
(2016) 08 KL CK 0039

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25049 of 2015 (E)

Manikuttan B.

APPELLANT

Vs

The Kerala State Public Service Commission

RESPONDENT

Date of Decision : 19-08-2016

Acts Referred:

Citation : (2016) 4 KLT 1002

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. P.C. Sasidharan, SC, KPSC, for the Respondent No. 1; Sri. M. Gopikrishnan Nambiar, SC, KSRTC, for the Respondent No. 2; Sri. K. Shaj and Sri. S. Sajju, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Shaji P. Chaly, J. - This writ petition is filed by the petitioner seeking direction to the 1st respondent Kerala State Public Service Commission [hereinafter called "the P.S.C."] to include the petitioner in the ranked list in category No. 470/09 for appointment to the post of Blacksmith Grade-II in the 2nd respondent Corporation and to quash Ext.P5 letter issued by the P.S.C, whereby petitioner was informed by the 1st respondent that he cannot be included in the rank list. Material facts for the disposal of the writ petition are thus :

2. First respondent issued notification dated 30.12.2009 inviting applications to category No. 470/09 for direct recruitment to the post of Blacksmith Grade-II in the 2nd respondent Corporation. Pursuant to the aforesaid notification, petitioner applied to the said post. Petitioner has all the requisite qualifications and experience for seeking appointment. But petitioner did not find a place in the final rank list published by the 1st respondent. The reason assigned for excluding the petitioner stated in Ext.P5 is that his experience as casual labourer is not sufficient. It is the contention of the petitioner that, notification dated 30.12.2009 only requires a work experience of three years in any Body building/ Body repairing Units having S.S.I. registration. It does not make any exclusion to

the work experience obtained as a Casual Labourer. The terms, conditions and eligibility for recruitment cannot be changed after the notification, and further contends that 1st respondent cannot add additional criteria which has not been specifically provided in the notification. It is in this background, this writ petition is filed.

3. First respondent has filed a counter affidavit contending that the qualifications prescribed for selection to the post were: I.T.I Certificate in the trade of Blacksmith/Forger and Heat Treatment/Sheet Metal/Fitter/Diesel Mechanic/Mechanic Motor vehicle/Welder with not less than three years experience in any body building or body repair workshop having S.S.I. Registration. Petitioner cleared the objective type O.M.R. Test. Petitioner at the time of certificate verification conducted for the post from 17.02.2014 to 22.02.2014, produced National Trade Certificate in the trade of Sheet Metal Worker and Experience Certificate as casual labourer from M/s. Suresh Engineering Works and Metal Industries, Adoor, denoting experience from January, 1992 to January, 1995. The specific date of the month of January, 1992 or the month of January, 1995 is also not specified in Ext.P3 experience certificate. As per paragraph 19 of Part-II General Conditions, it is clearly stipulated that the experience gained by candidates in the capacity of paid or unpaid apprentices, trainees and casual labourers will not be accepted. As per the experience certificate produced, petitioner has gained experience in the capacity of casual labourer. Hence the application of the petitioner was rejected and his name was not included in the rank list for the post of Blacksmith Grade-II in the 2nd respondent Corporation, published on 23.10.2014.

4. It is also stated that, a Division Bench of this Court in "Kerala Public Service Commission v. Anil Kumar" [2013 (2) KLT SN 103 (C.No. 132)] while considering the empanelled service rendered in the K.S.R.T.C for the purpose of age relaxation, held that empanelled service which are only intermittent appointments cannot qualify for age relaxation. Therefore, it is the contention that experience as a casual employee does not qualify for the required three years experience as per the notification. Further, it is contended, going by the decisions reported in "Karnataka Public Service Commission and others v. B.M. Vijaya Shankar and others" [1992 (2) SCC 206] and "Rangaswamy v. Kerala Public Service Commission" [1982 KLT 574], the conditions in the notification is binding to both the candidates and the Commission and departure from the notification is not justified. Therefore, it is submitted that petitioner is not entitled to get any reliefs in the writ petition.

5. Heard learned counsel for the petitioner and learned Standing Counsel for the respective respondents, perused the pleadings and documents on record.

6. The question to be considered is whether the petitioner has the requisite qualification in accordance with the notification issued by the 1st respondent inviting applications to category No. 470/09 for the post of Blacksmith Grade-II in the 2nd respondent Corporation. The notification is produced by learned

Standing Counsel for the 1st respondent and paragraph 7 deals with qualifications, wherein it is stated that, the candidate should be a Blacksmith, Forger and Heat Treatment, Sheet Metal, Fitter, Diesel Mechanic, Mechanic Motor Vehicle, Welder having I.T.I. Certificate in any one of the aforesaid trades and experience certificate from a body building or body repairing workshop for a period of three years, which shall be provided in the format of certificate provided in the notification. In Ext.P5, the reason mentioned for not including the petitioner in the rank list is that the experience of the petitioner as a casual labourer is not acceptable. Petitioner has produced Ext.P1 I.T.I. Certificate, Ext.P2 National Trade Certificate and Ext.P3 experience certificate. It is finding fault with Ext.P3, petitioner was not included in the rank list.

7. On a perusal of Ext.P3, it is categoric and clear that the certificate is provided in accordance with the format of certificate provided in the notification signed by the Proprietor of a Body Building workshop having S.S.I. Registration, and countersigned by the Assistant Labour Officer, Adoor. On a perusal of the notification, the issue with respect to the term "casual labourer" is absent.

8. Learned Standing Counsel for the 1st respondent invited my attention to a Division Bench judgment of this Court in "Kerala Public Service Commission v. Anil Kumar" [2013 (2) KLT SN 103 (C.No. 132)], wherein it was held that empanelled drivers in K.S.R.T.C cannot claim relaxation. So also, another Division Bench judgment of this Court in "Jinesh Kumar M. and anr. v. Kerala Public Service Commission & others" [W.A.No. 1997 of 2014 dated 12.01.2015], wherein a certificate was produced showing the experience as a casual labourer and thereupon, this Court held that the experience as a casual labourer is not sufficient to meet the requirements of the notification. So also, learned counsel has invited my attention to the judgment of this Court in "Santhosh and others v. Kerala Public Service Commission and others" [W.P.(C) No. 12935 of 2014 dated 23.06.2014] in which some of the petitioners in the writ petition were not included in the rank list for the reason that the experience certificate produced by them show only daily wage engagement. Therefore, it is the contention of the learned Standing Counsel for the 1st respondent that the experience of the petitioner in this writ petition is only as a casual labourer, and therefore is not entitled to find a place in the rank list.

9. Learned Standing Counsel for the 1st respondent has invited my attention to paragraph 19 of the General Conditions Part-II and contended that apprentice/trainee, casual labourer will not be accepted as qualification. However, from paragraph 19 itself, I find that an experience certificate showing the experience secured by a candidate in a Central or State Government organization, Public Companies, registered Private Establishments as temporary or permanent employee is acceptable. So also, so far as workers in factories are concerned, experience gained either permanently or as a daily rated worker is also acceptable. Therefore, even going by Paragraph 19, it is categoric and clear that, experience gained by the petitioner from a registered private establishment, is

an acceptable experience as per the General Conditions Part-II. Therefore, from Ext.P3 certificate, it is vivid clear that petitioner worked as a Sheet Metal worker in a registered private establishment having Registration No. 09/01/02481/PMT-SSI functioning in the name and style of "M/s. Suresh Engineering Works and Metal Industries, Keerukuzhi, Adoor". It also shows that petitioner has worked there from January, 1992 to January, 1995 for a period of three years on a monthly salary of Rs. 1,050/-. That apart, in the notification inviting applications, it only states that apart from the basic qualification, the candidate should have three years work experience in any establishment having S.S.I. Registration. Therefore, in my considered opinion, going by the experience certificate, it is categoric and clear that petitioner had gained three years experience apart from the basic qualification, evident from Exts.P1 and P2 certificates of basic qualification.

10. From Ext.P3 certificate, what is discernible is, in a printed format all details are incorporated in writing. That apart, with respect to the experience in employment, except the required nature of employment, other entries are struck off. It is true, in Ext.P3, the nature of employment that is not struck off is "casual labourer", which thus means, the certificate shows that petitioner worked for a period of three years as a casual labourer. The term "casual" is defined in the "Chambers Concise Dictionary" to mean ; "accidental, unforeseen, occasional, off-hand" etc. etc. Merely because in the certificate, the nature of experience shows as "casual labourer", the term is not the criteria that is to be taken into account, but the material aspect with respect to the nature of work carried out by the applicant. From Ext.P3 certificate, as I have pointed out earlier, it is clear that petitioner was in continuous employment for a period of three years from 1992 to 1995 for a specified monthly salary. Therefore, merely the term "casual" is employed in Ext.P3 certificate, it should not be applied disadvantageously to the petitioner if he has actually gained three years experience as contemplated in the notification as well as the General Conditions Part-II. In that view of the matter, Ext.P5 communication of the 1st respondent dated 01.01.2015 cannot be sustained under law and accordingly same is quashed.

11. In the circumstances, there will be a direction to the 1st respondent to include the name of the petitioner in the rank list of Blacksmith Grade-II, category No. 470/09 on the basis of the notification dated 30.12.2009.

The writ petition is allowed accordingly.