
(2020) 12 KL CK 0158

In the High Court Of Kerala

Case No : Original Petition (Kerala Administrative Tribunal) No. 358, 378 Of 2019

Vishnu Velayudhan

APPELLANT

Vs

Kerala Public Service Commission And Ors

RESPONDENT

Date of Decision : 09-12-2020

Acts Referred:

Kerala State And Subordinate Service Rules, 1958 — Rule 14

Citation : (2020) 12 KL CK 0158

Hon'ble Judges : A.M. Shaffique, J;Gopinath P., J

Bench : Division Bench

Advocate : J. Julian Xavier, Firoz K. Robin, T. Rajasekharan Nair, P.C. Sasidharan, E. Narayanan

Final Decision : Allowed

Judgement

Gopinath P., J

1. These Original petitions are filed challenging two orders of the Kerala Administrative Tribunal. O.P (KAT) No.358/2019 has been filed challenging

order dated 24-07-2019 in OA (EKM) No.1858/2018, while O.P (KAT) No.378/2019 has been filed challenging order dated 22-08- 2019 in OA

No.1878/2018. The sole applicant in OA (EKM) No.1858/2018 is the petitioner in O.P (KAT) No.358/2019 while the applicants 1 to 4 in OA

No.1878/2018 are the petitioners in O.P (KAT) No.378/2019.

2. The brief facts are that the petitioners in both cases applied for selection to the post of Veterinary Surgeon Grade-II in a Special Recruitment

conducted by the Kerala Public Service Commission for filling up 3 posts from members of the Scheduled Caste Community (Category No.607/2017)

and 9 posts from members of the Scheduled Tribe Community (Category No.608/2017). The sole controversy in the case arises from the following

stipulation against 'method of appointment' in the said notification: -

5. Method of appointment : Direct Recruitment from among Scheduled Caste and Scheduled Tribe Community. In the absence of qualified SC

candidates application of ST candidates will also be considered and vice versa. Application of Candidates other than SC & ST Community will be

rejected. Individual rejection memo will not be issued.

It appears that no candidate belonging to the Scheduled Tribe Community was selected following the notification. The petitioners are included in the

ranked list of candidates belonging to the Scheduled Caste Community. The claim of the petitioners in both cases was that in the light of the stipulation

contained in the notification, they were entitled to be considered against the vacancies set apart for members of the Scheduled Tribe Community

though they are Scheduled Caste candidates. The PSC contended that they have published two separate ranked lists; one for Category No.607/2017

and the other for Category No.608/2017. It is submitted that Scheduled Caste candidates who wish to be considered for appointment against the

Scheduled Tribe vacancies ought to have submitted a separate application for each category and the petitioners who admittedly did not apply under

Category No.608/2017 cannot be heard to contend that they should be considered against the 9 vacancies set apart for Scheduled Tribe candidates.

The Tribunal considered OA (EKM) No.1858/2018 and by order dated 24-07-2019 came to the conclusion that the stand of the PSC cannot be

faulted. The order in OA No.1858/2018 was followed and OA No.1878/2018 was also rejected.

3. We have heard Adv. Julian Xavier, the learned counsel for the petitioners, Sri. P.C. Sasidharan, learned Standing Counsel for the Public Service

Commission and Sri. E. Narayanan, the learned counsel appearing for respondents 2 to 6 in both the original petitions.

4. The learned counsel for the petitioners would contend with reference to the notification that there was no stipulation therein that Scheduled Caste

candidates who wanted to be considered against the posts reserved for Scheduled Tribe candidates, had to make an application under Category

No.608/2017 also. He would contend that any person included in the list of candidates prepared by the PSC for filling up the posts reserved for

members of the Scheduled Caste Communities could in the absence of any

Scheduled Tribe candidates or in the absence of a sufficient number of

Scheduled Tribe candidates be considered against the posts reserved for Scheduled Tribe candidates in terms of the stipulation contained in the

notification. He would also submit that this is in accordance with Rule 14 of Part-II of the Kerala State and Subordinate Service Rules.

5. Per contra, the learned Standing Counsel for the KPSC would vehemently contend that without a separate application, the petitioners cannot be

considered for appointment against posts reserved for members of the Scheduled Tribe Community. The learned Standing Counsel for the PSC has

produced before us the details of the applications filed by some other candidates to suggest that a large number of candidates had applied under both

categories. He would also place reliance on the judgment of the Supreme Court in T. Jayakumar v. A. Gopu and another; (2008) 9 SCC 403 and on

the judgment of this Court in W.P (C) No.35209/2008, to contend that a mistake of this nature committed at the time of making the application will

result in the rejection of the candidature of those concerned. Learned Counsel appearing for respondents 2 to 6 would contend that the petitioners had

not impleaded any of the affected parties and his clients had got themselves impleaded in the proceedings before the Tribunal. He would also support

the contentions taken by the learned Standing Counsel for the PSC.

6. In reply, the learned counsel for the petitioners placed reliance on Ext.P16 notification issued by the PSC for filling of posts of Livestock Inspector

Grade-II / Poultry Assistant / Milk Recorder / Store Keeper/ Enumerator and points out with reference to Note-V of that notification that in cases

where separate applications were insisted upon for each category, the stipulation in that regard would be clearly provided in the notification itself. The

notification in question, he submits, did not indicate any such stipulation. He would also place reliance on a Division Bench decision of this court in

Shaila E.J. v. The Kerala PSC & others; 2012 (1) KLJ 434 to contend that the PSC should not act in a mechanical manner.

7. We have considered the rival contentions. We notice that the notification issued by the PSC for filling up of posts of Veterinary Surgeon Grade-II in

the Animal Husbandry Department while mentioning that in the absence of qualified Scheduled Tribe candidates, application of Scheduled Caste

candidates will be considered and vice-versa did not in any manner stipulate that

if a Scheduled Caste candidate wanted consideration of his candidature against a post reserved for a Scheduled Tribe candidate, he/she must make a separate application. This is in clear distinction with the stipulation in the notification issued by the PSC as Ext.P16 where the candidates in the category of Cattle Improvement Assistants, the Ex-service personnel/Dependents of Ex-service personnel/ dependents of Defence Service personnel who could apply under the open quota were required to make a separate application for each category. If there had been a similar stipulation in the notification issued for filling of post of Veterinary Surgeon Grade-II, we would have had no hesitation to uphold the order of the Tribunal. A reading of the notification in question in these cases indicates that in the absence of any or sufficient number of Scheduled Tribe candidates for filling up of the 9 vacancies reserved for members of the Scheduled Tribe community, the same would be filled up from among those qualified under the Scheduled Caste category. The learned Standing Counsel for the PSC is quite right in contending that the candidates are expected to scrupulously follow all instructions while submitting their applications. However, in the facts of the present case, we do not think that the stand of the PSC can be justified in the light of the stipulations contained in the notification. A reading of the notification suggests that there is a chance that a candidate may be misled into thinking that by making an application against Category No.607/2017, he could be considered automatically against the seats reserved for Scheduled Tribe communities also. Further, the consideration of Scheduled Caste candidates against seats reserved for Scheduled Tribe candidates and vice- versa is a statutory mandate of Rule 14 of Part-II of the KS & SSR. While the principles laid down in T. Jayakumar (supra) and in the judgment in W.P (C) No.35209/2008 are unexceptionable, we feel that they do not apply in the fact situation of these cases.

8. We, therefore, allow these original petitions and set aside the orders passed by the Tribunal which are impugned in these original petitions. The petitioners and all others who are included in the list of candidates belonging to the Scheduled Caste Community shall also be considered against posts reserved for members of Scheduled Tribe community in accordance with their eligibility determined with reference to the inter-se merit after a re-cast of the ranked list, on the basis of our findings as above. We make it clear that if

anyone lower in rank than the petitioners has already been advised and appointed, such appointment shall not be disturbed.