
(2014) 10 KL CK 0328
In the High Court Of Kerala
Case No : O.P. (KAT). No. 3731 of 2012

Manjusha O.T.

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0328

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : N. Nandakumara Menon, Sr. Adv., P.K. Manojkumar and Hena Bahuleyan, Advocate for the Appellant; P.K. Radhika, Latha Krishnan, SCs., George Abraham, Advocate and Viju Thomas, Sr. Government Pleader, Advocate for the Respondent

Judgement

Antony Dominic, J.—This OP is filed challenging the order passed by the Kerala Administrative Tribunal dismissing OA No. 50/12 filed by the petitioner herein.

2. We heard the learned senior counsel for the petitioner, learned Government Pleader appearing for the 1st respondent, learned standing counsel appearing for the 2nd respondent and the learned counsel appearing for the 3rd respondent.

3. The facts which led to the filing of the OA are that by Annexure A1 notification dated 4/9/10, applications were invited from sportsmen/women who have made the specified achievements in sports/games, disciplines of which are shown in the Annexures to the notification, during the calendar years 2006-08 and 2009 for appointment in the State Government service under the scheme for the appointment of outstanding sportsmen/women. In this notification, a total of 110 vacancies were notified to be filled up and in so far as the dispute in the OA was concerned, rival claim was in relation to one of the vacancies of 2009 that was earmarked for the discipline of Ball Badminton.

4. Petitioner and the 3rd respondent applied in response to the notification. In the application, the petitioner claimed that she was the captain of the team

which had represented Kerala State in the Senior National Championship for women and won first place in 2009, whereas the 3rd respondent not only claimed that she was a member of the aforesaid team, but she also claimed that she had represented the University and won third place in All India Inter University Competition in 2009. These events were included at Sl. Nos. 39 and 46 of Annexure IV to Annexure A1 notification. In the selection process that was conducted, the 3rd respondent having the priority 39 and 46 was chosen over the petitioner, who had priority 39 alone. Accordingly, the 3rd respondent was eventually appointed as a Lower Division Clerk. It was challenging the selection and appointment of the 3rd respondent that the petitioner filed the OA.

5. The Tribunal perused the terms of Annexure A1 notification and held that the view taken by the official respondents that the 3rd respondent was eligible to be given credit for priority items for 39 and 46, is a reasonable view and declined to interfere with the selection and appointment of the 3rd respondent. It is this order of the Tribunal, which is impugned before us.

6. Learned senior counsel for the petitioner took us through the various provisions of Annexure A1. According to him, going by the terms of the notification, only the highest achievement as given in Annexure IV can be taken into account. He pointed out that in view of the above prescription, since both the petitioner and the 3rd respondent had represented the Kerala State in the Senior National Championship for women and had won first place, it being priority item 39 in Annexure IV to Annexure A1 notification, that alone could have been taken into account. According to him, therefore, giving credit to the 3rd respondent for representing the University and winning third place in All India Inter University Competition is illegal. He also pointed out that in the Kerala State Senior National Championship where both the petitioner and the 3rd respondent participated in 2009 and won first prize, the petitioner was the captain of the team. Therefore, according to the counsel, since both had participated in the same event, there was a tie and in view of her captaincy, petitioner was entitled to be preferred in view of clause 2.10 of Annexure A1. According to him, therefore, the selection of the 3rd respondent and her appointment are illegal.

7. On the other hand, learned counsel for the 3rd respondent contended that the provisions of notification read in its totality would show that the candidates were entitled to take credit for any of the priority items enumerated in Annexure IV to the notification. He pointed out that if so read, the 3rd respondent was entitled to priority in respect of both item Nos. 39 and 46 and that her selection and appointment on that basis cannot be impugned.

8. We have considered the submissions made.

9. The entitlement to be appointed which is asserted by both the petitioner and the 3rd respondent has to be adjudicated having regard to the terms of Annexure A1 notification dated 4th September, 2010. Reading of the provisions

of the selection procedure enumerated in the notification shows that in terms of clause 2.10, where there is a tie in any of the achievements listed, the criteria enumerated therein should be applied and based on the priority listed, the tie should be broken. As per this provision, captaincy in the higher competition is to be preferred to a participant in the competition. It is relying on this provision that the petitioner, who had captained the team, in which she and the 3rd respondent won first prize, is claiming priority over the 3rd respondent.

10. Annexure III to Annexure A1 notification is the format of the application to be submitted by the candidates. Clause 13 of Annexure III reads thus;

"13. Details of achievements in sports/games as required in the Notification (Highest achievements as given in Annexure IV alone need be given. The Certificates should be enclosed chronologically and in the order of priority)"

11. It is relying on this provision that the learned senior counsel for the petitioner argued that the highest of the achievements as given in Annexure IV alone need be given by a candidate. According to him, therefore, even if a candidate has participated in more than one item listed in Annexure IV, only the highest item need be indicated in the application form and only that item can be reckoned by the appointing authority for selecting and appointing the candidate. He therefore contended that both of them having participated in item No. 39 of the priority list and the petitioner having captained the team, is entitled to be preferred in view of the provisions contained in Clause 2.10 of the notification. Though, at the first blush this contention would sound attractive, a closer reading of Clause 13 of Annexure III shows that the details of "achievements" in sports/games as required in the notification is to be given by the candidates. The bracketed portion of Clause 13 shows that the highest "achievements" as given in Annexure IV alone need be given by the candidates. The candidates are also required to enclose "certificates chronologically and in the order of priority". The terms, "achievements", "certificates" and also the requirement that certificates are to be enclosed chronologically and in the order of priority mentioned in clause 13 are in plural and not singular. The bracketed portion is thus capable of being read as indicating that the achievements mentioned in Annexure IV, where 46 achievements have been listed in the order of priority, are, for the purpose of the notification, treated as highest. If that were not the intention of the notification, nothing prevented the appointing authority in using singulars as against plurals in clause 13 of the notification. Further, there need not have been any requirement to enclose certificates chronologically in the order of priority.

12. Therefore, in the light of the above prescriptions, if the provision of the notification is read as enabling the candidates to indicate priority in respect of more than one item mentioned in Annexure IV and entitling them to take advantage of the same, such a reading of the provisions of Annexure A1 cannot be said to be perverse one or at any rate such a reading is certainly a plausible one. It is trite that if a provision is read by an authority, who is entrusted with the responsibility of implementing the same, in a reasonable and plausible

manner, even if a different view is possible, a court of law exercising power of judicial review will not upset the view taken by the authority.

13. The learned senior counsel for the petitioner states that there was a tie between the petitioner and the 3rd respondent and that the same should have been resolved applying the preferential provision contained in clause 2.10 of the notification in favour of the petitioner, who had captained the team. In our view, the question of tie arises only if two candidates are equally placed. In so far as this case is concerned, while the petitioner had claimed the benefit of priority item No. 39, the 3rd respondent had claimed the benefit of priority item Nos. 39 and 46. Therefore, this is not a case where the two of them were equally placed resulting in a tie requiring resolution applying the provisions of clause 2.10 of the notification. Therefore, this contention also does not appeal to us.

14. In so far as this case is concerned, as found by the Tribunal, the manner in which the provisions of the notification have been understood by the authorities cannot be said to be a perverse one and at any rate it is a reasonable view. We, therefore, do not think that the Tribunal erred in declining to interfere with the appointment of the 3rd respondent.

OP is dismissed.