
(2012) 03 KL CK 0289

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27432 of 2004

P.C. Appukuttan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 2 KLJ 777

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : V. Philip Mathews, for the Appellant; Shaij Raj. T.K. (GP), N.N. Sugunapalan (SC), P. Santhalingam (SC) and P.C. Sasidharan (SC), for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—The petitioner has filed this writ petition challenging Ext.P12 order of the 4th respondent by which, he has been removed from service. The petitioner was appointed as a Mazdoor/Electricity Worker under the 2nd respondent pursuant to an advise of the 3rd respondent dated 24.6.2003. Thereafter, Ext.P3 memo of appointment dated 13.8.2003 was issued to the petitioner. On the basis of Ext.P3, the petitioner joined the service of the 2nd respondent. However, later on, certain complaints were raised against the appointment of the petitioner. Thereupon, as per Ext.P4 order dated 4.2.2004 the petitioner was suspended from service and disciplinary action was also initiated against him. The allegation against the petitioner was that the petitioner had suppressed from the 3rd respondent the fact that he has passed his SSLC examination, with the object of securing a job as Electricity Worker.

2. It was as per Ext.P1 notification that the 3rd respondent had invited applications for appointment to the post of Electricity Worker (Mazdoor). The qualification prescribed was that a candidate should have passed his fourth standard but should not have passed SSLC. Certain other physical requirements

have also been insisted on. Though the petitioner had passed the SSLC examination, he submitted an application stating that he had not passed the SSLC examination. On the basis of the said application the petitioner was considered for appointment and advised as per Ext.P2. It was pursuant to the detection of the above discrepancy that the petitioner was suspended as per Ext.P4. It is stated in Ext.P4 that a local enquiry that was conducted revealed that the petitioner had two SSLC books bearing Nos. 642002 and 181280 which in combination would show that he had passed his SSLC examination. Therefore, it is alleged in Ext.P4 that he had suppressed facts fraudulently with the object of securing an appointment in the service of the 2nd respondent.

3. Subsequently, Ext.P5 show cause notice was issued to the petitioner. A charge sheet as well as a memo of charges evidenced by Ext.P6 were also served on the petitioner. He submitted his explanation Ext.P7. According to the petitioner, it is true that he has passed SSLC, "at a belated stage". He had responded to the notification on the belief that the stipulation was flexible and subject to exceptions. He further says in Ext.P7 as follows:

Moreover I thought that my passing of SSLC examination will not disentitled my eligibility.

The petitioner has thereafter proceeded to attack the stipulation that a person should not have passed SSLC, as being arbitrary and violative of Article 14 of the Constitution. In Ext.P9 reply to the show cause notice issued to him, the petitioner has stated as follows:

It is submitted that if the wording contained in Clause I of the education stipulations are literally interpreted, I admit that I am not qualified for the said post.

4. On the basis of the explanation, further action proceeded and in Ext.P10 issued by the 5th respondent, the petitioner has been directed to show cause why the punishment of removal from service should not be imposed on him. Though Ext.P10 was issued by the 5th respondent and though it appears that the petitioner has submitted his explanation Ext.P11, it is not clear as to what proceedings followed thereafter. Since the 2nd respondent is not represented through counsel, I am left in the dark regarding the subsequent proceedings that are likely to have followed Ext.P11. The petitioner has challenged Ext.P12 issued by the 4th respondent setting aside the advise issued in his favour and removing him from service.

5. According to the counsel for the petitioner, Rule 3 (c), Part II of the Kerala State & Subordinate Service Rules ("KS & SSR" for short) empowers respondents 3 and 4 to cancel an advise only within a period of one year. In the present case, since Ext.P2 advise is dated 24.6.2003 and Ext.P12 dated 20.7.2004, it is contended that Ext.P12 is issued after the expiry of one year is unsustainable and liable to be set aside. Further, it has been found in Ext.P10 that the petitioner has suppressed the fact that he had passed the SSLC examination.

Whether the petitioner was ineligible to hold the post of Mazdoor under the 2nd respondent has neither been considered nor decided by the authorities. Particular reliance is placed on the decision of the Apex Court in Ram Kumar Vs. State of U.P. and Others, to contend that it was incumbent upon the authorities to have considered whether the petitioner was suitable for appointment to the post to which he was appointed and that if he was suitable, then there was no reason for terminating his service.

6. Though this writ petition is of the year 2004, no counter-affidavit has been filed in this case by the respondents. The counsel for the 3rd respondent pointed out with reference to Ext.P1 that as per paragraph 29 of the said notification, candidates had been informed well in advance that in the event of it being detected that any of the information furnished by them were false or that they were guilty of suppression of material facts from the Public Service Commission, their advise as well as their appointment would be set aside and they would be removed from service. In the present case, the petitioner is guilty of suppression of a material fact that he had passed his SSLC Examination. Since passing of the SSLC Examination disentitles the petitioner from being considered for appointment to the notified post, it is contended that the suppression was material. Referring to Exts.P7 and P9 explanations submitted by the petitioner, it is pointed out that he has admitted the culpable conduct alleged against him. In the light of the admission made by the petitioner, it is contended that no further enquiry was undertaken and the show cause notice Ext.P10 was issued to him. Thereafter, as per Ext.P12 the petitioner has been removed from service. The counsel also contended that in view of the decision of a Division Bench of this Court in Kerala Public Service Commission Vs. Hareendran, T.R. and Others , Rule 3(c) of KS & SSR is not applicable to the Public Service Commission. The counsel for the 3rd respondent therefore contends that the writ petition is liable to be dismissed.

7. I have heard Sri. V. Philip Mathew appears for the petitioner as well as Sri. P.C. Sasidharan who appears for the Kerala Public Service Commission and the learned Government Pleader. I have anxiously considered the contentions advanced before me by the contesting parties.

8. It is not in dispute that the petitioner had passed his SSLC examination, which fact was not disclosed at the time when the petitioner submitted his application pursuant to Ext.P1 notification. On the contrary, the petitioner submitted his application representing that he has failed his SSLC examination. It has been found on a local enquiry conducted by the 5th respondent that the petitioner possessed two SSLC books, one bearing No. 642002 and the other bearing No. 181280. Both these SSLC books in combination show that the petitioner had passed his SSLC examination. Since Ext.P1 disentitles a person who has passed the SSLC examination from applying for the notified post, the representation of the petitioner that he has passed his SSLC can only be construed as made, with the object of misleading the authorities into believing that he was qualified for

appointment to the notified post. It was acting on the basis of the misrepresentation that the petitioner was selected and advised for appointment as per Ext.P2. It is to be noted that but for the above misrepresentation, the petitioner would not have been selected for such appointment.

9. On the above misrepresentation being detected, by Ext.P4 the petitioner was suspended and a show cause notice Ext.P5 was issued to him. His explanation to the different notices evidenced herein by Exts.P7, P8 and P9 show that the petitioner has virtually admitted the fact that he had passed his SSLC examination. However, he was under the belief that the stipulation regarding the educational qualification was applicable subject to exceptions. According to him, he was not aware that passing of the SSLC examination would disentitle him from seeking employment to the notified post. In view of the above, no further enquiry was conducted and a show cause notice Ext.P10 was issued to the petitioner. Thereafter, as per Ext.P12 the petitioner has been removed from service. This writ petition is of the year 2004. There has been no interim order either staying the operation of Ext.P12 or permitting the petitioner to continue in service. Therefore, it is doubtful whether anything survives in this matter, at this length of time. However, since the issues involved are mainly centered on the legal aspects, I shall proceed to consider the issues raised.

10. With reference to Rule 3(c) of KS & SSR, the contention of the counsel for the petitioner is that since the one year period stipulated by the said Rule had expired as on the date of issue of Ext.P12, the same is unsustainable. However, it is to be noted that a Division Bench of this Court has considered the scope of Rule 3(c) in the decision in Kerala Public Service Commission v. Hareendran (referred supra) and it has been held that Rule 3(c) applies only to a mistake inadvertently committed by the Public Service Commission. It has also been held that the said Rule has no application in cases where fraud has been committed by a candidate and an advise has been issued by the Public Service Commission on the said basis. The above decision has been followed by another Division Bench of this Court in M. Babu Vs. The Kerala State Electricity Board, The Assistant Engineer, The Kerala Public Service Commission and The District Officer, . In the said decision, the facts are also identical for the reason that the candidate in the said case had applied for appointment the post of Mazdoor in the Kerala State Electricity Board suppressing the fact that he had actually passed SSLC examination. The Division Bench held that, in such a case, the PSC cannot be said to have committed any mistake. Therefore, it was held that Rule 3(c) has no application to cases where fraud has been played by the candidates. The dictum in the said case will apply on all fours to the facts of the present case. Therefore, it has to be held that Ext.P12 does not suffer from any infirmity, since Rule 3(c) of KS & SSR does not have any application to the facts of the present case.

11. The next contention of the counsel for the petitioner is that Ext.P12 has been issued without considering whether the petitioner was suitable for appointment

to the notified post, which as per the dictum of the Apex Court, an authority in similar circumstances is bound to consider. *Ram Kumar v. State of U.P. and others* (cited supra) has been pressed into service for the above purpose. A reading of the said decision shows that the said dictum has been laid down within the confines of the fact situation in the said case. The same was a case in which a Police constable had to submit an affidavit in a pro forma which included a statement as to whether a criminal case was registered against him. He stated that there was no criminal case registered against him. After the petitioner therein was deputed for training a criminal case was registered against him. In the said case also he was subsequently acquitted. In the said circumstances, the Apex Court has held that the authority should have considered the suitability of the petitioner for appointment to the post. Therefore, the dictum in the said case has no application to the facts of this case. The petitioner has already been removed from service as per Ext.P12. I do not find any infirmity justifying interference with Ext.P12. I am not satisfied that the petitioner is entitled to any of the reliefs prayed for. The writ petition fails and is accordingly dismissed.