

(2000) 03 KL CK 0020

In the High Court Of Kerala

Case No : O.P. No's. 4169, 7058, 8530 and 8969 etc. of 1998

Partha Radha and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Kerala State and Subordinate Services Rules, 1958 — Rule 10, 13

Citation : (2000) 03 KL CK 0020

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : V.P. Sukumar, Ranjit Thampan, V.M. Unnikrishnan, V.P. Seemanthini, K.R. Krishna Kumari, P.K. Asokan, K. Ramakumar, P.B. Sureshkumar and K. Karjit, for the Appellant; O.V. Radhakrishnan, Preethi Ramakrishnan, C.T. Ravikumar, C. Raghavan and R.K. Venu Nair, for the Respondent

Judgement

Arijit Pasayat, C.J.—All these petitions involve a single point of dispute and therefore are disposed of by this common Judgment.

2. The controversy lies within a narrow compass and factual aspects need to be noted in brief. The Kerala Public Service Commission (hereinafter referred to as "the Commission") invited applications for selection to the post of Sub Engineers (Electrical) in the Kerala State Electricity Board (in short "the Board") in terms of the notification in the official Gazette dated 21st June 1994. The qualifications prescribed for selection to the post were:

(1) S.S.L.C. or its equivalent

(2) Technical qualifications:

(a) Diploma in Electrical Engineering of a recognised institution after 3 years course of study.

or

(b) A certificate in Electrical Engineering from any one of the recognised Technical Schools, shown below with five years service under Kerala State Electricity Board.

(i) City and Guilds, London Examination in Electrical Engineering in A.C. and D.C. of intermediate or final grade.

(ii) Krishna Rajendra Technological Institute (2 years course).

(iii) S.M.T. School Overseer's Certificate in Electrical and Mechanical Engineering (2 years course).

(iv) Certificate in Electrical Engineering of Engineering College, Thiruvananthapuram or Technological Institute, Thrissur or equivalent course (2 years).

(v) Certificate in Electrical Engineering, C.N.T. Institute, Madras (2 years course).

(vi) Certificate obtained from P.S.G. Institute, Coimbatore (2 years course).

(vii) Electricians course certificate, College of Engineering, Calcutta (2 years course).

(viii) Certificate in Electrical Wiring of the Industrial School, Calicut.

(ix) M.G.T.E./K.G.T.E. Group Certificate in Electrical Engineering in 4 subjects, viz. Electrical Lights and Power (Higher), Applied Mechanics (Lower), Heat Engines (Lower) and Machine Drawing (Lower).

(x) Departmental 3 years apprentice course training and pass in the final examination.

(xi) Craftsman certificate from Industrial Training Centre as Electrician, Wireman or Lineman.

(xii) Certificate of Grade II Proficiency test in the trade of Electrician under Technical Training Scheme (Demob).

or

(c) M.G.T.E./K.G.T.E. in Electrical Light and Power (Higher) with five years experience as II Grade Overseer (Electrical) under the Board.

3. Candidates who applied for selection were permitted to appear at the written test conducted on 23rd December 1995. Subsequently the test was cancelled and re-test was conducted on 20th July 1996. According to the Commission the permission to appear at the written test was provisional as detailed scrutiny of the application forms had not been undertaken. Subsequently it was done and candidates who did not possess the prescribed qualifications were not included in the short list. Petitioners in the Original Petitions are holders of B. Tech. Degree in Electrical Engineering or Bachelor Degree in Electrical Engineering. The Commission was of the view that they did not possess the prescribed

qualification and were therefore not eligible for selection. Such conclusion is the subject matter of challenge in each case.

4. According to learned Counsel for Petitioners, they possess higher qualifications and therefore the non- consideration of their cases is illegal and unsustainable. They have moved this Court for a direction to the Commission to consider them as eligible candidates. It is also submitted that since the inception of the Board, persons possessing higher qualifications are being considered and therefore in terms of Rule 13 Part I of Kerala State and Subordinate Service Rules, 1958 (in short "the Rules") it shall be presumed that the Commission and the Board had accepted higher qualifications to be applicable to these cases.

5. Stand of the Commission is that Graduate in Engineering or other qualifications possessed by Petitioners may for the sake of argument be taken as higher qualifications than those prescribed for the post, but they are not equivalent qualifications prescribed for the post. Cases of candidates possessing higher qualifications can only be taken note of in case they acquired such higher qualifications after acquiring the prescribed qualifications. Reference has been made to Rule 10 (a)(ii) of Part I of the Rules to contend that such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall be sufficient for the post. The qualifications possessed by the Petitioners do not presuppose the acquisition of the prescribed lower qualifications. Therefore the qualifications possessed by the Petitioners do not meet the requirement.

6. Learned Counsel for Petitioners by way of reply submitted that rules have no application to the employees of the Board and in any event the provision which has been referred to by the Commission was incorporated by way of an amendment brought in the year 1994, and do not have any application.

7. Learned Counsel for the Board submitted that the Board has adopted rules to be applicable to its employees inclusive of all amendment. Reference is made to Board's order dated 27th July 1964 wherein it was ordered that the Rules shall be deemed to have been in force in the Board from 17th December 1958, i.e. the date on which it was brought into force by Government. It was therefore accepted that the provisions contained in the rules are in force in the Board from 17th December 1958. It was further submitted that the Board in consultation with the Commission has ordered that the principles contained in the rules would be applicable to the employees of the Board for all purposes contemplated in the Kerala Public Service Commission (Additional Functions) Act, 1963 (in short Commission Act) and the rules thereunder. This position was stated in Board's order dated 24th July 1967. Earlier by order dated 27th July 1964, rules were deemed to be in force so far as Board is concerned with effect from 17th December 1958. Subsequent order dated 24th July 1967 was necessary in view of Commission Act and Rules made thereunder. In spite of taking this stand the Board submitted that it has no objection in appointing candidates possessing qualifications equivalent to the prescribed qualifications or higher qualifications.

8. As the factual scenario described above would show there is no dispute that the prescribed qualification was Diploma in Electrical Engineering of a recognised institution after 3 years course of study or a certificate in Electrical Engineering from any one of the recognised Technical Schools described in the notification itself with five years service under the Board or M.G.T.E./K.G.T.E. in Electrical Light and Power (Higher) with five years experience as Grade II Overseer (Electrical) under the Board. So far as the application of the Rules is concerned, there is no dispute by the Board that the same applies to the employees of the Board with all amendments made thereto after it came into force. Rule 10 (a) of Part I as it stood prior to its amendment on 3rd February 1994 reads as follows:

10. Qualifications-(a) The educational or other qualifications, if any, required for a post shall be as specified in the Special Rules applicable to the service in which that post is included.

The above rule has been substituted with effect from 3rd February 1994 by G. O. (P) No. 8/94/P and ARD. dated 3rd February 1994 published as S.R.O. No. 510/94 in Kerala Gazette No. 13 dated 29th March 1994. The substituted Rule 10 (a) reads as follows;

10. Qualifications.-(a) (i) The educational or other qualifications, if any, required for a post shall be as specified in the Special Rules applicable to the service in which that post is included or as specified in the executive orders of Government in cases where Special Rules have not been issued for the post/service.

(ii) Notwithstanding anything contained in these rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.

9. The Rules have been framed under Article 309 of the Constitution of India, 1950 (in short "the Constitution"). As observed by the apex Court in Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, such rules have to be followed strictly and not in breach. Executive orders cannot override such rules. Even a decision by Government to amend the rules do not obliterate the concerned rules. [See K. Kuppusamy and Another Vs. State of T.N. and Others, The Rules framed in terms of Article 309 are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. As succinctly stated in A.K. Bhatnagar and Others Vs. Union of India (UOI) and Others, of such problems are created by Governments who get trapped on account of their own mistakes or action in excess of what is provided in the rules.

10. Admitted position is that the qualifications possessed by Petitioners do not presuppose the acquisition of prescribed lower qualifications. Where qualification has been prescribed for a post that cannot be diluted and persons not possessing those qualifications cannot be permitted to be considered Certain observations made by the apex Court in District Collector and Chairman, Vizianagaram Social

Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, need to be taken note of. In paragraph 6 thereof it was observed by the apex Court that it must be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. Though observations were made in a slightly different context it has to be noted that the apex Court laid stress on fulfilment of the particular qualifications. In Upen Chandra Gogoi Vs. State of Assam and Others, it was observed by the apex Court that the qualifications to be met by the candidate are those prescribed under the advertisement in response to which application is made and not those prescribed with effect from a subsequent date. In Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, , it was held that an advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by it and cannot act contrary to it. It is not the function of the Court, as observed by the apex Court in V.K. Sood Vs. Secretary, Civil Aviation and others, to prescribe qualifications. Question whether qualification prescribed by the notification is sufficient does not fall within scope of judicial review. Thus, there is no substance in the plea of learned Counsel for the Petitioners that denial of opportunity to them would constitute violation of Articles 14 and 16 of the Constitution. The qualifications prescribed being specific, the case of persons not possessing that specific qualification is not to be considered.

11. In view of the established position that Rules have application, the clear stipulation in Rule 10 (b) Part I thereof (after amendment), that the higher qualification which does not presuppose acquisition of the lower qualification prescribed for the post is not the specified qualification, plea raised by Petitioners is without substance.

12. Above being the position, we are of the view that the Commission was justified in not taking into consideration cases of Petitioners. The fact that in the past degree holders were being considered, even if erroneously cannot be a ground to take a different view. Rule 13, Part I of the Rules has no application to the present dispute.

The Original Petitions are dismissed.