

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

O.P.No.9310 of 2003 (G)

PETITIONER(S):

K. PASUPALAN NAIR, S/O.KUTTAN NAIR, AGED 52 YEARS,
U.D. CLERK,
OFFICE OF THE KERALA TODDY WORKERS' WELFARE FUND INSPECTOR,
KOLLAM, RESIDING AT CHERIYAMBALLOORVEEDU,
KAVANAD P.O., KOLLAM.

BY ADVS.SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.S.HARIKRISHNAN

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
LABOUR & REHABILITATION (C) DEPARTMENT,
SECRETARIAT, TRIVANDRUM.
2. THE KERALA TODDY WORKER'S WELFARE FUND BOARD,
REPRESENTED BY ITS SECRETARY,
KERALA TODDY WORKER'S WELFARE FUND BOARD OFFICE,
ULLOOR, TRIVANDRUM.
3. THE CHIEF WELFARE FUND INSPECTOR,
KERALA TODDY WORKER'S WELFARE FUND BOARD,
ULLOOR, TRIVANDRUM.

R1 BY GOVERNMENT PLEADER SRI.S.JAMAL.
R2 & R3 BY STANDING COUNSEL SRI.K.D.BABU.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE ORDER NO.ESST.A1/882(A)/02 DATED 30.7.2002.
- EXT.P2 TRUE COPY OF THE ORDER NO.ESTT.A1/7410, 7507/02/571 DATED 17.8.2002 ISSUED BY THE 3RD RESPONDENT.
- EXT.P3 TRUE COPY OF THE JUDGMENT DATED 4.2.2003 IN O.P. NO.24633/2002 OF THIS HON'BLE COURT.
- EXT.P4 TRUE COPY OF THE ORDER NO.ESTT.A1/882(A)/02 DATED 10.03.2003 ISSUED BY THE 3RD RESPONDENT.
- EXT.P5 TRUE COPY OF THE LETTER NO.19484/B1/02/LABOUR DATED 28.10.2002 ISSUED BY THE 1ST RESPONDENT.
- EXT.P6 TRUE COPY OF THE RELEVANT PAGES OF THE KTWWF B STAFF RECRUITMENT AND CONDITIONS OF SERVICE REGULATIONS 1971.
- EXT.P7 TRUE COPY OF THE RELEVANT PAGES OF AMENDED SPECIAL RULES PUBLISHED IN G.O.(MS) NO.20/9/LBR & REH DATED 1.2.1988.
- EXT.P8 TRUE COPY OF THE RELEVANT PAGES OF AMENDED SPECIAL RULES IN THE YEAR 1999.
- EXT.P9 TRUE COPY OF THE RELEVANT PAGE OF THE ORDER NO.ESTT.A1/882/2002/DTD.23.5.2002 ISSUED BY THE CHIEF WELFARE FUND INSPECTOR.

RESPONDENT'S EXHIBITS:-

- EXT.R3(a) TRUE COPY OF THE CIRCULAR NO.10261/RULES-1187/P&ARD DATED 9.11.87 ISSUED BY SEC FRETARY TO GOVERNMENT, PERSONNEL & ADMINISTRATIVE REFORMS (RULES) DEPARTMENT.
- EXT.R3(b) TRUE COPY OF LETTER NO.19485/B1/02/LABOUR DATED 28.10.2002 SENT BY THE SECRETARY TO THE CHIEF WELFARE FUND INSPECTOR.

Vku/-

[true copy]

“C.R.”

K. Vinod Chandran, J

O.P.No.9310 of 2003-G

Dated this the 14th day of October, 2015

JUDGMENT

The petitioner is aggrieved with the reversion effected by Exhibit P2, which he claims to be not permissible by reason of the exemption available under Rule 13B of the Kerala State and Subordinate Services Rules, 1958 [for brevity “KS&SSR”]. The petitioner’s first appointment in the Kerala Toddy Workers' Welfare Fund Board [for brevity “the Board”] was as a Peon on 20.10.1973 and then was promoted as a Lower Division Clerk [for brevity “LDC”] as per order dated 26.06.2000. By Exhibit P1, the petitioner having crossed 50 years, was promoted as an Upper Division Clerk [for brevity “UDC”], granting exemption allegedly under Rule 13B. Immediately thereafter, on a complaint raised by certain employees, the petitioner’s promotion was cancelled and he was reverted back to the post of LDC. The petitioner was before this Court for consideration of his representation, as is evidenced by Exhibit P3, which was declined by the Board as per Exhibit P4, which is challenged herein.

2. The petitioner's contention is that, the Special Rules existing as on the date of the petitioner's promotion was Exhibit P8, wherein the mode of appointment to the cadre of UDC is prescribed as,/ promotion from the cadre of LDC and the qualifications prescribed were:

- (i) A degree of a recognised University;
- (ii) Pass in Account Test (Lower); and
- (iii) Pass in Manual of Office Procedure.

The qualification of graduation was also exempted for persons who had joined the Board prior to 01.02.1988. The petitioner's contention is that, the test prescribed under the Special Rules is an obligatory departmental test, which stands exempted by Rule 13B for persons who have crossed the age of 50. The petitioner also relies on the judgment of this Court in ***Sarojini Amma v. State of Kerala* [2002 (3) KLT 573]** to buttress his contention that the department test would be exempted under Rule 13B.

3. The learned Government Pleader and the learned Standing Counsel for the respondent-Board, however, would contend that the test prescribed under the Special Rules for the Board is an essential qualification for promotion and not an

obligatory departmental test. The learned Government Pleader also would specifically refer to the decision cited and the Special Rules considered thereunder, wherein prescription of “qualification and test” was under such specific heading. The learned Standing Counsel for the Board also refutes the ground of discrimination urged on the basis of Exhibit P9; a similar promotion granted just one month before; with the contention that all such promotions granted have been reviewed as has been stated in the counter affidavit.

4. The question that assumes significance is as to whether the test prescribed under the Special Rules is an essential qualification for promotion or a mere obligatory departmental test. In this context, it is to be specifically noticed that Rule 13B draws a distinction between an obligatory departmental test and those prescribed as essential qualification in the Special Rules. **Sarojini Amma** (*supra*) was a case in which the ambit and scope of Rule 13B was examined in the context of promotion in the subordinate service and whether it would be applicable for promotion to State service. The promotions which were the subject matter of the above case was to the post of Head Surveyor and Superintendent, both of which fall within the

State service. While considering the said issue, the Division Bench considered the aspect of promotion within the subordinate services itself and specifically noticed the prescription of eligibility for promotion to the post of Head Surveyor. There, the qualification and test were specifically provided under the heading “qualification or test”. The Division Bench noticed the said heading and found that the graduate qualification prescribed would be the essential qualification for the post and the test prescribed would be one which could be exempted under Rule 13B, since it can be only taken as an obligatory departmental test.

5. However, in the case of promotion to the posts in the State service, the Special Rules were extracted and it was found so:

“We may indicate in the table referred to earlier, Column 3 deals with only qualifications and not tests as provided in the subordinate service. In other words, either by direct recruitment or recruitment by transfer qualification prescribed in the rules states that one should possess the qualification prescribed for such service. We have seen that for appointment by recruitment by transfer one should possess the minimum general educational qualification of SSLC standard, pass in the Head Surveyors and Sub Assistants Test of Madras or the Head Surveyors' Test of Travancore or the Theodolite Test and Mapping test of

Cochin, pass in the Account Test of Madras, Travancore or Cochin or Account Test for Executive Officers of Kerala State and pass in the Revenue Test of Madras, Travancore or Cochin provided that a person who has passed the Head Surveyors' and Sub-Assistants' test of Madras shall not be required to pass the Revenue test. So also for the post of Technical Assistant some of the tests are prescribed as essential qualifications. Those qualifications are to be acquired after joining the State service. **In other words, only those persons who possess the qualifications alone can aspire for appointment by transfer to the post of Superintendent of Survey and Land Records or to the post of Technical Assistant. Rule 13B cannot be imported to get permanent exemption from essential qualification prescribed for respective posts in Rules. Those qualification cannot be characterised as obligatory departmental tests. They are basic essential qualification for direct recruitment and for recruitment by transfer.** R.6 refers to tests in the case of those persons who are recruited directly and not relating to persons who were appointed to the post of Superintendent or Technical Assistant etc. by transfer.

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Aforementioned provisions and the Explanation to Rule and the Explanation to Note 2 would positively show that recruitment to the post of Superintendent of Survey and Land Records etc. are to be made by transfer from the subordinate service. Petitioners are admittedly in the subordinate service. They can aspire for appointment to the

post of Superintendent of Survey and Land Records only by recruitment by transfer. **We may indicate that the tests indicated are qualifications and not departmental tests within the meaning of R.2(13). Consequently there is no question of any permanent exemption. Same is the position as far as the last proviso to R.13B as well which states that persons in Government service who attain the age of 50 years and who have put in 25 years of service shall be eligible for permanent exemption from passing the obligatory departmental tests for all purposes such as promotion, appointment as full member of a service etc. We have found various tests have been prescribed for posts in the State service. Passing of those tests is essential for appointment by transfer. Those tests are not to be treated as departmental tests so as to get exemption under R.13B of the K.S.& S.S.R”.**

The dictum stands against the petitioner's case.

6. What assumes significance is, the aspect that in the Special Rules, which are the subject matter of the present case, the prescription has been made under the heading “qualifications” alone, in which circumstance even the test prescribed gets an essential nature of qualification and is removed from the definition of an obligatory departmental test.

7. In this context another Division Bench in **Somarajan v. State of Kerala [2007 (1) KLT 186]** had considered the question with respect to exemption of essential qualification in the case of Scheduled Castes/Scheduled Tribes [for brevity “SC/ST”] in the matter of promotion as provided under Rules 13A, 13AA and 13AB. The Division Bench specifically noticed that the exemption granted under Rule 13A was “Special or Departmental Test”. The distinction insofar as the two tests was seen to be indicated even in Rule 13A. On a comparison of the above Rules, it was held that Rule 13B was only with respect to an “obligatory departmental test” and Rule 13A, as extended by Rules 13AA and 13AB covers exemption from Special and Departmental Tests. The term “obligatory departmental test” was tested in terms of Rule 12(7) of Part I Kerala Service Rules [for brevity “KSR”] and it was held that any test otherwise prescribed, would be necessarily special ones, as mentioned in Rules 13 and 13A. In that context, Rule 13AB was examined and it was found that exemption both from Special and Departmental Tests was brought in and the SC/ST would be entitled to exemption from all such tests. Rule 13B, however, stands on an entirely different footing and only 'obligatory departmental tests' are exempted.

8. The distinction drawn in both the judgments is squarely applicable and relevant in the present case also. Herein the Special Rules prescribe only the “qualification”. The test qualification is in the nature of a special test, which is intended as a qualification, and not as an obligatory departmental test. The petitioner’s contention that there is no other obligatory departmental test prescribed, cannot be taken as deviating from the essential nature of the test as has to be understood from the prescription in the Special Rules. The fact that obligatory departmental test is not prescribed would not bring any test prescribed in the Special Rules within the definition of obligatory departmental test. The tests specified hereunder can only be found to be an essential qualification.

In the above circumstances, the writ petition is found to be devoid of merit and the same is dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

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[true copy]