

(1986) 12 KL CK 0013

High Court Of Kerala

Case No: W.A. No. 734 of 1982

The Kerala Public Service
Commission

APPELLANT

Vs

M.K. Santhamma and Another

RESPONDENT

Date of Decision: Dec. 12, 1986

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Public Service Commission Rules - Rule 22

Citation: (1987) KLJ 709

Hon'ble Judges: V.S. Malimath, C.J; V. Bhaskaran Nambiar, J

Bench: Division Bench

Advocate: T.P. Kelu Nambiar, for the Appellant; S. Parameswaran and Government Pleader, for the Respondent

Judgement

Bhaskaran Nambiar, J.

The Public Service Commission framed its own rules of procedure and Rule 22(iv), relevant for our purpose, reads thus:

22. Candidates who are found guilty of the following items of misconduct shall be liable for disqualification for being considered for a particular post or debarment from applying to the Commission either permanently or for any period or the invalidation of their answer scripts or products in a written practical test or the initiation of criminal or other proceedings against them or their removal or dismissal from office or the ordering of any other disciplinary action against them if they have already been appointed, or any one or more of the above.

* * *

(iv) Production of any false or tampered document before the Commission or the tampering with any document produced before the Commission in connection with

a selection after their production.

* * *

2. Under this rule the axe has fallen on Santhamma. Santhamma was an applicant for the post of Staff Nurse. She was called for interview by the Commission and at the time of verification of the original documents to prove age, qualification, community etc., it was noticed that there was an unauthorised entry regarding community made in column 5 of her Secondary School Leaving Certificate. She was, however, admitted for the interview and her name was included in the rank list on a provisional basis subject to further verification of the entry regarding community. The S.S.L.C. book obtained from her was forwarded to the Commissioner for Government Examinations for verification regarding the authenticity of the entry relating to community found therein. The Commissioner for Government Examinations conducted an enquiry and on the admission made by Santhamma herself, reported that the entry was made by her in the place left blank in the Book. On the basis of this report, the Commission proposed to delete the name of the Petitioner from the list, for, according to the Commission, she had tampered with the S.S.L.C. Book. A show cause notice was issued to her and the Commission passed an order deleting her name from the rank list on the ground that she has made "unauthorised entry for Caste in the S.S.L.C. Book". The Commissioner for Government Examinations also informed Santhamma that the tampered certificate could not be allowed to be in circulation and she was, therefore, permitted to apply for a duplicate copy of S.S.L.C. as per rules.

3. There is no dispute that she belongs to the "Eazhava" community. It is also a fact that the column in the S.S.L.C. book which should have shown her Community was left blank. It is admitted that it was Santhamma who made the entry in that book. She thus tampered with the Secondary School Leaving Certificate. The short question is whether on these facts the Commission was justified in invoking Rule 22(iv) to cancel her rank list. The learned Single Judge quashed the order of the Commission holding thus:

It appears to me that the Public Service Commission failed to address itself to all the relevant aspects of the case, when it took Ext. P-12 decision. Irregularities should be curbed, and the guilty should be punished. But the gravity of the misconduct and the punishment imposed should be rationally related. Counsel for the Commission contends that this Court cannot sit in appeal over the decision of the Commission in matters like these. I agree that it cannot be done ordinarily. The matter is in their discretion. But are there unbelievable discretionary powers, or absolute discretions totally immune from judicial scrutiny? It seems to me that all discretion must be exercised reasonably and in good faith, to promote the purpose for which they are granted, and with due regard to the impacts on the rights affected. A discretion is not to be exercised capriciously, arbitrarily or even mechanically. The items of misconduct enumerated under Rule 22 are all designed to curb dishonest and

improper conduct, and not to penalise errors of judgment or technical mistakes. When the rule speaks of false and tampered documents, "tamper" has to get some colour from "false", in the context of misconduct and punishment. With regard to age, qualification and other relevant particulars, the Commission itself was of the view that the Petitioner was suitable for being selected. Their only doubt was with regard to her Community, a matter relevant for reservation of posts. That doubt was cleared by the Commissioner for Government Examinations, and a duplicate S.S.L.C. book was also issued. The so called tampering amounted to no more than furnishing correct information, though the manner in which it was done was unauthorised. If the purpose of Rule 22 is to prevent the making of false claims and to punish those who make such claims, the Petitioner had made no false claim at all. The power under the rule is to be exercised for that purpose, and not for penalising everything that may generally be regarded as immoral or objectionable.

* * *

The Petitioner was entitled for preference as a member of a Backward Class. Those responsible for giving her the stamp of that Class had failed in their duty by making the relevant entry in her S.S.L.C. book. All that she did therefore was to do something which Ors. should have done, in order to effectuate her claim. To hold that that amounted to a misconduct serious enough to be visited with what could conceivably be the maximum penalty, is to act mechanically and arbitrarily, and to forget the behests of Articles 14 and 16.

The widest discretion may sometimes have to be controlled by imposing minimum standards of reasonableness. An authority may not stray into the path of irrelevancies; it may still fail in its duty if it attaches too much weight to one relevant factor and too little to Ors. , and thereby reaches a decision which is "Preposterous" or "shocking". That the Petitioner made an unauthorised entry in her S.S.L.C. book was a relevant factor but that was not the only relevant factor to be taken into account.

The Public Service Commission, I repeat, may have a wide discretion; but that is no reason why the Courts should make a retreat from the Commanding heights of law and permit a genuine grievance to go unrepresed. Where the decision of the Commission suffers from a failure to attach sufficient weight to all the relevant facts, where it amounts to a mere mechanical exercise of power, and where it is found to be a decision which reasonable persons could not have reasonably arrived at, I think this Court has a duty to interfere.

4. We do agree with the learned Judge that Article 14 strikes at the root of arbitrariness and judicial review reaches at its farthest end. Irrelevant facts and extraneous factors will naturally vitiate any quasi judicial decision just as omission to consider relevant facts equally affect any such proceeding. However, with great respects to the learned Judge, we regret we are not able to share his view on the

interpretation of Rule 22(iv).

5. Production of any false document or any tampered document or tampering with any document already produced before the Commission invites the wrath of the rule. This rule intended, as it is, to assure purity in the process of selection provides that misconduct of the applicant entails his disqualification for being considered to a particular post or results in some disciplinary action against him. The items of such misconduct are those enumerated in Clauses (i) to (ix) of the rules. Clause (iv) specifies three independent items of misconduct which would attract the disciplinary jurisdiction of the Commission to punish a candidate who has resorted to unfair means to secure selection. Thus production of a false document and production of tampered document are two different and independent categories of misconduct specifically enumerated in the rule as distinct causes for disciplinary action. It is not possible to agree with the reasoning that the expression "tamper" has to get some colour from "false" in the context of misconduct and punishment.

6. "Tamper", according to Webster's Dictionary means "to alter for an improper purpose or in an improper way" (here, perhaps is the most objectional aspect of tampering the texts). In the Concise Oxford Dictionary, "tamper with", means "make unauthorised changes in (will, M.S. etc.)".

7. When, therefore, the candidate inserted new particulars in a blank space in her Secondary School Leaving Certificate, it was not only unauthorised, it was improper and it was misconduct vulnerable under the rule.

8. The learned Judge observed that by tampering the certificate, Santhamma furnished only a correct information regarding her Community and all that she did was what the authorities should have done in filling the relevant entries in the S.S.L.C. book. Thus, the learned Judge has held that the writ Petitioner made no false claim at all. If this reasoning is stretched to its logical conclusion, any person who tampers with the S.S.L.C. book need only show later that what was done was only to erase the wrong entry and insert the correct entry. Under this plea, even a tampering of the date of birth in the S.S.L.C book may not be ground to disqualify a candidate, for, the candidate may be able to prove later that the original date was wrong and only the correct date has been inserted. Moreover, in all cases of tampering, the Commission may have to embark on an enquiry whether "the tampering amounted to no more than furnishing correct information". We do not think that a licence to tamper an S.S.L.C. book or any public record, to correct a mistake, or, to furnish true information can be countenanced and the language of the rule cannot be stretched for that purpose. We are inclined to hold that all cases of production of tampered documents can be subjected to disciplinary action under Rules 22(iv). Tampering of a document thus gives jurisdiction to the Commission to act and proceed under the said rules. We are, therefore, not inclined to agree that the Commission in this case acted mechanically and reached a decision "which is preposterous or shocking".

9. In the present case, the quashing of the order of the Commission virtually amounts to condoning the misconduct committed by the writ Petitioner. Depending upon the gravity of the misconduct and all attendant circumstances, it is always open, to the Commission to decide whether action should be taken under Rule 22 or not. The primary authority for this purpose is the Commission itself and it is for the Commission, and, not for this Court, to decide whether the alleged misconduct in the peculiar circumstances of any case, should be condoned and whether action should be initiated or not. A constitutional functionary, the Public Service Commission, is not expected to exercise this jurisdiction arbitrarily or capriciously and they too have a public duty, to maintain the highest public standards in such matters.

10. Shri T.P. Kelu Nambiar, counsel for the Commission submitted that in the peculiar circumstances of this case, where the Commissioner for Government Examinations has issued a duplicate S.S.L.C. book to the writ Petitioner and a learned Single Judge has given relief to her, the Commission is prepared to condone the misconduct and withdraw the impugned order cancelling the rank list. He also submitted that the main purpose in filing this appeal was only to obtain an authoritative ruling on the interpretation of Rule 22, as several cases do arise before the Commission itself.

11. Recording this submission, this writ appeal is disposed of. No costs.