Public Service Commission Vs Ramesan

W.A. No''s. 1374 and 1381 etc. of 2004

Court: High Court Of Kerala

Date of Decision: June 22, 2005

Acts Referred:
Constitution of India, 1950 â€" Article 320(3)

Citation: (2005) 3 ILR (Ker) 805 : (2005) 4 KLT 466

Hon'ble Judges: K.A. Abdul Gafoor, J; K. Hema, J

Bench: Division Bench

Advocate: P.C. Sasidharan, for the Appellant; P.P. Jacob, N. Sugathan, KRB Kaimal, A.V. Ramkrishna Panicker, R. Seema, P.V. Surendranath and Bindumol Joseph, for the Respondent

Judgement

K.A. Abdul Gafoor, J.
All these Writ Appeals, except W. A. No. 1180 of 2004, which will be dealt with separately, have been filed by

the Kerala Public Service Commission. In the impugned judgment, it is directed:

...to take all steps so as to see that the applications of the petitioners in these Original Petitions are treated as valid for all purposes. What is

necessarily to be done by the Public Service Commission are to be expeditiously carried out. Depending upon the ultimate rank they secure, as

adjudged, they have to be accommodated in the rank list which is already published.

This direction was issued after having found that ""the petitioners have a strong base when they urge that notwithstanding the reference to the pay

scales in the notification, it has in fact an invitation to a post which carried basic pay of less than Rs. 250 (in this case Rs. 140) in contradistinction

to posts which had pay scale of Rs. 250 and above"". The short facts necessary for disposal of these Writ Appeals are as follows:

2. The Act, namely, Kerala Public Service Commission (Additional Functions as Respects Certain Societies) Act, 1996 was enforced with effect

from 27-10-1995. Going by this Act, by Section 80(3A) of the Kerala Co-operative Societies Act and by Rule 187 of the Kerala Co-operative

Societies Rules, 1969 (hereinafter referred to as the Rules) direct recruitment to the post of Clerk/Cashier in the and District Co-operative Banks

has to be made by the Public Service Commission. Fifty per cent of the vacancies shall have to be filled up through direct recruitment from among

the members of the staff of the Primary Co-operative Societies possessing required qualification. Accordingly, the Public Service Commission, on

getting requisition form the concerned District Co-operative Banks, issued Ext. P-l notification on 26-10-1999. These cases are confined only to

the vacancies reserved exclusively for ""eligible employees of Primary Co-operative Societies"".

3. Ext. P-l notification was issued inviting application from those who possess B.A./B.Sc./B.Com. with H.D.C. or J.D.C. or B.Com. with Co-

operation or B.Sc.(Co-operation and Banking) of the Kerala Agricultural University, with three years regular service in the Primary Co-operative

Society as experience. The writ petitioners, though they did not possess graduation, applied pursuant to Ext. P-l notification. Their applications

were rejected. They approached this Court contending that insistence by the Public Service Commission for minimum qualification of graduation is

opposed to Rule 186 (ii) read with Appendix III to the Rules, which provides that in relation to the posts carrying scale of pay of less than Rs. 250

per month, the qualification shall only be matriculation or Section S.L.C. and not graduation. Therefore, insistence of graduation by the Public

Service Commission in Ext. P-l was bad in view of the statutory rules. This over insistence defeats the rights of the writ petitioners for being

considered for appointment. In support of this contentions, the writ petitioners mainly relied on Appendix III referred to in Rule 182(1) of the

Rule. It is submitted that for all posts which is having a pay of less than Rs. 250, Section S.L.C. with J.D.C. shall be the minimum qualification for

appointment.

4. The scale of pay of the post of Clerk/Cashier notified in Ext. P-l at the relevant time was Rs. 1665-3955, meaning thereby, the pay was above

Rs. 250. This is an admitted position going by Ext. P-l itself.

5. It is contended, based on letter No. E(M) (1)1.1062/82 dated 15-6-1982 issued by the Registrar of Co-operative Societies, Trivandrum that

pending amendment to the Rules ""the qualification under Rule 186 of K.C.S. Rules for different categories of posts have to be decided based on

the pre-revised scales of pay which is prescribed in Appendix III to the K.C.S. Rules, 1969"". In other words, whatever revision that had taken

place subsequent to the initial introduction of Appendix III, such revision in the pay shall not be taken into account for determination of

qualification. Therefore, the scale of pay mentioned in Ext. P-l notification is irrelevant to consider whether an applicant does possess the necessary

qualification. Qualification shall be dependent on the pay scale applicable at the initial time of introduction of Appendix III. Such pay scale shall

have a bearing to determine the qualification, especially when Rule 186 does not specifically prescribe the qualification for any particular category,

but prescribes qualification only with reference to the pay applicable to the posts concerned.

6. This contention was resisted by the Public Service Commission which issued Ext. P-l, contending that they had been following the rules hitherto

followed by the District Co-operative Banks for making direct recruitment to the posts, until the Public Service Commission did have a role in the

matter of recruitment. In other words, rules like Ext. P-7 framed by the concerned District Co-operative Banks are being followed. The said rules

prescribed graduation with HDC/JDC or B.Com. with Co-operation or B.Sc. (Co-operation and Banking) of Kerala Agricultural University as the

essential qualification for the posts of Clerk/Cashier. Over and above, they have also followed the Regulations issued by the Government in the

form of Rules as appended to G.O.(MS) No. 79/86/Co-op. dated 30-9-1986 which had been issued on the basis of Section 80 (3) of the Co-

operative Societies Act, 1969. Therefore, the Public Service Commission did not add to the qualification prescribed as per the rules. As per the

Government Order dated 30-9-1986, the minimum qualification for the posts of Clerks for appointment by direct recruitment is graduation with

H.D.C. or J.D.C. or B .Com. with Co-operation or B.Sc.(Co-operation and Banking) of Kerala Agricultural University.

7. The learned Single Judge considering these rival contentions came to the conclusion as contained in paragraphs 12 and 13 of the judgment as

follows:

12. Now the second aspect also may be taken notice of. The plea raised is that the posts notified were/beyond the range of Rule 186 in the

matter of pay scale. It is not as if the issue had not been brought to the attention of the authorities as well as this Court earlier. Reference had been

made to Circular No. E(M)l. 1062/82 dated 15-6-1982 and one issued thereafter, by way of clarification. A copy of the Circular is produced as

Ext. P-3 in O.P.No. 31942 of 1999. It had been notified for information of all concerned that pending amendment of the Rules, the qualification

under Rule 186 of K.C.S. Rules for different categories of posts, have to be decided based on the pre-revised scales of pay which is prescribed in

Appendix III to the K.C.S. Rules, 1969. Sri Jacob also referred to a judgment rendered by this Court in O. P. No. 9916/88, which settles the

issue, and as suggested by the Circular. Even though the scale of pay had changed from time to time, the basic Government orders had remained

unchanged which were part of the statutory rules. Therefore, the petitioners have a strong base when they urge that notwithstanding the reference

to the pay scales in the notification, it has in fact an invitation to a post which carried basic pay of less than Rs. 250 (in this case Rs. 140) in

contradistinction to posts which had pay scale of Rs. 250 and above.

13. In the aforesaid view, I have to uphold the contentions that have been urged by the petitioners. They are not seeking for setting aside the

selection in toto. This is, especially because of the fact that this Court had permitted the petitioners to participate in the selection. All of them have

participated in the selection. But, their names might not have been included in the rank list. However, as the petitioners have taken up the matter

expeditiously and the delay in disposal of the Original Petitions was not attributable to them, they cannot be denied the reliefs. I direct the Public

Service Commission to take all steps so as to see that the applications of the petitioners in these Original Petitions are treated as valid for all

purposes. What is necessarily to be done by the Public Service Commission are to be expeditiously carried out. Depending upon the ultimate rank

they secure, as adjudged, they have to be accommodated in the rank list which is already published. Though the exercise will be tedious, this is the

essential little, that has to be extended to them. The rank list so redrafted will be in operation only for the period reckoned from the date of its

original publication.

8. The learned Single Judge, thus, was of the view that the invitation of application as per Ext. P-l was to a post which carried basic pay of less

than Rs. 250 (in this case Rs. 140) in contradistinction to posts which had pay scale of Rs. 250 and above, which alone require graduation. It was

in the above circumstances, the consequential direction was issued to consider the petitioners" application and to take follow up action based on

their ranking in accordance with their performance in the written test.

9. In support of the contentions raised by the appellant Public Service Commission based on Ext. P-7 rules issued by the District Co-operative

Banks and the rules issued by the Government as per G.O.(MS)79/86/Co-op. dated 30-9-1986, they have relied on the decision reported in

Valsala Devi v. Leela Bhai 2002 (3) KLT 18 (Case No. 26), and submitted that the scale of pay as on the date of recruitment shall be the criterion

for the purpose of determining qualification in terms of Rule 186 (1).

10. In answer to this, it is contended by the writ petitioners, supporting the judgment, that G.O. (MS) No. 79/86/Co-op. dated 30-9-1986 does

not have any legal sanctity insofar as it is not rules issued either u/s 109 or u/s 80(3) of the Co-operative Societies Act, 1969. It is further

submitted that the said Government Order does not reveal consultation with the State Co-operative Union, as obligatorily required in terms of

Sub-section .(3) of Section 80 of that Act. It is contended that the said rules have not been notified as enjoined in terms of Section 109 of the Act.

It is further contended that this Government Order is not intended to amend Rule 186 which had been duly notified by the Government exercising

the powers vested in them u/s 109., Therefore, G.O.(MS) No. 79 of 1986 dated 30-9-1986 does not have any legal sanctity. It is further

submitted that this Government Order had never been pressed into service before the learned Single Judge. With reference to the decision

reported in Valsala Devi''s case (supra) it is contended by the writ petitioners that it was in relation to. promotion and cannot have bearing in

determining the qualification for appointment on direct recruitment and that it was also in relation to the pay applicable after 1973. It was in respect

of a post which even initially had a pay over Rs. 250.

11. With these rival contentions in mind we have to examine the relevant statutory provisions and precedents cited and the contentions urged from

either side. Section 109 of the Kerala Co-operative Societies Act provides as follows:

109. Power to make rules.--

(1) The Government may, for the whole or any part of the State and for any class of societies, after previous publication, by notification in the

Gazette, make rules either prospectively or retrospectively to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters,

namely:

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(xv) the qualification of employees of societies;

12. The above statutory provision which confers rule making power on Government provides that rules can be made only after previous

publication and by notification in Gazette. When the Co-operative Societies Rules, 1969 were originally promulgated, it did not contain the rules in

the Chapter XV captioned "Establishment". It was introduced as per Section R.O. No. 596/73 published in Kerala Gazette Extraordinary 952

dated 27-9-1973. We obtained the Gazette and perused the same and are convinced that the said Chapter was introduced to the Rules by way of

an amendment invoking the rule making power vested in the Government under Sub-section (1) of Section 109.

13. On the other hand, Section 80(3) of the Kerala Co-operative Societies Act provides that ""the Government shall, in consultation with the State

Co-operative Union, make rules either prospectively or retrospectively regulating the qualification, remuneration, allowances and other conditions

of service of the officers and servants of the different classes of societies specified in Sub-section .(1)"". Sub-section (1) deals with classification of

the Societies. The power conferred on Government by Sub-section (3) of Section 80 as extracted above does not oblige the Government to notify

the Rules so made in order to publish it in the official Gazette, as required in terms of Section 109 (1) of the Act. The qualifications mentioned in

Rule 186 of the Co-operative Societies Rules issued in terms of Section 109 is a general prescription in relation to the pay scale obtainable to a

particular post; whereas the rules envisaged u/s 80(3) is one ""regulating the qualification, remuneration, allowances and other conditions of service

of the officers and servants of the different classes of societies"". Conditions of services of Officers and servants shall be with reference to the posts

held at the respective time. Therefore, Section 80(3) envisages a special prescription of qualification vis-a-vis the posts held by the officers or the

servants as the case may be. When we go through G.O.No. 79/867 Co-op. dated 30-9-1986, we see that the Government have approved the

rules appended to the said Government Order and has prescribed in Rule 8 thereof separate qualifications for different categories of posts

including that of Clerks/Cashiers notified in Ext. P-I. Qualifications are prescribed differently for direct recruitment and for promotion. The said

Rules provide that ""for Direct Recruitment the qualification for the post of Clerks/Cashiers will be B.A.,B.Sc. or B.Com. with H.D.C./J.D.C. or

B.Com. with Co-operation or B.Sc.(Co-operation and Banking) of Kerala Agricultural University"".

14. This is the qualification which is insisted in Ext. P-I, therefore, the Public Service Commission has not added anything to the qualifications

prescribed in the said rules.

15. True, it is at that juncture, the contention urged by the writ petitioners with regard to the applicability of the pay scale with reference to the date

of introduction of the rule has to be considered. Rule 186 was initially introduced on the statute book with effect from 1-1-1974. Thereafter, a few

amendments have been made even to Rule 186. It is stated that all posts other than those require technical qualifications the starting pay of which is

250 and above shall have the qualification of Degree in Commerce or Masters Degree in Arts of a recognized University with Co-operation as

special subject or B.A., B.Sc. or B.Com. Degree of a recognised University and Higher Diploma in Co-operation (H.D.C.) of a State Co-

operative Union of Kerala or B.Sc. (Co-operation and Banking) Degree of the Kerala Agricultural University. As contended by the writ

petitioners, the Registrar had issued a letter on 15-6-1982 to the effect that the stipulation of pay shall be as originally prescribed. Thereafter

decades have passed. The said order was issued pending amendment to the rules. Amendment has been made substituting Appendix III even in

1993. Even then there was no amendment to Rule 186 as regards the prescription of qualification based on pay scale or amendment to the rate of

pay mentioned therein consequent to the pay revision. At the same time Rules in the said Government Order dated 30-9-1986 have been issued.

In this regard it will be useful to refer to the Division Bench Judgment reported in Valsala Devi v. Leela Bhai 2002 (3) KLT 18 . We had perused

the full text of the judgment. It is profitable to extract paragraph 10 thereof which will reveal the contentions urged and the conclusions reached by

the Division Bench in that case:

10. The learned Counsel for the appellant contends that the Judgment of the learned Single Judge is contrary to the provisions of the Rules. He

submits that under Rule 186 (1), the post of Senior Supervisor being a post which carries the pay of Rs. 250 and above, the minimum qualification

required is a Degree with High Diploma in Co-operation, which only the appellant possesses and respondents 1 and 2 admittedly do not possess.

learned Counsel for respondents 1 and 2, however, contends that the pay of Rs. 250 must not be the pay of the scale as on the date of promotion,

but must be the pay of the post prior to the pay revision granted by the Government Order dated 14-6-1979 (Ext. P-5). In our view, there is no

warrant for this contention. This submission may have been relevant if the promotions were granted earlier than the bifurcation of the post of

Supervisor into Junior Supervisor and Supervisor by the Service Regulations of the Registrar dated 17-5-1979 (Ext. P-8). As far as the present

case is concerned, admittedly, all three were employees promoted to the post of Junior Supervisor only with effect from 1 -7-1979. This was

obviously after the date on which the bifurcation of posts into Junior Supervisor and Supervisor had taken effect. Thereafter, for further promotion

to the post of Senior Supervisor and above, there was no justification for considering the pay prior to the pay revision. The relevant criterion for

the purpose of Rule 186 would be the pay attached to the pay scale as on the date when promotion is to be made. In the present case, the

promotion was made on 1-7-1985. On that date, without dispute, promotion was to be made to the post of Senior Supervisor and it carried a

minimum pay of Rs. 260. Consequently, under Sub-rule (1) of Rule 186, the incumbent must necessarily have a minimum qualification of Degree

with High Diploma in Co-operation. The only person qualified is the appellant. Respondents 1 and 2 are admittedly not in possession of this

minimum qualification. In our view, therefore, the appellant is entitled to succeed on this short ground only. We are unable to accept the learned

Single Judge''s view that there is inconsistency between the Regulations at Ext. P-8 and the Rule 186. The contention of Mr. George Poonthottam,

learned Counsel for respondents 1 and 2, that there is inconsistency between the staff pattern indicated in Appendix III read with Rule 188 and the

staff pattern indicated in Ext. P-8, has no merit. In fact, by reason of the second proviso to Rule 188, it was permissible for the third respondent

Bank to make a deviation from the staff pattern indicated in Appendix III. This was subject to the approval of the Registrar of Co-operative

Societies, which admittedly has been given.

16. The Division Bench has, therefore, with reference to a position obtainable on a date after 1-7-1985, taking note of the revision of pay scales,

has come to a definite finding that ""the relevant criterion for the purpose of Rule 186 would be the pay attached to the pay scale as on the date

when promotion is to be made"". The case considered by the Division Bench in the said judgment involved a promotion, whereas the case on hand

is on direct recruitment. That makes no difference in relation to qualification based on pay scales. Necessarily, the relevant criterion regarding

qualification for the purpose of application to Rule 186 shall be the appropriate pay attached to the posts namely, Clerks/Cashier, when such direct

recruitment is notified. The direct recruitment was notified on 16-10-1999 stipulating the pay scale at Rs. 1665-3955. Therefore, that is the

relevant pay scale applicable on the date of notification for direct recruitment and that shall be the relevant criterion for the purpose of application

of Rule 186. Therefore, the contention that the scale of pay prevalent when Rule 186 was originally introduced cannot be accepted going by the

said Division Bench judgment.

17. It is further contended that the Rules issued in the Government Order dated 30-9-1986 do not have any enforceability insofar as it does not

reveal consultation with State Co-operative Union as enjoined in Section 80(3) of the Co-operative Societies Act. When the Division Bench had

already pronounced on the matter that the relevant criterion for the purpose of application of Rule 186 would be the pay attached to the pay scale

as on the date when the appointment is to be made, necessarily, this contention will not go to the root of the issue. Even then it is now trite as held

in G.S. Lamba and Others Vs. Union of India (UOI) and Others, , which reads as follows:

Coming home in State of U.P. Vs. Manbodhan Lal Srivastava, a Constitution Bench of this Court specifically held that where consultation with the

Public Service Commission is provided as required by Article 320(3)(c) of the Constitution such provision is not mandatory and they do not confer

any rights on public servants so that the absence of consultation or irregularity in consultation does not afford him a cause of action in a court of

law. There are number of subsequent decisions to which our attention was called reiterating the same principle. Therefore assuming there was

failure to consult the Union Public Service Commission before exercising the power to relax the mandatory quota rule and further assuming that the

posts in integrated grade II and III were within the purview of the Union Public Service Commission and accepting for the time being that the

Commission was not consulted before the power to relax the rule was exercised yet the action taken would not be vitiated nor would it furnish any

help to Union of India which itself cannot take any advantage of its failure to consult the Commission.

18. The further contention is that the Division Bench in Valsala Devi ''s case has considered only the question of promotion to a post which even

carried at the relevant point of time and at the initial introduction of the Rule 186, a pay above Rs. 250 also does not have any relevance in the light

of the category finding in the said judgment. So the relevant criterion for the purpose of Rule 186 shall be the pay attached to the pay scale as on

the date of promotion or direct recruitment as the case may be.

19. This aspect has not been gone into by the learned Single Judge in the impugned judgment. True, as contended by the counsel for the

respondents-- writ petitioners, the rules made as per G.O.(MS) No. 79/86/Co-op. dated 30-9-1986 are pressed into service only in this appellate

stage. But that being the law made in terms of Section 80(3), as we have found above, necessarily it cannot be ignored, when it is brought to notice

of the Court at the appellate stage. In such circumstances, we are of the view that the appeals have to succeed and the impugned judgments have

to be set aside resulting in dismissal of the writ petitions.

20. Now we will consider W.A.No. 1180 of 2004 which has been filed by a candidate who did not possess graduation when his application has

been rejected by the Public Service Commission. His application has been rejected on 27-9-2001. He approached this Court far belatedly

impugning the said rejection alter pronouncement of the judgment impugned in W.A.No. 1381 of 2003 and connected cases. The learned Single

Judge dismissed the Writ Petition on the ground of laches on the part of the writ petitioner. We confirm the said view taken by the learned Single

Judge. Even otherwise on merit also, when Writ Appeal No. 1381 of 2004 and other connected cases are allowed, this Writ Appeal shall

necessarily have to be dismissed and we do so.

21. Now we will deal with the grievances voiced in Writ Petitions. These Writ Petitions are for the same relief as in the ones from which W. A.No.

1381 of 2003 and connected cases creep up contending that the undergraduates shall also have to be considered for appointment for the post of

Clerk/Cashier. We have already rejected that contention while considering W.A. No. 1381 of 2003 and other connected cases. In the light of that

finding, these Writ Petitions have to be dismissed and we do so.