

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WA.No. 504 of 2014 () IN WP(C).31565/2013

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AGAINST THE ORDER/JUDGMENT IN WP(C) 31565/2013 of HIGH COURT OF KERALA
DATED 14-02-2014**

APPELLANT(S)/RESPONDENTS:

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- 1. KERALA PUBLIC SERVICE COMMISSION,
THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.**
 - 2. CHAIRMAN,
KERALA PUBLIC SERVICE COMMISSION, PATTOM.P.O,
THIRUVANANTHAPURAM-695 004.**

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

RESPONDENT(S)/PETITIONER:

**BEJOY SEBASTIAN,, AGED 33 YEARS,
S/O.M.R.XAVIER, WORKING AS ASSISTANT, H-SECTION,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

R BY SMT.SMITHA GEORGE

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

**THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.**

W.A.No.504 of 2014

Dated this the 2nd day of February, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1.This writ appeal by the Kerala Public Service Commission is against the judgment of the learned single Judge directing that the result of the departmental test in which the writ petitioner appeared for the paper “KSR Part I Lower” be published, treating his candidature as one in accordance with law. We have heard the learned legal retainer for the Public Service Commission and learned counsel appearing for the respondent in the writ petition.

2.The writ petitioner applied for participating in the departmental test. He appeared in that test on 13.02.2013. Annexures A1 to A3(a) produced along with I.A.No.683 of 2014 in this appeal are the copies of the documents presented by the writ petitioner and on which would depend resolution of

the dispute in hand. Those documents are not disputed by the writ petitioner.

3. On 13.12.2013, the writ petitioner produced Annexure A1.

That is an identification certificate shown to have been signed by an officer in the establishment of the writ petitioner's employer. Unfortunately, that did not have the seal of the office of the establishment, though there is a specific space provided in that certificate, which requires the office seal to be affixed. When that defect was noted, the writ petitioner produced yet another identification certificate, which carried the office seal of the establishment, namely, the High Court of Kerala. Unfortunately for the writ petitioner, the name and designation of the head of the office/department/controlling officer is not shown in that certificate. We looked into the relevant format. The identification certificate is to be handed over to the invigilator at the time of examination. The attesting officer should verify before putting "tick mark" on respective boxes, whichever is applicable, among the four enumerated matters stated therein. They relate to different aspects, including the photograph etc. The writ petitioner's

application was treated as defective by the PSC.

4. The learned single Judge took the view that the materials disclosed the identity of the writ petitioner and would, therefore, fall within the parameters of the decision rendered by the Division Bench of this Court in W.A. No.2761 of 2009. On a deeper consideration, we are unable to approve that verdict. We say this because, W.A.No.2761 of 2009 dealt with a case where all other material requirements regarding attestation were available in all the certificates and other documents and all that was lacking was the certification and attestation on the application form. The application, in that case, was accompanied by a separate certificate regarding all necessary particulars. More importantly, that application goes to the PSC. It does not go to the invigilator of the examination. Under such circumstances, the view taken in W.A.No.2761 of 2009 that the application ought to have been treated as one properly presented may be correct, but cannot be followed in the case in hand, since the defective or faulty certificate which we are dealing with is the identification certificate that goes to the invigilator who supervises the conduct of the written

examination. That position notwithstanding, W.A.No.2761 of 2009 arose from a judgment which was preceded by different other writ petitions and interlocutory orders touching the parties to that litigation and, nothing really remained for further consideration except to direct that the application is to be treated as accepted. However, in the case in hand, we cannot follow that as a precedent, when Annexures A1 and A2 clearly show that those documents could have been acted upon as due certification by the competent controlling officer of the writ petitioner in his establishment, namely, the High Court of Kerala, as regards the issuance of identification certificate. We visualize that it is a matter of heartburn for the writ petitioner in the situation in which he has landed, not only as a result of his own making, but also as a result of a situation which could have been avoided if the superior officers in the High Court establishment are more vigilant. But at the same time, we also have to note that at least when the writ petitioner faced the situation where he knew that Annexure A1 was not a proper identification certificate, he ought to have cared, at least for himself, and ensured that at least Annexure A2 is appropriately obtained. We have our sympathies for the writ

petitioner, but we are duty bound to always stand guided that in all in jurisdictions; that misplaced sympathies cannot override the dictates that regulate judicial review of executive action. On the totality of the facts and circumstances, we are unable to sustain the impugned judgment of the learned single Judge.

5. While concluding as aforesaid, we have ascertained and are told on behalf of the PSC that departmental tests are conducted twice in an year. We see that the writ petitioner would be around 33 to 35 years of age as of now and would have chances ahead.

6. But, this litigation is also a situation which should be taken note of by all in the hierarchy of the High Court administration as regards the required vigilance, care and caution, that ought to be maintained when dealing with requests of officials in service, for issuance of such certificates.

In the result, this writ appeal is allowed, vacating the impugned judgment and resultantly, dismissing the writ

petition.

A copy of this judgment shall be perused by the Registrar General for appropriate advice as may be required for officers at different levels in the hierarchy of the High Court administration. Let no such situation arise hereafter. This direction is issued as a judicial command and consequences ought to be avoided in future.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(K.HARILAL, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG