

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

OP(KAT).No. 216 of 2015 (Z)

AGAINST THE JUDGMENT IN OA 95/2015 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 19-05-2015

PETITIONER(S)/4TH RESPONDENT BEFORE THE TRIBUNAL:

BHAVANI K AGED 38 YEARS
KOOLIKUNNU PARAMBIL HOUSE, KARADU.P.O.
VANIYAMBALAM VIA
MALAPPURAM DISTRICT-679 339. NOW RESIDING AT
PONNAN VEETILHOUSE
P.O.NADUVATH, WANDOUR, MALAPPURAM DISTRICT.

BY ADVS.SRI.R.K.MURALEEDHARAN
SMT.ATHIRA A.MENON

RESPONDENT(S)/APPLICANTS & RESPONDENTS 1 TO 3 BEFORE THE TRIBUNAL:

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1. MAYADEVI G, AGED 42 YEARS
W/O.T.VRANGANATHAN, RESIDING AT KARTHIKA
THOTTUKADAVU, KADAKKARAPPALLY, CHERTHALA
ALAPPUZHA DISTRICT-688 529.
 2. SUREKHA V.S, AGED 34 YEARS
W/O.BIJU, RESIDING AT THUNDIL VEEDU, UMayANELLUR.P.O.
VADAKKUMKARA WEST, KOLLAM DISTRICT-691 589.
 3. STATE OF KERALA
REP. BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.
 4. DIRECTOR OF VOCATIONAL HIGHER SECONDARY EDUCATION
DIRECTORATE OF VOCATIONAL HIGHER SECONDARY EDUCATION
HOUSING BOARD BUILDING, SANTHI BHAVAN
THIRUVANANTHAPURAM-695 001.
 5. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY SECRETARY, PATTOM
THIRUVANANTHAPURAM-695 004.

R3 & R4 BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE
R5 BY SRI.P.C.SASIDHARAN

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 216 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1- A TRUE COPY OF THE RELEVANT PAGES OF THE O.A ALONG WITH
EXHIBITS.**

**P2- A TRUE COPY OF THE REPLY STATEMENT FILED BY THE
PETITIONER/4TH RESPONDENT.**

**P3- TRUE COPY OF THE COMMON ORDER IN O.A 95/2015 AND
CONNECTED CASES DATED 19.05.2015.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

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**P.R.RAMACHANDRA MENON
&
BABU MATHEW.P.JOSEPH, JJ**

O.P.(KAT) No.216 of 2015

Dated this the 2nd day of July, 2015

JUDGMENT

P.R.RAMACHANDRA MENON,J

Declaration of ineligibility of the petitioner herein, for being appointed as “Vocational Instructor” in the Vocational Higher Secondary Education Department, referring to the absence of notified qualifications prescribed for the post, that too, in a case filed by the 1st and 2nd respondents herein, who could not have been deemed as “aggrieved parties” (in view of the nature of prayers and pleadings raised by them), is sought to be intercepted by filing the present original petition.

2. The petitioner herein came across a notification issued by the Public Service Commission, way back in the year 2005, inviting applications for the post in question. The qualification prescribed also contained an alternate qualification and under the firm belief that the petitioner was having the requisite qualification as prescribed by the PSC, application was submitted. The selection process was finalized by the PSC, who published Annexure A-1 rank list in the year 2008, where the petitioner was placed at 'rank no.1', in the

supplementary list for the OBC. The petitioner was waiting for his turn, to be appointed, based on her placement in the list as above.

3. While so, some of the candidates challenged the selection process referring to the course pursued by the Public Service Commission, in so far as the PSC wrongly reckoned the post graduate qualification in the concerned subject as an equivalent qualification to have considered and finalized the selection. According to the said applicants, the persons who were already selected and included in the select list, were not having the prescribed/notified qualifications and hence interference was sought for, with regard to the entire selection and rank list. The matter came up for consideration before a learned single Judge of this Court and after hearing both the sides and meticulous analysis of the facts and figures in the light of the binding precedents, Annexure A1 judgment was rendered on 15.12.2008 in W.P.(C).No.20771/2008 and connected cases whereby, it was held that the challenge raised in respect of the disputed qualification was liable to be upheld. It was accordingly held that the concerned candidates who were already selected and included in the rank list by the PSC on the basis of the disputed qualification, were not eligible to be included in the rank list. It was also observed by the learned

single judge that, for that reason, the entire rank list did not require to be set aside and that the concerned persons, who were actually not eligible to be included in the selection list, could be removed from the list and the list containing the names of actually qualified candidates could be given effect to. It was accordingly, that the candidates placed at ranks **no. 1,6,7,8 and the person at rank no.1 of the supplementary rank list** in respect of OBC candidates were ordered to be removed and the proceedings were directed to be finalized accordingly.

4. Of the turn of events, the aggrieved parties took up the matter by filing Writ Appeal no. 20771/2008 and connected cases. All the said cases were considered by a Division Bench of this Court and the verdict passed by the learned single Judge was affirmed, as per the decision reported in **2009 (2) KLT 161 (Kerala Public Service Commission Vs. Vivina)**. Though the matter was taken up further by approaching the Apex Court, interference was declined and the S.L.P (C) was dismissed. The position has become final.

5. Pursuant to the finality to the issue, the PSC proceeded with further steps so as to streamline the process and to have the list finalized retaining only the eligible persons and to have them advised for appointment. The ineligible persons were

caused to be removed accordingly. Notices were issued to the other ineligible or similarly situated persons as well, and after completing the proceedings, they were also removed from the rank list. This made some other persons who were already advised and appointed pursuant to the selection process finalized as per Annexure A-1 rank list and were holding the office to approach the Tribunal challenging the proceedings pursued by the PSC. Various grounds were raised in support of their claim. Apprehending coercive steps in this regard, the respondents 1 and 2 had also moved the Tribunal by filing O.A.971/2014, wherein, the petitioner herein came to be impleaded as the 10th respondent.

6. In the course of further proceedings, the PSC was of the view that the petitioner herein, was also a duly qualified candidate, by virtue of the alternate qualification prescribed and accordingly, she was advised for appointment, who joined duty in the office of 4th respondent. By virtue of the turn of events, the respondents 1 and 2 herein approached the Tribunal again by filing O.A.No.95/2015, pointing out that, after seeking to displace the said applicants, PSC had accommodated the petitioner herein, leading to her appointment, inspite of the fact that the petitioner did not stand to be qualified, either by virtue of the primary

qualification or by virtue of the alternate qualification. The petitioner herein was arrayed as 4th respondent in the said original petition.

7. After completing the pleadings and proceedings, all the matters were posted together and they were heard by the Tribunal. In the case of the respondents 1 and 2, the Tribunal arrived at a finding in O.A.971/2014 that, they were having only the post graduation qualification; but they could be displaced only to accommodate the applicants in T.A.No.4969/2012. Coming to O.A.95/2015, the Tribunal held that the 4th respondent (petitioner herein) was not having either the primary qualification, or the alternate qualification particularly since the certificate stated as issued and possessed by the 4th respondent could not be treated as an equivalent qualification to the Diploma stipulated and notified by the PSC. By virtue of the positive declaration as above, the petitioner herein, who is to lose the job has approached this Court mainly raising a contention that the O.A.95/15 itself is not maintainable, by virtue of the law declared by the Apex court in ***Dr.Duryodhanan Sahu & Others v. Jithendra Kumar Misra & Others (1998)7 SCC,2003***). The contention is that the O.A could have been filed and maintained only by an “aggrieved party”, by virtue of the mandate under Section 19

of the Act and that by causing exit of the petitioner herein, for want of qualification, the applicants in the said O.A. could not have aspired appointment as the relief sought for in the said original application was only to declare the petitioner as not qualified and nothing more.

8. Heard Sri.R.K.Muralidharan, learned counsel appearing for the petitioner at length and also Sri.Joseph George, the learned Sr.Government Pleader appearing for the respondent and Sri.P.C.Sasidharan, the learned Standing Counsel appearing for the PSC.

9. The primary question to be considered is whether any interference is warranted by invoking the supervisory jurisdiction of this Court under Article 227 in respect of the order passed by the Tribunal and if so, to see where the Tribunal has gone wrong. For analyzing, this issue, it has to be considered whether the petitioner does satisfy the requirement, possessing the prescribed qualification, so as to be included in the rank list and to have been appointed by the PSC. The qualifications notified by the PSC for the post in question are under the following terms:

" A pass in Vocational Higher Secondary Course in Clothing and Embroidery conducted by the Government of Kerala or its equivalent with B.Sc. Home Science

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degree awarded by any of the Universities in Kerala or an equivalent Qualification

OR

Pre-degree awarded by any of the universities in Kerala or its equivalent with Diploma in Costume Designing and Dress Making awarded by the Department of Technical Education".

10. The learned counsel for the petitioner concedes that the petitioner does not have the 'primary qualification' as notified above but the version is that the petitioner is having a B.A.degree in Economics and that she has been issued VHSC certificate by the Department of Technical Education involving the subject KGTE (Lower & Higher) in Tailoring, Embroidery and Needle work. It is stated that she has passed VHSC course in Agriculture - plant protection. The traits of the petitioner were analyzed by the Tribunal and it was held that the qualification possessed by the petitioner was not a notified qualification and that the certificate obtained by the petitioner could not be treated as equivalent to VHSC (Clothing & Embroidery) or B.Sc. (Home Science). The claim of the petitioner that the KGTE certificate possessed by her was to be treated as equivalent to the Diploma in Costume Designing and Dress making awarded by the Department of Technical Education as stipulated in the

notification, could not have been true, for the plain reason that the notification (which reflected the position as per the special rules) did not provide for accepting any “certificate qualification” as equivalent to the 'Diploma qualification'. Reliance was also sought to be placed on the decision rendered by the Full Bench of this Court reported in ***Suma v. Kerala Public Service Commission (2011)1 KLT Page 1***, wherein, it was held that, Technical examination Certificate can never be equated with the Diploma qualification, by any norms.

11. It is relevant to note that inspite of the serious dispute raised by the applicants in the concerned O.A, particularly with regard to the challenge against the absence of qualification of the 4th respondent (petitioner herein) and the course and events pursued by the PSC in selecting her and placing her in the rank list also giving advice and appointment, the PSC had not chosen to file any reply statement as observed in paragraph 10 of the common order. The circumstance under which the petitioner came to be included in the rank list, securing employment and obtaining undue favours was noted as a disturbing feature and was deprecated. The Tribunal has also exclaimed, as to how a person having B.A.Economics and Technical Examination certificate in the concerned subject was

treated as qualified and advised for appointment. It was in the said circumstance, that the PSC was directed to hold an appropriate enquiry and to take necessary action as warranted against the concerned officials as given in Paragraph 19 of the P3 verdict. This Court finds that, there is absolutely no merit or bonafides with regard to the case projected by the petitioner so as to enable her to have been advised, appointed and to have continued in service.

12. The remaining point is only with regard to the challenge raised by the petitioner with reference to section 19 of the Tribunals Act and the decision rendered by the Apex Court in **(1998(7) SCC Page 273) Dr.Duryodhanan Sahu & Others v. Jithendra Kumar Misra & Others**. Section 19 reads as follows:

"It is shown that the Apex Court held in its decision, explained the scope of the provision that only a person aggrieved can maintain a petition towards the tribunal".

13. Now comes the question, whether the respondents 1 and 2 herein who preferred the O.A, could have considered as 'persons aggrieved' or not. The prayers raised by the said parties (applicants) in O.A. No.95/2015 are in the following terms:

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- a) *To call for the records leading to Annexure -A5, 5 (a) and A6 9b) canceling applicant's advice and set aside the same;*
- b) *to call for the records relating to Annexure -A7 to that extent it orders to terminate applicant's service, and set aside the same;*
- c) *Direct the 1st respondent to consider and pass orders on Annexures - A8, A8 (a) and A8 (b) within a time frame to be fixed by this Honourable Tribunal after hearing the applicants;*

And

- d) *Grant such other reliefs this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case including the costs of this Original Application.*

12. So as to sustain the prayers, the concerned applicants have raised various grounds; wherein, it is categorically stated that the appointments given to them in the year 2008 stands cancelled in 2014, after a period of six years; that too, without a notice of hearing. They have stated that, after cancelling their advice, the PSC had issued advice memo to the 4th respondent (petitioner herein), an unqualified hand, treating as having equivalent qualification and hence that the action of the PSC was illegal, arbitrary, unjustifiable and liable to be set aside. Further expansion of the case was given as per Grounds B,C and D as well. It is to be borne in mind that the said O.A filed by respondents 1 and 2 herein was considered along with the other connected matters, which

included O.A.971/2015 preferred by the very same parties wherein the prayers raised (as revealed from the copy of the relevant O.A handed over by the Learned Counsel appearing for the petitioner) are as follows:

“.....the applicants preferred Annexure A8 series representations before the Government praying to invoke the power of the Government under Rule 39 of the Kerala State and Subordinate Service Rules ('KS & SSR' for short) and regularize their appointments. Thereafter, this Original Application is filed praying to quash Annexure A6 series communications of the Public Service Commission and also Annexure A7 order of the Director terminating them from service. They also prayed for a direction to the Government to consider and pass orders on Annexure A8 series representations filed by them under Rule 39 of the KS & SSR. The applicants submit, they were advised and appointed in 2008 and after the lapse of six years their advices and appointments cannot be canceled in view of the provisions contained in Rule 3(C) of Part II of the KS & SSR wherein a time limit of one year is prescribed for recall of advice and cancellation of appointment.”

14. In other words, the course pursued/proposed to be pursued by the PSC in cancelling the memo, after the advice and appointment effected nearly six years ago, was ought to be intercepted by filing O.A.971/2014, wherein reference was also made to the credentials of the petitioner herein; who was subsequently impleaded as the additional 10th respondent in the said proceeding.

15. On coming across the fact that the petitioner herein who was subsequently advised and appointed, despite the lack of requisite qualification, it gave another cause of action for the respondents 1 and 2 herein, to bring the instance of discrimination pursued by the PSC to the notice of the Tribunal, which led to the filing of O.A.95/2015 for a positive declaration to the effect that the petitioner herein who was arrayed as 4th respondent in the said O.A. was having no requisite qualification and for appropriate relief. The pleadings and prayers concerned, raised by the respondents 1 and 2 herein, both by way of O.A.s 971/2014 and 95/2015 are to be read together. This is also for the reason that the respondent 1 and 2 herein were always at liberty to have filed necessary proceedings to get the O.A.971/2014 amended, raising appropriate pleadings and prayers, challenging the qualification and also the appointment of the 10th respondent therein (petitioner herein). Instead of doing that, in view of the subsequent cause of action which arose in 2015, after filing O.A.971/2015, it was sought to be exposed by a fresh O.A., i.e, O.A.95/2015. This being, the position, it cannot be said that the applicants who filed O.A.95/2015 were not to be treated as an 'aggrieved party', so as to come within the purview of the law declared by the Apex court in decision cited ***supra*** which refers to the mandate of Section 19 of the Tribunals Act. The contention raised by the petitioner to the said extent, stands repelled.

16. In the above circumstance, this Court finds that the

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original petition is devoid of merit and none of the grounds raised in support thereof could be held as tenable. Interference is declined and the Original Petition is dismissed accordingly.

**Sd/-
P.R.RAMACHANDRA MENON
JUDGE**

**Sd/-
BABU MATHEW.P.JOSEPH
JUDGE**

//TRUE COPY//

PA TO JUDGE

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