

CASE NO.:

Appeal (civil) 3569-3580 of 2001
Appeal (civil) 3582 of 2001
Appeal (civil) 3581 of 2001

PETITIONER:

K.G. ASHOK & ORS.

Vs.

RESPONDENT:

KERALA PUBLIC SERVICE COMMISSION & ORS.

DATE OF JUDGMENT: 03/05/2001

BENCH:

G.B. Pattanaik, S.N. Phukan & B.N. Agrawal

JUDGMENT:

WITH

Civil Appeal No.3582 of 2001
(Arising out of SLP (C) No.12254/2000)
and

Civil Appeal No.3581 of 2001
(Arising out of SLP (C) No. 11170/2000)

J U D G M E N T

B.N. AGRAWAL, J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T.....T..J

These appeals have been filed against different orders passed by Kerala High Court upholding orders passed by Kerala Public Service Commission (hereinafter referred to as the Commission) rejecting applications filed by the appellants for the posts of Junior Health Inspector, Grade-II, in Kerala Health Service either on the ground that they made false statement in the application form to the effect that they had not applied in more than one district for appointment on the said posts though they had so applied or applied in more than one districts contrary to the instructions in the gazette notification published for appointment on the said posts both of which are independently sufficient grounds for rejection of the applications.

The short facts giving rise to these appeals are that the Commission issued a notification, inviting applications for filling up 348 posts of Junior Health Inspector, Grade-II, in 14 districts of the State of Kerala, published in Kerala Gazette on 2-4-1996 and in Part-I, Note-(2), thereof a restriction was put to the effect that applications should not be sent for more than one district in response to the notification, and if, application contrary to said direction is sent and the candidate is selected, his name would be liable to be struck off from rank list and disciplinary action will be taken. Part-II of

the said notification contained, apart from application form in which application was required to be filed, general conditions. In column no.8(b) of the application form, a candidate was required to state Yes or No in answer to the question whether he had applied for the post in any other district pursuant to the said notification. Under general condition 25 (b), an application was liable to be summarily rejected if a candidate had applied for more than one district for a post in response to the said notification. Under condition No.29 it was enumerated that if a candidate was, inter alia, found guilty of making any false statement in the application, he was liable to be debarred from applying for the post either permanently or for any particular period and if such a person had already appeared in any written or practical test that would be considered invalid and if any appointment made, a criminal prosecution may be initiated against him and action for removal from service be taken.

Thereafter on 11-4-1996 a short notification was issued by the Commission which was published in the newspaper inviting applications for filling up the said posts and last date of receipt of applications was 15-5-1996 and it was enumerated therein that for more details the concerned gazette notification dated 2-4- 1996 should be referred. Pursuant to the said notification 1270 persons applied, out of whom 436 persons applied for more than one district. In all 1233 persons appeared in written test conducted on 8-7-1998 in all the 14 district simultaneously. In the year 1999, candidature of all those 436 persons was rejected either on the ground that they had applied for more than one district or they had given false declaration in the application form that they had not applied to any other district while in fact they had so applied.

Appellants in civil appeals arising out of S.L.P.(C) Nos.4955-4966 of 2000 and SLP (C) No.12254 of 2000 filed separate writ applications challenging the aforesaid order of the rejection of their candidature which were dismissed by a Division Bench of the High Court under two separate judgments. Sole appellant in civil appeal arising out of S.L.P.(C) No. 11170 of 2000 filed a separate writ application challenging order of rejection of his candidature and the same was dismissed by a learned Single Judge of the High Court which order was upheld by a Division Bench. The aforesaid orders passed by the High Court are subject matter of challenge in these cases.

When these SLPs were placed for consideration before a two judge bench on 2-2-2001, it was pointed out that in SLP (C) No.12562 of 1999, such order passed by the High Court was upheld by this Court by dismissing the SLP on 13.9.99 by a speaking order, whereas in other SLPs notices were issued and interim orders passed. In view of these facts the Bench thought it appropriate that the matter may be considered by a larger bench and accordingly these cases have been placed before us. It may be necessary to refer to order dated 13.9.99 passed in S.L.P. (civil) no. 12562 of 1999 which runs thus:

The petitioner knew that she could apply for a post in only one district. She applied for posts in two districts while stating in each of the forms that she had applied only for that district. This having been discovered after she was in employment, the employment has been cancelled. The

High Court has declined her relief on her writ petition. We concur with the High Court. Having regard to her conduct, our discretion under Article 136 is not available to her.

The Special Leave Petition is dismissed.

Learned counsel on behalf of the appellants in support of this appeal firstly contended that Note-2 of gazette notification dated 2-4-1996 restricting the choice of candidates to one district is violative of equality clause enshrined in Article 14 and 16 of the Constitution, as by restricting choice of a candidate to one district his right for being considered for the posts in other districts is taken away. For appreciating the point it would be expedient to refer to certain statutory provisions. The Kerala State and Subordinate Services Rule, 1958, (hereinafter referred to as 1958 Rules) were framed by the State Government under proviso to Article 309 of the Constitution in respect of Members of the State and Subordinate Services, Rule 2(4) whereof defines Commission to mean the Kerala Public Service Commission. Rule 2(12) defines expression recruited direct to mean a candidate recruited to service in consultation with the Commission for which it was required to issue notification inviting applications for the recruitment. Under Rule 3 appointment has to be made on the advice of the Commission from a list of approved candidates prepared by the Commission in the prescribed manner which advice would be liable to be cancelled if it is found that the same was given under some mistake. Rule 4 prescribes that in response to a notification issued by the Commission, a candidate may apply in the form published by the Commission with the notification inviting applications for the post. Under Rule 5A weightage marks have been provided in certain cases. The said Rules 3, 4 and 5A reads thus:

Rule 3. Approved candidates (a) All first appointments to the service shall be made by the appointing authority on the advice of the Commission in respect of posts falling within the purview of the Commission and in all other cases by the appointing authority from a list of approved candidates prepared in the prescribed manner.

b) The inclusion of a candidates name in any list of approved candidates for any service (State or Subordinate) or any class or category in a service, shall not confer on him any claim to appointment to the service, class or category.

c) 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.

Provided further that, cancellation of advice under this sub-rule shall be made only after giving the candidate concerned a reasonable opportunity of being heard in the matter.

The provisions in this sub-rule shall be deemed to have come into force on the 31st July, 1969.

4. Every candidate for appointment to any service or for admission to any suitability/eligibility test, whether a member of a service or not, who in response to a notification issued by the Commission makes an application, shall make such application either printed or typed in the model form prescribed for the purpose and published by the Commission along with the notifications inviting applications for the post, for which no fee shall be levied.

5A. Award of weightage marks in certain cases:-

Where the method of recruitment to any service, class or category is by direct recruitment on district wise basis, such of the candidates belonging to that district who qualify for interview/become qualified to be included in the Ranked List for such of the district-wise posts mentioned in the annexure to this rule shall be given a weightage of five marks for the selection:

Provided that the candidates who are eligible to get the above weightage marks shall produce along with the application a nativity certificate issued by a competent authority not below the rank of Tahsildar of the concerned taluk.

Acting under Rule 3 of the 1958 Rules the Commission framed rules known as Kerala Public Service Commission Rules of Procedure published in the Kerala Gazette on 5.10.1976 prescribing therein detailed procedure for making selection by the Commission, Rule 22 whereof lays down conditions for disqualifying candidature of a person. Rule 40 of the said rules recognises powers of the Commission to pass necessary orders for proper discharge of functions of the Commission. Relevant portion of the said Rule 22 and Rule 40 run thus:

22. Candidates who are found guilty of the following items of misconduct shall be liable for disqualification for being considered for a particular post or department 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

..
(iii) Making of any false statement in the Application form or its Annexure or any document produced in connection with a selection or suppression of any material fact relevant to the selection from the Commission

40. Savings.- Nothing contained in Parts I & II of these rules shall be deemed to limit or affect the power of the Commission to make such orders as may be necessary to give effect to any of the provisions of the Constitution of India or for the proper discharge of the functions of the

Commission:

Provided that no such order which has an over-riding effect on the provisions contained in Part I of these rules shall be made by the Commission without the prior concurrence of the Government.

In exercise of the powers conferred upon it, the Commission issued notification on 2.4.1996 inviting applications for filling up the posts in question in 14 districts of the State, providing therein restrictions not to apply in more than one district and consequences for its breach, incorporated in Part I, Note (2) and Part II condition nos.25(b) and 29 and Note (1) and column no. 8(b) of the application form which read thus:

Note (2) Applications should not be sent to more than one District in response to this Notification. If applications are sent contrary to the above direction and if he/she is selected his/her name will be removed from the ranked list and disciplinary action will be taken against him/her. Candidates should submit application for this post to the concerned District Officer of the Commission and should note the name of the District against the relevant column in the application. The address of the District Officers to which applications are to be sent is furnished in column (9) of the notifications.

25. (b) The application having one or more of the following defects will be summarily rejected: 1 to 8 deleted.

9. If the candidates apply to more than one District (For District-wise selection) for a post in response to the same notification.

(Emphasis added)

29. Warning

Candidates who are found guilty of the following items of misconduct shall be liable for disqualification for being considered for a particular post of 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 initiations 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 been appointed or any one or more of the above.

(i) and (ii) deleted.

(iii) Making of any false statement in the application form or any document produced in connection with selection or suspension of any material fact relevant to the selection from the Commission.

(Emphasis added)

APPLICATION FORM

Name of Post . Scale of pay.

Department/Company/Corporation/Board/Local Authority.. Gazette Date.

Note. (1) Leave 5 cm. Space on the top of the application form.

(2) Furnish full and correct information. Candidates should read the relevant Gazette notification inviting applications before filling up the application form. Enclose self-attested true copies of documents in proof of the claim.

Column 8(b) of the application form reads as follows:

8(b) - Have you applied for the post in any other District as per this notification (Answer Yes or No.

(Emphasis added)

Thereafter on 11.4.1996 short notification was issued by the Commission inviting applications for filling up the posts in question, relevant portion whereof runs thus:

Model application form is appended to the gazette notification.... Candidates applying to posts under general recruitment belonging to Scheduled Caste / Scheduled Tribe / Other Backward Class will be given by relaxation benefit admissible under law. For more details refer to the concerned gazette notification.

(Emphasis added)

From bare perusal of the aforesaid rules as well as notifications referred to above it would be clear that a person was debarred from applying in more than one district pursuant to notification dated 2nd April, 1996, whereby application could be filed by a person seeking employment in any one of the 14 districts of his choice for which vacancies were notified and if a candidate applied for more than one district his application was liable to be rejected on this ground alone. Similarly, application of a person was liable to be rejected also on the ground if he had applied in more than one district but had made false declaration in the application form that he had not so applied. Apart from rejection of the application on the said grounds, in case such a candidate had appeared in the written test and interview the same were liable to be declared invalid and in case such a person was appointed, he was liable to be dismissed or removed from service treating the same to be one of the misconducts over and above any criminal action that may be taken against him.

It appears that the government introduced decentralisation of recruitment to the lower ministerial cadre in various departments and teaching posts in Education Department to district level vide G.O. (MS) No.154/71 dated 27.5.1971 with a view to avoid administrative inconvenience caused due to dearth of recruits in such cadres in northern districts of Kerala. It was with this intention that Government stipulated conditions restricting inter district transfers vide Government Order dated 27.5.1971. However, while implementing the decentralisation, a lot of practical problems cropped up before the Commission. If candidates are allowed to apply to more than one district in response to the same notification, they have to be allowed to appear in the tests to be conducted in different districts on different dates and subsequently, if they find a berth in

the ranked list relating to more than one district, they will have to be advised for recruitment from more than one district if the occasion arises. A candidate who is appointed in one district will have to forego appointment in another district and the same defeats the very purpose of the aforementioned Government Order. The circumstances as detailed above would put the Commission in an embarrassing situation and cause administrative difficulties. The situation would assume fresh dimensions if it is allowed to prevail in the present day district-wise selections. Therefore, the candidates are permitted to apply for one district only in one notification. It is in order to avoid such exigencies and to facilitate a feasible selection process, the Commission issued orders to the effect that candidates are prohibited from applying to more than one district for the post notified in one and the same notification. Accordingly in the notification inviting applications for district-wise selection, specific instructions are incorporated to the effect that candidates should not send applications for the post in more than one district and his failure to observe the same would entail rejection of application of such a person apart from taking other actions enumerated above.

Though a candidate is prohibited from applying to more than one district, he is free to choose any district of his choice and thus the only thing is that the candidate is not entitled to apply for the same post in more than one district at a time. Here, the right of the candidate is not curtailed as he/she is not prevented from choosing the district of his/her choice. At the same time, if every person is permitted to apply for all districts the number of applications received by the Commission will be 14 times the number of applications now being received with the result that the Commission will be doing a futile exercise of selection work, in the other 13 districts, as a candidate can after all accept appointment in only one District. Considering all these aspects the Commission has imposed the restriction on candidates from applying in more than one district in response to one and the same notification. The restriction does not tantamount to the denial of opportunity to a candidate for applying to any post.

In the case of Radheshyam Singh and Ors. Vs. Union of India and Ors. (1997) 1 SCC 60, reliance whereupon has been placed by learned counsel on behalf of the appellants, zone-wise separate merit list was prepared by the Subordinate Services Commission on the basis of same examination albeit conducted in various zones which resulted devaluation of merit of the selection examination by selecting a candidate having lesser marks over the meritorious candidate who had secured more marks and consequently the rule of equal chance for equal marks would be violated. It was laid down that such a selection process would not only be against the principles enunciated in Articles 14 and 16 of the Constitution but it would also result in heart burning and frustration amongst the young men of the country. It was directed in that case that if the government is keen to make zone-wise selection after allocating the same posts for each zone, it may make such scheme or the Rules or adopt such process of selection which may not clash with the provisions contained in Articles 14 and 16 of the Constitution.

In the case of Minor P. Rajendran vs. State of Madras

& Ors., 1968 (2) S.C.R. 786 State Government framed rules for selection of candidates to medical course and Rule 8 provided for district-wise allocation of seats on the basis of population. A case was made out that in view of such a rule candidates of inferior calibre were being selected in one district and those of superior calibre were not selected in another district. Validity of the said rule was challenged on the ground that it was violative of Article 14 of the Constitution of India by way of filing an application under Article 32 of the Constitution apart from filing SLPs against order of Madras High Court upholding the rule and Constitution Bench of this Court had no option but to strike down the said Rule 8 for admission to medical colleges providing therein district-wise allocation of seats on the basis of population as the same was found to be violative of Article 14 of the Constitution.

In the case of *Minor A. Peeriakaruppan and Sobha Joseph vs. State of Tamil Nadu and others*, 1971 (1) SCC 38, which was also for admission in the medical college, the seats were distributed unit wise treating each medical college to be a separate unit and an application under Article 32 of the Constitution was filed before this Court assailing the selection according to the aforesaid mode and making a complaint that the writ petitioners though had higher marks and brilliant academic carrier were not selected but persons having inferior merit were selected. It was held that for admission in medical college unit wise distribution of seats was violative of Article 14 of the Constitution as there were no reasonable nexus behind it. In that case, such a selection was struck down as unit wise allocation of seats was found to be violative of Article 14 of the Constitution being discriminatory and direction was given to make fresh selection on a state-wise basis.

In the case of *Nidamarti Maheshkumar vs. State of Maharashtra and others*, 1986 (2) SCC 534, in the matter of admission to medical colleges region wise scheme was adopted by the State of Maharashtra meaning thereby that a student from a school or college situate within the jurisdiction of a particular university was not eligible for admission to medical college situate in the jurisdiction of other university but was confined only to medical college or colleges within the jurisdiction of the same university. As a result of such a region wise classification in the matter of admission a student from one region who had secured lesser marks than another from a different region could be selected for admission to the medical college or colleges within his region while the student who had secured higher marks may not succeed in getting himself selected for admission within his region. Such a region wise scheme in the matter of medical admission was held by this Court to be violative of Article 14 of the Constitution and accordingly struck down.

None of the aforesaid decisions has any application to the facts of the present case as it has been simply pleaded that Note-II of the gazette notification was violative of Article 14 of the Constitution. Neither before High Court nor before this Court necessary facts showing discrimination have been pleaded inasmuch as there is nothing to show that more meritorious persons have been deprived of employment whereas persons of inferior merit have been selected. Apart from the fact that the necessary facts leading to discrimination have not been pleaded, there is absolutely no

material to show that a case of discrimination is made out and accordingly the submission of learned counsel is devoid of any substance.

Learned counsel for the appellants, next submitted that as in these appeals one advertisement was issued for making selection in 14 districts and though the candidates had applied in more than one district but they could appear only in one district in view of the fact that test was conducted in all the districts on one day, rule restricting filing of application for one district incorporated in Note-2 of the notification should be read down in its application to the cases like the appellants. The submission has been made only to be rejected as in the present case we have already held that the aforesaid restriction contained in Note-2 is not violative of Article 14 of the Constitution, therefore, the question of reading down the same does not arise. Reference in this connection may be made to the decision of this Court in the case of Electronics Corporation of India Ltd. And others vs. Secretary, Revenue Department, Govt. of Andhra Pradesh and others, 1999 (4) SCC 458, in which case it was submitted that Article 285 of the Constitution was intended to protect public revenue, the shares of appellant Companies, in those appeals, being fully owned by the Central Government, their funds were public revenue. As such it was found not necessary to read down the provisions of Sections 2(j) and 12 of Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 (14 of 1963) to exclude therefrom all but private owners and lessees of land.

This Court while rejecting the submission observed thus:

The question of reading down comes in if it is found that these provisions are ultra vires as they stand. We have held that these provisions are not ultra vires because Article 285 does not apply when the property that is to be taxed is not of the Union of India but of a distinct and separate legal entity. Each of the appellants being companies registered under the Companies Act, they are entities other than the Union of India. The question of reading down does not, therefore, arise.

Learned counsel for the appellants further submitted that out of 1270 candidates 436 persons including appellants in these appeals applied for more than one district as they were misled by the short notification dated 11.4.1996 and were not aware of the penal provisions contained in Note-(2) of gazette notification dated 2-4-1996. In this regard, it may be stated that in the concluding portion of the short notification dated 11.4.1996 it was specifically mentioned that for more details a candidate was required to refer to concerned notification meaning thereby the aforesaid notification dated 2-4-1996. Moreover it has been further stated in the short notification that model application form has been appended in the gazette notification again meaning thereby notification dated 2-4-1996. In these cases some of the appellants in their application form, in reply to column 8(b), which required a candidate to state whether he had applied in more than one district, had stated No and others Yes, though all of them had applied in more than one district. In view of language in the short notification a candidate was obliged under law to look into the gazette notification dated 2-4-1996, more so when in the application form which was duly filled up by the appellants, it was specifically enumerated that candidates should read the

relevant gazette notification inviting applications before filling up the application form. Thus we find no substance in this submission as well.

Learned counsel for the appellants also submitted that decision of this Court in the case of O.N. Omana vs. Kerala Public Service Commission and others (S,L.P. (civil) No.12562 of 1999) is quite distinguishable as in that case though there was one notification inviting applications for appointment in several districts and similar restriction was there and in contravention of the same application was filed for appointment in more than one district, but written test was conducted in different districts on different dates and not on one date and the candidates appeared in more than one district. In our view, though in the present case written test was conducted in all the 14 districts on one day but that cannot be a ground for making any distinction. Application of some of the appellants have been rejected on the ground that though they had applied for appointment in more than one district but made a false declaration that they had applied in one district only whereas in other cases they did apply in more than one district and stated in the application that they had so applied. According to the gazette notification both the grounds were independently sufficient for rejection of candidature of a candidate. It appears that the Commission has been liberal in simply rejecting their candidature for the time being and had not debarred them from applying for any public post either for a specified period or permanently inasmuch as for making a false declaration though the appellant were liable to be criminally prosecuted but no such steps have been taken against them.

Learned counsel for the appellants lastly submitted that as number of appellants had crossed the upper age limit and number of vacancies are available, without disturbing already selected candidates, the appellants can be considered for selection on the basis of their placement in the merit list. In our view seeing the conduct of appellants in making false declaration and applying in more than one district in contravention of gazette notification, it is not possible to accede to their prayer even on equitable grounds.

For the foregoing reasons we are in respectful agreement with the view expressed by a two Judge Bench of this Court in the case of Omana and the High Court was quite justified in upholding order of rejection of candidature of the appellants by the Commission.

Accordingly the appeals are dismissed but there shall be no order as to costs.