
(2016) 02 KL CK 0079
In the High Court Of Kerala
Case No : W.P. (C) No. 1203 of 2014

Paul Ben

APPELLANT

Vs

Managing Director, Kerala State Women Development
Corporation Ltd.

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Citation : (2016) 1 KerLJ 757 : (2016) 1 KHC 890 : (2016) LIC 1438

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : P.N. Mohanan, Advocate, for the Appellant; Mohammed Shah,
Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—1. The petitioner is aggrieved with the denial of appointment to the post of Regional Manager, despite he having figured as No. 2 in the rank list prepared pursuant to a selection. The notification is seen at Ext. P1 and the call letter issued to the petitioner is seen at Ext. P2. After the selection process, the eligible candidates were interviewed and a short list of six persons were made as is seen at Ext. P3, wherein the petitioner is the 2nd rank holder. The 1st rank holder was issued with appointment letter. There was no appointment letter issued after that, in which event, the petitioner applied to the Corporation under the Right to Information Act as per Ext. P6. The Corporation replied by Ext. P6 in which it is stated that only one post was available to the Open Category and the second post is conceded to a Ezhava Candidate included in the Other Backward Community list, for reservation within the State of Kerala. There being no other Ezhava candidate, the Corporation is proposing a fresh notification; is the contention. The learned counsel for the petitioner however, contends that the Corporation had notified the vacancies by Ext. P1 which contained no specification as to reservation. Reservation is not a constitutional imperative, and it has to be applied to the service of a particular employer and

the contention raised is that unless the same is incorporated in the recruitment rules, there can be no reservation granted. The learned Counsel appearing for the respondent however, would submit that there was an omission insofar as the reservation not being noticed in Ext. P2. All the same Ext. P2 call letter indicated that a candidate belonging to SC/ST/OBC/PWD categories should attach a copy of the certificates issued by the competent authority. This definitely indicates that there is a specific provision for reservation in the Corporation; is the contention.

2. The petitioner relies on Ext. P7 judgment of the Division Bench of this Court and another Division Bench judgment in WA No. 1314/2008 dated 03/02/2011 to contend that the petitioner ought to be appointed being the second rank holder.

3. Ext. P7 judgment was in an almost similar circumstance where two vacancies were notified. But however, the 2nd rank holder was not granted the appointment. On the 2nd rank holder challenging the same before this Court, it was contended by the employer that there was a person who was appointed as a casual employee in the post of LDC and since he was not qualified to be regularised in that post; he was regularised in the post of Peon, notified for direct recruitment. The same was found to be illegal by Ext. P7 judgment and the petitioner in the writ petition was directed to be granted the appointment. An additional contention then raised, by the employer, was that the rules of reservations were applicable and the 2nd vacancy would have to go to the eligible person on communal rotation. This was a contention raised to frustrate the claim of the petitioner. Only in that circumstance, this Court found that reservation having been not specified in the notification, there is no warrant to accept the said contention taken at the stage of hearing of the writ appeal.

4. The further reliance placed is on WA 1314/2008. Therein the issue dealt with was the inter se seniority of merit based candidates from the open category and the candidates from the backward communities. The Court found that there was no rule for reservation for backward communities at that point of time in the Co-operative Societies Act, (Kerala), 1969 or in the rules applicable to the Bank. A circular issued by the Registrar of Cooperative Society directing such reservation was found to be only suggestive and not mandatory. It was found that the same was not implemented by the employer before the selection commenced and to fortify such finding it was also noticed that the notification also did not speak of reservation to backward communities.

5. It does not necessarily follow that if reservation is applicable as per the recruitment rule and the same is not stipulated and specified in the notification, then, the reservation cannot at all be applied and the vacancies will then, have to be conceded to the open category candidates. If such a contention is accepted then, that would go against the principle of reservation and the issuance of a notification by the prospective employer without such condition, would lead to a valid exclusion of the reserved candidates. Then any employer could subvert the principles of reservation made applicable to it, by not specifying it in the notification.

6. The circular with respect to applicability of reservation, inter alia in the respondent Corporation was handed over across the Bar, bearing No. 12068/BPE-2/93-Plg. Thiruvananthapuram dated 01/03/1994, which followed an earlier Circular No. 14896-BPE-2/91-Plg. N dated 28/02/1992; and reads so:

"In the circular cited, Government have prescribed the procedure to be followed while making recruitments in the Public Sector to posts which are outside the purview of the Kerala Public Service Commission.

It has been specified in sub-para V of the above Circular, that principles of reservation as applicable to Government appointments should be adhered to for appointment in Public Sector Undertakings also. But the Legislature Committee on Welfare of Backward classes expressed apprehension that the instructions in the Circular could be misinterpreted.

It is therefore reiterated that in respect of all recruitments to posts outside the purview of the Public Service Commission, each Public Sector Undertaking should scrupulously follow the principles of communal rotation as laid down in Rules 14 to 17 of the Kerala State and Subordinate Service Rules, Part II."

Hence the respondent is definitely obliged to follow the rules of communal rotation under the KS & SSR being a Corporation wholly owned by the Government of Kerala. In such circumstance, it cannot be found that the mere fact that the reservation was not specified in the notification would require the Corporation not to follow the communal rotation.

The writ petition would stand dismissed. No costs.