

(2008) 10 KL CK 0044

High Court Of Kerala

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

Haseena T.A.

APPELLANT

Vs

The Kerala Public Service
Commission and Others

RESPONDENT

Date of Decision: Oct. 15, 2008

Acts Referred:

- Kerala Public Service Commission Rules of Procedure, 1976 - 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 Commission 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 turn. 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.