
(2014) 08 KL CK 0017

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 24279 of 2012

Shebin, A.S.

APPELLANT

Vs

Kerala Public Service Commission

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) 4 ILR 341

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : C. Unnikrishnan, Varughese Oommen and D. Jayakrishnan, Advocate for the Appellant; P.C. Sasidharan and Joseph John, SCs, Advocate for the Respondent

Judgement

P.R. Ramachandra Menon, J.—Selection process done by the 1st respondent/Public Service Commission (PSC), at the instance of the 2nd respondent/Kerala Water Authority, to the post of Lower Division Clerk, vide Ext. P-1 notification, specifying the qualifications required for the post, virtually disabling thousands of persons like the petitioner herein, who are having much higher qualification, by restricting the zone of consideration to just about 1192 applicants in respect of 102 notified vacancies and 43 anticipated vacancies, is under challenge in this writ petition.

2. The petitioner is a differently abled citizen having acquired his degree and computer qualification (DCA) as revealed from Ext. P-2. By virtue of the qualification obtained by the petitioner, he is very much entitled to apply for the post of LDC in the 2nd respondent, who is following the relevant Rules framed by the Government for appointment. On the basis of the requisition sent by the 2nd respondent, 1st respondent/PSC issued Ext. P-1 gazette notification dated 16-7-2012 inviting applications from the eligible hands for appointment to the post in question, mentioning the basic qualification as "Degree" in any discipline and certificate in Data Entry and Office Automation of minimum three months (120 hours) duration awarded by the Lal Bahadur Shastri Centre for Science

and Technology (LBS), Institute of Human Resource Development (IHRD) or from similar/equivalent institutions approved by the Government.

3. The case of the petitioner is that, by virtue of the specific qualification mentioned in Ext. P-1, which is only a lesser qualification than the qualification acquired by the petitioner vide Ext. P-2, detailed representation was submitted by the petitioner and several others as borne by Ext. P-3 to change the qualification, so as to include the higher qualification of DCA as well. According to the petitioner, there was no response at all, and the petitioner was not in a position to make "on-line application" before the last date (22-8-2012). Later, the petitioner came to know that, just a few days prior to the last date for submitting the application, the 1st respondent had considered the grievance and decided that "DCA" could also be considered for the post in question. Based on the instructions appeared in the website, some candidates were fortunate to have applied for the post (as in the case of the person concerned, who submitted Ext. P-4 application on 19-8-2012) which however was not known to the petitioner as no corrigendum notification was ever issued by the PSC. It is in the said circumstance, that the petitioner has approached this Court seeking for the following reliefs:

"I. Issue a writ of mandamus or other appropriate writ, order or direction commanding the 1st respondent to set aside the selection process so far and to call for applications accepting DCA and allied qualifications afresh.

II. Issue a writ of mandamus or other appropriate writ, order or direction commanding the 1st respondent to re-open and extend the date for applying and permit the petitioner to apply for the post of LDC in the 2nd respondent Kerala Water Authority.

III. Declare that the act of the 1st respondent in changing the qualification without due publicity is inconsistent with the principles of fair play, justice and equal opportunity.

IV. Issue such other writ or order as this Honourable Court deems fit and proper in the facts and circumstances of this case."

4. When the matter came up for consideration before this Court on 8-11-2012, the following interim order was passed:

"The grievance in this writ petition is that, the PSC is now proceeding with selection for the post of L.D. Clerk in the Water Authority on the basis of a qualification which was not published in Ext. P-1 Gazette Notification. 2. The petitioner is having a higher qualification of "DCA", which however was not included in Ext. P-1. Hence the petitioner's application was rejected by the PSC website. Pursuant to complaints and representations from different corners including the petitioner (like Ext. P-3), the PSC changed the qualification by including "DCA" as well just a few days prior to the last day for submitting the application. But this was not properly notified to the general public and hence the

petitioner and other similarly situated persons could not apply. Only few persons who chose to apply on the last few days got their applications accepted online, whereby the scope of selection stands restricted to about "1192" candidates; which has quite adversely affected the rights and interest of the petitioner and others concerned.

3. When the matter taken up for consideration on 16-10-2012, the learned Standing Counsel for the PSC was required to get instructions; whether the PSC, after publishing Ext. P-1 Gazette Notification, had issued any revised notification as to the change in qualification. The matter was adjourned thereafter on 1-11-2012 as well. No instructions, statement or affidavit is forthcoming.

4. In the above circumstances, the writ petition is admitted. The respondents shall file counter-affidavit. It is settled law that the Rules of the game can't be changed after starting the game. Decision of the Apex Court in K. Manjusree Vs. State of A.P. and Another, is the authority. Position has been explained by a Division Bench of this Court as well, vide Jayachandran C. Vs. The High Court of Kerala and Others, as it stands so, all further proceedings of selection pursuant to Ext. P-1 shall be kept in abeyance for a period of two months.

It is made clear that, this will not bar the way of the PSC in issuing a revised notification as to the amended qualification/equivalent qualification, also enabling all concerned to apply for the post, suitably extending the last date for submitting the application."

5. Separate counter-affidavits have been filed by the 1st and 2nd respondents. The version of the 2nd respondent is that the selection to the post in question is to be conducted by the PSC/1st respondent. It was based on their requisition that Ext. P-1 notification was issued in tune with the qualifications required as per the Kerala Water Authority (Administrative, Ministerial and Last Grade) Service Rules, 2011. The version of the 1st respondent is that, it was very much open for the petitioner and other candidates who were possessing equivalent/higher qualification to have applied for the post by adding such equivalent/higher qualification in their profile, also entering the details of the same in the "remarks" column. The question of equivalency of the qualification was a matter to be considered at a later stage by the PSC and nothing prevented the petitioner from applying for the post, with Ext. P-2 qualification.

6. Heard both the sides in detail.

7. During the course of hearing, the learned counsel for the petitioner points out that no equivalent qualification was mentioned by the PSC at any point of time and the change in position/qualification, virtually accepting "DCA" as one of the qualifications along with the "Certificate" to be possessed as mentioned therein, was not brought to the notice of the general public/aspirants. In view of the specific qualification mentioned in Ext. P-1, thousands of candidates, who were actually having higher/equivalent qualification could not apply for the post. Pursuant to Ext. P-1 notification containing such defective description of the

qualification, as against the notified vacancies of 102 and anticipated vacancies of 43, only a limited few candidates came forward. The total number of applications received by PSC was just "1192". Thus, the zone of consideration came to be unreasonably restricted, which could only be a dubious exercise to deny chances of several eligible persons to participate in the process of selection. The learned counsel also seeks to place reliance on the decision referred by the Apex Court in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, as to the necessity to have wide publicity with regard to public appointments, simultaneously adding that the reliance sought to be placed by the 1st respondent on *Jyothi, K.K. and others v. Kerala Public Service Commission* J.T. 2002 Suppl. 1 S.C. 85 is not sustainable, so far as the said decision stands on a different footing, rendered in a different set of facts and circumstances.

8. The learned standing counsel for the 1st respondent submits on the other hand that, the idea and understanding of the petitioner is thoroughly wrong and misconceived, more so, in view of the mandate under Rule 10(a)(i) and 10(a)(ii) of Part II KS & SSR, which refers to the course and proceedings to be pursued by the PSC with regard to "equivalency" of the qualification prescribed for the post. It is also brought to the notice of this Court that the PSC has introduced "one time registration" system with effect from 1-1-2012 and that the candidates are at liberty to add all the features/particulars/credentials in their permanent registration, upon issuance of individual notification issued by the PSC. This being the position, it is contended that the version of the petitioner that he was not in a position to apply for the post pursuant to Ext. P-1, does not hold good at all. Reference is also made to the Full Bench decision of this Court (to which I was also a member) as reported in *Suma v. Kerala Public Service Commission* 2011 (1) KLT 1 discussing the scope of Rule 10 of the Rules mentioned above.

9. The stand taken by the 1st respondent/PSC to justify the course pursued is discernible from paragraphs 7, 9 and 15 which are reproduced below for the purpose of convenience of reference.

"7. The allegation of the petitioner that Public Service Commission decided to accept the applications of candidates with DCA qualification only for few days till the last date for receipt of application is absolutely incorrect and denied. It is submitted that candidates possessing equivalent/higher qualification could apply for the post by adding such equivalent/higher qualification in their profile as qualification possessed and then by entering the details of the same in the remarks column of the qualification. The above procedure was made known to all the candidates who had enquired about the same. Candidates who had any problem in applying for the post could call the "Enquiry Section" of "Call Centre" of the Commission for availing any help. Many candidates had made use of this facility and they could apply for the post online, if there is any difficulty.

8. * * * *

9. The petitioner has also alleged that the Commission did not give any reply to his petition dated 25-7-2012. The commission vide decision No. 8 dated 3-9-2012 has decided not to consider the complaint raised by the petitioner as ample provisions are already there in the website to redress the same.

10.--14. * * * *

15. The averment of the petitioner he could not submit application since DCA qualification was not specifically stated. It is submitted that the notification specifically stipulates that higher qualification will also be accepted and that since the notification says higher qualification can be accepted no independent notification or declaration is necessary in that regard since rule itself makes the position clear. This legal position is categorically held by the Honourable Supreme Court of India in Jyothi's case wherein the Honourable Supreme Court has held that:

On the question that the said rules are applicable to the selection posts in the board, there is no dispute. The High Court after setting out the contentions noticed that there were no executive orders in relation to equivalent qualifications prescribed by the Government. The High Court stated that the position is that, the qualifications possessed by the appellants do not prescribed for a post, the same cannot be diluted and persons not possessing those qualifications cannot be permitted to be eligible. It was noticed that all those who had similar or even better qualifications than those candidates would not have applied for the post because they did not possess the qualifications mentioned in the advertisement and such a position would result in "fraud on public to appoint persons with inferior qualifications, in such circumstances, unless it is clearly stated that qualifications are relaxable". On that basis, the High Court dismissed the petitions filed by the appellants. The contentions urged before the High Court are reiterated on either side before us.

Rule 10(a)(ii) reads as follows: "Notwithstanding anything contained in these rules or in the special rules, the qualifications recognized by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the special rules and such a those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post".

10. It is specifically stated in "paragraph 7" of the counter-affidavit that the candidates possessing equivalent/higher qualification could also apply for the post and as such, the petitioner also could have applied pursuant to Ext. P-1 notification. There cannot be any dispute with regard to the power and competency of the PSC to certify the equivalence of a particular qualification, more so in tune with the relevant rules as mentioned herein before. But the basic question is, whether such equivalent qualification/higher qualification was incorporated in the notification, making the position known to the general public, enabling the qualified candidates having the specified/equivalent/higher

qualification to have applied for the post.

11. The qualifications mentioned in Ext. P-1 are in the following terms:

"(i) Degree in any discipline and

(ii) Certificate in Data Entry and Office Automation of minimum 3 months (120 hrs.) duration awarded by Lal Bahadur Shasthri Centre for Science and Technology (LBS), Institute of Human Resource Development (IHRD) or from similar/equivalent institution approved by the Government."

When the 1st respondent contends in paragraph 7 and elsewhere in the counter-affidavit, that the persons having equivalent/higher qualification could have applied for the post, the qualification mentioned by the 2nd respondent/requisitioning authority as incorporated in the 4th paragraph of their counter-affidavit and the qualification notified by the 1st respondent vide Ext. P-1, do never mention anything with regard to the equivalent/higher qualification. What is stated in Ext. P-1 notification is "specific", in so far as the candidates should possess (i) a Degree in any discipline and (ii) they should be having a Certificate in Data Entry and Office Automation of minimum three months (120 hours) duration. The word "similar/equivalent" appearing in the notification is only with reference to the institute from which the certificate in Data Entry and Office Automation should have been obtained. The notification says that such certificate should have been awarded by the Lal Bahadur Shastri Centre for Science and Technology (LBS), Institute of Human Resource and Development (IHRD) or from similar/equivalent institution approved by the Government. Equivalency of an institution is entirely different from equivalency of qualification. If the 1st respondent had mentioned in Ext. P-1 notification that persons having equivalent or higher qualification could also apply for the post, there could not have been any case for the petitioner or anybody else. But in so far as Ext. P-1 notification is "specific", mentioning only one qualification i.e; the Certificate in Data Entry and Office Automation, the permissive change that anybody who was having equivalent/higher qualification could also have applied for the post, was not revealed to the general public. By virtue of the obscurity or inadequacy of the notification, thousands of people/aspirants, who were having the qualification like Ext. P-2, could not offer their candidature to acquire a Government job.

12. The fact of unemployment is acute in the State, more so when, the demand-supply ratio as to the opening and availability of the candidates is highly disproportionate. The 1st respondent has conceded in their counter-affidavit that they are accepting the applications of candidates/persons like the person who has submitted Ext. P-4 application having Degree and "DCA". But it is sought to be clarified by the learned standing counsel for the 1st respondent that, adequacy of the qualification is a matter, which is to be considered by the PSC in the due course. But, if the eligibility to apply, based on the equivalent/higher qualification is not mentioned in a notification, consideration of such qualification by the PSC at a later stage can only be to the benefit of the fortunate few as

mentioned herein before, who applied for the posts, taking a chance. In other words, the notification issued by the PSC does not categorically inform all concerned as to the job specification and the requisite extent of qualification, to hold the post, giving a fair and reasonable chance to all the qualified candidates to apply for the post. This Court does not find it necessary to say anything more with regard to the necessity to have adequate and effective publicity with regard to the field of public recruitment, since the position has already been made clear on many an occasion, including as per the decision rendered by the Apex Court in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, .

13. With regard to contents in paragraph 15 of the counter-affidavit and the decision rendered by the Full Bench of Court in *Suma v. Kerala Public Service Commission 2011 (1) KLT 1*, there cannot be any dispute with regard to the Rule position; particularly Rule 10 of Part II KS & SSR, as declared by the Full Bench. But here, the question is something different. The said decision does not come to the rescue of the 1st respondent in any manner, so as to justify Ext. P-1. At the time of passing the interim order by this Court on 8-11-2012, the PSC was specifically required to get instructions and to file an affidavit as to whether the PSC, after publishing Ext. P-1 Gazette Notification, had issued any revised notification as to the change in qualification. But the version of the first respondent, as discernible from paragraph 8 in this regard, is as follows:

In fact no change has been made in the website of the Commission relating to this issue. Candidates having higher/equivalent qualification could apply online for any posts following the above mentioned procedure right from the introduction of one time registration scheme.

On going through the above version and the stand reflected from paragraph 15 (extracted earlier), it remains a fact that no revised notification was ever issued by the first respondent so as to have included "DCA" as well. On the other hand, the stand of the PSC is that, the candidates who are having higher/equivalent qualification could also apply through on-line for any post under "one time registration" scheme. This Court finds it difficult to accept the said proposition, more so, in view of the discussions made already, that Ext. P-1 notification is silent as to whether any equivalent or higher qualification would be considered and that the candidates having such equivalent qualification or higher qualification could also make an application for the post in question. When the notification clearly specifies a particular qualification and the machinery of selection is set in motion, same has to be strictly adhered to and same cannot be changed in any manner. It is settled law that Rules of the Game cannot be changed after starting the Game, as made clear by the Apex Court in *K. Manjusree Vs. State of A.P. and Another*, . This position has been reiterated by this Court as well, in *Jayachandran C. Vs. The High Court of Kerala and Others*, , to which I was also a member. There is no dispute for the respondents that, pursuant to Ext. P-1 notification inviting application for filling up of existing

vacancies of 102 and anticipatory vacancies of 43, only 1192 candidates could apply for the post. By virtue of the interim order passed by this Court on 8-11-2012, the entire process has been stayed by this Court and the position continues as such.

14. The decision of the Apex Court in *Jyothi, K.K. and others v. Kerala Public Service Commission* J.T. 2002 Suppl. I.S.C. 85 sought to be relied on from the part of the first respondent, as referred to in paragraph 15 of the counter-affidavit, stands on a different footing, in view of the difference in factual situation. In the said case, the Kerala State Electricity Board sought to fill up the vacancies of Sub Engineer, when the PSC invited applications mentioning "Diploma in Electrical Engineering" as the technical qualification, without any reference to Degree in Electrical Engineering. On challenge by Degree holders, the stand of the PSC was upheld and interference was declined by this Court. In the course of further proceedings, S.L.P. was preferred by the Degree holders, leading to the decision rendered in *Jyoti, K.K. and Ors. v. Kerala Public Service Commission* J.T. 2002 Suppl. I.S.C. 85. Observation of the Apex Court in paragraph 9 is relevant, which hence is extracted below:

"9. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of lower qualifications prescribed for the post. If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant rules, for the post of Assistant Engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognized or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held. The qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub Engineer. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the Government is of the view that only diploma holders should have applied to post of Sub Engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is no clear but on the other hand rules do not disqualify per se the holders of higher qualifications in the same faculty, it becomes clear that the High Court cannot be sustained. In this case we are not concerned with the

question whether all those who possess such qualification could have applied or not. When statutory rules have been published and those rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public."

The Apex Court accordingly directed the eligible/suitable Degree holders to be appointed against the available vacancies of Sub Engineers. The said finding or reasoning does in no way promote/support the case projected by the first respondent/PSC, more so when the contention herein is the "DCA" holders also could be considered and that they could have applied for the post. As mentioned already, the defective/obscure notification has restricted the zone of consideration to "1192" candidates. This Court is of the firm view that the notification should have been more transparent and unambiguous, particularly with regard to the qualification, specifying whether equivalent/higher qualification could be accepted, thus giving a chance to all eligible hands to have applied for the post. By pursuing such procedure, no prejudice whatsoever would be caused to the PSC or the second respondent Kerala Water Authority. It will only be in their best interest, as more candidates will be coming to arena and the best among the lot can be selected and appointed by the respondents.

15. In the said circumstances, there is no other alternative for this Court but to set aside Ext. P-1 and it is ordered accordingly. The first respondent is directed to issue a "revised notification" in the manner as specified under the Rules, also incorporating the qualifications, specifying whether equivalent or higher qualification could also be accepted and giving a chance to the eligible aspirants to apply for the post. It would only be proper, if it is made clear in the notification that the persons who have already applied for the post, pursuant to Ext. P-1 notification and having the necessary qualification need not apply afresh.

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