
(2014) 06 KL CK 0058

In the High Court Of Kerala

Case No : W.P. (C). Nos. 9489 of 2013 (I) and 22481/2013

Vineeth N.R.

APPELLANT

Vs

Staff Selection Commission

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Citation : (2014) 06 KL CK 0058

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : N. Nagaresh, Sri Shaji Thomas, Sri Binu Paul and Sri T.V. Vinu,
Advocate for the Appellant; P. Parameswaran Nair, ASGI and Sri T. SANJAY, CGC
for R1 to R9, Advocate for the Respondent

Final Decision : Allowed

Judgement

Muhamed Mustaque Ayumantakath, J.—These writ petitions are filed by writ petitioners, who are 24 in number, alleging that they have been included in the select list for appointment as Constables (GD) and Rifleman (GD) in Central Armed Police Forces and the refusal to appoint them, in spite of having vacancies in the quota earmarked for the State of Kerala, is illegal. W.P.(C). No. 22481/2013 is filed by the female candidates, who have applied for selection. The petitioners, therefore, seek for a declaration that the above refusal is illegal and unsustainable and, for a consequential relief of mandamus directing the respondents to appoint them against those vacancies.

2. The petitioners, admittedly, have applied for recruitment for the year 2011 pursuant to the notification issued by the Staff Selection Commission.

3. In the counter affidavit filed on behalf of respondent Nos. 1 and 2, i.e. on behalf of the Staff Selection Commission, it is stated that the petitioners are not included in the select list and they have only secured lower marks than the cut off marks prescribed for Reserve List 2. It is further contended that the respondents are not trying to fill up vacancies of the year 2011 from the

Recruitment of 2012-13.

4. It appears that cut off marks fixed to Reserve List 2 is based on the number of vacancies available and not with reference to the criteria for selection.

5. This matter was taken up along with the connected matters, which were filed by the candidates for the recruitment year 2012. It is admitted by the Ministry of Home Affairs that there are 21 vacancies in the State of Kerala in the year 2011 and the same will be considered for the recruitment year 2012. This, in fact, affirms the claim of the petitioners and discredits the statement filed by the respondents 1 and 2 contending that vacancies of the year 2011 would be considered for the year 2011 and not for the year 2012-13. That being so, this Court has to conclude that 21 vacancies are available for recruitment in the year 2011-12 and, necessarily, those vacancies are to be reckoned for selecting candidates among the applicants for the year 2011 itself.

6. It is well settled position of law, when vacancies are available for the notified year, those vacancies are to be filled from the candidates who have applied based on the notification issued for the recruitment of that year. It is apposite to quote decision of the Hon'ble Supreme Court in *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, , see para.8, which reads as follows:

It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (*State of Haryana v. Subhash Chander Marwaha*; *Mani Subrat Jain v. State of Haryana*; *State of Kerala v. A. Lakshmikutty*) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, - in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government -- the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today.

Considering the number of petitioners involved in these writ petitions, respondents are bound to consider the petitioners for the selection for the year 2011. Respondents also have not stated split up vacancies available for male and female candidates separately. Therefore, all the writ petitions have to be considered in accordance with the vacancies that are earmarked for male and female candidates. Accordingly, these writ petitions are allowed, directing respondents to consider the petitioners for selection for the recruitment year 2011, based on their merit and satisfying other conditions for selection. This shall be done within two months from the date of receipt of a copy of this judgment.