

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

OP(KAT).No. 160 of 2015 (Z)

AGAINST THE ORDER IN O.A.(EKM)NO. 242/2015 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 10-03-2015.

PETITIONER(S):

1. S.G. VAISAKHAN, AGED 29 YEARS,
MORIAH MOUNT EDACODU, NEMOM P.O.,
THIRUVANANTHAPURAM DISTRICT, PIN: 695 020.
2. NIMESH A.G.,
LAL BHAVAN, VELLAPPALLY, NARUVAMOODU P.O.,
THIRUVANANTHAPURAM DISTRICT, PIN: 695 528.

BY ADV. SRI.D.SREEKUMAR

RESPONDENT(S):

1. THE KERALA PUBLIC SERVICE COMMISSION, PATTOM,
THIRUVANANTHAPURAM, PIN: 695 004
REPRESENTED BY ITS SECRETARY.
2. DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION, DISTRICT OFFICE,
THIRUVANANTHAPURAM, PIN: 695 004.

R1,R2 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON
15-10-2015, ALONG WITH OPKAT. 398/2014, OPKAT. 235/2015, THE COURT ON 28.10.2015
DELIVERED THE FOLLOWING:

P.T.O.

OP(KAT).No. 160 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1: TRUE COPY OF ORIGINAL APPLICATION NO.242/2015 WITH ANNEXURES.
- EXHIBIT P2: TRUE COPY OF THE ORDER DATED 10/3/2015 IN O.A.(EKM) NO.242/2015 PASSED BY THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 19/10/2012 IN WPC NO.18011/2012 (B) OF THIS HON'BLE COURT.
- EXHIBIT P4: TRUE COPY OF THE CIRCULAR NO.8/2013 DATED 29/5/2013 ISSUED BY THE SECRETARY, PUBLIC SERVICE COMMISSION.

RESPONDENT(S)' EXHIBITS:

- EXHIBIT R1(A): TRUE COPY OF JUDGMENT IN O.P.(KAT) NO.121 OF 2015.

//TRUE COPY//

P.S. TO JUDGE

St/-

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(KAT) Nos.160 & 235 of 2015 & 398 of 2014

Dated this the 28th day of October, 2015

JUDGMENT

Shaji P. Chaly, J.

These Original Petitions are filed from the separate orders of the Kerala Administrative Tribunal in O.A. (Ekm) No.242 of 2015 dated 10.03.2015, O.A.No.2351 of 2014 dated 15.12.2014 and O.A.No.2066 of 2014 dated 29.10.2014 by the applicants therein, by which, the Tribunal refused to entertain the claim of the petitioners that the rank list drawn by the Kerala Public Service Commission (for short, "K.P.S.C") was not in accordance with law and declined the reliefs sought for. Even though separate orders are passed by the Tribunal on different dates, the subject matter of the Original Petitions are common in nature and therefore we propose to dispose of the Original Petitions by a common judgment. The facts are common in nature and they are not elaborately required for the purpose of disposal of the Original Petitions in view of the nature of the short but interesting question to be decided.

2. The common question that arises for consideration in these Original Petitions is with regard to the meaning provided to the stipulation contained under Note-4 to Clause-7 of Ext.P1 notification issued by the K.P.S.C, the Respondents in the Original Petitions. Note-4 to Clause-7 reads as follows:

"4. Candidates should possess a current Driving licence at the last date for receipt of application and on the date of the practical test and advice".

3. Clause-7 prescribes the qualifications required for the applicants applying to the post of Police Constable Driver (Armed Police Battalion), in the scale of pay of Rs.10480-18300. Out of the various qualifications, the qualification contained under Clause-7(a) is only relevant to consider the question posed by the petitioners, and it is as follows:

"7. Qualifications:-

(a) Educational

(1) General:-(i)

Must possess SSLC or its equivalent qualification.

(ii)

Must possess a current heavy duty vehicle licence with badge. Driving Licence issued after 16.01.1979 must have endorsement both for Heavy Goods and Heavy Passenger Vehicles and the applications with only one endorsement will be summarily rejected (Vide amendment No.47/78 to the Motor Vehicle Act).

- (iii) Proficiency in Driving Heavy Motor Vehicles (to be proved by a Practical Test conducted by the Kerala Public Service Commission).

Note:- Possession of licence for driving Motor Cycle shall be a desirable qualification."

4. Therefore, in accordance with Ext.P1 notification, a candidate who is applying for the aforesaid post should possess the Secondary School Leaving Certificate or its equivalent qualification and must possess a current heavy duty vehicle licence with badge, the driving licence issued after 16.01.1979 must have endorsement both for Heavy Goods and Heavy Passenger Vehicles and the applications with only one endorsement will be summarily rejected and further that proficiency in driving Heavy Motor Vehicles is to be proved by a Practical Test conducted by the K.P.S.C.

5. The petitioners in all these cases did possess driving licence with badge, but during the process of selection, either the licence or the badge were not renewed by the petitioners on expiry, consequent to which, even though they participated in the selection process, they were not included in the rank list.

6. Therefore, the question to be ultimately decided is whether non-renewal of the licence or badge during the

process of selection was a disqualification to have their names included in the rank list. Petitioners raised a contention that on a reading of Note-4 extracted *supra*, petitioners were expected to have the current licence only on the date of receipt of application, on the date of Practical Test and on the date of advice. On the other hand, Respondents contend that Note-4 is only a subservient explanation given to Clause-7 of Ext.P1 notification by which the Respondents intended that during the entire process of selection, an applicant should have a valid driving licence.

7. Heard learned counsel for the petitioners, Sri. D. Sreekumar and Sri. Pirappancode V.S. Sudheer and Sri. P.C.Sasidharan and Sri. Aravindakumar Babu for the Respondents.

8. Learned counsel for the petitioners contend that the expression "current" used in Clause-7 if read along with Note-4, petitioners were expected to have a valid licence with badge on the three occasions mentioned thereunder during the whole process of selection i.e. (1) last date for receipt of application, (2) on the date of Practical Test and (3) advice. Learned counsel for the petitioners invited our attention to 'Max Law

Dictionary', wherein the meaning provided to the expression "current" is 'presently valid', 'existing' or 'prevailing'. Taking cue from the said meaning provided to the word "current", it is submitted that if the said meaning provided is applied to the three occasions wherein the licence was required under Note-4, it is clear and plain that the applicants were expected to have the current licence only on those three occasions.

9. To substantiate the said contention, learned counsel for the petitioners have invited our attention to the judgment in '**Rajesh Kumar v. Public Service Commission**' [1998 (2) KLT 945] and specifically to the latter part of paragraph 10, wherein this Court, taking into account a judgment of the Supreme Court, has held that an advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. So also, the judgment in '**Parameswaran v. Kerala State Road Transport Corporation**' [2012 (4) KLT 71] and specifically to paragraph 6 of the judgment, wherein it is held as follows:

"6. The afore-quoted prescription as to possession of driving licence requires the possession of valid Motor Driving Licence with endorsement to drive

heavy duty vehicles. That should be available as on the last date fixed for application. It is also the requirement that an applicant should have completed seven years after getting the driving licence and three years or more during the period after having the Heavy Duty Vehicle Licence. The words "driving licence" occurring the second limb of the aforesaid prescription are nothing but made with specific reference to "valid Motor Driving Licence" as stated in the first limb. There is no other way to read the afore-quoted prescription as to qualification. To read it otherwise, would be violence to the plain meaning of the words used in a notification which is admittedly issued in terms of the statutory prescriptions".

10. On the other hand, learned counsel for the Respondents have invited our attention to the judgment in '**Maheen v. State of Kerala**' [2013 (3) KLT 639], wherein the very same question at hand was considered by a Division Bench of this Court, contends the counsel. There, the question relates to the application for the post of Driver Grade-II (LDV) in response to the Public Service Commission notification and it was held that it is trite law that an applicant has to possess the prescribed qualification as on the last date fixed for the receipt of applications by the P.S.C. Such qualification that an applicant possesses licence, has to continue to run with that

person during the selection process, to be continually carried at the selection, appointment, joining the service and even while holding the post to which the incumbent was selected and appointed; that is, during the entire spectrum of employment, from the last moment available to apply for being considered. It was further held that same is a basic doctrine and salutary principle of law which cannot be watered down to hold that an applicant for the post of Driver Grade-II (LDV) who ought to possess a driver's badge along with driver's licence as on the date of application or the last date fixed for receipt of application, need not necessarily continue to possess the driver's badge on the date of the Driving Test. It was further held that it is not based on the interpretation of any provision of law applicable to driving of motor vehicles, but on the indefeasible legal effect of the prescriptions and terms of the recruitment rules and the P.S.C's notification over which the petitioners have no dispute. It was also held that the action of the P.S.C is in conformity with the prescription in the notification issued by it and the provisions in the recruitment rules, which as already noted, are not under challenge. Learned counsel for the Respondents also relied on the

judgment in '**Kerala Public Service Commission v. Sasikumar**' [2013 (4) KLT 315]. Therein, yet another Division Bench of this Court relying on the judgment in **Maheen's case** *supra*, has held in paragraph 6 as follows:

"6. We are of the definite opinion that the same applies on all fours to the facts of the instant case also. The contention now that if it was the intention of the Corporation that every applicant should have a current licence as on the last date of application, then the respondent ought to have been given an opportunity to cure the defect does not hold water. On a specific question put to the learned counsel as to whether an applicant who had a valid licence on the date of his application, which later expired, could take up a contention that he need renew it only before he was offered an appointment; the learned counsel answered in the negative. It is contended that in the instant case the respondent had the current driving licence at the time of his application. Looking at the facts, it is clear that though he had a valid driving licence on the date of his application, the respondent failed to apply for renewal within the time stipulated as per M.V. Act to see that the driving licence remained current throughout the selection process. By his own failure, a valid driving licence expired on 04.08.2010 and the respondent did not have a valid licence during three months till its renewal on 9.11.2010. The requirement that an applicant should have a current licence during the entire spectrum of his employment, as has been

stated in Maheen (supra), persuades us to reject the contention of the respondent and approve that of the P.S.C. The current driving licence stipulated in Exhibit P1 notification has to be current and valid during the entire selection process and that is the only interpretation that can be given to a stipulation requiring current driving licence on the date of application. It postulates the currency to be maintained throughout”.

11. Learned counsel for the petitioners contended that the judgments in '**Maheen**' and '**Kerala Public Service Commission**' *supra* were considered in a different context and in the judgment in '**Maheen**', the Court was considering the qualification prescribed under the Special Rules for appointment to the post of Police Constable Drivers in the Kerala Police Subordinate Service which read thus:

“5(1)(ii) Must possess a current Heavy Duty Vehicle Licence with badge”.

12. Learned counsel for the petitioners thereupon contended that, here, a Note contained in Ext.P1 notification specifically mentions only three separate occasions under which an applicant is expected to have a valid driving licence with badge. Learned counsel further contended that if the intention of the Respondents were otherwise, Note-4 should

not have been required at all to Clause-7 which prescribed qualification. Thus, the learned counsel contends that the normal, ordinary and popular meaning should be provided to the three circumstances contained under Note-4 and the Court is not expected to go beyond that in order to find out a meaning to the expression provided thereunder over and above the intention of the Respondents.

13. The said contention was strongly objected to by learned counsel for the Respondents, who contended that the current driving licence with badge is the qualification prescribed under Clause-7 to Ext.P1 notification and therefore even without relying on Note-4, one has to gather the ordinary and plain meaning and should understand that the current driving licence with badge is a continuing process not only during the process of selection but also continuously thereafter during his employment as a driver in order to drive the vehicles. Therefore, learned counsel for the Respondents contended that the interpretation given by the learned counsel for the petitioners cannot be legally sustained. It was further contended by the learned counsel that even if Note-4 is taken into account for the purpose of consideration, it can never be

said that an applicant is expected to have a licence only during the three circumstances mentioned there. But the three circumstances are followed and preceded by the conjoint expression 'and', and therefore it meant that the applicant should continuously having a valid licence throughout the entire period of selection process. It was also contended by the learned counsel that the Note provided to a main provision cannot supersede the intention of the main provision. Under the main provision so far as the qualification with regard to the licence was concerned, states that a 'current valid driving licence with badge' and thus it meant that during the entire selection process, i.e. from the date of application to the completion of the selection, an applicant should have licence continuously.

14. But, learned counsel for the Respondents has contended that it may be true that in the decisions *supra*, the Division Benches might have considered the currency of the licence with regard to a rule contained under a Special Rule, but the fact remains that a general principle was laid down by this Court in '**Maheen's** case *supra* that current driving licence with badge means the continuity of licence from the date of

application till the selection process is completed and even thereafter.

15. Having heard rival contentions of the learned counsel, perusal of the pleadings and the evidence on record, we are of the considered opinion that the question encircles the expressions used in Note-4 extracted *supra*. It is true that the normal rule of interpretation is that the words provided in a statute are to be understood in the natural, ordinary or popular sense and phrases and sentences are to be construed according to their grammatical meaning, unless that leads to some absurdity, ambiguity or there is something in the context or in the object of the statute to suggest to the contrary. This is a settled principle in the interpretation of the statutes for several decades. Here, the question is whether the expressions used in Note-4 can be provided with independent status for the purpose of having valid driving licence with badge to the applicants, so as to confine the requirement to the said three occasions alone. First of all, while considering the cases of applicants, who are drivers, this Court should bear in mind that a valid driving licence with badge is a necessary and vital requirement for a person to drive a heavy duty

vehicle. According to us, that is a necessary concomitant or corollary to the post and therefore while interpreting any provision with regard to a qualification prescribed, 'to possess a current heavy duty driving licence with badge', it should be borne in mind that the basic requirement is to be satisfied by the petitioners.

16. On a consideration of the facts of these cases, as admitted by the petitioners in the Original Petitions, it is categoric and clear that after the last date of the application and before the completion of the selection process, the petitioners failed to renew the licence/badge at some point of time. Therefore, according to us, it cannot be heard to say that the continuity of the licence was not an essential requirement so far as the prescription of the notification is concerned. In that view of the matter, we cannot agree with the arguments advanced by the learned counsel for the petitioners that a strict interpretation is to be provided to expression used in Note-4 to Ext.P1 notification. So also, according to us, even on a plain reading of Note-4, it is explicitly clear that since the conjunctive expression 'and' is used in the Note, it denotes the requirement of a current

driving licence with badge during the entire process of selection. Otherwise, instead of, 'and', it would have been a punctuation like, 'comma' or 'semi-colon' to point out that the applicant need only have the said requirement at the time of three different selection processes mentioned thereunder.

17. Learned counsel for the petitioners canvassed yet another proposition that the action of non-inclusion of the petitioners in the rank list is hit by the principle of promissory estoppel, in view of the fact that before the Practical Test of driving was conducted, the driving licences of the petitioners were verified by the authorities and only after having convinced that the petitioners had a current licence, they proceeded with the Practical Test. Therefore, learned counsel contended that the Respondents are duty bound to include the names of the petitioners in the rank list. We cannot agree with the said proposition of law canvassed by the learned counsel, for the reason that even assuming that the documents were verified, Respondents are not bound under law to include the petitioners in the rank list. At the most, by appreciating the said contention, we may arrive at a conclusion that the authority who verified the driving licences of the petitioners did

not understand the implication of law *vis-a-vis* the requirement of current driving licence with badge during the entire process of selection. Therefore, petitioners are not entitled to get the advantage by applying the principles of promissory estoppel.

18. In our considered opinion and view, if an interpretation is provided to Note-4, to mean that the applicants were expected to have a current driving licence only during the three occasions mentioned thereunder, we are afraid, we would be acting against the intention of the Respondents in the matter of selection process. So also, in our view, rather than giving interpretation to Note-4, from the words, phraseologies, expressions and terminology used thereunder, we need only provide life and meaning to Note-4, to understand that the applicants had to have a licence continuously during the entire process of selection.

19. That apart, according to us, that by itself constitutes a check and measure to identify the punctuality and responsibility of future incumbents as Drivers. A driver is normally expected to maintain a continuity of his licence as a basic requirement to drive vehicle on public roads in accordance with the provisions of the Motor Vehicles Act and

the allied Rules thereunder. Therefore, while interpreting such a provision, a Court is expected to provide a constructive, legalistic and resourceful meaning to the provision. This is a requirement necessitated to find out the sustainability of legislations/notifications/orders etc. etc.

20. To a query put by us to the learned counsel for the petitioners as regard to the number of candidates who were included in the rank list, it was answered by both the counsel for the petitioners as well as the Respondents that there are hundreds. Therefore, according to us, except the petitioners all other applicants have understood the purport and intent of the notification, that they should have a current licence with badge continuously during the entire process of selection. Therefore, we have no hesitation in arriving at a conclusion that majority of the applicants have understood Note-4 in its natural, ordinary and popular sense as to have the currency of the licence continuously during the entire process of selection. Therefore, we can only say that it is an irony that the petitioners herein had not understood the notification in a manner adaptable to the prudence, common sense and wisdom of an ordinary/common man.

21. Yet another aspect that persuades our mind is that, if the contentions of the learned counsel for the petitioners are accepted, then we will be overlooking the well-settled legal principle of subject and object rule. Here, in these cases, the subject is selection to Driver's post in the Police Department and the object is driving of vehicles of the Police Department and in order to drive the vehicles on road, a current licence with badge throughout his career is a basic requirement. Therefore, viewed in that background also, we are unable to accept the contentions raised by the petitioners. It may be true that the same expressions and terminologies used in a different context under a different set of facts while considering a statute which requires strict interpretation, a Court may be able to arrive at a different conclusion. But, in the present context and scenario, if we provide strict interpretation as to mean only the three occasions mentioned in Note-4 we will be doing violence to the intention behind Clause-7 of Ext.P1 notification. Viewed in that circumstances also, we cannot apply strict grammatical or etymological requirement of language *de hors* its ordinary, popular and meaningful sense. Moreover, 'Chambers 21st Century

Dictionary' defines 'current' as running or flowing and interlinks the expression with a 'stream' or 'flow of electricity', which thus means a continuous act.

22. It is also a cardinal and recognised principle of interpretation that the words and expressions used should be understood in a sense, which would harmonise with the object and avoid stalemate to the intention of the legislature. Learned counsel for the petitioners also contended that in the subsequent notification inviting applications to the post of Drivers, Respondents have clearly stated in the note that, applicants should have the licence continuously during the process of selection and therefore it is clear that under the impugned notification, the intention was to have the current licence on the occasions mentioned thereunder. To the said contention, we can only say that the Respondents have started employing language and expressions, which would satisfy the understanding of the general public and nothing more. But that by itself is not a valid and legal reason to interpret or explain Ext.P1 notification by providing life and meaning to Note-4 thereunder. So also, if and when two views are possible by looking into the construction of a statute or

legislation, Courts avoid narrow, pedantic and obscure approach, so as to achieve the manifest intention of the legislature. Therefore, while appreciating the cumulative factual, legal and contextual circumstances, it is clear that the applicants should have had driving licence with badge continuously during the entire process of selection to have secured a place in the rank list.

23. The Tribunal has arrived at a conclusion that the petitioners did not have a current driving licence with badge during an interregnum period of the entire selection process, and thereby non-suited the petitioners from securing any relief in their favour. We do not find any legal and factual situations to interfere with the orders passed by the Tribunal, invoking our jurisdiction under Article 227 of the Constitution of India.

Resultantly, these Original Petitions fail and they are accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE
Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
28.10.2015