

(2014) 02 KL CK 0089
In the High Court Of Kerala
Case No : W.A. No. 1842 of 2013

Mukesh V.R.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Citation : (2014) 02 KL CK 0089

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : Saritha David Chunkath, Advocate for the Appellant; Viju Thomas, R1 by Sr. Govt. Pleader, Sri. Arun B. Varghese, SC, R2 and R3 by Advocate and Smt. P.V. Asha, R4 by, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The appellant challenges the decision of the learned single Judge refusing to interfere with the application of 40% as the cut off marks in the written test for appointment to the category of Assistant Grade II from the low paid staff working in the Sree Sankaracharya University of Sanskrit.

2. We have heard the learned counsel appearing for the appellant, the learned standing counsel for the University, the learned Senior Government Pleader and the learned counsel appearing for the private respondent.

3. By Ext. P1 notification, University through its Registrar, invited applications for recruitment to the post of Assistant Grade II on regular basis. Five percentage of the total existing vacancies were to be filled up from the low paid staff working in the University who have minimum qualification for the post and from the separate rank list to be maintained exclusively for them after the written test. It is the admitted position that such earmarking of 5% of the total existing vacancies is done applying GO(P). No. 12/2010/P&ARD dated 5.4.2010, which is Ext. P5, by which the Government have enhanced the 5% quota to 10% quota

overruling the advice of the Public Service Commission in that regard. The limited plea is regarding the fixation of 40% cut off marks in the written examination. Such a prescription is specific in Ext. P5. That was a prescription which was carried to Ext. P5 from GO (P).No. 11/74/PD dated 10.1.1974 which can be treated as the mother Government Order for the policy decision to make available a particular quota of vacancies among Lower Division Clerks, Lower Division Typists, Typist-Clerks and Copyists as reserved for persons holding low paid posts. The qualification that was maintained right from the inception for operating that scheme is that those persons would be included in the Subordinate Services and they ought to secure not less than 40% marks in the competitive test conducted by the Public Service Commission for selection to the said posts. In the light of the contents of that Government Order, the appellant has also challenged the fixation of 40% cut off marks as per that Government Order.

4. No statutory rule governing recruitment to the services of the University provides any such reservation or quota rule. The prescription of 5% reserved for the low paid employees is made on the basis of the executive decision of the Government. That decision of the Government is held the field from 1974 and it continues to be so even now; one of the prime objects for its operation being that the candidates should obtain 40% marks in the written examination. The learned counsel for the appellant has referred to the decision of this Court in *Dr. S. Ajayan v. State of Kerala and others* ILR 2006 (3) Ker. 641 (DB) and *Ravidas v, Public Service Commission* 2009 (2) KLT 295 (FB). While the Full Bench held that the PSC could not have prescribed cut off marks to shortlist candidates for interview in the absence of such a provision in the Rules or notification, the Division Bench in *Dr. S. Ajayan (supra)*, which was affirmed by the Full Bench, dealt with similar issue relating to recruitment through PSC. We do not have to go to such areas now because, the whole exercise of regulating 5% for the low paid employees is on the basis of the Government Orders which operated from 1974, all those Government Orders carrying the specific prescription of 40% as the cut off marks for the written examination in the case of such candidates. The University has not applied any other yardstick. The mere fact that a cut off date has not been mentioned in the notification issued by the University makes no difference. This is all the more so because, 40% cut off marks are indefeasibly applied to open market candidates as also those aspiring for inclusion in the 5% quota. For these reasons, we do not find any ground to interfere with the decision of the learned single Judge.

In the result, this writ appeal is dismissed. No costs.