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(2008) 4 ILR (Ker) 692 : (2008) 3 KLJ 813 : (2009) 2 SLJ 167 : (2009) 3 SLR 235 High Court Of Kerala

Case No: Writ Petition (C) No. 13296 of 2006

Haseena T.A. APPELLANT

Vs

The Kerala Public Service Commission

RESPONDENT

and Others

Date of Decision: Oct. 15, 2008

Acts Referred:

Kerala Public Service Commission Rules of Procedure, 1976 â€" Rule 18, 18(1)

Citation: (2008) 4 ILR (Ker) 692: (2008) 3 KLJ 813: (2009) 2 SLJ 167: (2009) 3 SLR 235

Hon'ble Judges: Kurian Joseph, J

Bench: Single Bench

Advocate: R. Renjith and M.T. Sureshkumar, for the Appellant; Alexander Thomas, SC, for the

Respondent

Judgement

Kurian Joseph, J.

Whether the cancellation of an advice by the Public Service Commission made against the reservation turn will forfeit the

claim of a candidate for advice against the open competition turn is the crucial question arising for consideration in this case. Petitioner is serial No.

817 in the ranked list published by the Public Service Commission for appointment to the post of Last Grade Servants in various departments in

Ernakulam District. The ranked list was published on 29-1-2004. She was advised for appointment to the post in the reservation turn of Muslim in

the Judicial Department. Ext.P1 is the advice memo dated 23-5-2005. It is specifically noted in the advice memo that the appointment is against

the reservation turn. Accordingly the District Judge, Ernakulam, the appointing authority, issued Ext.P2 proceedings appointing the petitioner as

Peon in the Additional District Court, Ernakulam. However, the petitioner was not permitted to join duty on the ground that she had not produced

the original of the Non Creamy Layer Certificate. According to the petitioner the same had already been produced before another authority and

she could not produce the original within the permitted time. Therefore, she requested the appointing authority to intimate the Public Service

Commission that the petitioner could not join duty in the reservation turn owing to the non-production of the original of the Non Creamy Layer

Certificate.

2. Thereafter the petitioner made Ext.P4 representation dated 16-8-2005 requesting for appointment against the open competition turn (general

merit). In the meanwhile by proceedings dated 18-8-2005 the appointing authority cancelled the appointment since the petitioner could not

produce the original of the Non Creamy Layer Certificate. Subsequently the petitioner was issued Ext.P6 show cause notice by the Public Service

Commission requesting the petitioner to explain as to why the petitioner did not produce the original of the Non Creamy Layer Certificate before

the appointing authority. Petitioner submitted Ext.P7 reply stating that the petitioner had already produced the original of the Non Creamy Layer

Certificate before the District Officer of the Public Service Commission at Thrissur and hence she could not produce the same before the

appointing authority. Petitioner also prayed in Ext.P7 that she, being 817 in the ranked list, may be advised for appointment against the open

competition (general merit) turn. Without considering the said request, the C ommission issued Ext.P8 memo cancelling the advice issued to the

petitioner against the Muslim reservation turn stating only that her explanation for non-production of the original of the Non Creamy Layer

Certificate before the appointing authority was not satisfactory. She was not advised in the open competition turn.

3. Thus aggrieved, the writ petition is filed contending that even if the petitioner is not considered against the Muslim reservation turn, she is entitled

to be considered against her turn in the general merit.

The stand taken by the Public Service Commission is that the request of the petitioner for appointment in the general merit cannot be considered

since her advice against the Muslim turn had already been cancelled. It is further submitted that once a candidate is advised from a ranked list the

name stands deleted from the ranked list. However, learned Counsel for the petitioner submits that the advice that was cancelled was an advice

against a reservation turn and if for some reason the petitioner could not enjoy the benefit of the reservation turn, that by itself will not forfeit the

claim of the petitioner for being considered against the open competition turn.

- 4. Rule 18(1) of the Kerala Public Service Commission Rules of Procedure is the relevant Rule which reads as follows:
- 18(1) The advice of a candidate made by the Commission for recruitment to any post in the Service who does not join duty in the post in

pursuance of the order of appointment shall, unless the Commission are satisfied that the order has not been sent to the candidate by registered

post with acknowledgment due, be cancelled and his name deleted from the ranked list.

(ii) Any candidate whose name has been included in a ranked list prepared by the Commission may relinquish his claim for appointment in writing

giving his full address and signature attested by an officer not below the rank of a Tahsildar under his seal, on or before the date of receipt of

requisition for advice against which he/she is to be advised. The Commission shall thereupon remove his name from the ranked list and advise

another candidate according to rules. The candidate whose name has been so removed from the ranked list shall be informed of such removal by

the Commission.

The prescription under the Rule is that once a candidate is advised for appointment and if that candidate does not join duty in the post pursuant to

the order of appointment, the advice will be cancelled and the name of the candidate will be removed from the ranked list. But the crucial question

is whether the cancellation of an advice made against the reservation turn will forfeit the claim of a candidate for advice against the open

competition turn.

5. A literal reading of the provision, and as contended by Sri. Alexander Thomas, learned Legal Retainer to the Kerala Public Service

Commission, would indicate that once a candidate is advised from a ranked list, the name of the candidate also will be removed from the ranked

list, the name of the candidate also will be removed from the ranked list. It is all the more so when once the advice is cancelled. But the undisputed

factual position in this case is that the petitioner is rank No. 817 in the main ranked list. She was advised as per Ext.P1 only pursuant to her claim

for reservation in the OBC Muslim quota. That claim is permissible only if the candidate does not belong to the Creamy Layer. It appears that the

petitioner had already produced the original of the Non Creamy Layer Certificate before the Public Service Commission and based on that only

she was advised for appointment against the Muslim turn. However, she could not produce the original of the Non Creamy Layer Certificate

before the appointing authority within the permitted time and for that reason only, her appointment was cancelled by the appointing authority.

Consequently the advice was also cancelled by the Public Service Commission.

6. But it has to be seen that the advice that is cancelled is only an advice against a reservation rum. Merely because a candidate could not conform

to the requirements for advice and appointment against a reservation turn, that by itself will not and cannot forfeit his claim for advice and

appointment against the open competition turn. It is significant to note that even in Ext.P8 memo what the Commission had intimated the petitioner

was only regarding the cancellation of Ext.P1 advice. That advice was only against the reservation turn. If as a matter of fact the petitioner was

entitled to be considered for advice in case her turn arises in "the general merit rank", and in case the petitioner was available for advice and

appointment she should have been advised against that open competition turn.

7. Ext.P10 circular issued by the Commission itself would indicate that in case ""...candidates fail to produce the Non-Creamy Layer Certificate, the

benefit of community will be denied to them and they will be considered for advice only against open competition turns if included in the main

list...." In this case the petitioner had produced the original before the Public Service Commission and hence only she was advised for appointment

against the Muslim turn. But she could not produce the same before the appointing authority and hence her appointment was cancelled. Therefore,

she should have been considered against her open competition turn as stated in Ext.P10 circular issued by the Public Service Commission.

8. The Kerala Public Service Rules of Procedure came into force 16-8-1976. The issue of Creamy Layer was not prevalent at that time.

Therefore, the Commission did not have an opportunity to provide for the contingencies pertaining to the Creamy Layer as far as communities

included in the OBC list are concerned. Rule 18(i) of the Kerala Public Service Commission Rules of Procedure will hence have to be read down

to the effect that the advice of a candidate against a reservation turn will be cancelled in case he does not join duty pursuant to the appointment

order as per the advice and such candidate thereafter will be considered only against his open competition turn, in case he is ranked in the main list.

9. In this case, according to the petitioner, the additional 3rd respondent is the person who has been advised against rank No. 818. Despite

service of notice there is no appearance. Be that as it may, since the petitioner is entitled for advice against the open competition turn 817, there

will be a direction to the respondents to advise the petitioner for appointment against the turn 817 from the ranked list of Last Grade Servants in

various departments in Ernakulam District published on 29-1-2004. This shall be done within a period of two months from the date of receipt of a

copy of this judgment.

The writ petition is disposed of as above.