
(2012) 03 KL CK 0284

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 3290 of 2012

Sreekala Devi Ammal P.N.

APPELLANT

Vs

The Kerala Public Service Commission and Others

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2012) 2 KLJ 550

Hon'ble Judges : Thottathil B. Radhakrishnan, J;C.T. Ravi kumar, J

Bench : Division Bench

Advocate : P. Nandakumar, for the Appellant; P.C. Sasidharan (SC), T.A. Shaji (SC) and P.S. Abdul Kareem (GP), for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—This matter is before the Division Bench on a reference. The petitioner applied to the Kerala Public Service Commission, for short, "PSC", for being considered for appointment as Data Entry Operator in the service of the third respondent, a District Cooperative Bank. That application was rejected on the ground that the petitioner did not have the requisite experience. The petitioner challenged it. The learned single Judge has made this reference, doubting the correctness of the ratio of the judgment dated 9.1.2012 in W.P(C).16522/11, cited on behalf of PSC. The notification inviting applications quoted verbatim the qualifications laid by the Rules governing the service, formulated and accepted by the District Co-operative Banks, after the selection of employees to the District Co-operative Banks was entrusted with the PSC. The qualifications for the post of Data Entry Operator are as follows:

Qualifications:

- (1) B.A./B.Sc/B.Com. Degree of a recognised University.
- (2) Certificate in Data Entry Operation of an Institution recognised by State/Central

Government.

(3) One year experience in Data Entry Operation.

NOTE:--The Register No. and date of registration of the Institution from which the experience certificate is produced, shall be clearly entered in the experience certificate. The experience certificate shall be countersigned by a District Level Officer of the concerned Govt. Department which issue the Registration Number to the Institution. (The genuineness of the experience certificate shall be examined. Action will be taken against those who issue bogus certificates and the candidates who produce bogus certificates).

2. The issue is as to whether the one year experience in Data Entry Operation, which is prescribed at Sl. No. 3 among the qualifications is to be gained after acquiring Certificate in Data Entry Operation.

3. Heard learned counsel for the petitioner and the learned standing counsel for PSC in extenso. Learned counsel for the third respondent, to whose service recruitment is being made, supports the view of the PSC.

4. Petitioner was awarded certificate in Computer and DTP Operation by the Department of Technical Education, she having passed the examination held in February, 2005, after completing the prescribed course of study in the Kerala State Audio-Visual and Reprographic Centre (a Government of Kerala undertaking). Ext.P6 certifies that the result of that examination was published on 17.7.2006. This means that in terms of the settled position in law, the effective date on which the petitioner acquired the qualification of Certificate in Data Entry Operation is 17.7.2006. The last date fixed for submission of applications in terms of the notification issued by the PSC was 11.10.2006. Therefore, after 17.7.2006, till the last date fixed for receipt of applications, the petitioner could count only less than three months of experience, though the petitioner, on the strength of Ext.P4, claims that she had been working with Asoka Press Gandhi Nagar, Kottayam from 25.3.2005 and has sufficient experience as Data Entry Operator. The question is whether such experience as claimed by her, is sufficient to satisfy the requirement of one year experience in Data Entry Operation as per the prescribed and notified qualification.

5. Ext.P2 certificate clearly shows that the petitioner had completed the prescribed course of study in the Kerala State Audio-Visual and Reprographic Centre. This means that the Department of Technical Education, the certifying authority, goes by the requirement that the candidates appearing for that examination have to undergo the prescribed course of study through an institution which it recognises. Reverting to the qualifications prescribed for the notified post, the certificate in Data Entry Operation is to be of an institution recognised by the State/Central Government. The certificate of the Department of Technical Education clearly shows that a certificate in Computer and DTP Operation could not have been obtained except by passing the examination after completing the prescribed course of study in an institution recognised by that

department.

6. Learned counsel for the petitioner, relying on the decision of the Apex Court in *Subhash v. State of Maharashtra and Ors.* and that of the Full Bench of this Court in *Shaila Beegum Vs. Kerala Public Service Commission and Another*, argued that, there being no specific prescription in the notification or rules that the experience should be one gained after acquiring the prescribed educational qualification of certificate in Data Entry Operation, the experience gained in Data Entry Operation, even before 17.7.2006, the date of passing the educational qualification in Data Entry Operation has also to be reckoned.

7. *Subhash (supra)*, dealt with rules framed under Article 309 of the Constitution of India. That precedent notices that, on facts, the appellant before their Lordships had acquired additional experience of one year in a reputed automobile workshop as required. Respectfully, we would read that precedent only to note the overriding effect that Article 309 would have. In the case in hand, we do not have any such issue at all. The qualifications in the case in hand are issued based on resolutions passed by the cooperative societies or co-operative banks. Those guiding rules have been approved by the competent authority, after following a generalised pattern for recruitment to the District Co-operative Banks in the State of Kerala. That process is, with the passage of time, entrusted to the PSC, having regard to the larger public interest involved in such matters. Therefore, as rightly pointed out by the learned counsel for the petitioner, notification having been issued in terms of the recruitment rules which govern the parties, all that is called for is to interpret the rules as they apply in the case in hand.

8. We see that *Shaila Beegum (supra)* decided by the Full Bench appears to have gained acceptance before the learned single Judge. But, we may point out that *Shaila Beegum* dealt with the issue as to experience in a government publicity organisation or publicity department of a private organisation or forum, or the editorial section of a daily newspaper or news agency. That prescription as to experience, is not linked with any technical qualification. In our view, *Shaila Beegum* does not apply to cases where technical qualifications are involved.

9. Now, we may see that *Sheshrao Jangluji Bagde Vs. Bhaiyya and others*, was referred to in *Shaila Beegum (supra)* only to notice that the ratio of that precedent has no bearing on the issue to be decided in that case. It needs to be emphasized that *Shaila Beegum* was not a case dealing with technical-qualifications.

10. The Apex Court pointed out in *Sheshrao Jangluji Badge (supra)* that normally when we talk of an experience, unless the context otherwise says, it can be taken only as experience after acquiring the minimum qualification required and therefore, necessarily will have to be posterior to the acquisition of the qualification. It is also stated that in cases of promotion, the same interpretation may not be justified or warranted. In the case in hand, the only method of appointment to the category of Data Entry Operator is by direct recruitment.

Sheshrao Jangluji Badge is relied on in *G. Sundareswararao Vs. Government of A.P. and Others*, to conclude that on the facts of that case and the rules which fell for consideration therein, experience required has to be one that was acquired after obtaining the minimum educational qualification prescribed. When gaining of experience is intricately linked with obtaining a qualification, the acquisition of experience cannot start to run before or commence prior to the actual acquisition of the educational (technical) qualification prescribed. What needs to be decided in each situation would depend on the relevant provisions and the particular type of experience which is required.

11. In W.P(C). 16522/11, decided as per the judgment doubted in the reference order, the rule itself provides that the experience prescribed as qualification shall be one gained by the candidate after acquiring the basic qualification prescribed for the post and should be gained before the last date fixed for receipt of the application. On the face of such a specific rule, the conclusions arrived at in that judgment cannot be found fault with. That question having been referred for reconsideration, we affirm that view as being correct interpretation and application of the relevant recruitment rule. However, that precedent is not relevant to the case in hand where there is no express statement in the rules that the experience is to be gained after acquisition of the qualification. This case has to be decided without reference to the aforesaid precedent, which does not apply to the issue in hand.

12. Now, in the case in hand, the relevant factors are that, the post is of Data Entry Operator; the educational qualification required is certificate in Data Entry Operation of an institution recognised by the State/Central Government, apart from B.A./B.Sc./B.Com. Degree; and the experience prescribed is one year in Data Entry Operation. Ext.P2 certificate itself shows that Data Entry Operation is one for which there is a prescribed course of study in the Kerala State Audio-visual and Reprographic Centre. The mere fact that one may know a particular science or art or one would have the ability to carry out a particular technical work does not enable that person to claim the legitimate acquisition of the prescribed qualification. In works involving technical skills for which courses of study and acquisition of technical qualifications are provided for, the acquisition of qualification can be envisaged as available only after undergoing the particular process of training. In such cases, law does not permit the assumption as to commence gaining of experience even before possessing the technical qualification concerned.

13. We may also notice the submission on behalf of the PSC that clauses 17 and 19 of the General Conditions of the notification include the requirement in clause 19 that the prescribed qualification as to experience shall, be one gained after acquisition of the educational qualification. Having regard to the interpretation given above, we do not find any legal infirmity in that clause, though we may also note that clause 19 of the General Conditions is not under challenge specifically. The plea of the petitioner that clause 19 has no application does not

stand. It is repelled. For the aforesaid reasons, we do not find any merit in the claim of the petitioner. The writ petition fails.

In the result, this writ petition is dismissed. No costs.