
(2014) 11 KL CK 0126

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 12720 of 2014 (L)

Sanil Kumar C.S.

APPELLANT

Vs

Kerala Public Service Commission

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2014) 11 KL CK 0126

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : S. Ramesh and S.D. Asokan, Advocate for the Appellant; P.C. Sasidharan, M.G.K. Nambiar, SCs, V. Vijulal, Government Pleader and C. Joseph Johny, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—The petitioner, working in a private industry as Painter, applied for the post of Painter Grade II in the second respondent Corporation in response to Exhibit P1 notification issued by the first respondent, the recruiting agency. Having fulfilled all the conditions, including that of submitting an experience certificate, i.e. Exhibit P5, the petitioner was hopeful of getting selected. In fact, the petitioner was subjected to the selection process and also document verification, with his name reflecting in the short list. When Exhibit P7 rank list was published, the petitioner's name was found missing. Later, when the petitioner sought information by invoking the provisions of the Right to Information Act, the first respondent supplied the reasons through Exhibit P9 for rejection. Assailing those reasons as not being substantial, the petitioner has filed the present writ petition.

2. Notwithstanding the reasons assigned in Exhibit P9, the first respondent in its counter affidavit has attributed the cause for rejection to a supposed defect in Exhibit P5 experience certificate. In other words, the said certificate is found to be incomplete, as it has not contained the details regarding the period of experience.

3. In the above factual background, the learned counsel for the petitioner has

contended that Exhibit P5 does not suffer from any substantial defect going to the root of the matter, thus disentitling the petitioner to be considered for selection. Elaborating on his submissions, the learned counsel would contend that Exhibit P5 certificate, which is in vernacular, was filled up by the employer; a private individual. In the column where the period of experience would be shown, in the gap after "from" it was, according to the learned counsel, correctly filled in with 09.05.1998 as the date of commencement of the petitioner's service. Since the petitioner had been continuing in service by the time the certificate was issued, in the gap after "to" it was recorded as "till date", i.e. 04.07.2012.

4. The learned counsel has also pointed out that with his inadequate knowledge or experience, in the gap provided for quantification of experience in figures, the employer instead of quantifying the period of experience of the petitioner filled up the gap with the date when the certificate was issued. In this regard, the learned counsel for the petitioner contends that since the employer mentioned till date as the terminus point of the service, bona fide he filled up the gap by expanding the said expression "till now" in numerical terms by way of the date of issuance of the certificate. The learned counsel has also brought to the notice of this Court that initially when Exhibit P5 was submitted, it did not contain the registration number of the employer. On scrutiny, the first respondent pointed the mistake out and gave an opportunity to the petitioner to rectify it. The petitioner, in fact, rectified it by having the registration number affixed on Exhibit P5. The learned counsel, therefore, contends that had the petitioner felt that the mistake in filling up the gap after correctly mentioning the period of experience had any major mistake, the authorities would have pointed it out for the petitioner to rectify the mistake, as had been done in the case of registration number.

5. According to the learned counsel, even the respondent authorities could not have either noticed that there was such an omission or that they might have felt that it was inconsequential. Under these circumstances, the respondent cannot, contends the learned counsel, turn back and say that it is an incurable defect going to the root of the matter. Accordingly, the learned counsel for the petitioner has urged this Court to allow the writ petition.

6. Per contra, the learned Standing Counsel for the first respondent has submitted that Exhibit P1 notification itself is quite explicit. It contains a clear format, in which the petitioner is obligated to submit the experience certificate. According to the learned Standing Counsel, the petitioner submitted Exhibit P5 certificate in a very casual manner. He has further pointed out that, apart from having the discrepancy in the period of the petitioner's experience, even the counter signing authority, i.e., the General Manager, District Industries Centre, Thiruvananthapuram, has also wrongly filled up the date when he signed Exhibit P5 certificate.

7. Elaborating on his submissions, the learned Standing Counsel has submitted that though the certificate was issued on 04.07.2012 and presumably counter

signed on the same day, on the left side column of the certificate reflecting the date when it was counter signed, the officer put 03.07.2012 instead of 04.07.2012. According to the learned Standing Counsel, it speaks volumes about the manner of presenting a crucial certificate such as Exhibit P5. The learned Standing Counsel has brought to the notice of this Court clause (8) of Exhibit P1 which is to the effect that the applications submitted in violation of the conditions shall be rejected summarily. Thus contended the learned Standing Counsel that it is not obligatory on the part of the first respondent to provide repeated opportunities to the applicants to rectify all the mistakes. He has also submitted that though the first respondent has the option of rejecting the defective applications summarily, only with a view not to affecting the career prospects of the candidates adversely, it provided an opportunity to the candidates to rectify the mistakes. It does not, however, mean that the candidate should be given opportunity, contends the learned Standing Counsel, to cure each and every defect. In other words, according to the learned Standing Counsel, if the defect is substantial, it straightaway earns disqualification and it does not call for any opportunity being provided to the candidate to rectify the said mistake. Accordingly, he urged this Court to dismiss the writ petition.

8. The issue in this writ petition hinges on a singular aspect: whether Exhibit P5 contains any substantial defect that goes to the root of the process thus deserving a summary rejection of the application in terms of the conditions stipulated in Exhibit P1 notification.

9. A perusal of Exhibit P5, which is in vernacular, with the help of translated version, makes it very clear that the employer in this case, namely Oscar Arts and Designers, a proprietary concern, issued the experience certificate, which was duly counter signed by the General Manager, District Industries Centre, Thiruvanthapuram. It is very clear that the experience certificate was issued on 04.07.2012, which could be seen from the date appended at the beginning of the document, which portion the employer has filled, as well as from the date put under the signature of the General Manager in the latter portion. The document, however, contains in the latter half, i.e. the part left for the attestation by the officer, the date of issuance was indicated as 03.07.2012. I believe, it is obviously an inadvertent mistake committed by the counter signing officer, not by the employer, who issued the certificate in the first place. At any rate, the first respondent has not raised this as an objection in its counter affidavit, nor has it cited the reason for rejection in Exhibit P9 reply given in response to the query raised by the petitioner under the provisions of the Right to Information Act.

10. Evidently, what weighed with the authorities for rejecting Exhibit P5 is that it contained inaccurate or erroneous period of experience reflected in the certificate. On a closer scrutiny of the document, it is evident that the petitioner commenced his service on 09.05.1998. Soon after the space provided for the terminal point of service, there are other spaces provided to fill up the exact period of service. Instead of filling up all those lines with the figures 14 years, 1

month and 25 days, the employer filled up that with 4-12-July, the date when Ext. P5 certificate was issued. It is not far to discern the reason why the employer filled up those gaps with these figures. Since the previous gap was concerning the terminus point of service, i.e. till date, in expansion thereof, the employer has filled up the gaps with the date when the certificate was issued. Otherwise, 4-12-July would be rather unintelligible.

11. The fact, however, remains that initially the first respondent has found certain mistake in Exhibit P5, as was the case with many certificates submitted by various other applicants, and provided the petitioner with an opportunity to rectify the mistake. In the instant case, the first respondent, having found that the registration number of the employer was not correctly reflected in Exhibit P5 certificate, provided an opportunity to the petitioner to rectify the mistake. Consequently, at the foot of the certificate the registration number of the employer was specified. In my considered view, there is force in the contention of the learned counsel for the petitioner that had the first respondent felt that there was any discrepancy in filling up the experience period after correctly specifying the date of commencement and continuation of petitioner's service under the employer, nothing prevented the first respondent in pointing out the said mistake at the time when the omission in mentioning the registration number had been noticed.

12. Evidently, the first respondent has noticed much later in point of time, after the scrutiny of the applications, the alleged defect and eventually rejected the candidature rather belatedly. Indeed, Exhibit P1 contains, in clause (8) thereof, a specific mandate that defective applications could be rejected summarily. This can be viewed from two angles: firstly, each and every defect would result in summary rejection of the application or that only substantive shortcomings in the application or annexures thereto may earn disqualification. Secondly, once an opportunity has been provided, it concerns itself with covering minor defects but incurable defects automatically result in rejection of the application. Viewed from either angle, I am of the considered opinion that initially the first respondent provided an opportunity to the petitioner to rectify the mistake concerning the omission of registration number of the employer in the experience certificate. I earnestly believe that after specifying correctly the date of commencement of service and also the factum of the petitioner's continuation in service, the employer, instead of specifying the exact period of experience, which is any way a matter of deduction, has put the date of issuance of the certificate in its place.

13. Once there is no difficulty in ascertaining the period of experience and the subsequent gaps provided there are only meant to give clear-cut information in statistical terms, I do not think it to be any defect, substantial or simple, going to the root of the matter. Thus, firstly, notwithstanding the condition that the applications are liable to be rejected without notice, in the case of many candidates, including the petitioner, the respondent authorities have provided opportunity to rectify the mistakes in the applications. Secondly, the mistake

with regard to the erroneous filling up of the period of experience by the employer, had not been noticed by the first respondent in the first instance. Finally, after specifying correctly the period of experience in the certificate, its quantification in arithmetic terms is no omission to term Exhibit P5 experience certificate in any way deficient to result in its summary rejection.

14. In the facts and circumstances, this Court holds that the action of the first respondent in not considering the candidature of the petitioner what could be a mere arithmetical error in Exhibit P5 is unsustainable. Accordingly, the first respondent is directed to include the name of the petitioner, if he is otherwise eligible, in Exhibit P7 rank list and take consequent steps thereon. Needless to observe, the first respondent may expedite the process in the manner indicated above and include the name of the petitioner in Exhibit P7 as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment. It is further made clear that if "advices" have already been issued to any other candidates by this point of time, the direction of this Court in the present writ petition shall not affect their career prospects adversely.

With the above observation, the writ petition is allowed.