

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WA.NO. 399 OF 2015 () IN WP(C).26937/2014

AGAINST THE JUDGMENT IN WP(C) 26937/2014
OF HIGH COURT OF KERALA DATED 13-11-2014

APPELLANT(S)/RESPONDENTS:

1. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY
KERALA PUBLICSERVICE COMMISSION, PATTOM
THIRUVANANTHAPURAM - 695 004.

2. THE SECRETARY
KERALA PUBLIC SERVICE COMMISSION, REGIONAL OFFICE
ERNAKULAM (NEAR SOUTH RAILWAYSTATION
EASTERN ENTRY TOWER) - 682 035.

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

RESPONDENT(S)/PETITIONER:

ROSHINI K.S
D/O.SHANKARAN NAMBOOTHIRI, W/O.RAJESH E.M.
EDAPILLY MANA, SOUTH VAZHAKULAM, ALUVA
ERNAKULAM - 683 105.

R1 BY ADV. SRI.R.LAKSHMI NARAYAN
R1 BY ADV. SMT.R.RANJINI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
30.07.2015, THE COURT ON 07.08.2015 THE SAME DAY DELIVERED THE
FOLLOWING:

“C.R”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.399 of 2015

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Dated this the 7th day of August, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed against the judgment dated 13.11.2014 in W.P(C) No.26937 of 2014 by which judgment, the learned Single Judge has allowed the Writ Petition filed by the petitioner. The Kerala Public Service Commission (hereinafter referred to as “the Commission”) aggrieved by the judgment has come up in this appeal.

2. Brief facts giving rise to the Writ Petition as emerged from the pleadings of the parties are: The Commission invited applications with photo uploaded online for Category No.489/11 for the post of Junior Assistant/Casher/Assistant Grade II/Clerk Grade I/Time

Keeper Grade II/Senior Assistant/Assistant/Junior Clerk, etc. Petitioner, from the website of the Commission downloaded the details of Category No.489/11 and submitted application for the post. The last date for submission of the application was 08.02.2012. Written test was notified on 08.06.2013. Petitioner downloaded the admission ticket and identification certificate from the website of the Commission. The identification certificate downloaded by the petitioner contained her photograph with name and date. Petitioner appeared in the written examination and her name was included in the short list of successful candidates published by the Commission on 23.05.2014. The Commission vide letter dated 08.07.2014 called the petitioner to appear in person for document verification with the documents mentioned therein. One of the documents required to be brought was "passport size photo taken within 6 months".

Petitioner appeared for the document verification on 16.07.2014 with all the required documents. The 2nd respondent was fully satisfied with the verification of the documents produced by the petitioner. Rank list was published by the Commission for Category No.489/11 in which petitioner's name was not included. Petitioner secured 78 marks out of 100. The rank list included name of persons who secured less marks than the petitioner. Petitioner aggrieved by the non-inclusion of her name in the rank list filed the Writ Petition with the following prayers:

“i) Issue a writ of mandamus directing the 1st respondent to place the petitioner in the rank list dated 22.09.2014 published by the 1st respondent for category No.489/11, appropriately and further direct the 1st respondent to advise the petitioner for appointment, in accordance with her turn, in accordance with law.

ii) Pass such other writs, orders or directions as this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case.

iii) Allow this Writ Petition with cost.”

3. The Commission filed a counter affidavit in the Writ Petition. The reason given by the Commission for non-inclusion of petitioner's name in the rank list was that even though petitioner's photo on the application bears name and date, it was not acceptable since the date printed on the photograph was 15.12.2010 whereas it was stipulated in the notification that the photo uploaded should be after 31.12.2010 with the name and date of the candidate printed in the bottom of the photograph. Petitioner filed a reply and pleaded that Ext.P1 notification which was downloaded by the petitioner from the website of the Commission did not contain any stipulation that the photograph uploaded should be the one taken after 31.12.2010. The detailed instructions as stipulated in Ext.P1 that is general conditions given in Part II were not anywhere traced out online. The requirement of photograph

being taken after 31.12.2010 being not uploaded in the website of the Commission, petitioner could not comply with that part of the requirement. Had she been aware that the photograph should be the one taken after 31.12.2010, she could have easily submitted the photograph taken after 31.12.2010. It is stated that at the time when the documents were verified she produced photograph taken within six months from the date of verification and thus the said condition was fully satisfied by the petitioner. Learned Single Judge while hearing the Writ Petition directed the Standing Counsel for the Commission to submit hard copy of the general conditions downloaded from the website to indicate that at any time the website contained the information in question. But the learned Standing Counsel could not submit the hard copy downloaded from the website of the Commission to indicate that the information in question was uploaded in the website rather the

Standing Counsel submitted a neatly typed copy of the instructions which was not a downloaded copy from the website.

4. The learned Single Judge held that on facts, the petitioner has made out a case for issuing a direction for inclusion of her name in the rank list since it was not due to any fault of her in not uploading the photograph taken after 31.12.2010. The photograph which was affixed was taken on 15.12.2010, i.e., only 15 days before the stipulated date. Learned Single Judge allowed the Writ Petition directing the Commission to include the name of petitioner in the rank list at appropriate place. Learned Single Judge further observed that if any less meritorious candidate than the petitioner has been given advice, his/her name shall not be disturbed. Against the said judgment, the Commission has come up in this appeal.

5. Shri P.C.Sasidharan, learned Standing Counsel

for the Commission challenging the judgment of the learned Single Judge submitted that the learned Single Judge committed error in allowing the Writ Petition whereas the condition as stipulated in the Notification dated 31.12.2011 which was published in the Official Gazette requiring “photograph uploaded should be of colour/black and white taken after 31.12.2010” was not complied. It is stated that the said Notification was available in the website of the Government of Kerala. He further submitted that the above condition was also on the website of the Commission which might have been taken out of the website due to lapse of time and may not be available as on date. But that does not disentitle the Commission from rejecting the candidature of a candidate who has not complied with above said condition. It is submitted that the issue has been considered by several Division Benches of this Court and learned Single Judges where it has been laid

down that the Commission is fully entitled to reject the candidature of a candidate for non-compliance with the condition of the photograph bearing name of the candidate and date as specified. He submitted that before the learned Single Judge copy of the conditions containing the aforesaid conditions was submitted. A copy of the said documents (in Malayalam) have been produced before us. He submitted that in the Notification which was published in the website of the Commission, ie., Ext. P1 there was a note, namely, "for further details see the general conditions given in Part II." He submitted that the general conditions contained the requirement of photograph being taken after 31.12.2010 and bearing the name of the candidate.

6. Learned counsel for the Writ Petitioner refuting the submissions of the learned Standing Counsel for the Commission contended that in the website of the Commission where Ext.P1 notification

was uploaded, it did not contain any requirement that the photograph to be uploaded should be taken after 31.12.2010. It is submitted that the general conditions as given in Part II as mentioned in Ext.P1 could not be downloaded, it being not available in the website of the Commission. It is submitted that before the learned Single Judge in spite of a specific direction to place before the Court hard copy of the instructions uploaded in the website, containing the above conditions, the Standing Counsel for the Commission failed to produce any material to indicate that at any point of time the above condition was uploaded in the website of the Commission. It is submitted that what was produced before the learned Single Judge was the typed copy of the conditions which was not uploaded in the website as has been held by the learned Single Judge in the judgment. It is submitted that Division Bench judgments relied on by the learned Standing Counsel for the

Commission were all cases where the candidates did not mention date of photograph and name of the candidate. The Division Bench held that in the above circumstances the application suffered major defect and was rightly rejected by the Commission. It is submitted that in the present case petitioner's name as well as date of photograph was very much there as is evident from Ext.P2 which is the identification certificate of the petitioner downloaded from the website. It is submitted that only minor defect which is being highlighted by the Commission is that the photograph uploaded by the petitioner contained the date 15.12.2010 whereas it ought to have been after 31.12.2010. It is submitted that 15 days' difference in the taking of photograph was not such a defect which required rejection of the candidature. More so, when at the time of verification of the documents petitioner produced photograph taken within six months from the

date of verification and respondent No.2 was fully satisfied with the documents produced at the time of verification including the photograph. Candidates who secured less marks than the petitioner were included in the rank list whereas petitioner's name was not included due to the above reason. Learned counsel for the petitioner also submitted that before the petitioner could obtain any benefit of the judgment of the learned Single Judge, unfortunately her husband died on 19.03.2015 due to unexpected massive cardiac arrest. With no fault of the petitioner she has been denied justice at the hands of the Commission.

7. Learned counsel for the parties have relied on various judgments of the Apex Court and this Court which shall be referred to while considering the submissions in detail.

8. From the submissions of the learned counsel for the parties and pleadings on record, the following are

the issues which arise for consideration.

I. Whether the Commission by any material on record proved that the conditions/instructions regarding photograph to be uploaded in the web site be taken after 31.12.2010 was available in the website of the Commission?

II. Whether the learned Single Judge committed any error in allowing the Writ Petition directing the Commission to include the name of petitioner while the photograph uploaded by the petitioner in her application was dated 15.12.2010 whereas it ought to have been after 31.12.2010?

9. For answering the above issues, pleadings on record have to be looked into. Petitioner's categorical case in the Writ Petition is that although in the bottom portion of Exhibit P1 Notification it was stated that general conditions are given in Part II, despite all earnest efforts, Part II could not be traced out online. Petitioner's clear pleading was that Part II as notified in

the Notification was not published in the online and even on date Part II is not available in the website. The following pleadings were made in paragraph 2 of the Writ Petition:

“Though it is given in the bottom portion of the notification that general conditions are given in part II, despite all earnest efforts, Part II could not be traced out, online. The petitioner conformed that Part II, as specified in the notification, has not been published, online. Even now part II is not available in the web site. The petitioner also complied with all the conditions and instructions given to the candidates, including submission of application, with photo uploaded. The last date for submission of application was on 8.2.2012. The petitioner applied very early to the last date. Subsequently, date of written test was notified as 8.6.2013. The petitioner downloaded the admission ticket and identification certificate of the petitioner from the web site of the 1st respondent, for the examination. The photocopy of the admission ticket and identification certificate is produced herewith and marked as Ext.P2. From Ext.P2, it is clear that the identification certificate bears photograph of the petitioner with name and date as 15.12.2010.”

10. Though the Commission filed a counter affidavit there was no paragraph wise reply to the pleadings of the petitioner. In paragraph 7 the following was stated by the Commission.

“From the above facts it is clear that Smt.Roshni K.S. was not included in the ranked list, since the photo uploaded by her was not according to the stipulations in the Gazette notification. Even though her photo bears name and date, it was not acceptable since the date printed on the photo was 15.12.2010. It was clearly stipulated in the notification that the photo uploaded should be taken after 31.12.2010, with the name of candidate and date of taking photo printed at the bottom of the photograph. Hence she was not included in the ranked list.”

11. From the above averments it is clear that the Commission has referred to Exhibit P1 Notification where according to it petitioner's uploaded photograph was not conforming. Although in paragraph 8 it was

specifically pleaded that in each issue of PSC Bulletin there was specific and unambiguous instructions regarding uploading of photos and press release in this regard was also given in the leading news papers and instructions regarding uploading of photos have been posted on the website of the Commission no material was placed before the learned Single Judge to prove that instructions regarding uploading of photos were posted on the website of the Commission. The learned Single Judge has recorded findings in the above context in paragraphs 15 and 16 which are to the following effect:

“15. On the last occasion when the matter was heard in part, this Court directed the learned Standing Counsel to submit a hard copy of the general conditions downloaded from the website to indicate that at any point of time the website contained the information in question. Today, the learned Standing Counsel did submit the information which is a neatly typed copy, but not a hard copy directly downloaded from the website. He has submitted that in the light of the

change in the web portal name, the information could have been removed from the website. This contention, I am afraid, cannot be countenanced. The respondents do not dispute that even now the official website of the respondents contains Exhibit P1 notification, but not the alleged information concerning the general conditions. Had it been the case of removing the information owing to the fact that the recruitment process was complete, it makes sense to expect that the entire information, including Exhibit P1 notification, must have been removed.

16. The learned Standing Counsel has been candid enough in admitting that this method of providing information through website was not there in the initial phase; it was taken recourse to only from 2010 onwards. Going by the demonstrably convincing submission of the learned counsel for the petitioner that at no point of time, including today, did accessing the respondent's website lead to any general conditions, the petitioner could not have been at fault in affixing an older photograph. I have used the expression 'Demonstrably' for the reason that today, too, the learned Counsel has brought the laptop with wi-fi connection to demonstrate before the Court that Ext.P1, though still available in the online, does not have the general conditions annexed to it. Coupled with this is the fact that the learned Standing Counsel for the respondent could not produce any hard copy of those general guidelines downloaded either in the past or in the present. I am, therefore, constrained to conclude that all along the website has not contained the information or, in the alternative, it was not readily accessible.

Indeed, on more than one occasion, the learned Division Benches of this Court have concluded that omission on the part of the applicants, either in not signing on the photograph or in not reflecting the date on the face of it, would amount to a major and incurable defect rendering the application liable for rejection. The decisions cited across the Bar are essentially based on the Division Bench decision in **Sasikala's case** (supra)."

12. In this appeal which has been filed by the Commission also no material has been brought on record, the instruction that photograph ought to have been taken after 31.12.2010 has been uploaded in the website of the Commission or it was available with the Commission at the relevant time or as on date. The learned Single Judge during hearing of the Writ Petition has granted opportunity to the Commission to submit a hard copy downloaded from the website containing the aforesaid conditions that the photograph should be taken after 31.12.2010 but the learned Single Judge has returned a finding that no downloaded hard copy of the

instructions from the website was submitted rather only a neatly typed copy of the instructions have been placed before the Court. As observed above, in the Writ Petition also when the findings were returned by the learned Single Judge that the above instructions were not uploaded in the website, no materials have been brought in the appeal to indicate that the aforesaid observations of the learned Single Judge are incorrect.

13. Learned Standing Counsel for the Commission has submitted that the said requirement was published in the Gazette Notification dated 31.12.2011 which was uploaded in the Government website. The Gazette Notification dated 31.12.2011 which was published in the Gazette and uploaded in the website of the Government did contain the condition that the photograph uploaded should be taken after 31.12.2010. But a candidate who has to submit an online application shall submit application on the basis of the

notification uploaded on website of the Commission as well as the instructions contained therein.

14. Learned Standing Counsel for the Commission before us also submitted a typed copy of the instructions which contained the stipulations regarding uploading of photograph which should have been taken after 31.12.2010. Copy of the instructions which has been handed over to us by the learned Standing Counsel for the Commission be kept on record. A perusal of the said document indicate that the said document is not downloaded from the web site rather it is a typed copy of the instructions. The above fact clearly fortifies the finding recorded by the learned Single Judge and in so far as the Notification Exhibit P1 is concerned instructions were not uploaded. It is relevant to note that in Exhibit P1 with regard to the mode regarding sending of applications the following is mentioned in paragraph 8 which is quoted below:

“8. Mode of sending Applications:-

Applications with photo uploaded shall be submitted online only. Detailed instructions regarding the submission of applications are available in the website of Kerala Public Service Commission viz. www.keralapsc.org. No application fee is required. The barcode number in the application form shall be quoted in all further enquiries/correspondences. Documents to prove qualification, age and community have to be produced as and when called for. Applications which are submitted not in accordance with the instructions given in the website will be summarily rejected.”

15. The above stipulation mentioned only that the photograph uploaded shall be submitted online.

16. In the above view of the matter, we are of the view that no material has been placed even in this appeal to support the submission of the learned Standing Counsel for the Commission to come to the conclusion by us that the finding recorded by the learned Single Judge that the stipulation regarding photograph being after 31.12.2010 was not available in the website of the Commission. Petitioner thus cannot

be made to suffer on not having uploaded the photograph taken after 31.12.2010.

17. The only defect in the application of the petitioner which has been highlighted by the Commission is that the uploaded photograph ought to have been taken after 31.12.2010 whereas the photograph uploaded by the petitioner was taken on 15.12.2010. Thus there is only 15 days' difference regarding the date of the photograph. There is no dispute that photograph uploaded by the petitioner bears her name as well as date of the photograph. Learned Standing Counsel for the Commission has heavily relied on the Division Bench judgment of this Court in **Sasikala v. Kerala Public Service Commission** (2012) 2 KLT 585). In the above case petitioner applied for selection. Clause No.1(a)7 of that notification required that the application shall include a photograph taken within a period of six months of the

application and with the name of the applicant and the date of the recording of the photograph written on that photograph. Facts have been noted in paragraph 1, which is to the following effect:

“1. The petitioner applied for selection on the basis of a notification issued by the Kerala Public Service Commission. Clause No. 1(a)7 of that notification required that the application shall include a photograph taken within a period of six months of the application and with the name of the applicant and the date of the recording of the photograph written on that photograph. Admittedly, the petitioner did not write her name or enter the date of photographing, on the photograph which was printed and uploaded while submitting the application on - line. KPSC rejected that application. The petitioner's challenge against that stands turned down by the Kerala Administrative Tribunal. In doing so, the Tribunal has followed the unreported judgment dated 04/07/2011 of a learned Single Judge of this Court (Mr. Justice C. T. Ravikumar) in WP (C) No. 17767 of 2011. Hence this original petition by her.”

In the above case the petitioner did not write her name or enter the photograph on the basis of which the

Commission rejected the application. Matter was taken to the Kerala Administrative Tribunal which rejected the claim of the petitioner against which the Writ Petition was filed. The Division Bench in the above case laid down in paragraph 3 and 4 as quoted below:

“3. Having heard learned counsel for the petitioner and the learned counsel for the KPSC, we see that the decision in Manojkumar (supra) was rendered in a case where the challenge was against the action of the KPSC extending opportunity to rectify the defects. As noted by the learned Single Judge in that case, KPSC had granted opportunity to rectify what it termed as 'minor defect' to all candidates who had committed such minor defects. But in the case in hand, if we were to treat the non - mentioning of the identity of the person and the date on which photograph is taken on the photograph as a minor defect, the very concept of the word 'minor' as an adjective to the word 'defect' would be lost sight of. The two crucial requirements are that the name of the person and the date of photographing shall be written on the photograph. The need for the mentioning of the name of the person is to identify the applicant. The date on which the photograph was taken has to be mentioned. That is for the purpose of ensuring that the photograph was taken within a period of six months

before the application. Either way, we are unable to see that the said defect can be passed off as a minor one. We are of the view that the ratio in Manojkumar (supra) does not apply to the facts in this case.

4. Adverting to the judgment in WP (C) No. 17767 of 2011, we find that clause No. 1(a)7 has been pointedly considered and it has been rightly held that such conditions have been made with a view to prevent impersonation and ensure fairness in the conduct of examination. In our view, the learned Judge was justified in saying that such conditions cannot be taken as insignificant especially in the light of reported incidents. We affirm the view expressed in WP (C) No. 17767 of 2011.”

The Division Bench held that the photograph did not contain the name and date which cannot be said to be a minor defect and it was held that the said condition was made with a view to prevent impersonation and to ensure fairness in the conduct of the examination. There cannot be any dispute to the proposition laid down by the Division Bench in the above case. But in the present case as noted above, name of the candidate as well as the date of the photograph was

very much written in the photograph. The only shortcoming was that the photograph ought to have been taken after 31.12.2010 whereas it was dated 15.12.2010.

18. In this context one more fact which needs to be noted is that in Exhibit P4 letter by which the petitioner was called for certificate verification condition No.4 of the documents to be produced contained the following:

“4) Passport size photo taken within 6 months”.

Petitioner had pleaded that in response to Exhibit P4 she appeared on 16.07.2014 and got her documents verified including the passport size photograph taken within six months. It is pleaded that respondent No.2 was fully satisfied with the verification of documents and photograph. Thus at the time of verification passport size photograph taken within six months was submitted and the photograph was got verified. In the

above background it cannot be said that the learned Single Judge has committed error in allowing the Writ Petition setting aside the rejection of the candidature.

19. Another Division Bench judgment which has been relied on by the Commission is **Sreejesh Vijayan v. State of Kerala (2014 [1] KLT 1003)**. In the above case also the photograph uploaded along with the application did not contain the name and date on which photograph was taken. The Division Bench relying on the ratio of its earlier judgment in **Sasikala's case (supra)** has held the following in paragraph 2:

“2. The learned counsel for the petitioner made reference to the decisions in Ushakumari v. State of Kerala, 2013 (4) KLT 11 and in WP(C) Nos.10989 and 10991 of 2012 referred to in Ushakumari's case. The judgment in WP (C) Nos.10989 and 10991 of 2012 clearly shows that the learned Judge did not proceed to lay down any principle of law, after having noted that the defects pointed out cannot be brushed aside as immaterial. The learned Judge had taken a lenient view, as stated in that judgment, to direct that the applications of the petitioners in those cases be

considered. We further find that the Ushakumari's case (supra) is decided relying on the judgment in WP (C) Nos. 10989 and 10991 of 2012 without stating any further principle of law. We deem it appropriate to now point out that as stated in Sasikala's case (supra), the whole object sought to be achieved is to ensure not only transparency, but also to exclude the possibility of any allegation as to impersonation. It has to be remembered that such allegations can come against the PSC and the process of examination and selection, even after the selection process is over. It was, therefore, that the view expressed in WP (C) No. 17767 of 2011 was affirmed in Sasikala's case (supra)."

There cannot be any dispute to the ratio of the Division Bench as laid down above. As noted by the Division Bench, the object of including such condition was to ensure not only transparency but also to exclude the possibility of any allegation as to impersonation. In the present case there was no breach of any transparency nor there is any allegation of impersonation.

20. Other judgments relied on by the learned Standing Counsel for the Commission lay down the

same ratio as stated in **Sasikala's case (supra)**.

21. We are thus of the clear opinion that the judgment relied on by the Standing Counsel for the Commission are distinguishable and the learned Single Judge in the judgment did not take any view which is contrary to the view laid down by the Division Bench judgment.

22. Be, that as it may, even if it is assumed that the Commission was justified in rejecting the candidature of the petitioner, the above was a fit case where High Court in exercise of writ jurisdiction under Article 226 of the Constitution could have interfered in the matter. The Apex Court in **T. C. Basappa v. T.Nagappa and another** (1954 SC 440) laid down the scope of Article 226 is very wide and can be used to remedy injustice wherever it is found.

23. The Apex Court in **State of Punjab v. Shamlal Murari** ([1976] 1 SCC 719) had occasion to

consider the consequence of non-compliance of Rule 3 of the Punjab and Haryana High Court Rules. Rule 3 required that no appeal under clause 10 of the Letters Patent will be received by the Deputy Registrar unless it is accompanied by three typed copies of the three documents mentioned therein. In the above case there was non-compliance of Rule 3. In the above context the High Court has entertained the appeal. The State took up the matter in appeal. Dismissing the appeal, the Apex Court laid down the following in paragraph 8:

“8.....We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand maid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, Courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory

traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time.....”

24. Learned counsel for the petitioner has also placed reliance on the judgment of the Apex Court in **UPSC v. Gyan Prakash Srivastava** ([2012] 1 SCC 537). In the above case the respondent in response to an advertisement issued for the post of Legal Advisor did not submit his Law Degree rather had submitted a certificate issued by the Bar Council of Uthar Pradesh under Section 22(1) of the Advocates Act. Application was rejected by the Commission finding that the petitioner had not enclosed any document to show that he had been awarded a Degree in Law by a recognized University, which is an essential qualification for the post of Legal Advisor. Matter was taken to the Tribunal. The Tribunal allowed the claim against which the Commission took up the matter in the Apex Court. The Apex Court dismissed the appeal filed by the

Commission. It is thus clear that whether an infraction of a condition in the advertisement shall entail rejection of candidature depends upon facts of each case and it cannot be said that there has to be mechanical rejection of all applications. Although on non-fulfillment of the stipulations as required in the advertisement the Commission has right to reject the candidature, when the matter is taken to the High Court under Article 226, Court is entitled to look into the facts of each case and can consider whether injustice has been meted out in a particular case. Learned Single Judge has exercised the discretion in favour of the petitioner by which justice has been meted out. Interfering with the order of the learned Single Judge will be erasing the justice which has been given to the petitioner. In this context, we refer to the following observations of the Apex Court in **Roshan Deen v. Preeti Lal** ([2002] 1 SCC 100):

“.....Time and again this Court has reminded that the power conferred on the High Court under Art.226 and 227 of the Constitution is to advance justice and not to thwart it. (vide State of Uttar Pradesh v. District Judge, Unnao and Others (AIR 1984 SC 1401). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the byproduct of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.”

25. We are thus not persuaded to interfere with the judgment of the learned Single Judge.

Writ Appeal is dismissed.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**