
(2014) 06 KL CK 0108
In the High Court Of Kerala
Case No : OP (KAT). No. 2546 of 2013 (Z)

Reeja K.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-06-2014

Acts Referred:

Citation : (2014) 06 KL CK 0108

Hon'ble Judges : K.M. Joseph, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : K.C. Charles, Sri. M. Poly Mathai, Sri. Vimal K. Charles and Smt. A.T. Renju, Advocate for the Appellant; P.C. Sasidharan, Adv., SC, KPSC, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, J.—The petitioner is an applicant before the Kerala Administrative Tribunal (herein after referred to as "the Tribunal"). She applied for the post of HSST (Sociology), pursuant to Ext. P4 notification dated 30.10.2010 issued by the Public Service Commission (hereinafter referred to as "the commission"). There is no dispute that going by the upper age limit fixed, as per the notification, the applicant was over aged by about 7 months. Still she applied for the post and she was called for the written test. Apprehending that her application will be rejected by the Commission, a writ petition was filed seeking the following relief"s:

(i) to issue a writ of mandamus directing respondents 2 and 3 to consider Exhibit P5 application submitted by the petitioner for the post of Higher Secondary School Teacher in Sociology ignoring the upper age limit prescribed in Exhibit P4 notification.

(ii) to declare that the petitioner is eligible to be considered to the post of Higher Secondary School Teacher notified in Exhibit P4, in relaxation of age limit prescribed in Exhibit P4, in view of her continued service in the post of Higher

Secondary School Teacher from the year 2008 onwards.

(iii) to declare that the service rendered by the petitioner as guest lectures from 2008 may be reckoned as temporary service and therefore she is eligible for age relaxation on Exhibit. P4 notification and eligible to be considered for the post of Higher Secondary School Teacher.

The said writ petition was transferred to the Tribunal after it's establishment and the Tribunal considered the matter and decided the matter against the petitioner and dismissed the transferred application.

2. The case of the petitioner appears to be that she is working as guest lecturer in Sociology in the Government Higher Secondary School, Mankada in Malappuram District from 2008 onwards.

3. By the Government order dated 30.8.1969, the Government has clarified the aspects relating to relaxation of age limit as contemplated in G.O.(Ms.) No. 389/PD dated 4.10.1966. We consider it appropriate to extract the same.

ORDER

In the G.O. read above provisional employees of Government were granted age relaxation to the extent of their provisional service for purposes of admission to the competitive test of the Kerala Public Service Commission for recruitment to Public Service Commission for recruitment to Public Service subject to the condition that a minimum provisional service of one year is necessary to become eligible for the concession and that the maximum period of concession permissible will be five years. The Public Service Commission has now pointed out that candidates holding regular posts under Government on officiating basis while applying for direct recruitment for better posts notified by the Commission are also claiming age relaxation on the basis of the above Government order. The commission has therefore requested that a clarification may be issued as to the type of provisional employees to whom the concessions are to be granted.

2. It is hereby clarified that the relaxation in age limit contemplated in the G.O. Read above will be available only to persons appointed under Rule 9(a)(i) of Part II of Kerala State and Subordinate Services Rules before he/she is recruited and appointed to any post in Public Service on a regular basis. When once a person is regularly appointed, the above concession will not be operative for further selections.

4. Therefore in terms of the G.O., since the petitioner was not appointed under Rule 9(a)(i) of Part II KS and SSR, the petitioner is not entitled to age relaxation. But the case of the petitioner is that had she been appointed under Rule 9(a)(i) she would have secured the benefit of extended upper age limit. Though there was a vacancy and she should have been appointed under Rule 9(a)(i), the Government resorted to the practice of appointing her as a guest lecturer. Therefore the contention is, since her appointment could have been done only under Rule 9(a) (i) as per law, her appointment should be treated as

appointment under Rule 9(a)(i) and she should be given the benefit of exemption from upper age limit.

5. The Tribunal found as follows:

2. The Public Service Commission and the candidates are bound by the conditions contained in the notification. If the applicant is under aged petitioner over aged, the PSC cannot entertain her application. If the notification itself provides for age relaxation, then the applicant can claim it. There is no stipulation in the notification, which says that the service rendered as Guest Lecturer will be considered for age relaxation. Therefore the PSC cannot grant the said relief to the applicant Even assuming the PSC takes such a decision, then the said benefit has to be extended to all similarly placed candidates by issuing a supplementary notification. Otherwise, the entertainment of the application of the applicant alone, will amount to a fraud on the public.

3. As per the relevant rules and orders, the applicant is ineligible to apply for the post of HSST (Sociology). The applicant points out that if the school notified the vacancy to the Employment Exchange, she stood a fair chance for being sponsored by the Employment Exchange and getting appointment as provisional hand. In that event, she would have been eligible for age relaxation. But based on such ground no candidate can claim age relaxation. She should have actual provisional service to get relaxation. Chances of getting provisional appointment is not sufficient.

In the result, there is no merit in the transferred application and accordingly it is dismissed.

6. We heard learned counsel for the petitioner, learned Government Pleader and the learned Standing counsel for Public Service Commission.

7. Learned counsel for the petitioner would submit that the Tribunal ought to have granted relief to the petitioner in the facts of the case and law does not permit appointment as guest lecturer. It is pointed out that the Government has not revealed its stand before the Tribunal.

8. It is the case of the Government that it is under the G.O., that the petitioner was appointed and she continued as guest lecturer. The order, G.O.(P). No. 154/07/G1. Edn. Dated 14.8.2007 reads as follows:

ORDER

The Government have hitherto been engaging Higher Secondary School Teachers on hourly basis whenever PSC hands were not available. In order to have smooth and uninterrupted functioning of the schools and to ensure the availability of teachers throughout the day, the Director, Higher Secondary Education has forwarded a proposal as per the letter read above to engage Higher Secondary School Teachers on daily wages and to fix their remuneration and guidelines of appointment.

Government have examined the proposal in detail and are pleased to accord sanction to engage Higher Secondary School Teachers on daily wages in Government Higher Secondary Schools in unavoidable circumstances when there is no possibility of appointing permanent Higher Secondary School teachers due to non availability of PSC list or when PSC advice is delayed or the advised candidates do not join duty etc.

The following guidelines are also fixed for the appointment of Higher Secondary School Teachers on daily wages:

1. The remuneration of the Higher Secondary School Teachers engaged on daily wages will be at @ Rs. 250/- for Higher Secondary School Teacher (Junior) and @ Rs. 300/- for Higher Secondary School Teacher (Senior).
2. The teachers shall be posted through walk in interviews.
3. The interview shall be notified two weeks in advance by press release and also by notification in local dailies, by publishing notices in Panchayath office, school and other public places.
4. The candidate shall register themselves on the day of interview in the morning.
5. A merit list and reservation will be prepared and interview shall be conducted in afternoon. Merit will be the criteria for selection. Merit and Reservation candidates will be interviewed alternatively.
6. The interview board shall be constituted with the following members.
 - a) Head or a representative from the concerned local bodies.
 - b) School Principal
 - c) A subject expert (may be the senior most Higher Secondary School Teacher in the concerned subject)
 - d) PTA President.

The following guidelines regarding reservation should also be followed in the appointment of teachers in Higher Secondary Schools on daily wages.

- i) The first vacancy that arises in one academy year shall be filled up on merit basis.
- ii) The second vacancy shall be filled up by reservation from among Scheduled caste/Scheduled Tribe/OBC candidates.
- iii) The above appointments on merit and reservation shall be on 1:1 ratio basis.
- iv) If qualified Scheduled Caste/Scheduled Tribe/OBC candidates are not available to fill up the vacancy, the same shall be filled up [on merit basis.
- v) In the filling up the vacancies and maintaining reservation, the school shall be taken as one unit.

9. Learned counsel for the petitioner would in fact contend that even the said G.O. Is violated when she was appointed. It is further pointed out that she is fully qualified and it is only on account of the action on the part of the Government, in not appointing her under Rule 9 and instead appointing her as guest lecturer, she stands deprived of the benefit vouch safed for her under the G.O.

10. Learned Government Pleader got instructions particularly in the light of the orders passed as to its stand on invoking powers under Rule 39, The Government Pleader would submit that the stand of the Government is that it does not deem it fit to invoke Rule 39.

11. As noted by the Tribunal, the petitioner was an applicant for direct recruitment by the Public Service Commission which was sought to be done, on the basis of the qualifications prescribed under the special Rules. Age was also a qualification proclaimed. Admittedly, the petitioner is age barred going by the terms of the notification. The only relaxation which is granted is that only appointment under Rule 9(a)(i) qualifies for age relaxation. No doubt, learned counsel for the Public Service Commission would point out that probably Government only contemplated appointment under Rule 9(a)(i) and that may be the reason why it is clarified that appointment made under Rule 9 (a) (i) will qualify for age relaxation.

12. We would think that we cannot permit the petitioner to turn around after having secured appointment as a guest lecturer and continued for six years and seek the relief sought. The petitioner was appointed in 2008 and is continuing apparently in terms of G.O.(P) No. 154/07/G1. Edn. Dated 14.8.2007. That is to say the petitioner had derived an advantage in terms of the order of appointment which in turn is traced the terms of G.O.(P) No. 154/07. The G.O. is not an issue either before us or before the Tribunal. It is under the said order the petitioner is appointed as guest lecturer.

13. It is true that a declaration is sought. We further notice that in Rule (9), there are certain restrictions in the matter of appointment to be made thereunder. We notice the proviso to Rule 9(a)(i) which reads as follows :

9. Temporary appointments.- (a)(i) xxxxxxxx

1 [Provided that before a person is appointed under this clause, persons who are admittedly senior to him shall also be appointed even if they are absent from duty, whether on leave [other than leave 2 without allowances for taking up other employment] or on foreign service or on deputation or for any other valid reason, [except³ due to suspension] and allowed to continue as such subject to the condition that persons so appointed shall not be eligible for the higher time scale of pay by virtue of such appointments unless otherwise specifically ordered by the Government.

14. Learned counsel for the Commission would also draw our attention to the

following proviso : (Part II R.9 of KS and SSR)

2[Provided also that person appointed under this clause by direct recruitment to a post and discharged from service after the admissible period, shall not be re-appointed to the same post by the same appointing authority, except when fresh candidates are not available for appointment through Employment Exchange, and such reappointment shall be made only with the prior concurrence of the Commission.]

Appointment under Rule 9 (a)(i) is to be made from the Employment Exchange. It is true that the petitioner has a case that she has been registered with the Employment Exchange since 1993 and registration continues even now.

15. There are certain restrictions in regard to the manner in which appointments are to be made including following the communal rotation. We are to assume that all these things would have happened and petitioner would have secured appointment under Rule 9(a)(i). On the other hand, we are also asked to ignore the actual terms under which the petitioner was appointed namely, she got the benefit of an order of appointment under which even now she continues. The petitioner chose to accept the terms of the said appointment. It is only when it came to direct recruitment, she wants to transform her appointment which she had accepted with all the advantages and disadvantages for the purpose of getting age relaxation. We would think that it would be impermissible. In such circumstances, the Original Petition is dismissed.