
(2006) 06 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8945 of 2006 M

Sheeba Kuttiatan and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (2006) 2 KLJ 613 : (2006) 4 RCR(Civil) 51

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; P. Nandakumar (G.P.), P.C. Sasidharan, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair

1. The petitioners are candidates, who are desirous of applying for the post of Villageman, in the Revenue Department. The Public Service Commission invited applications for appointment to the said post, by Ext. P1 notification dated 31-12-2005. But, there was a stipulation in it, to the effect that women are not eligible to apply for the post. The petitioners have got all the prescribed qualifications for appointment to the said post. But, because of the above stipulation, they are ineligible to apply. The P.S.C. has issued the notification, based on Ext. P5 Government order dated 28-6-1973, prescribing the qualifications and method of appointment to the post of Villageman, in the Revenue Department. Ext. P5 order provides the method of appointment as direct recruitment from male candidates only. In view of the said stipulation contained in that order, the P.S.C. has included a condition in Ext. P1 notification to the effect that women are ineligible to apply for the post. The petitioners attack the said stipulation, alleging that the same is arbitrary and discriminatory and it offends their fundamental rights, guaranteed under Articles 14, 15 and 16 of the Constitution of India. Special reference is made to Article 15, which

prohibits discrimination only on the basis of sex. So, they seek a declaration that Ext. P5 is ultra vires and unconstitutional. They also pray for issuing a writ of certiorari, quashing Ext. P1 notification. The Public Service Commission has filed a counter affidavit, in which it is submitted that the P.S.C. is bound by the method of appointment, prescribed in Ext. P5 order, which is produced by it, as Ext. R3(a). It has produced Ext. R3(b) letter also, along with its counter affidavit. The P.S.C, by the said letter, brought to the notice of the Government that the condition that women are ineligible to apply for the post of Villageman, is irrational and requires reconsideration. But, it appears, the Government have not taken any steps in this regard, so far. Since the point involved is only a pure question of law, the Government have not filed any counter affidavit in this Writ Petition.

2. Heard the learned counsel on both sides. The learned counsel for the petitioners relied on the decisions of this Court in *Rajamma v. State of Kerala* (1983 KLT 457), *Omana Oomen v. FACT Ltd.* (1990(1) KLT 614) and *Mariamamma v. Hindustan Latex Ltd.* (1993(1) KLT 899). In the decision in *Rajamma v. State of Kerala* (1983 KLT 457), this Court considered the validity of a note under Rule 5(b) of the Special Rules for the Kerala Last Grade Service, as it stood then. The said note reads as follows :

Note : In view of the arduous and special nature of the duties and responsibilities attached to the posts specified in the Table below, only male candidates shall be eligible for appointment under this rule to the said posts:-

Peon

Watchmen

Duffadar

Cleaner-cum-conductor

Gate Keeper

Court Keeper

Process Server

Messenger

Villageman

Chainman

Maistry

Plumber?

The posts enumerated above, for which women were ineligible to apply, included Villageman also. This Court, after elaborately considering the various authorities, struck down the said Note. Now, the Special Rules for Last Grade Service have

been amended and the method of appointment to the post of Villageman is prescribed by an executive order. The said executive order cannot survive, in view of the declaration made by the Division Bench of this Court in the above decision. It is declared that Ext. P5, to the extent it provides that male candidates alone are eligible to apply, is ultra vires and unconstitutional. In the result, Ext. P1 notification, to the extent it prohibits women candidates from applying for the post of Villageman, is quashed. The P.S.C. shall issue an erratum notification and give a chance to submit applications, to the women candidates, who are desirous of applying for the said post.

The Writ Petition is allowed as above.