
(2010) 07 KL CK 0005

In the High Court Of Kerala

Case No : Writ Petition (C) No. 36958 of 2008

Shaiji Cherukkattil

APPELLANT

Vs

The Kerala Public Service Commission and Another

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(4)

Citation : (2011) 1 KLJ 12

Hon'ble Judges : K. T. Sankaran, J

Bench : Single Bench

Advocate : Sunil V. Mohammed, for the Appellant; Alexander Thomas, SC, K.P.S.C, for the Respondent

Judgement

K. T. Sankaran, J.—The question involved in this Writ Petition is whether the petitioner can be permitted to carry out corrections in the application submitted by her before the Kerala Public Service Commission for selection to the post of Laboratory Assistant in the Kerala Vocational Higher Secondary Education Department, so as to claim the benefit of communal reservation, after the select list was published and when the petitioner had filled up the column in the application stating that she is not eligible for communal reservation. The Kerala Public Service Commission invited applications from qualified candidates for appointment to the post of Laboratory Assistant in Kerala Vocational Higher Secondary Education Department, as per the Gazette Notification dated 02/11/2004 for direct recruitment and for appointment from "by transfer" category. The candidates were required to fill up the application form and also to fill up the OMR data sheet. The petitioner submitted the application. Column 5 of the application contains the question "Are you eligible for communal reservation" (Answer Yes or No). The answer given by the petitioner was "No". In column 17 of the OMR data sheet, for the question "whether eligible for communal reservation", the answer was given by bubbling the required column "No" indicating that the petitioner is not eligible for communal reservation. In column 4 of the application, Religion and Community are shown as Hindu and

Thiyya respectively.

2. The petitioner was called for a written test on 24/02/2007. A probability list was published by the Public service Commission on 28/02/2008. The petitioner was included in the list. The petitioner was called for interview on 14/03/2008. The petitioner states that she produced the original certificates for verification. A ranked list was published on 10/ 06/2008. The petitioner is included in the main list of the ranked list with rank No. 708 against general quota. The Public Service Commission states that the ranked list contains 1052 candidates in the main list and 2410 candidates in the supplementary list for various communities.

3. The petitioner belongs to OBC (Thiyya community). She claims that she is entitled to communal reservation. Unfortunately, by inadvertent mistake, while filling up the OMR data sheet, she bubbled the column "No" indicating that she was ineligible for reservation, though she had properly shown her community as Thiyya. It was also written in the application that she belongs to Thiyya community. The petitioner states that on 14/03/ 2008, the second respondent stated that the petitioner has not claimed the community quota reservation. The necessary documents produced by the petitioner including non -creamy layer certificate were not accepted by the second respondent. Only then the petitioner came to know that there was mistake in the application submitted by her. The petitioner submitted Ext. P3 representation dated 02/04/2008 to the first respondent. She sought to rectify the mistakes in the application. Ext. P3 was not disposed of by the first respondent.

4. The relief prayed for by the petitioner is for the issue of a writ of mandamus commanding the respondents to accept the documents produced by her and to include her in the select list for the post of Laboratory Assistant against the community quota reservation, after permitting her to cure the defect in the application form.

5. In the counter - affidavit filed on behalf of the respondents, it is stated that the petitioner had deliberately expressed her intention not to claim the community benefit. If she had filled up the columns showing "Yes" to the question whether she was claiming community reservation status, the Commission would have certainly considered the same. It is not a question of wrongly marking the bubbles nor is it an inadvertent mistake. A deliberate statement, as revealed from an answer given by her in the application form, that she is not claiming the community reservation benefit, cannot be treated as an inadvertent mistake. Correction of the application cannot be permitted in such circumstances. The Commission would also rely on column 18 of the general conditions in the Gazette Notification that claims made subsequent to the application will not be considered in any circumstance. The Public Service Commission contended that if the claims made by the petitioner were to be entertained, there would be no end to the selection process and it will lead to endless litigation.

6. Learned counsel for the petitioner, Sri. Sunil V. Mohammed, submitted that the mistake in the application could be permitted to be corrected and it is not a mistake which is incurable. The counsel relied on the decisions in *Santhamma v. Public Service Commission* 1982 KLT 786; *Kuriakose v. State of Kerala and Others*, 1984 KLT 925; *Manoj Kumar v. Kerala Public Service Commission*, 1999 (2) KLT 534; *Sajeev v. Public Service Commission*, 2008 (4) KLT 691. The counsel also relied on R. 17C Part II of the Kerala State & Subordinate Services Rules, 1958 and R.40 of the Kerala Public Service Commission Rules of Procedure. In answer, Sri. Alexander Thomas, Standing Counsel for the Public Service Commission, submitted that the mistake is an incurable one. He submitted that during the last year, more than 36 lakhs of applications were processed by the Kerala Public Service Commission. If candidates who did not claim communal reservation are allowed to correct their applications claiming such reservation, there would be no end to the process of selection. He submitted that it would paralyze the whole selection process of the Commission. The Standing Counsel for the Public Service Commission submitted that R.40 of the Kerala Public Service Commission Rules of Procedure only saves the power of the Commission to make such orders as may be necessary to give effect to any of the provisions of the Constitution of India or for the proper discharge of the functions of the Commission. R.40 cannot be invoked by the petitioner, in the facts and circumstances of the case. The Standing Counsel also refers to conditions 17 and 18 of the General Conditions contained in Part II of the selection notification, which read as follows:

17. Candidates are required to acquaint themselves with the instructions given in the notification and also the brochure issued with the application for filling up the application form. They will not get an opportunity to rectify any mistake in the application later. Candidates applying for different posts shall send each application in separate envelopes.

18. Claims made subsequent to the application will not be considered under any circumstances. Proof submitted without proper claim in the application also will not be considered.

R.40 of the Kerala Public Service Commission Rules of Procedure and R. 17C of Part II of Kerala State & Subordinate Services Rules, 1958 are extracted below for easy reference;

40. Savings.- Nothing contained in Parts I & II of these rules shall be deemed to limit or affect the power of the Commission to make such orders as may be necessary to give effect to any of the provisions of the Constitution of India or for the proper discharge of the functions of the Commission:

Provided that no such order which has an over - riding effect on the provisions contained in Part I of these rules shall be made by the Commission without the prior concurrence of the Government.

17C. The candidate claiming the benefit of age relaxation / reservation in

appointments / special recruitments by virtue of being a member of the Backward Classes / Scheduled Castes / Scheduled Tribes as provided for in sub-rules (c), (d) and (dd) of R. 10, R. 14, R. 17A and R. 17B *ibid* shall produce to the satisfaction of the Kerala Public Service Commission, certificates / relevant documents as required by them, to prove the claim in the application and in any case, before the finalisation of the ranked list for the post concerned.

7. In *Manoj Kumar v. Kerala Public Service Commission*, 1999 (2) KLT 534, the Commission found on scrutiny of the applications that many applications were defective. The defects were minor defects. To provide an equal treatment to all the candidates, the Commission decided to give an opportunity to all the candidates who submitted defective applications to rectify the defects. An opportunity was given to the candidates to prove that they possessed the requisite qualifications. The writ petitioner therein challenged the select list and contended that the Commission was not justified in allowing the candidates to rectify the mistakes and therefore names of all such candidates should be removed from the list. Condition 17 of the General Conditions was relied on in support of the contention of the writ petitioner. It was held by Justice K. A. Abdul Gafoor that in terms of condition 17, any defective application can be rejected by the Public Service Commission. The applicant who made the defective application cannot have any right to seek consideration of his defective application or to make further application to cure the defect. At the same time, condition 17 would not disable the Public Service Commission to give an opportunity to the candidates to cure the defects. Condition 17 could be waived or relaxed by the Public Service Commission. The Public Service Commission had shown fairness in allowing all the candidates to cure the minor defects, without compromising the conditions regarding age, educational qualifications etc. The decision taken by the Public Service Commission was upheld and the Writ Petition was dismissed.

8. In *Santhamma v. Public Service Commission*, 1982 KLT 786, the petitioner therein had produced her SSLC Book, in which, her community which was omitted to be noted was entered by the petitioner and submitted to the Public Service Commission. The Public Service Commission took the view that the entry made by the petitioner in her SSLC Book amounted to tampering with documents though the entry was found to be a correct one insofar as the petitioner was concerned. The Commission rejected the explanation submitted by the petitioner and removed her name from the rank list. Justice M. P. Menon noticed the peculiar facts and circumstances of the case, including the fact that the petitioner was aged more than 38 years, and allowed the Writ Petition. It was held thus:

7. It is now settled law that Art. 14 of the Constitution strikes not only at discrimination in the orthodox sense of the term, but also at arbitrariness in general. The power of judicial review in this country is thus wider; the Courts can hold even the highest authorities to the leading strings of fairplay and reasonableness. Art. 16(4) providing for reservation of appointments in favour of backward classes has to be read along with Art. 14. The petitioner was entitled

for preference as a member of a backward class. Those responsible for giving her the stamp of that class had failed in their duty by making the relevant entry in her SSLC Book. All that she did therefore was to do something which others should have done, in order to effectuate her claim. To hold that, that amounted to a misconduct serious enough to be visited with what could conceivably be the maximum penalty, is to act mechanically and arbitrarily, and to forget the behests of Art. 14 and Art. 16.

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11. The Public Service Commission, I repeat, may have a wide discretion; but that is no reason why the Courts should make a retreat from the commanding heights of law and permit a genuine grievance to go unredressed. Where the decision of the Commission suffers from a failure to attach sufficient weight to all the relevant facts, where it amounts to a mere mechanical exercise of power, and where it is found to be a decision which reasonable persons could not have reasonably arrived at, I think this Court has a duty to interfere.

9. In *Kuriakose v. State of Kerala and Others*, 1984 KLT 925, the petitioner and the fourth respondent therein applied to the post of Production Assistant in the Kerala Agro Industries Corporation. At the time of interview, the candidates were expected to produce the original records with proof of age, qualification, experience etc. The petitioner therein contended that the fourth respondent did not produce the original records at the time of interview and, therefore, selection of the fourth respondent was illegal. During the course of arguments in the case, several decisions touching upon the powers of the Kerala Public Service Commission were cited. In that context, it was held thus:

12. That a rigid adherence to all the conditions in the notification cannot be insisted upon in all cases, has been laid down by this Court from very early times. *Eradi, J.* took that view in one of the first cases where the Public Service Commission had insisted on a rigorous compliance with a condition. The learned Judge discountenanced a plea of the Public Service Commission based on "the hyper technicality of the breach committed.....of the condition specified in one of the clauses in the notification inviting applications." (See *Abdul Rasheed Kunju v. The Kerala Public Service Commission*, Judgment dated 16/08/1970 in OP 1093 of 1970). The judgment was upheld by a Division Bench in WA 154 of 1970. This decision in OP 1093 of 1970 is not fully reported in the law journals and had not therefore received due attention in some of the later cases. Apparently, the dimension of the work to be done by the Public Service Commission has been indicated as a reason in some of the decisions as a justification for the Public Service Commission to have such an inflexible stand. The working difficulties of the Public Service Commission, according to me, cannot defeat valuable rights of the citizens. Difficulties arising out of the increase in work load and the like, have to be solved otherwise than by stultifying the rights of those knocking at its doors and waiting there for long, for an employment opportunity. I am comforted by the realisation that such an approach had been taken by *Khalid, J.* (initially),

Narendren, J., and Chandrasekhara Menon, J. A liberal approach in favour of the candidate was indicated by M. P. Menon J. in *Santhamma v. Public Service Commission*, 1982 KLT 786. This liberal approach had not received due attention in some of the later decisions of this Court."

10. In *Sajeev v. Public Service Commission*, 2008 (4) KLT 691, the Kerala Public Service Commission published a rank list, in which, names of the writ petitioner and the third respondent therein were included. The name of the third respondent was included only provisionally on account of non - production of attested copies of the certificates of qualification along with the application. In the interview, the third respondent was not invited since there was defect in her application. The petitioner was advised to the post. Later, a show cause notice was issued by the Public Service Commission directing him to show cause why advise made by mistake should not be cancelled. It was stated that on rectification of the rank list, the third respondent in the writ petition was included as rank No. 1 and accordingly the rank of the writ petitioner was included as rank No. 1A. The learned Single Judge (Justice S. Siri Jagan) allowed the Writ Petition and in that context, it was held thus:

12. In this connection, another question also arises for consideration, which is whether the Public Service Commission had powers to re - open the selection process itself, by conducting a supplementary interview, long after the rank list was published, that too, without intervention of the Court. The Supreme Court has, in the decision of *A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others*, , held that the selection process "consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications, or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of that of successful candidates for appointment." Therefore, the selection process ended with the publication of the rank list. If that be so, the Public Service Commission could not have on its own, conducted a supplementary interview in favour of an errant candidate, who did not even file a valid application, after giving him a further opportunity to cure the defect long after the time given to him for the purpose was over. The counsel for the Public Service Commission has not been able to point out any provision by which they are obliged or empowered to do so. In fact, they are not even obliged to call upon a candidate to cure the defects in his application. Of course, the counsel for the Public Service Commission relies on two decisions of this Court, viz. *Kuriakose v. State of Kerala and Others*, 1984 KLT 925 and *Manoj Kumar v. KPSC*, 1999 (2) KLT 534 in support of the proposition that it is not illegal in allowing the candidates to cure minor defects in the production of documents. It is true that such a proposition of law cannot be quarrelled with. Permitting candidates to appear in the selection process after curing the defect is certainly a humane conduct. But, can such magnanimity be taken to the extent of conducting a supplementary interview, after curing the defect, that too, after the rank list was published and a candidate advised, to the prejudice of the advised candidate? Does not have the advised candidate any

rights of his own, even when the other candidate is more meritorious, when he was validly advised on the basis of his rank in the rank list validly published? In this case, even if the late production of certificate by the 3rd respondent was refused to be accepted for want of proper explanation for having not produced it earlier, the same could not have been faulted. If that be so, he was rightly refused to be interviewed. The only reasoning given by the Public Service Commission is that by show cause notice dated 23/04/1998, the 3rd respondent was given 15 days" time and the interview was conducted before the expiry of the 15 days. I do not think that such a reasoning could be adopted to give a candidate, who was admittedly in the wrong, an opportunity to be separately interviewed to deprive a validly advised candidate, the benefit of that advise. The decisions in Kuriakose's case and Manoj Kumar's case (supra) could have been pressed into service in favour of the 3rd respondent only if the Public Service Commission had accepted the certificates before the interview and interviewed him along with the others or at least before the list was published...."

11. In Rangaswamy v. Kerala Public Service Commission, 1982 KLT 574, a Division Bench held thus:

The Public Service Commission is bound by the conditions and stipulations contained in the Notification inviting applications. It will not be within the province of this Court to issue directions to the Commission to whittle down the rigour of the conditions and stipulations. The Commission will be within its rights in rejecting the applications, if the applications are not in strict compliance with the conditions and stipulations contained in the Notification. The Commission deals with large number of applications. Its staff has to sort the applications submitted in proper form, process them and take follow up action. No discretion is given to the Commission or freedom to the staff to relax the conditions in the notification. Laxity in one case will leave open the flood gate of requests to condone irregularities or omissions. Such cases cannot be decided on sympathies or by extending other extenuating considerations. The Commission with its heavy workload, has to adhere strictly to its norms and its working can be streamlined only by strict adherence to the norms set by it. A case here or a case there may invoke sympathy or may deserve sympathy, as in this case. But it is not within the province of this Court to extend any sympathy in such cases. The Public Service Commission is a high constitutional authority. This Court will normally be loathe in interfering with its decisions, unless strong grounds are made out like mala fides etc."

12. In T. Jayakumar v. A. Gopu and Another, (2008) 9 SCC 403, respondent No. 1 submitted application for appointment as Extra - Departmental Branch Post Master. The last date for receipt of the application was on 05/01/2000. Respondent No. 1 submitted the application on 04/01/2000, but in that application he omitted to put his signature. Later, he submitted another application with a request to treat the same as part of the first one. The second application was received after 05/01/2000. The first respondent was called for

interview, but the appellant was selected. The Central Administrative Tribunal upheld the claim of respondent No. 1 and it was confirmed by the High Court. Setting aside the order and judgment, the Supreme Court held thus:

12. We are not aware of any principle of law under which once a candidate is allowed participation in the selection process, the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in the selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light."

Condition 17 of the General Conditions of Part II of the Selection Notification mandates that the candidates should acquaint themselves with instructions and they would not get an opportunity to rectify any mistake in the application at a later point of time. Condition 18 specifically provides that claims made subsequent to the application will not be considered under any circumstances. The petitioner belongs to a community which is included in the category "OBC". Reservation is available to a candidate belonging to "OBC" only on fulfillment of certain conditions. A candidate is expected to produce the Non Creamy Layer Certificate in order to enable him to claim the benefit of reservation. It is true that in the application, only the claim for reservation need be made and the proof thereof can be produced later. But in the application, the petitioner made it crystal clear that she was not claiming communal reservation. It was not a mistake committed at the time of filling OMR data sheet by bubbling at the relevant place. The petitioner answered "no" in writing to the question as to whether she was eligible for communal reservation. That shows that it was not a case of any accidental slip or omission or an accidental mistake by which the petitioner did not claim the benefit of reservation. Therefore, this is a clear case where the Commission was justified in considering the application of the petitioner as if she did not claim any reservation. The representation submitted by the petitioner was not liable to be considered or accepted by the Public Service Commission. R.40 of the Kerala Public Service Commission Rules of Procedure only saves the power of the Commission to make such orders as may be necessary to give effect to any of the provisions of the Constitution of India or for the proper discharge of the functions of the Commission. R.40 cannot be invoked as a matter of right by a candidate to allow the candidate to rectify a mistake in the application submitted by him before the Commission.

I am of the view that a writ of mandamus cannot be issued directing the Commission to allow the petitioner to rectify the mistake. If such a request made by the petitioner is granted by the Public Service Commission, it would lead to a situation where the Commission would have to entertain hundreds of such applications for correction at different stages of the selection process. It would affect the transparency of the selection process by the Commission and would

also lead to several litigations by disgruntled candidates who did not get selection.