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**(1979) 06 KL CK 0001**  
**In the High Court Of Kerala**  
**Case No : O.P. 360 of 1979**

Radhakrishnan Nair

APPELLANT

Vs

Kerala Public Service Commission and Another

RESPONDENT

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**Date of Decision :** 01-06-1979

**Acts Referred:**

**Citation :** (1979) 06 KL CK 0001

**Hon'ble Judges :** V. Balakrishna Eradi, J

**Bench :** Single Bench

**Advocate :** M.R. Rajendran Nair, for the Appellant; T.K. Kelu Nambiar, for 1st Respondent and Government Pleader for 2nd Respondent, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Balakrishna Eradi, J.—I do not see any merit in this writ petition.

2. The Petitioner who is a class IV employee in the Treasury Department working at Sub Treasury, Vaikom had applied for recruitment to the post of Lower Division Clerks/Lower Division Typists/Typist Clerks and Copyists, in response to the notification published by the Kerala Public Service Commission on 9th September 1975. He was called for a written test which was conducted on 29th September 1976. When the ranked list was published by the Public Service Commission the Petitioner's name was not included in the list. In reply to a representation which the Petitioner made to the Service Commission he was informed as per letter Ext. P-2, dated 6th January 1978 that his name was not included in the ranked list, because he had secured only 39 marks for Parts I and II, while the minimum marks required for inclusion in the ranked list was 40 marks for Parts I and II. Thereupon the Petitioner put in another petition before the service commission Ext. P-3, dated 5th March 1978 contending that under the Government order Ext. P-1 the only condition to be satisfied for eligibility for inclusion in the select list was that a candidate should secure 40 per cent marks in the test and Inasmuch as the Petitioner had secured 39 marks for Parts I and II, and 22 marks out of 50 for Part III he had secured an average of 40 per cent for the

entire test and thereby satisfied the condition mentioned in Ext. P-1. This representation was not replied to by the Public Service Commission. Hence the Petitioner has come to this Court with this writ petition praying to quash the communication Ext. P-2 by a writ of certiorari and also for a writ of mandamus directing the 1st Respondent to include the Petitioner's name in the ranked list for promotion to the post of Lower Division Clerk, etc., against the 5 per cent vacancies reserved for persons holding class IV posts.

3. A detailed counter-affidavit has been filed on behalf of the Public Service Commission. It is averred therein that in the notification inviting applications for the posts in question published in the gazette, dated 9th September 1975, a note had been incorporated to the effect that to have a pass in the examination the minimum marks fixed was 40 per cent for Parts I and II together and 40 per cent for Part III separately. The Petitioner who had applied in response to the said notification and appeared for the written test had failed to satisfy the aforesaid standard fixed by the Commission and hence his name was, therefore, not included in the list. It was submitted on behalf of the Service Commission that it was perfectly competent for the Commission to fix its own norms as to the minimum marks to be secured by a candidate in order to be eligible for inclusion in the select list and since the said standard had been uniformly applied in respect of all the candidates who appeared for selection,, there is absolutely no ground for interference with the selection made by the Public Service Commission.

4. In my opinion, the aforesaid contention taken by the Public Service Commission is perfectly correct and sound and has to be upheld. It is no doubt true that in the G.O. Ext. P-1 the Government had directed a reservation of 5 per cent of the vacancies arising in the cadre of Lower Division Clerks/Lower Division Typists, Copyists, etc., for persons holding the low paid posts in the subordinate services, and had further incorporated a condition that such persons should secure not less than 40 per cent marks in the competitive tests conducted by the Public Service Commission for selection to the above posts. As to how the said standard of 40 per cent marks should be worked out was a matter left entirely to be decided by the Public Service Commission in the exercise of its discretion. It was, therefore, fully competent for the Commission to decide that in conducting the examination consisting of different parts the candidates should secure for a pass 40 per cent marks in Parts I and II together and a separate minimum of 40 per cent for Part III. There is nothing in the CO. Ext. P-1 which precludes the Public Service Commission from insisting on such separate minima for the different parts. It is also not open to the State to dictate to the Public Service Commission as to how exactly a particular selection should be conducted by them. The Commission is an independent high power constitutional body entrusted with the responsibility of making selections to posts in the public services and the very purpose underlying the setting up of the Commission is to have an impartial and independent body to perform the said function. It will therefore not be correct to assume that the Government had intended by Ext.

P-1 to interfere with the discretion of the Commission in the matter of deciding as to what exactly should be the standard to be satisfied by a candidate for securing a pass in the test conducted by the Public Service Commission.

The original petition is, therefore, devoid of merits and it is accordingly dismissed. The parties will bear their respective costs.