
(2010) 10 KL CK 0239
In the High Court Of Kerala
Case No : W.A. No. 1600 of 2010

P. Rajeshkumar

APPELLANT

Vs

The Kerala Public Service Commission and The District Officer

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 7

Citation : (2010) 10 KL CK 0239

Hon'ble Judges : Jasti Chelameswar, C.J;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : M.V. Bose, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—The appellant/writ petitioner was an aspirant for the post of Driver Grade II in Government Departments in Wayanad District. He applied for the same pursuant to the notification issued in this regard by the Public Service Commission. On completion of the selection process, Ext.P1 rank list was published on 03.04.2002 wherein he was placed at serial No. 22. Petitioner contends that, in spite of reporting the concerned vacancies way back on 10.03.2004, proper "advice" was not given from the office of the 2nd respondent; which in fact was effected only on 04.06.2005, i.e., on the date of expiry of the rank list, whereby the person at serial No. 20 (by name K.V. Sunny) was advised to the Education Department and the person at serial No. 21 (by name Jagadeesh) was advised to the Revenue Department. The person at serial No. 21 did not join duty, thus giving rise to an "NJD" vacancy (Non-joining duty vacancy).

2. On coming to know the factual position as above, the appellant/petitioner put forth a claim on 30.06.2005, vide Ext.P3, seeking to advise and appoint him against the said "NJD" vacancy. It is stated that many a representation followed and since there was no positive response from the part of the respondents, after collecting the necessary materials availing the remedy under the Right to

Information Act, 2005, the petitioner approached this Court by filing the writ petition in the year 2010; i.e., 5 years after expiry of the rank list.

3. The claim was seriously contested on the part of the Public Service Commission stating that the person at serial No. 20 by name "K.V. Sunny", though was originally advised to the vacancy in the Education Department, happened to be thrown out for reduction of vacancies and in the said circumstances, he had to be accommodated against the "NJD" vacancy pursuant to the non-joining by the person at serial No. 21 and accordingly he was advised against the NJD vacancy reported on 10.11.2005.

4. Taking note of the factual position as above, the learned Single Judge, as per the impugned judgment dated 28.07.2010 held that, both the persons, advised at rank Nos. 20 and 21 having been placed above the petitioner (who was only at rank No. 22), there was absolutely no merit in the contentions raised by the petitioner and accordingly, interference was declined and the writ petition was dismissed, which in turn is under challenge in this appeal.

5. The learned Counsel for the appellant submits that the petitioner/appellant has been put to irreparable loss and injury because of the inordinate delay in effecting the "advice" in spite of reporting the vacancies on 10.03.2004 and had it been done within a reasonable time, the "NJD" vacancy would have come to the petitioner, who was at serial No. 22.

6. The learned Standing Counsel for the P.S.C submits that the course pursued by the respondents is in accordance with the statutory requirements, particularly in tune with the "second proviso" to Rule 7 of Part II K.S. & S.S.R, which stipulates that preference is to be given to such "thrown out" candidates. It was in the said circumstance, that the person at serial No. 20 (by name Sunny) was accommodated against the "NJD" vacancy.

In view of the factual position and the stipulation contained under the "second proviso" to Rule 7 as above, we find that the verdict passed by the learned Single Judge is beyond challenge. The appeal is devoid of merit and none of the grounds raised in support of the claim does serve any purpose. No interference is warranted and the writ appeal is dismissed accordingly.