
(2014) 03 KL CK 0030
In the High Court Of Kerala
Case No : O.P. (KAT) No. 43 of 2014

Sulochana, A.C.

APPELLANT

Vs

Kerala Public Service Commission

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Citation : (2014) 2 ILR 506 : (2014) 2 KLJ 878 : (2014) 2 KLT 430

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : Sanil Kunjachan and Smt. T.M. Reshmi Sanil, Advocate for the Appellant; P.C. Sasidharan, S.C., K.P.S.C, Advocate for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Petitioner challenges Kerala Administrative Tribunal's refusal to interfere with the rejection of her application for appointment as Telephone Operator in the Medical Education Department of the Government of Kerala on the ground that she does not have the prescribed experience for that post. Heard the learned counsel for the petitioner, learned standing counsel for the Public Service Commission and the learned Government Pleader on instructions.

2. The qualification prescribed in PSC's notification is in terms of the prescriptions in the Special Rules for the post of Lift Operator and Telephone Attendant in the various departments issued as per G.O. (P) No. 203/80/GAD dated 16th May, 1980 as amended as per G.O. (P) No. 54/92/P & ARD dated 15th December, 1992 published as S.R.O. No. 721/93. The qualifications prescribed in those Special Rules for the post of Telephone Operator are as follows:

(1) S.S.L.C. or its equivalent.

(2) Six months experience in handling PBX System. The experience shall be one gained after acquiring the qualification specified in item (1) above.

3. The aforesaid means that a person, who has gained experience of six months in handling PBX System after acquisition of S.S.L.C. or its equivalent, would be eligible to apply for being considered for the post of Telephone Operator.

4. Since the aforesaid is part of the Special Rules noted above, Rule 10(ab) of Part II of Kerala State & Subordinate Services Rules, 1958 is to be applied to reckon the experience. That Rule reads as follows:

10(ab) Where the Special Rules or Recruitment Rules for a post in any service prescribe qualification of experience, it shall, unless otherwise specified, be one gained by persons on temporary or regular appointment in capacities other than paid or unpaid apprentices, trainees and casual labourers in Central or State Government Service or in Public Sector Undertaking or Registered Private Sector Undertaking, after acquiring the basic qualification prescribed for the post:

Provided that the experience gained as factory workers on daily wages of a permanent nature may be accepted, if the service is continuous and not of a casual nature.

5. Learned Tribunal held that the experience claimed by the petitioner is an experience as a daily wage hand and therefore, unless she falls within the term "factory workers", she would not be eligible to be considered in view of Rule 10(ab).

6. As per the proviso to Rule 10(ab), the experience gained by factory workers on daily wages of a permanent nature is also included as experience for the purpose of Rule 10(ab), provided such service is continuous and not of a casual nature. That proviso operates only as regards factory workers.

7. But, the main part of Rule 10(ab) provides that unless otherwise specified, where the Special Rules for a post prescribe qualification of experience, it shall be one gained by persons on temporary or regular appointment in capacities other than paid or unpaid apprentices, trainees and casual labourers in Central or State Government Service or in Public Sector Undertaking or Registered Private Sector Undertaking, after acquiring the basic qualification prescribed for the post. Therefore, experience gained by persons on temporary or regular appointment, otherwise than in the capacity of paid or unpaid apprentices, trainees and casual labourers, is eligible to be reckoned as experience gained for the purpose of that rule.

8. Annexure A-3 in Ext. P-1 is an experience certificate issued by the Superintendent-in-charge of the Government T.D. Medical College Hospital. It shows that the petitioner has worked/has been working in that institution as Telephone Operator on daily wages of Rs. 300 per day for the period of 5 years, 10 months and 13 days from 22-8-2007 to 5-7-2013. It also says that she was working on daily wages and after a period of 14 days, without "day off". That certificate is issued by an institution which is part of a department of the Government of Kerala. Though the petitioner was drawing payments counted as

wages on daily rated basis, the fact of the matter remains that the aforementioned certificate is to the effect that she had continuously worked for 5 years 10 months and 13 days as Telephone Operator. The gaining of such experience as PBX Operator cannot be denounced merely by making reference to the fact that she was being paid only at daily rated wages. It is a reality worth recognition in this great Republic that the marginalised gain experience, toiling in various capacities, eking to live, even when compelled under circumstances to work, practically, continuously, on daily rated wages. There is nothing on record to show that there was any effort for nearly six years or more to fill up the post against which the petitioner was working, by recruitment on regular basis. It would be a mockery of justice in terms of the socio-economic goals of the Constitution to say that a person, who had worked for nearly six years, that too, in an institution of the State Government, cannot be treated as one who has gained six months" experience, merely on the ground that wages due to that person was paid on daily rated basis. The situation is not one where the petitioner had worked as a paid or unpaid apprentice, trainee or casual labourer. For all intents and purposes, the quality of her employment and experience gained thereby is experience gained as one employed on temporary appointment in a capacity other than paid or unpaid apprentice, trainee or casual labourer. Therefore, her experience as such is eligible to be considered as due experience in terms of the main part of Rule 10(ab) of Part II KS & SSR.

9. To be taken along with the aforementioned Annexure A-3 certificate in Ext. P-1 is Ext. P-4, an experience certificate produced in this original petition. That was not produced before the learned Tribunal. Ext. P-4 shows that the petitioner had worked in the Government T.D. Medical College Hospital as Telephone Operator on temporary basis for a period of 179 days from 22-8-2007 to 16-2-2008. That, probably, is the first lap of the period from 22-8-2007 to 5-7-2013 covered by Annexure A-3 in Ext. P-1. Rule 10(ab) in Part II KS & SSR states that experience for 179 days gained through temporary appointments under Rule 9(a)(i) in Departments under Government or Government/quasi Government Institutions or Public Sector Undertakings shall be considered as experience therein for six months for appointment to posts for which qualification of experience for not less than six months is prescribed. Rule 9(a)(i) of Part II KS & SSR provides that where it is necessary in the public interest, owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with the KS & SSR and the Special Rules, the appointing authority may appoint a person, otherwise than in accordance with those rules temporarily. The last among the provisos to Rule 9(a)(i), inserted as per GO. (P)137/S4/GAD dated 5-5-1984, published as SRO. No. 527/84 provides that a person appointed under Rule 9(a)(i) by direct recruitment to a post and discharged from service after the admissible period, shall not be re-appointed to the same post by the same appointing authority, except when fresh candidates are not available for appointment through Employment Exchange, and that such re-appointment shall

be made only with the prior concurrence of the Public Service Commission. As can be seen from Annexure A-3 to Ext. P-1, the petitioner was never discharged from service. Even if we take that Ext. P-4 shows a break after 179 days, there is nothing to infer that fresh candidates were available for appointment through Employment Exchange. The continuance of the petitioner in the post, as is evidenced by Annexure A-3 in Ext. P-1, clearly shows that she continued to discharge duties and responsibilities as Telephone Operator for a period more than six months. Gaining of experience in that regard is what is crucial, the appointment being one made lawfully, unless the converse is proved. There is no material on record to hold that the petitioner was not lawfully engaged on temporary appointment. For the aforesaid reasons, the impugned order of the Tribunal and the decision of the PSC evidenced by Annexure A-2 in Ext. P-1 original application do not stand.

In the result, this original petition is allowed setting aside the impugned Ext. P-2 decision of the Tribunal and the decision of the PSC as contained in Annexure A-2 in Ext. P-1 original application. Consequently, PSC is directed to act on Annexure A-3 certificate in Ext. P-1 as a certificate evidencing petitioner's qualification in terms of the Special Rules and its notification on the basis of which she had applied. Consequential action by the PSC on the basis of this, will follow at the earliest.