

(2024) 11 KL CK 0052

High Court Of Kerala

Case No: Original Petition (KAT) No. 293 Of 2024

Binumon K.P, S/O Purushan .K.V

APPELLANT

Vs

Kerala Public Service
Commission

RESPONDENT

Date of Decision: Nov. 21, 2024

Acts Referred:

- Kerala State & Subordinate Services Rules, 1958 - Rule 2(13), 8(c)
- Civil Service Examination Rules, 2022 - Rule 27(3)

Hon'ble Judges: A.Muhamed Mustaque, J; P.Krishna Kumar, J

Bench: Division Bench

Advocate: Kaleeswaram Raj, Thulasi K. Raj, Chinnu Maria Antony, Aparna Narayan Menon, Nisha Bose

Final Decision: Dismissed

Judgement

P.Krishna Kumar, J.

1. The petitioner challenges the order passed by the Kerala Administrative Tribunal in O.A.No. 45 of 2021, in which the Tribunal rejected the

petitioner's claim that he is entitled to be included in Annexure A6, the ranked list prepared by the Kerala Public Service Commission/first respondent,

for the post of Lower Division Typist, through by transfer method.

2. While working as Driver Grade II (HG) in the Block Development Office, the petitioner applied for the post of L.D.Typist (recruitment by transfer)

in various departments, pursuant to the gazette notification published on 29/12/2018. As per the notification, applications were invited from low-paid

employees in the Kerala Government Subordinate Service for appointment to the above post. The scale of pay for the post was Rs.19000-43600. At

the time of submission of application, as it appears from Annexure A3 service certificate issued in favour of the petitioner, his scale of pay was

Rs.18000-41500. As per Annexure A1 notification, the last date to apply was 30/01/2019.

3. The petitioner was excluded from Annexure A6 ranked list for the reason (as explained in Annexure A7) that he was not eligible for recruitment

through by transfer method in view of note 2 of Rule 8(c) of Part II of Kerala State & Subordinate Services Rules, 1958 (hereinafter referred to as

“KS & SSR”). The respondents further explained the reason for the exclusion of the petitioner from the said ranked list through the reply

statement submitted before the Tribunal. According to them, as per Rule 2(13) of Part I of KS & SSR, a person can be recruited by transfer only if

his appointment to the service is in accordance with the orders issued or rules prescribed for recruitment by transfer to the service. Applications were

invited only from low-paid employees and thus the said eligibility for recruitment by transfer has to be maintained until a candidate is finally appointed

to the post. However, at the time of verification, it was found that the petitioner was promoted to the post of Driver Grade II (HG) with a scale of pay

of Rs.20000-45800. It is also contented by the respondents in the reply statement that, by virtue of the provisions of Rule 8 of KS & SSR, a candidate

who applied for by transfer appointment, if appointed to a post (having a higher scale of pay) in another department, he is entitled to be repatriated to

his initial post (having a lower scale of pay) from which he applied for by transfer appointment, but if he cannot go back to the original post as it

carries a higher scale of pay, he is not eligible for by transfer appointment.

4. Adv.Sri.Kaleshwaram Raj, the learned counsel for the petitioner, assailed the order of the Tribunal mainly on the ground that the eligibility or

qualification for appointment to a post is to be examined with reference to the last date for receiving the application unless and until the notification

prescribes otherwise. According to him, this elementary principle was not acted upon by the Tribunal and hence, the petitioner is entitled to be included

in Annexure A6 ranked list. To support the said contention, the learned counsel relied on the decisions in Ashok Kumar Sharma & Ors. v. Chander

Shekhar & Anr. [(1997) 4 SCC 18], Ashok Kumar Sonkar v. Union of India & Ors. [(2007) 4 SCC 54], Rekha Chaturvedi v. University of Rajasthan [1993 Supp(3)SCC 168], A.P.Public Service Commission v. B.Sarat Chandra [(1990) 2 SCC 669], Bhupinderpal Singh v. State of Punjab [(2000) 5 SCC 262] and Divya v. Union of India [(2024) 1 SCC 448].

5. It is further argued that if the contentions put forward by the Public Service Commission are accepted, an employer can very well defeat the rights of an eligible candidate by delaying the process of appointment, which will result in disastrous consequences. It is also contended that the relevant special rules do not contain a provision like Rule 187 of the Co-operative Societies Rules, wherein it is provided that the stipulation for reservation in the vacancies of apex societies to the employees of a member society shall be applicable to those employees who should be in the service of the member society not only on the date of application but also on the date of appointment.

6. Adv.Sri.P.C.Sasidharan, the learned Standing Counsel for the Kerala Public Service Commission, defended the impugned order relying on the provisions contained in Rule 2(13) of Part I of KS & SSR. The learned counsel submitted that applications were invited from low-paid employees and that eligibility condition ought to have been maintained until the appointment is completed, unlike in the case of appointment by direct recruitment, wherein the crucial point of time would be the date of notification inviting application by the PSC.

7. In order to appreciate the contentions advanced by the learned counsel appearing for the petitioner, we have extensively considered the decisions cited by him. In Ashok Kumar Sharma's case (supra), the question under consideration was, when a number of persons applied for appointment to the post of Junior Engineer, which requires a pass in B.E.(Civil) Examination, 33 persons had not passed the B.E. examination before the last date fixed for the submission of application, but they were permitted to participate in the interview pursuant to the directions of the Government and when this was challenged, the Honourable Supreme Court held that persons who acquire the prescribed qualification subsequent to such cut-off date could

not be considered at all, even on the ground that the recruiting authority might get the best talent available. In Ashok Kumar Sonkar's case and

Rekha Chaturvedi's case (supra) as well, the factual situation was identical.

8. In A.P. Public Service Commission's case (supra), a candidate who did not complete the minimum age prescribed for the selection claimed that

the completion of the minimum age should be determined on the basis of the date of preparation of the selection list and not any date anterior to it. In

Bhupinderpal Singh's case (supra) as well the question under consideration was related to the upper age limit.

9. In Divya's case (supra), the Honourable Supreme Court was considering the eligibility of economically weaker section category candidates for

the Civil Service Examination. The Honourable Court noted that as per the official memorandum issued by the Department of Personnel and Training,

the benefit of reservation under the EWS category would be available only upon possession of an Income and Asset Certificate(I&AC) issued by a

competent authority and the official memorandum further specifies the crucial date of submission of I&AC as the closing date of receipt of

application. The court further noted that Rule 27(3) of the Civil Service Examination Rules, 2022 clearly stated that a candidate will be eligible to get

the benefit of economically weaker section reservation only if the candidate meets the criteria issued by the Central Government and is in possession

of the requisite I&AC based on the income for the relevant financial year (2020-2021). The petitioner in the said case claimed that she had the EWS

certificate for the year 2019-2020, but she could not obtain the certificate for the financial year 2020-2021 due to the COVID pandemic crisis and thus

she initially uploaded the certificate for the available period, and subsequently, she produced the certificate for certain other periods. Later, she was

informed by the UPSC that her candidature had been converted to the general category from the EWS category. She challenged the said decision by

filing a writ petition. In the said circumstances, after adverting to the relevant rules under the Civil Service Examination Rules, 2022, the Honourable

Supreme Court held that "it is also very well settled that if there are relevant rules which prescribe the date on which the eligibility should

be possessed, those rules will prevail. In the absence of rules or any other date prescribed in the prospectus/advertisement for determining the eligibility, there is a judicial chorus holding that it would be the last date for submission of the application.â€

10. It is true that the Honourable Supreme Court has laid down that the eligibility of a candidate has to be judged with reference to the last date fixed for submitting the application unless there is a contrary rule or a provision in the notification itself. However, in all those decisions, what was in question was the propriety of acquiring certain qualifications which are necessary for the appointment (or for determining eligibility), after the last date fixed in the notification. In that circumstance, the Apex Court held that if a qualification is prescribed, that shall be obtained before the last date fixed for submitting the application, and the subsequent acquisition of the qualification has no relevance. Those are also cases in which appointment by direct recruitment was in question based on the acquisition of some essential qualifications subsequent to the last date fixed. The ratio of those cases centres around the aforementioned factual circumstances and has no relevance in the present context, wherein the eligibility for recruitment by transfer method is in question.

11. The method of recruitment by transfer is entirely a different process. As a general rule, the method provides an opportunity for change of post or category to low-paid employees or persons in a pay scale not higher than the post to which the applications are invited. Through by transfer appointment, existing employees in one post/category will be appointed to another post/category, which is not in the direct line of promotion, but it may carry a higher or identical scale of pay, and not lesser scale of pay.

12. Rule 2(13) of Part I of KS & SSR specifically provides that a candidate is said to be recruited by transfer to a service if his appointment to the service is in accordance with the orders issued or rules prescribed for recruitment by transfer to the service, subject to certain other conditions. When it was explicitly stated in the notification that the candidature is expected from persons holding low-paid posts in the Government Services, the said qualification of the candidate is certainly expected to be of the same nature until he is finally appointed to the post, as the appointment by transfer does

not envisage appointment of a person with a higher scale of pay.

13. As rightly pointed out by the learned Standing Counsel for the Public Service Commission, when the term used in rule 2(13) is that a candidate is

said to be "recruited by transfer" to a service if his "appointment to the service" is in accordance with the orders issued or rules prescribed

for recruitment by transfer to the service, the condition prescribed in the notification is to be scrupulously followed till the appointment is effected.

Clause 4 of Annexure A6 notification reads as follows:

"4. Method of appointment : Recruitment by transfer (from persons holding low paid posts in the Government Services)"

It is thus evident that the said recruitment by transfer can be made from persons holding low paid posts which is a concomitant element to be attached

to the employee till the appointment takes effect.

14. In this case, it is not disputed that the petitioner had been promoted to Driver Grade II (HG) with a scale of pay of Rs.20000-45800 which post

possesses a pay scale higher than that of a Lower Division Typist with a scale of pay Rs.19000-43600. Therefore, the respondents rightly excluded

the petitioner from Annexure A6 ranked list and hence there is no scope for any interference.

The original petition is dismissed.