

**(1988) 01 KL CK 0032**

**High Court Of Kerala**

**Case No:** O.P. No. 6987 of 1984-K

Jyothi Nayar

APPELLANT

Vs

Kerala Public Service  
Commission and Others

RESPONDENT

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**Date of Decision:** Jan. 4, 1988

**Acts Referred:**

- Kerala Public Service Commission Rules of Procedure, 1976 - Rule 22
- Kerala State and Subordinate Services Rules, 1958 - Rule 3

**Hon'ble Judges:** K. Sreedharan, J

**Bench:** Single Bench

**Advocate:** S.A. Nagendran and K.B. Subhagamani, for the Appellant; T.P. Kelu Nambiar, for 1st Respondent and Government Pleader for 2nd Respondent, for the Respondent

**Final Decision:** Allowed

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**Judgement**

K. Sreedharan, J.

Petitioner was advised by the Kerala Public Service Commission for the post of Junior Lecturer in Botany on 18th May 1981. In pursuance to that advice she joined duty. On 25th August 1983 she was promoted to the cadre of Lecturer.

2. The Petitioner joined the M.Sc. course of the Calicut University during the years 1977-79. The result of the final examination was officially published on 5th May 1980. The Public Service Commission invited applications for the post of Junior Lecturer in Botany in the Collegiate Education Department as per Notification, dated 25th September 1979. The last date for submitting the applications was 31st October 1979. The Petitioner put in her application on 29th October 1979 as if she has passed the M.Sc. Botany Examination in first class. When the results were published she came out successful in the final examination with a first class. The Commission found out that on the date of filing the application she had not passed the M.Sc. examination. Therefore, Ext. P-1 notice was issued to the Petitioner on 6th

March 1984 to show cause why action contemplated by Rule 22 of the Kerala Public Service Commission Rules of Procedure should not be taken against her. The Petitioner filed Ext. P-2 reply on 26th March 1984. No further action was taken by the Commission on Ext. P-1. Thereafter they issued Ext. P-3 notice dated 24th July 1984 asking the Petitioner to show cause why she should not be debarred from applying to the Commission for appointment or admission to tests for a period of two years under Rule 22 of the Kerala Public Service Commission Rules of Procedure. The said notice is under challenge.

3. A detailed counter affidavit has been filed by the Kerala Public Service Commission. The main contention raised therein is that the Petitioner in her application dated 29th October 1979 claimed to have passed the M.Sc. Examination in first class, that the results of the examination were published subsequent to that date, that the claim of the Petitioner that she possessed M.Sc. Botany Degree in first class was clearly a false statement, that had the real facts been known her application would not have been admitted, that she would not have been considered for selection as Junior Lecturer, that it was only due to the misrepresentation of facts that her application happened to be admitted, that notice issued under Rule 22 of the Kerala Public Service Commission Rules of Procedure is not one falling within the scope of Rule 3(c) of the Kerala State and Subordinate Services Rules, that Ext. P-3 is only a show cause notice, that the Petitioner has to file objections thereto and that the Petitioner can have grievance only if an adverse order is passed against her. On the above grounds it is contended that the Original Petition has only to be dismissed.

4. The question whether Rule 22 of the Kerala Public Service Commission Rules of Procedure is subject to the provisions contained in Rule 3(c) of the Kerala State and Subordinate Services Rules came up for consideration in Appukuttan Pillay v. Kerala Public Service Commission 1984 KLT 880. In that decision the Division Bench observed:

Our attention has been drawn by the learned Counsel for the Commission to Rule 22 of the Kerala Public Service Commission Rules of Procedure which deals with the procedure in regard to candidates who are found guilty of certain items of misconduct. Those rules are admittedly not statutory rules and are framed for the guidance of the Public Service Commission. The terms and conditions in the notification subject to which the applications are invited are only reproductions of the contents of Rule 22 of the Rules of Procedure. It is not as if in the matter of inviting applications and making advices the Kerala Public Service Commission was entering into any contract with the candidates. These conditions will operate only subject to the Rules and therefore despite the notice given that action will be taken for misconduct that must be subject to the limitations in Rule 3(c) of the Kerala State and Subordinate Services Rules.

5. The impugned notice, Ext. P-3, states:

The Commission, therefore propose to debar Smt. Jyothi Nayar from applying to the Commission for appointment or admission to tests for a period of two years under Rule 22 of the Kerala Public Service Commission Rules of Procedure without prejudice to any other course of action which may deem necessary under law. Smt. Jyothi Nayar is therefore directed to show cause why action, as specified above should not be taken against her, within 15 days from the date of receipt of this communication. If no reply is received within the stipulated time further action will be pursued on the presumption that she has nothing to offer in the matter.

According to the learned Counsel appearing for the Public Service Commission Rule 22 of the Kerala Public Service Commission Rules of Procedure contemplates action not only to cancel the advice but many others as provided in that Rule. If the action contemplated is one other than that for cancellation of the advice, it is argued, Rule 3(c) of the Kerala State and Subordinate Services Rules has no application. In the instant case the Commission has no intention to cancel the advice of the Petitioner. The action contemplated was only to debar her from applying to the Commission for appointment or admission to tests for a period of 2 years. Such an action, it is argued, will not fall within Rule 3(c) of the Kerala State and Subordinate Services Rules and therefore Ext. P-3 notice is not open to challenge.

6. For a proper understanding of the above argument advanced by the learned Counsel, I would read Rule 22 of the Kerala Public Service Commission Rules of Procedure:

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.

The above provision makes it clear that the Commission may take action for disqualifying a candidate for a particular post, for debarment from applying to the Commission either permanently or for any period, for the invalidation of the answer scripts or products in a written practical test, for the initiation of a criminal or other proceedings or for ordering of other disciplinary action over and above the removal or dismissal from office. According to the learned Counsel if the action taken by the commission is not for removal or dismissal of the candidate from office that action will be beyond the purview of Rule 3(c) of Kerala State and Subordinate Services Rule. Therefore, it is argued, notice need not be within the period of one year prescribed under Rule 3(c).

7. In the instant case the advice was dated 18th May 1981. Ext. P-3 notice is dated 24th July 1984. It is beyond 3 years from the date of advice. That notice, it is argued,

cannot be considered to have been issued in violation of the period of limitation prescribed under Rule 3(c) of the Kerala State and Subordinate Services Rules since it was not for removing or dismissing the Petitioner from office.

8. Rule 3(c) of the Kerala State and Subordinate Services Rules with its 1st proviso reads as follows:

Notwithstanding anything contained in these rules, the Commission shall have the power to cancel the advice for appointment of any candidate to any service if it is subsequently found that such advice was made under some mistake. On such cancellation the appointing authority shall terminate the service of the candidate:

Provided that the cancellation of advice for appointment by the Commission and the subsequent termination of service of the candidate by the appointing authority shall be made (within a period of one year from the date of such advice)

This rule makes it clear that the Commission shall have the power to cancel the advice for appointment of a candidate if it is subsequently found that such advice was made under some mistake. But the cancellation of the advice and the subsequent termination of service of the candidate should be made within a period of one year from the date of advice.

9. As stated earlier the action for cancellation of the advice can be taken by the Commission only under Rule 22 of the Kerala Public Service Commission Rules of Procedure. If such an action is initiated then the order of cancellation and the subsequent termination of service should be within a period of one year from the date of advice. Can it be considered that the said period of limitation is not applicable to notices for initiating the other actions that are open to the Public Service Commission under Rule 22 of the Kerala Public Service Commission Rules of Procedure? The Division Bench in 1984 KLT 880 observed:

These conditions (referring to the provisions under Rule 22 of the Kerala Public Service Commission Rules of Procedure) will operate only subject to the Rules (referring to Kerala State and Subordinate Services Rules) and therefore despite the notice given that action will be taken for misconduct that must be subject to the limitations in Rule 3(c) of the Kerala State and Subordinate Services Rules.

It means that as and when the Public Service Commission takes action for the misconduct contemplated by Rule 22 of the Rules of Procedure, that must be within the period of limitation prescribed in Rule 3(c) of the Kerala State and Subordinate Services Rules. In other words the actions under Rule 22 of the Rules of Procedure should be initiated within one year of the date of advice of a candidate. In the instant case, as stated earlier. Ext. P-3 was issued more than 3 years after the advice. Therefore, Ext. P-3 notice is clearly barred by limitation. It has only to be quashed. I do so.

The Original Petition is allowed and Ext. P-3 is quashed. No costs.