
(2006) 11 KL CK 0002

High Court Of Kerala

Case No: Writ Petition (C) No"s. 4208, 5520, 6956, 8474, 9016 and 27538 of 2006

Vishnu and Another

APPELLANT

Vs

K.S.F.E. and Others

RESPONDENT

Date of Decision: Nov. 17, 2006

Acts Referred:

- Kerala Public Service Commission Rules of Procedure, 1976 - Rule 13

Hon'ble Judges: K.K. Denesan, J

Bench: Single Bench

Advocate: K.R.B. Kaimal and Jacob Thomas, for the Appellant; P.C. Sasidharan, S.C. KPSC, D. Ajithkumar, A.M. Shaffique, E.K. Nandakumar, A.K. Jayasankar Nambiar, T.A. Shaji, T.V. Shaji and Ragam S. Mohan, for the Respondent

Final Decision: Allowed

Judgement

K.K. Denesan, J.

In all these writ petitions, the grounds urged and the reliefs prayed for by the Petitioners are identical. The writ petitions are, therefore, disposed of by this common judgment.

2. The Kerala State Financial Enterprises Ltd. ("KSFE", for short) and the Kerala Public Service Commission, hereinafter referred to as "the Commission", are the common Respondents in these writ petitions.

3. The Commission issued a notification (category No. 166/2000) in the Kerala Gazette dated 26-9-2000 inviting applications from qualified candidates for appointment as Junior Assistants in the service of the KSFE, which is a company fully owned by the Government of Kerala. Degree obtained from a recognised University is the qualification prescribed for the post. The age of the candidates shall be between 18 and 35 as on 1-1-2000. The Petitioners submitted applications to the Commission. A written examination was conducted by the Commission for selection of candidates. On the basis

of the results of the examination, the Commission published a rank list which was brought into force with effect from 30-4-2003. The Petitioners are included in the above rank list.

4. Rule 13 of the Kerala Public Service Commission Rules of Procedure reads as follows:

13. The ranked lists published by the Commission shall remain in force for a period of one year from the date on which it was brought into force provided that the said list will continue to be in force till the publication of a new list after the expiry of the minimum period of one year or till the expiry of three years whichever is earlier.

According to the Petitioners, since no such new rank list has come into force, the rank list of Junior Assistants in KSFE published on 30-4-2003 remained in force till 29th April 2006, on which date the period of three years was completed.

5. It is contended that the KSFE has got a duty to report all direct recruitment vacancies in the post of Junior Assistants arose upto 29-4-2006 to the Commission in the prescribed pro forma and the Commission in turn has got the duty to advise equal number of candidates from the above list against vacancies reported to the Commission upto 29th April 2006.

6. The Commission has denied the averments in the Writ Petitions that the rank list published on 30-4-2003 was kept alive for the maximum period of three years. According to the Commission, during the currency of the rank list which came into force with effect from 30-4-2003, Ext. R-2(a) notification inviting applications for the clerical posts in various Government owned Companies/Corporation/Boards was published in Kerala Gazette dated 4-11-2003 as category No. 138/2003 and pursuant to that notification a rank list was brought into force with effect from 17-11-2005 and therefore all vacancies reported to the Commission on and after 17-11-2005 will be utilised for advising candidates from the new rank list published as per Ext. R-2(b) notification dated 17-11-2005. The Petitioners refute the claim made by the Commission that the rank list came into force with effect from 17-11-2005 is for the appointment of Junior Assistants in KSFE.

7. The point for consideration is whether Ext. R-2(a) notification is one inviting applications for the post of Junior Assistant in KSFE. The contention that the rank list brought into force with effect from 30-4-2003 ought to have been kept alive for the maximum period of three years can hold water if only the rank list came into force with effect from 17-11-2005 is not a list prepared and published for appointment to the post of Junior Assistant in KSFE.

8. Admittedly, in the notification published by the Commission on 26-9-2000, the name of the institution shown is "Kerala State Financial Enterprises Ltd." and the name of the post shown is "Junior Assistant". The pay scale of the post is also shown in the notification. Candidates who responded to the above notification did so to participate in the selection process and get their names included in the rank list for appointment to the post of Junior Assistant in KSFE. The rank list brought into force with effect from 30-4-2003 is evidently

that of Junior Assistants in KSFE. Neither during the three year period reckoned from 30-4-2003 nor thereafter a similar notification inviting applications for the post of Junior Assistant has been published by the Commission.

9. In the second notification published in Kerala Gazette dated 4-11 -2003 there is no mention about KSFE or about the post of Junior Assistant. It would be useful to extract the following particulars from the notification published on 4-11-2003:

Category Number - 138/2002.

Company/Corporation/Board--Various Government owned
Companies/Corporation/Boards.

Name of Post - Assistant Gr.II/Clerk/Junior Clerk/Lower Division Clerk.

Scale of pay - Scale of pay as prescribed for the post by the concerned
Company/Corporation/Board.

10. Exfacie, the above notification does not cover the post of Junior Assistant. Looked at from the point of view of the Petitioners, there is reason to think, having regard to the existence of a rank list reckoned from brought into force with effect from 30-4-2003 and the three year life period of that rank list reckoned from the above date, the Commission might have felt it unnecessary to issue a fresh notification inviting applications for the same post within a short period, that too in the absence of requisition from KSFE. Hence the non-inclusion of the post of Junior Assistant in the second notification is neither inadvertent nor accidental omission but a conscious one. In fact that Junior Assistant is not included among the posts specifically given in the second notification justifies the contention that among the Companies, the Corporations and the Boards that are intended to be brought within the purview of that notification, KSFE is outside the coverage.

11. There is no convincing explanation from the Commission as to why it did not think it proper to mention specifically the nomenclature of the clerical posts in KSFE, i.e., Junior Assistant, despite the specific enumeration of the various clerical post, i.e., Assistant Gr.II/Clerk/Junior Clerk/Lower Division Clerk in other Companies, Corporations and Boards. The posts or categories of posts shall be clearly identifiable from the notification so as to enable the candidates to make up their mind as to whether or not they should apply for the post in response to the notification. The Commission is competent to conduct selection and publish the rank list only in respect of the post or posts for which notification inviting applications was published by the Commission. If the Commission omits to include any post or any institution in a notification, such omission can be supplied only by publishing an erratum or supplementary notification for the information of the candidates. No such thing was done in this case. On the contrary, what the Commission did was, presumably on noticing the non-mention of the post of Junior Assistant in the notification published on 4-11-2003, to adopt a resolution to the effect that the common ranked list prepared will be operated for selection to the post of Junior Assistant in KSFE

as well. That, the above was the course of action adopted by the Commission is evident from paragraph 6 of its counter-affidavit, which reads:

It is submitted that pursuant to the above notification the ranked list was finalised and brought into force with effect from 17-11 -2005. It is submitted that the Commission also adopted a resolution that the common ranked list so prepared will be operated for selection to the post of Junior Assistant in the KSFE as well, though the ranked list published for the post of Junior Assistant in KSFE was in currency. In implementation of the decision of the Commission the ranked list published on 30-4-2003 for the post of Junior Assistant KSFE stands automatically cancelled.

12. Evidently, the decision of the Commission that the common ranked list brought into force on 17-11 -2005 shall be applicable to Junior Assistants in KSFE as well, was made not only subsequent to the notification published on 4-11 -2003 but also after the coming into force of the rank list with effect from 17-11 -2005. The Commission ought to have made up its mind well in advance as to the identity of the posts for which notification inviting applications from candidates should be published. It is illegal to adopt a resolution in the nature of the one referred to in the counter-affidavit of the Commission, after the publication of the rank list. The text of the above-mentioned resolution is within the exclusive knowledge of the Commission and the candidates cannot be found fault with for not seeking orders to set it aside.

13. The rank list brought into force from 17-11 -2005 is for appointment to the post of Assistant Gr.II/Clerk/Junior Clerk/Lower Division Clerk in various Government owned Companies/Corporation/Boards. The rank list of Junior Assistants in KSFE which was in force during the above period will not become automatically inoperative, consequent to the resolution adopted by the Commission that the rank list published on 17-11-2005 would cover the post of Junior Assistant in KSFE as well. The above action of the Commission is beyond the scope of Rule 13 of the Kerala Public Service Commission Procedure rules. The Commission has no power to include any post or category of post which are not specifically included in the rank list by means of a resolution taken by the Commission subsequent to the publication of the rank list. The Commission has committed an error of jurisdiction by bringing within the purview of a certain post or posts are not covered by the notification inviting applications. The rank list brought into effect on 17-11-2005 cannot and will not supersede the rank list published for the post of Junior Assistant and brought into force with effect from 30-4-2003.

14. The counter-affidavit filed by the KSFE shows that subsequent to the rank list published by the Commission for the post of Junior Assistant and which was brought into force with effect from 30-4-2003, no requisition was made to the Commission to invite applications for the very same post.

15. The notification published on 4-11 -2003 shows that the Commission was not aware of the scales of pay of the various posts included in that notification. Scale of pay is a

changing phenomena, such changes do occur due to periodical revisions and various other reasons. There is no guarantee that the scale of pay of the clerical posts in the various Government owned Companies, Corporations and Boards are the same or identical. Even if parity in pay scales may be noticed at the time of publication of the notification inviting applications, it is quite possible that disparity emerges in between the date of notification and the publication of the rank list and even thereafter during the currency of the rank list. In such circumstances, advice and appointment of the candidates in accordance with the rank assigned to them based on merit against deserving posts would become unworkable. Hence the mere fact that a combined notification was issued for the sake of expediency and for providing more employment avenues to the candidates may not always be a justifiable ground. The action of the Commission in adopting a resolution to bring the post of Junior Assistant in KSFE within the purview of the rank list brought into force on 17-11 -2005, cannot be sustained. Such a resolution cannot be given effect to, behind the back of the candidates as also those included in the ongoing ranked list.

16. Therefore, the inevitable conclusion is that the rank list brought into force with effect from 30-4-2003 for appointment to the post of Junior Assistant in KSFE was the only live and valid list to be acted upon upto and including 29-4-2006. It is so declared. It follows that the vacancies of Junior Assistants reported to the Commission from KSFE upto and including 29-4-2006 shall be made use of to advise eligible candidates from the rank list brought into force with effect from 30-4-2003.

17. The Commission has got a duty to advise candidates even after the lapse of the rank list, provided the vacancies are reported to the Commission during the lifetime of the rank list. The Commission is directed to advise candidates against vacancies reported pursuant to the interim orders passed by this Court in this batch of writ petitions as also vacancies reported to the Commission till 29-4-2006 as stated in the counter-affidavit of the KSFE. This shall be done as expeditiously as possible, in any event, within three weeks on receipt of a copy of this judgment. On the basis of the advice letters of the Commission, the Respondent KSFE shall issue appointment orders to the respective candidates without delay.

The writ petitions are allowed as above.