
(2014) 12 KL CK 0030

In the High Court Of Kerala

Case No : O.P.(KAT) Nos. 292, 313 and 317 of 2014

The Secretary, Kerala Public Service Commission

APPELLANT

Vs

Nishakumari V.

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 12 KL CK 0030

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : P.C. Sasidharan, SC, Advocate for the Appellant; T. Gopalakrishnan, Advocate and S. Jamal, Sr. Government Pleader, Advocate for the Respondent

Judgement

Antony Dominic, J.—These Original Petitions are filed by the Kerala Public Service Commission challenging the orders passed by the Kerala Administrative Tribunal in T.A.2437/2012, O.A.259/2014 and O.A.344/2014. By these orders, the Tribunal has directed that the vacancies set apart for Cattle Improvement Assistants from the post of Live Stock Inspector Grade II in the Animal Husbandry Department shall also be filled up from the open market as there are no hands available in the category of Cattle Improvement Assistants. On this basis, the Tribunal ordered that for such vacancies also candidates should be advised from the rank list already published by the Public Service Commission. It is this order, which is challenged before us.

2. We heard the Standing Counsel appearing for the Public Service Commission, learned Government Pleader and also the counsel appearing for the party respondents.

3. The post of Live Stock Inspector Grade II is to be filled up in terms of the Special Rules for the Kerala Animal Husbandry Subordinate Service, 1993. As per this Rule, the post is to be filled up in the following manner:

Note: 1. 15% of the vacancies under category VI(2) shall be filled up by transfer

and 85% by direct recruitment. Out of the 85% vacancies reserved for direct recruitment, 10% shall be filled up by dependents of Defence Service personnel in the following order of priority:

- (i) Ex-Service Personnel;
- (ii) Wives and Children of Ex-Service Personnel.
- (iii) Wives and Children of Serving Personnel; and
- (iv) Dependent brothers and sisters of Ex-service Personnel and serving personnel.

2. 75% vacancies of the remaining 75% quota for direct recruitment shall be set apart for Cattle Improvement Assistants, Cattle Improvement Assistants are self employed persons under the supervision of the Dairy Development Department and ordered to be absorbed as Livestock Inspector Grade II in the Animal Husbandry Department as provided for in G.O.(Ms) No. 255/90/AD.dated 15-7-1990. Such Cattle Improvement Assistants to be absorbed as Livestock Inspector Grade II shall be given age relaxation to the extent of the period they have worked in that capacity Communal reservation principle shall be observed in their recruitment as Livestock Inspector Grade II. This arrangement will continue until all eligible Cattle Improvement Assistants are absorbed as Livestock Inspector Grade II."

4. When the Public Service Commission invited applications from candidates for filling up the vacancies that were reported, the party respondents herein submitted their applications and accordingly when the rank list was published, the respondents in O.P. (KAT)292/14 were included in the rank list for Kollam District, the respondents in O.P.(KAT)313/14 were included in the rank list for Kannur District and O.P.(KAT)317/14 were included in the rank list for Palakkad District. They filed the T.A. and O.As contenting mainly that in terms of the Recruitment Rules, 75% of the 75% vacancies were to be filled up from among the Cattle Improvement Assistants and that since there is none available in that category, those vacancies should also be filled up from the open market. In support of this contention, they also placed reliance on letter, dated 23.9.2014, issued by the Director of Animal Husbandry Department informing the Public Service Commission that since the category of Cattle Improvement Assistants have exhausted, candidates from the rank list prepared for appointment in the open market quota should be advised against the vacancy earmarked for the category of Cattle Improvement Assistants also. It was placing reliance of this communication which was marked before the Tribunal as Annexure A8 in the O.A.344/2014 and Annexure A14 in T.A.2437/12 that the Tribunal has directed that the candidates be advised from rank list against those vacancies also.

5. The contention raised by the Public Service Commission is that as per the Special Rules, 15% of the vacancies shall be filled up by transfer and that the remaining 85% by direct recruitment. It is submitted that out of the 85%

vacancies reserved for direct recruitment, 10% shall be filled up by dependents of Defence Service personnel in the order of priority indicated in the Rule and that 75% of the 75% quota for direct recruitment is to be set apart for Cattle Improvement Assistants and the remaining 25% by direct recruitment from open market.

6. According to the Public Service Commission, the arrangement of filling of 75% of the 75% quota for direct recruitment from among Cattle Improvement Assistants is to be continued until all eligible Cattle Improvement Assistants are absorbed as Live Stock Inspector Grade II and that if that category got exhausted by absorption, the rule making authority has to make appropriate changes in the Rules. It is stated that the Special Rules have not been amended so far and in the absence of such an amendment to the Special Rules, the Tribunal could not have directed the Public Service Commission to advice candidates from the ranked list against the quota earmarked for Cattle Improvement Assistants.

7. Public Service Commission has also invited our attention to Note 3 to the notification inviting applications from candidates, providing that in the event candidates are not available in any particular quota, the same will be diverted to the open market quota. According to the Public Service Commission, pursuant to the directions of the Tribunal in its order in O.A.498/12 and connected cases, Note 3 to the notification was deleted by the Public Service Commission by Erratum Notification, dated 15th July, 2013, a copy of which is produced as Ext.P5 in O.P.(KAT)292/14. It is on the aforesaid basis that the Public Service Commission is impugning the orders passed by the Tribunal.

8. We have considered the aforesaid contention made by the counsel in the light of the contentions raised by the counsel for the party respondents. Admittedly, the recruitment to the post of Live Stock Inspector Grade II is governed by the Kerala Animal Husbandry Subordinate Service Special Rules, 1993. As per this Special Rules, 85% of the vacancies are to be filled up by direct recruitment and out of the above 85%, 10% is to be filled up by dependants of Defence Service personnel in the order of priority indicated in the Special Rules. In so far as the remaining 75% is concerned, Special Rules provides that 75% thereof shall be set apart for Cattle Improvement Assistants and that arrangement shall continue until all eligible Cattle Improvement Assistants are absorbed as Live Stock Inspector Grade II. Annexure A8 in O.P.(KAT)344/2014 shows that the Director himself has informed the Public Service Commission that the category Cattle Improvement Assistants has exhausted by absorption as Live Stock Inspector Grade II. It was on that basis that the Director requested the Public Service Commission to advice candidates from the rank list against the vacancies set apart for Cattle Improvement Assistants also. It is relying on this document and the provisions of the Special Rules that the Tribunal has accepted the contention of the party respondents that the vacancies now set apart for Cattle Improvement Assistants also be filled up by advising candidates from the ranked

list. According to us, the view taken by the Tribunal that once the category of Cattle Improvement Assistants is exhausted, the vacancies earmarked for that category should be filled up by direct recruitment by advising candidates in the rank list published by the Public Service Commission is certainly a reasonable view. We say this for the reason that the quota earmarked for Cattle Improvement Assistants is from out of the 75% quota earmarked for direct recruitment from the open market and the Rule further provides that the said arrangement will continue until all eligible Cattle Improvement Assistants are absorbed as Live Stock Inspector Grade II. Therefore, necessarily once all Cattle Improvement Assistants are absorbed in the higher post, the quota earmarked to that category should be revert to the direct recruitment quota from out of which this quota was set apart. We also noticed that this exactly was the manner in which the rules were understood by the appointing authority also, as is evident from Annexure A8 referred to above. In such a situation, when the view taken by the Tribunal is a reasonable one and that view is consistent with the understanding of the appointing authority also, we do not think that this Court should interfere with the order passed by the Tribunal on that basis, exercising supervisory power under Article 227 of the Constitution of India. Therefore, we decline jurisdiction and the Original Petitions are accordingly dismissed.

However, time for compliance for the directions issued by the Tribunal is extended by eight weeks from today.