

(2016) 01 KL CK 0059

In the High Court Of Kerala

Case No : W.P. (C) Nos. 20916, 21518 and 25969 of 2005

Sajikumar S. and Others

APPELLANT

Vs

Kerala State Electricity Board and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Kerala Public Service Commission (Additional Functions) Act, 1963 — Section 3

Citation : (2016) 1 KerLJ 716 : (2016) 1 KHC 727 : (2016) 2 KLT 8 : (2016) LIC 1400

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

Bench : Single Bench

Advocate : P.M. Mohammed Shiraz, Advocate, for the Appellant; C.P. Sudhakara Prasad, Senior Advocate, Sunitha Vinod, Government Pleader, K.S. Anil, Asok M. Cheriyan, P.C. Sasidharan, Pulikool Abubacker, Jose J. Matheikel, Standing Counsels and Elvin Peter P.J., Advo

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—1. The petitioners in the writ petitions are Office Attendants, who challenged the orders of the Board, giving an edge to the persons appointed under the sports quota for promotion to the cadre of Junior Assistants/Cashier by Ext. P4, which was affirmed by the Government in Ext. P6. The promotion order prepared of those sports persons at Ext. P5 is also assailed. The documents are referred to from W.P.(C) 20916 of 2005. The controversy revolves around whether the Board could have made the amendments to the regulations providing an advantage to the sports persons for promotion to the cadre of Junior Assistants/Cashier without consultation with the Kerala Public Service Commission [for brevity, KPSC]. The qualification and method of appointment, with respect to recruitment and promotion in the Board, is produced at Ext. P1, which is made in consultation with the KPSC. The Lower Grade employees were allowed to be promoted to the post of Lower Division Clerk with the qualifications prescribed therein, being an SSLC with not less than 40% marks in English and aggregate 40% marks with 5 years" continuous

service under the Board and a pass in the suitability test conducted by the KPSC, for those persons who do not satisfy the minimum aggregate marks in the SSLC. The said regulation was amended by Ext. P2 again in consultation with the KPSC. By the amendment, the qualification required was as follows:

"(a) Pass in SSLC.

(b) 5 years experience (service) under the Board in the regular establishment (for Pre-Degree holders or equivalent examination. 3 years service under the Board shall be sufficient).

(C) A pass in the Suitability Test conducted by the Kerala Public Service Commission (Those who secure 40% marks in the test will be declared eligible).

Note.--Those in service as on the date of issue of this order having 40% or more marks in English and 40% aggregate for SSLC will be exempted from the suitability/eligibility test. The 5% Quota reserved for Typists will be made available to other (lower grade) categories in case there are no qualified Typists."

2. Subsequently, the Board by itself treated the sports personnel recruited to the services of the Board as a different category and provided for different qualification for promotion to such persons in the cadre of Junior Assistants/Cashier. By Ext. P4, the recruits under the sports quota were excluded from the requirement of suitability test for promotion to the cadre of Junior Assistants/Cashier. Ext. P4 provided that an appointee under the sports quota; who has passed SSLC and having length of service of five years or having pre-degree with service of three years in the pay scale of and below that of Junior Assistant/Cashier will be appointed as Junior Assistants. They were to be imparted training for six months in the post of Junior Assistants; on satisfactory completion of which after the prescribed probation period, regularized.

3. It is to be pointedly noticed that it is not the reasonableness of the prescription which arises for consideration, but whether the said amendment could have been made without consultation with the Kerala Public Service Commission. The Kerala Public Service Commission (Additional Functions) Act, 1963; by Section 3, mandates consultation with the PSC inter alia on all matters relating to the method of recruitment, to services and posts under the Electricity Board and with respect to the principles to be followed in making appointments to such services. This power extends to recruitment proposed to service and posts under the Electricity Board and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfer. It is also provided that the Government may make rules specifying the matters in which either general or any particular class or particular case or circumstance, it shall not be necessary for the Public Service Commission to be consulted.

4. Invoking the power conferred under the proviso, the Government brought out the Public Service Commission (Additional Functions) (Consultation) Rules, 1966.

The reliance placed by the Board is on Rule 4(j), which is extracted hereunder:

"4. It shall not be necessary for the Commission to be consulted:

xxxx xxxx xxxx

(j): in regard to the appointment of persons who are proficient in sports and games to the following posts:

1. Junior Engineer
2. 1st Grade Overseer
3. lineman.
4. Lower Division Clerk/Cashier
5. Lower Division Typists
6. Driver
7. Tracer
8. Peon"

5. There is also a contention raised by the learned counsel appearing for the respondent that, Clause (c) of Rule 4 also would be applicable which is also extracted herein:

"4(c) in regard to the suitability of candidates for promotion within the same service or for transfer from one subordinate service to another such service."

6. Clause (c) is with regard to the suitability of candidates for promotion within the same service or for transfer from one subordinate service to another such service. Considering the contention of the applicability of Clause (c) of Rule 4, it is to be noticed that the same speaks of the suitability of candidates for promotion within the same service. Admittedly, the promotion to the post of Junior Assistant/Cashier is either from the post of Electrical worker or from the post of Office Attendants. Hence there would be a distinction in service, as the former falls in the technical wing and the latter in the ministerial wing, both different services under the Board. It cannot be said that the promotion contemplated in Ext. P4 is within the same service. The said view is fortified by the specific words used in Ext. P4; the promotion from sports recruits being permissible from persons having specified service "in the pay scale of and below the post of Junior Assistants". Hence all the posts below that particular pay scale would be treated as a feeder category to the post of Junior Assistants/Cashier. It cannot hence be a sustainable contention that Clause (c) of Rule 4 of the Rules of 1966 will ensure to the benefit of the sports personnel.

7. Looking at Clause (j) of Rule 4 of Rules of 1966, the proviso assumes significance. As per the proviso, the persons so appointed, prescribing the qualifications without consultation with the PSC should, all the same, have the

minimum qualification including age prescribed for the post and the total number of persons who could be appointed waiving the suitability conditions would be confined to 15. Herein admittedly, there is no consultation with the KPSC. The specific clause under the Rule relied on by the Board would only enable the Board to promote/appoint 15 persons in a particular year waiving the suitability conditions, as brought out under Ext. P4, without consultation with the KPSC.

8. The facts reveal that in the subject year, 44 sports recruits were promoted as is indicated at Ext. P5. Such promotions made would be bad for the reason of the same being not in consonance with the Act and the Rules above mentioned. The promotions were obviously made granting relaxation in the suitability conditions, which relaxation was made without consultation with the PSC. Even under the rules there could be such relaxation made for sports quota recruits, but again confined to 15 such appointments in a subject year. The promotions made of 44 sports recruits in the subject year, providing relaxation was beyond the scope of the powers of the Board, as saved on this particular aspect, in the Rules of 1966.

9. The conclusion would be that Ext. P4 & P6 can be upheld only to the extent of permitting 15 such promotions of sports quota recruits, in any year. Ext. P5 would stand modified to that extent upholding the promotions made thereunder to the 15 senior most persons. The Board would have to re-work the promotions on the basis of the declaration herein above. Hence Ext. P4 could be applied only insofar as the 15 persons in any subject year, and the personnel in excess, in Ext. P5, being accommodated in the subsequent years; again confining the number to 15 in each of such years. The other vacancies would have to be conceded to the Lower Grade employees, other than sports recruits in the feeder category, who are qualified as per Ext. P2. Even if none in the feeder category are qualified in a subject year, the relaxation granted to Sports quota has to be confined to 15 promotions, as provided in Clause (j) of Rule 4 of the Rules of 1966.

10. It is also made clear that when promoting any of the petitioners or other Office Assistants it has to be looked into whether as on that date, they were qualified and suitable as per Ext. P2. The Board hence would re-work the seniority with notice to the petitioners and respondents and any other affected parties and within a period of six months re-do the promotions to the cadre of Junior Assistants/Cashiers confining the promotion of sports recruits as per Ext. P4, to 15 in a particular year and conceding the other vacancies to the others in the feeder category but promoting them only in accordance with the qualifications and suitability as prescribed in Ext. P2. The writ petitions are allowed. The promotions made in the interregnum, permitted by an interim order, were subject to the result of the writ petitions and the same has to be revised in accordance with the determination of seniority in the cadre of Junior Assistants/Cashiers, as directed herein above. Seniority would be adjusted in the promotion post also in accordance with the directions herein above. However, it is made clear that none should be issued notice for recovery of pay drawn in the

higher posts even if they were not entitled to be so continued, since they were continued for long during the pendency of the writ petition, and they had actually worked in the higher post. The future pay and allowances would be fixed in the posts assigned to each on the basis of the re-determination made as directed herein. The fixation of seniority and the resultant promotions granted to those others in the feeder category, other than those in the sports quota, also would be notional and they would not be entitled to any monetary benefits for the periods in which they have not worked in the post.

Writ petitions are allowed. No costs.