

(2004) 06 KL CK 0043

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30051 of 2003

Sudhakaran

APPELLANT

Vs

Public Service Commission

RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Kerala Public Service Commission (Additional Functions as Respects the Kerala State Road Transport Corporation) Act, 1970 — Section 3

Citation : (2004) 2 KLT 958

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : P.P. Satheesan, K.K. Gopinathan Nair, M.R. Jayaprasad, K.K. Rajeev, P. Santhosh Kumar, Panampilly Nagar, V.C. James, Sergi Joseph Thomas, Jacob Sebastian, Amjith C. John and Kaleeswaram Raj, for the Appellant; P.C. Sasidharan and N. James Koshy, for the Respondent

Judgement

Kurian Joseph, J.—The Writ Petitioners are aggrieved since they are not appointed despite advice by the Public Service Commission. The Public Service Commission issued notification dated 16.12.1997 for preparing a ranked list for appointment to the post of Coach Builders in KSRTC. The notified vacancies were 192. Pursuant to the notification, the Commission prepared a ranked list on 27.12.2002. However before the publication of the ranked list the Corporation addressed Annexure-A letter dated 1.2.2002 requesting the Corporation as follows:-

"In this context it may please be noted that the vacancy position was reported to the Commission based on the actual vacancies existed as on 31.12.97 and the vacancies likely to arise due to retirement in 1998, 1999, 2000 & 2001. KSRTC had received the Advice list of Drivers from the Commission and the selected candidates were already appointed in the existing vacancies. KSRTC has recently taken steps to streamline operation of services and a good number of super class services have been cancelled. So also a number of paper schedules which were not being operated for a long period were deleted from the strength of present

schedules of the Corporation. Consequently there is substantial reduction in the number of schedules held and operated. Moreover due to fiscal reasons, fleet augmentation is in slow process and operation of new routes has been held up. As part of modernising the system, K.S.R.T.C. has taken steps to computerise the administrative and operative branches. Due to these steps, there may be drastic reduction in the number of personnel required in the categories for which request for recruitment was placed before the Commission. Moreover, Government have imposed ban on creating new vacancies and as per G.O.(P) No.56/2002/Fin. dt. 16.1.2002 sanction of the Committee constituted by the Government has to be obtained for filling up vacancies. In the circumstances, I am to request the Commission to kindly stop recruitment steps for the posts requested by the KSRTC vide reference cited for which selection lists have not been finalised and published so far".

2. Despite such communication, Public Service Commission issued advice memos in respect of the substantive vacancies reported. Annexure-A letter dated 1.2.2002 was followed by Annexure-B letter from the Corporation dated 17.10.2003. The KSRTC informed the Public Service Commission in the said letter as follows:--

"The following vacancies were reported to the Commission for advising candidates vide this Office letter cited as 1st. Accordingly, KSRTC had received the Advice list of Drivers, Conductors, Painters, Guards, and Coach Builders. Appointment of candidates from the Advice list of Drivers and Conductors is completed and action is being taken to appoint Guards also. In this context, the following facts are brought to the kind consideration of the Commission with regard to the Advice list of Coach Builders and Painters received and request of KSRTC for recruitment of Blacksmiths, Work Assistant, and Upholsterer. The vacancy position of these 5 posts was reported to the Commission based on the actual vacancies existed as on 31.12.1997 and the vacancies likely to arise due to retirement during 1998, 1999, 2000 and 2001. These posts attached to the Mechanical wing are mainly utilised for bus body building purpose. As part of modernising the fleet strength, to face the increasing challenges in the Public Transport, KSRTC is adopting viable alternatives to bus body constructions in our Workshops. Improvised bus body kits are purchased from bus body construction companies and these kits are directly mounted on the chassis by the construction companies themselves. Cushion seats are also being supplied by the firms. There is substantial reduction in the cost of body building by purchasing body kits to the tune of approximately Rs. 1 lakh per bus. Moreover KSRTC has taken steps to modernise its body building workshops. These measures have rendered the existing workshop staff in the above posts superfluous. In the changing economic scenario when KSRTC is not getting any capital contribution from the State & Central Governments or State budgetary provisions in lieu of the expenses incurred for undertaking social obligations, KSRTC cannot go forward but by pruning expenses on all fronts. The State Planning Board have also recommended reduction of manpower in KSRTC. In the circumstances, the

requirement in the posts of Blacksmiths. Coach Builders. Work Assistant and Upholsterer for future arising vacancies has been reassessed as follows:-

Blacksmith : 200

Coach Builder : Nil

Work Assistant : 276

Upholsterer : Nil

Painter : 10

I therefore request that the recruitment and Advice list to the posts of Blacksmith and Work Assistants may please be limited to the present requirement noted. The recruitment procedures to the post of Upholsterer may please be stopped as there are no vacancies. In the case of Coach Builder and Painter for which Advice list has been furnished. KSRTC may not be able to appoint them all now".

3. It is the contention of the learned counsel for the petitioners that once the vacancies have been reported, there is no justification in not appointing the petitioners since they have undergone a due process of selection and the Public Service Commission has issued advice memos. It is also submitted that the KSRTC is purposely evading appointment to the writ petitioners and they are running the establishment by engaging Coach Builders on contract basis/daily wage basis.

4. Sri. James Koshy, learned Standing Counsel appearing for the Corporation submits that the actual and factual position is what is stated in Annexure-A and Annexure-B letters. The KSRTC is taking steps to further reduce even the existing staff and they cannot even think of making new appointments due to the steps taken for streamlining and modernising the establishment. Sri. P.C. Sasidharan, learned Standing Counsel appearing for the Public Service Commission submits that once the Corporation having approached the Public Service Commission for selecting to reported vacancies, the KSRTC cannot unilaterally withdraw from the process. Referring to the Kerala Public Service Commission (Additional Functions as Respects the Kerala State Road Transport Corporation) Act, 1970 and the Kerala Public Service Commission (Consultation by Kerala State Road Transport Corporation) Rules, 1969, it is submitted that in the event of any dispute it is for the Corporation to refer the matter to the Government and abide by the directions issued by the Government in the matter.

5. Section 3 of the Act reads as follows:-

"Functions of the Public Service Commission in respect of services under the Corporation.-

(1) The Corporation may consult the Public Service Commission.-- (a) on all matters relating to the methods of recruitment of the officers and servants of the

Corporation other than the Chief Executive Officer or General Manager and the Chief Accounts Officer, (b) on the principles to be followed in making appointments by direct recruitment of the officers and servants of the Corporation other than the Chief Executive Officer or General Manager and the Chief Accounts Officer and on the suitability of candidates for such appointments.

(2) Where the Public Service Commission is consulted on any matter under Sub-section (1) it shall be the duty of the Commission to advise the Corporation on that matter.

(3) In the case of any difference of opinion between the Public Service Commission and the Corporation on any matter, the Corporation shall refer the matter to the Government and the decision of the Government thereon shall be final.

Provided that the Government, before taking a decision against the advice of the Public Service Commission, shall refer the matter to the Commission".

6. Rule 5 reads as follows:--

"Where it is proposed to reject or to deviate from the advice of the Commission, the matter shall be placed in a meeting of the Corporation and orders taken. Corporation shall then refer the matter to the Government, and the decisions of the Government thereon shall be final".

7. A perusal of the provisions as extracted above would show that the stand of the Public Service Commission is perfectly justifiable. This is certainly an instance whereas the KSRTC has gone back from its original stand. They can do so only as per the Government decision in the matter. Once the substantive vacancies are reported, the Public Service Commission is bound to conduct the selection and advise candidates. If the Corporation, owing to intervening developments wanted to reduce the vacancies or go back on the decision, they can do so only through the Government. The Corporation cannot unilaterally decide so. Law requires the Corporation to refer the matter to the Government. It is for the Government to take a decision in the matter. In the process Government is bound to consult the Public Service Commission also.

8. In the above circumstances, I dispose of these Writ Petitions as follows:--

The KSRTC shall, as required u/s 3 of the Act read with Rule 5 of the Rules as extracted above, refer the dispute for a decision by the Government. This shall be done within a period of one month from today. Thereafter the State Government shall take a decision in the matter within a period of six months following the procedure contemplated under the Act and Rules in the process. The first petitioner in each of the Writ Petitions as representatives of the candidates who have been advised will also be heard by the Government, Parties will abide by the decision of the Government.

9. It is made clear that the KSRTC shall not engage any person either on contract

basis or on daily wage basis in the post of Coach Builder and for duties attached to the post of Coach Builder. In case the KSRTC requires the service of any such person, it will be open to them to appoint candidates already advised by the Public Service Commission in the order of advice.