

(2013) 06 KL CK 0063

High Court Of Kerala

Case No: O.P. (KAT) No's. 1643, 1826 and 1861 of 2013

Swapna Sukumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: June 18, 2013**Acts Referred:**

- Constitution of India, 1950 - Article 227

Citation: (2013) 3 ILR (Ker) 26 : (2013) 2 KHC 869 : (2013) 3 KLJ 430 : (2013) 3 KLT 53**Hon'ble Judges:** Thottathil B. Radhakrishnan, J; Babu Mathew P. Joseph, J**Bench:** Division Bench**Advocate:** N. Dharmadan, D.P. Renu, P. Sankarankutty Nair, K. Sandesh Raja and Babu S. Nair, for the Appellant; P.C. Sasidharan and Sr. Government Pleader (Noble Mathew), for the Respondent**Final Decision:** Dismissed

Judgement

Thottathil B. Radhakrishnan, J.

These Original Petitions under Art. 227 of the Constitution are filed essentially challenging the Kerala Administrative Tribunal's affirmation - of the Kerala Public Service Commission, that an aspirant to the post of High School Assistant (Physical Science) should have studied Physics and Chemistry at the graduate level or at the post graduate level. The second complaint is that the P.S.C. had deviated from the terms of its notification dated 30.4.2008 and such deviation is impermissible. The third issue is as to whether the refusal to advise the petitioners on the ground that they have not studied Physics and Chemistry at the graduate level or post graduate level amounts to hostile discrimination, since the P.S.C. had, as a matter of fact, advised similarly placed candidates from the same list. Sr. Adv. N. Dharmadan and Adv. Sandesh Raja K. argued on behalf of the petitioners that the approach adopted by the Tribunal is wholly faulty and the P.S.C. could not have arrived at any such decision on the basis of the Tribunal's order in O.A. No. 370 of 2012, as affirmed by this Court in O.P.(KAT) No. 3407 of 2012, since the issue therein was as to whether

Polymer chemistry could be treated as equivalent or as an alternative main subject in lieu of Chemistry, it was further argued that the P.S.C. could not have changed the rules of the selection after issuing the notification and that since the similarly placed persons have been advised from the same list, it is wholly impermissible to exclude the petitioners from being advised as such exclusion would amount to hostile discrimination. Reference was pointedly made to the Full Bench decision of this Court in [Udayan Vs. Kerala Agro Machinery Corporation Ltd, .](#) Adv. Sandesh Raja further argued that his clients are also aggrieved because they were deprived of opportunity of hearing before the Tribunal, since the first among the cases decided, was instituted before the Tribunal, later in point of time than O.A. No. 344 of 2013, which gives rise to O.P. (KAT). No. 1861 of 2013 and hence, the application of the Tribunal's decision in O.A. No. 368 of 2013 as a precedent in the other cases, without further consideration, has resulted in injustice.

2. Per contra, Adv. P.C. Sasidharan argued on behalf of the P.S.C. that the view taken by the P.S.C. leading to the decisions impugned before the Tribunal was based on the relevant Government orders and in conformity with the terms of the notification issued by the P.S.C. and that those Government Orders and the P.S.C. Notification are, in no manner, breached. He further argued that the P.S.C. has acted only in the best interest of the service to which the recruitment is being made and its views in that regard having been upheld by the Tribunal, no visitation in exercise of authority under Art. 227 is warranted.

3. Adv. Noble Mathew, the learned Senior Government Pleader had to face our query as to why the State Government had not filed any pleadings before the Tribunal, at least in cases where it was a party. Faced with the situation that it was for the Government to primarily speak up when an issue as to qualifications is in issue, he candidly, but persuasively, stated that appropriate instructions would be ensured in this regard, for future guidance.

4. The prescription of qualifications for the post of High School Assistants (Core Subjects) are dealt with through executive orders of the Government and not through any statutory rule. G.O. (MS). No. 141/88/G.Edn. dated 13.9.1988, which shows the classification of the posts of High School Assistants (Core subjects) into four groups; Mathematics, Physical Science, Natural Science and Social Studies; provided that the qualifications (Academic and Training) prescribed for the posts of High School Assistants (Core Subjects) are, a Degree in the concerned subject, and B.Ed/B.T.L.T. conferred or recognised by the Universities in Kerala. The then existing grouping for High School Assistant (Core Subjects) in Government schools and the academic qualifications prescribed for the posts are enumerated in that Government Order. The tabular prescription therein as regards Physical Science, is as follows:

5. Among the aforesaid, Home Science was removed from the notified qualifications as per Government Order - G.O.(MS). No. 227/09/G. Edn. dated 25.11.2009, for the

specific reason that for a Degree in Home Science, Physics is not one of the subsidiary subjects. That Government Order was issued making reference to the aforesaid G.O.(MS). No. 141/88/G.Edn.G.O.(MS). No. 227/09/G.Edn. reads as follows:

As per the Government Order read above, it was inter alia ordered that, Graduation in Physics or Chemistry or Home Science as main subject will be the academic qualification for the post of High School Assistant (Physical Science).

2. Physics is one of the basic subjects of Engineering and Technology. For teaching Physics in High School Classes, a thorough knowledge of the subjects Physics and Mathematics is absolutely essential. For B.Sc. Home Science (Main), Zoology/Botany and Chemistry are the subsidiaries. Therefore teaching of Physics in High School classes by a teacher with B.Sc. Home Science (Main), who has not studied Physics at graduate level is not desirable. It will adversely affect the quality of teaching Physics in High School classes.

3. In the above circumstances, Government have examined the matter in detail and have decided to delete Degree in Home Science as main subject for graduation as the qualification for the posts of H.S.A. (Physical Science) specified in the Government order read above.

4. The Government Order read above stands modified to the above extent.

6. P.S.C. notification dated 30.4.2008 prescribes the qualifications as follows:

A Degree in the concerned subject and B.Ed/B.T. conferred or recognized by the Universities in Kerala. (Concerned subjects are specified in Note 3 below).

7. As we see from the materials produced in these cases, the "Notes" read as follows:

(1) Post Graduates in concerned subject with B.Ed/B.T. in the concerned subject are also eligible to apply for the post.

(2) Diploma in Rural Service awarded by the National Council for Rural Higher Education will also be treated as equivalent to the Degree for the above purpose.

(3) Applicants should have taken Physics/Chemistry/Home Science as main Subject for graduation. Degree in Geology (Main) with Physics and Chemistry as subsidiary subjects and B.Ed. Degree (Physical Science) can also be considered as an alternative qualification for the post. (G.O.(MS). No. 195/96/G.Edn. dated 22.7.1996).

8. P.S.C. contended before the Tribunal that as per its order dated 19.6.2012 in O.A. No. 370 of 2012, the Tribunal had held that Physical Science teacher has to teach Physics and Chemistry in the High School classes and therefore, the applicant should have studied those subjects either as a main subject or as a subsidiary subject and that the said decision stands affirmed by this court in O.P. (KAT). No. 3407 of 2012.

9. While the learned senior counsel for the petitioners may be justified in saying that the core issue that was projected before this Court in O.P. (KAT). No. 3407 of 2012 was as to whether B.Sc. Polymer Chemistry can be treated as B.Sc. Chemistry for the purpose of such recruitment, we see that the Tribunal had specifically held in the original Application from which that Original Petition arose, that a Physical Science teacher has to teach Physics and chemistry in the High School classes and therefore, an aspirant to the post of HSA (Physical Science) should have studied both those subjects either as a main subject or as a subsidiary subject and that because the applicant in that case had not studied Physics as one of the subsidiary subjects, she is not eligible for appointment to the post of High School Assistant (Physical Science). Though the applicant in that case projected her case before the High Court based only on the plea regarding the distinction, or not, , between Polymer Chemistry and Chemistry, the Tribunal had decided specifically that she was ineligible because she had not studied Physics; and, her subsidiary subjects were Mathematics and Computer Science. Having regard, to the format of the Administrative Tribunals Act, 1985, and the constitutional setting in which a Tribunal under that Act is placed in the administration of justice, we are of the view that decisions of the Tribunal can definitely be persuasive, with precedent value, if it has pointedly decided an issue which had arisen in a particular case and if its such decision is found acceptable as a precedent, by this Court. Wisdom and Light; from any source; deserves not to be ignored.

10. Now, the Tribunal had rightly noticed that the crux of the Government decision in G.O.(MS). No. 227/09/G.Edn. contains the reflection of its wisdom that Physics has to be taught in the High School classes by a teacher who has studied Physics at the graduate level and that, otherwise, that would adversely affect the quality of teaching Physics in High School classes. It was that reason that led the Government to remove Home Science from the list of main subjects included against High School Assistant (Physical Science). Remember; G.O.(MS). No. 141/88/G.Edn. was issued when the Universities in Kerala offered degree with one main subject and two subsidiary subjects. The concept of triple main or multiple main subjects, as would have then been available in other universities, was then, just not there in the universities in Kerala. G.O.(MS). No. 141/88/G.Edn. was issued having only in view, the universities in Kerala and the qualifications awarded by them or recognised by them. When a student takes Physics as a main subject, the then available subsidiaries were Chemistry and Mathematics. Later, Electronics was also brought in. When Chemistry is opted as the main subject, Physics and Mathematics were to be the subsidiaries. These are matters of knowledge in public domain and we take judicial notice of those situations. Hence, we have no doubt in our mind that it was visioned by the Government while issuing G.O.(MS). No. 141/88/G.Edn., that one who takes Chemistry as main subject would necessarily learn Physics as a subsidiary subject at graduate level and one who takes Physics as main subject would necessarily learn Chemistry as a subsidiary subject. The expression of such vision

and mind of governance through the executive decision of the Government, contained in G.O.(MS). No. 227/09/G.Edn. clearly underlines the rationale of the necessity and the requirement that, one who is to teach Physical Science to the High School students should be one who has studied Physics and Chemistry, at least, at the graduate level. All that the P.S.C. has done to arrive at the impugned decision is to give effect to the Governmental decisions and the logical reasoning, as reflected on a conjoint reading of G.O.(MS). No. 141/88/G.Edn. and G.O.(MS). No. 227/09/G.Edn., in the backdrop of the Tribunal's reasoning and decision contained in its order dated 19.6.2012 in O.A. No. 370 of 2012. We find no infirmity in it because, the fundamental purpose sought to be achieved is the larger interest of the future generation of students who have to learn Physical Science: meaning thereby, Physics and Chemistry; and would, then have to aspire for pastures beyond.

11. The question then, would be as to whether the present exercise by the P.S.C. amounts to infraction of the notification that it had issued. The afore-quoted extract from that notification shows that a degree in the concerned subject is what is prescribed. Concerned subject is Physical Science. There is no graduation in Physical Science. Therefore, we have to understand the prescription in the P.S.C. notification to be in conformity with G.O.(MS). No. 141/88/G.Edn. and G.O.(MS). No. 227/09/G.Edn. which are executive orders of the Government, to whose service the recruitment is proposed. Those Government Orders governed the field of selection and appointment to the category of High School Assistants (Physical Science). The prescription in the P.S.C.'s notification that "applicants, should have taken Physics/Chemistry/Home Science as main subject for graduation" does not mean that whatever be the subsidiary subjects, a graduate in Physics or Chemistry can be treated as qualified, even without having undergone a course of study of Physics and Chemistry at the graduate level. This view is fortified by the view surging from the second sentence in Note 3 in the P.S.C.'s notification, which says that degree in Geology (main) with Physics and Chemistry as subsidiary subjects and B.Ed, degree (Physical Science) can also be considered as an alternative qualification. Hence, we have no doubt that the thrust is on study of Physics and Chemistry at least at the graduate level, for one to be an H.S.A. (Physical Science). If it were to be insisted that a graduate in Geology main, has to study both Physics and Chemistry as subsidiary subjects, there is no rationale to say that a graduate with Physics main, without Chemistry at least as a subsidiary subject, and a Chemistry graduate, without Physics as at least a subsidiary subject, would fall within the zone of choice. A plain reading of the P.S.C.'s notification does not lead to any conclusion that its stand impugned before the Tribunal is faulty on any count. It is not contrary to the P.S.C.'s notification. Not only that, the P.S.C.'s notification cannot stand independent of G.O.(MS). No. 141/88/G.Edn. and G.O.(MS). No. 227/09/G.Edn. Remember; the P.S.C. could not have issued any notification prescribing a qualification different from the decisions of the Government relating to the prescription of qualification. In the

absence of statutory rules, the executive decisions of the Government as contained in those Government orders govern. All taken together, the impugned decision of the Tribunal does not merit interference at our hands in exercise of authority under Article 227 of the Constitution. It does not work injustice.

12. The issue raised as to hostile discrimination has been rightly met by the Tribunal by saying that merely on the grounds that some ineligible persons were already advised before the earlier decision of the Tribunal, the P.S.C. cannot be ordered to repeat such illegality, merely because it had decided not to disturb the advices already made. Failure of rule of hearing at the hands of the Tribunal, as pointed out by Adv. Sandesh Raja, no more survives, having regard to the fact that his clients stand redressed of that, by the comprehensive arguments permitted to be advanced, and heard by us, on all issues raised in these Original Petitions. That ground also does not survive.

In the result, these Original Petitions are dismissed. No costs.