

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WA.No. 1461 of 2015 () IN WP(C).33110/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 33110/2014 of HIGH COURT OF KERALA
DATED 12-03-2015

APPELLANT/R1:

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

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

RESPONDENTS/PETITIONER AND RESPONDENT 2 AND 3:

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1. SONY P M
S/O.C.X.MATHAI, PANACHICKAL HOUSE, ARTHINKAL P.O.,
CHERTHALA-688 530.
 2. VINOD T.J.
S/O.JOSEPH K.K., THOTTAMKARA HOUSE
KADAKKARAPPALLY P.O., CHERTHALA-688 530.
 3. PRADEEP J.
S/O.JAYAPRAKASH B., THENGUVILA PADINJATTATHIL
PUNUKKANNOOR, K.P.P.(JN), PERUMPUZHA P.O.
KOLLAM-691 001.
 4. SAJEEV S.
S/O.SIVABALAN, SHAJI NIVAS, T.K.M.C. P.O.
KARICODE, KOLLAM-691 005.
 5. SHINU C.O.
S/O.C.K.OUSEPH, CHERACKAKUZHY (H), EZHUPURAM
S.MAZHUVANNOOR P.O., KOLENCHERY-686 669.
 6. MANEESHMON K.K.
S/O.KRISHNANKUTTY, KARATTEKATTUVELI, K.R.PURAM P.O.
CHERTHALA, ALAPPUZHA-688 566.

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- 7. GIRISH V.B.
S/O.V.K.BABU, VARUMBILLISSERY (H), VAVAKKAD
MOOTHAKUNNAM, N.PARAVOOR-683 576.**
 - 8. AUGUSTINE M.A.
S/O.ANTONY M.A., MALIYAKAL HOUSE, PONNARIMANGALAM
MULAVUKAD P.O., ERNAKULAM DISTRICT-682 504.**
 - 9. KERALA STATE ROAD TRANSPORT CORPORATION
THIRUVANANTHAPURAM REPRESENTED BY ITS
MANAGING DIRECTOR-695 001.**
 - 10. STATE OF KERALA
REPRESENTED BY THE SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- R1 -R 8 BY ADVS. SRI.T.A.SHAJI (SR.)
SRI.DARSAN SOMANATH
R9 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC
R10 BY SR. GOVERNMENT PLEADER SRI.E.M.ABDUL KHADIR**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05-10-2015, ALONG
WITH WA.1632/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

VPV

“C.R.”

P.N.RAVINDRAN & BABU MATHEW P. JOSEPH, JJ.

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**W.A.Nos.1461, 1632, 1639,
1640, 1689, 1762 & 2174 of 2015**

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Dated this the 5th day of October, 2015

JUDGMENT

P.N.Ravindran, J.

The common appellant in these writ appeals is the Kerala Public Service Commission, hereinafter referred to as “the Commission” for short. W.A.No.1461 of 2015 arises from the judgment delivered by a learned single Judge of this court on 12.3.2015 in W.P.(C)No.33110 of 2014. By that judgment, the learned single Judge allowed the writ petition filed by respondents 1 to 8 in W.A.No.1461 of 2015 and directed the Commission to include their names in Ext.P4 ranked list for appointment to the post of Blacksmith Gr.II published by it on 23.10.2014, but with the rider that such inclusion shall not affect the rank of persons already included in the list. Following the said judgment, the learned single Judge disposed of W.P.(C)Nos.4863, 8885, 8941, 8945, 8993 and 15759 of 2015 by separate judgments delivered on different dates, with the observation that the judgment in W.P.(C)No.33110 of 2014 shall govern the said cases as well. The said judgments are under challenge in the connected writ appeals. For the purpose of convenience, W.A.No.1461 of 2015 arising from

W.P.(C)No.33110 of 2014 is treated as the main case and unless otherwise mentioned, the documents referred to herein are those produced in W.P.(C)No.33110 of 2014. The brief facts of the case are as follows:-

2. By Ext.P1 notification published in the Kerala Gazette dated 30.12.2009, the Commission invited applications from eligible persons for appointment by direct recruitment to the post of Blacksmith Gr.II in the Kerala State Road Transport Corporation (hereinafter referred to as "the Corporation" for short). The number of vacancies notified was 350 and the last date stipulated for submission of applications was 3.02.2010. The qualifications prescribed for the post of Blacksmith Gr.II by the Corporation and set out by the Commission in Ext.P1 notification are extracted below:-

*"7. **Qualifications** : ITI certificate in the trade of Blacksmith/Forger and Heat Treatment/Sheet Metal/Fitter/Diesel Mechanic/Mechanic Motor Vehicle/Welder, with not less than 3 (Three) years experience in any body building or body repair workshop having SSI registration."*

3. As per Ext.P1 notification, the candidates were also required to submit an experience certificate in the prescribed form. The form prescribed for the purpose by the Commission and set out in Ext.P1 notification is extracted below:-

EXPERIENCE CERTIFICATE

*Date of registration :
Registration number :
Name of the Institution*

(Company/Corporation/Govt.
Department etc.,) :

*This is to certify that Shri/Smt.....
(Name and address of the candidate) has worked/has been
working in this institution as (here
enter the name of post held or holding or the nature of
assignment holding or held in the institution) on Rs.....
per day/per mensem for the period of years
months days from to*

*Dated Signature,
Name and designation
of the Issuing authority
with name of the institution*

*Place :
Date of issue :*

(Office Seal)

DECLARATION

*Certified that Shri/Smt..... mentioned in
the above experience certificate has actually worked/is
working as (specify
nature of employment) in the above institution during the
period mentioned therein as per the entry in the register
(Name of Register to be specified) maintained by the
employer as per the provisions of
the Act (Name of the Act/Rules to
be specified). Also certified that I am authorised officer to
inspect the registers kept by the employer as per the
provision of the Act/Rules of the State/Central Govt.*

*Signature with Date:
Name of the Countersigning Officer
with Designation and name of office.*

*Place :
Date :*

4. In Note 1 to Ext.P1, the Commission had stipulated that the

experience certificate should be one acquired after obtaining the academic or other basic qualifications. In Note 2 it was stipulated that the veracity of the experience certificate will be subjected to scrutiny and those who issue or produce bogus certificates will be subjected to legal proceedings. In Note 3, the attention of the candidates was invited to paragraph 21 of Part II of the General Conditions attached to the notification inviting applications, which stipulates that unless otherwise specified, the experience prescribed as qualification for any post shall be one gained after acquiring the basic qualifications prescribed for the post.

5. Pursuant to Ext.P1 notification, respondents 1 to 8 in W.A. No.1461 of 2015 and the party respondents in the connected writ appeals applied for appointment to the post of Blacksmith Gr.II. Respondents 1 to 8 in W.A.No.1461 of 2015 had along with their applications submitted the originals of Exts.P3 to P3(g) experience certificates. The party respondents in these writ appeals were invited to appear for the written test held on 19.12.2012. Though initially 37 marks was prescribed as the cut off mark, for want of the required number of candidates, the prescription regarding cut off marks was withdrawn. Since the experience certificates produced by respondents 1 to 8 in W.A.No.1461 of 2015 and the party respondents in the connected writ appeals were not in the prescribed format, they were

rejected. Consequently in Ext.P4 ranked list published on 23.10.2014, the names of respondents 1 to 8 in W.A.No.1461 of 2015 and the party respondents in the connected writ appeals were not included. The party respondents in these writ appeals thereupon filed W.P.(C) No.33110 of 2014 and other writ petitions in this court, challenging Ext.P4 ranked list to the extent it does not include them therein and seeking a writ in the nature of mandamus commanding the Commission to modify Ext.P4 ranked list, by including them at the appropriate place, in accordance with the marks obtained by them in the written test.

6. The main ground raised in the writ petitions was that the writ petitioners possess the prescribed educational qualifications as also the experience qualification, that their applications were accompanied by experience certificates duly countersigned by the competent authority after enquiry and therefore, the non-inclusion of their names in Ext.P4 ranked list is arbitrary and illegal. It was contended that the reason stated in Ext.P5 letter for rejecting their applications is not tenable, that in similar circumstances, a learned single Judge of this court has in W.P.(C)No.7587 of 2011 held that in cases where records are not available with the employer, the Assistant Labour Officer cannot decline to countersign the experience certificate but has a duty to make an enquiry and on being satisfied

about the genuineness of the claim made by the applicant, countersign the experience certificate. It was contended that the writ petitioners are similarly placed and therefore, they are entitled to be included in the ranked list.

7. The Commission entered appearance in W.P.(C)No.33110 of 2014 and filed a counter affidavit dated 30.1.2015. Paragraphs 6 and 7 thereof which are relevant for the purpose of this case are extracted below:-

"6. All the petitioners possessed the National Trade Certificate. The notified experience of 3 years should be within the last date for receipt of application i.e. 03/02/2010. The declaration portion of the experience certificates produced by the petitioners were defective. It is submitted that nature of employment, Name of Register maintained by the employer and Name of Act & Rules should be specified in the declaration portion, and it must be countersigned by Assistant Labour Officer. But in the experience certificates produced by the petitioners the said portion was stricken off and the Assistant Labour Officer had counter signed the Experience Certificate on the basis of enquiry made by him and the statement made by the employer.

7. It is submitted that such experience certificate will not satisfy the requirement of conditions of notification. The experience certificate should be in the proforma provided in the notification. Since it is not in the prescribed format with all details the experience certificate to the prove essential qualification is rejected so also the candidature of the candidate. The judgment relied by the petitioner has no application in the instant case since the fact and circumstances are entirely different."

The substance of the averments in the counter affidavit is that the experience certificates produced by the petitioners in W.P.(C)

No.33110 of 2014 are not in accordance with the stipulations in the form prescribed by the Commission and forming part of the notification. It was contended that as the Assistant Labour Officers, who have countersigned the experience certificates, have countersigned the certificates on the basis of the enquiry conducted by them and without verifying the relevant records, the experience certificates were rejected.

8. The learned single Judge after considering the rival contentions held, relying on the decision in W.P.(C)No.7587 of 2011 that, as the competent officer has countersigned the experience certificates, notwithstanding the absence of registers which are required to be maintained by the employer, the writ petitioners cannot be excluded from the zone of consideration. The learned single Judge accordingly directed the Commission to treat the experience certificates produced by the writ petitioners as valid and to include their names in Ext.P4 ranked list without disturbing the rank of the persons already included therein. The Commission has, as stated above, filed these writ appeals, aggrieved thereby.

9. We heard Sri.P.C.Sasidharan, learned counsel appearing for the Commission, Sri.T.A.Shaji, learned Senior Advocate appearing for the party respondents/candidates, Sri.E.M.Abdul Khadir, learned Senior Government Pleader appearing for the State of Kerala and

Sri.M.Gopikrishnan Nambiar, learned counsel appearing for the Corporation. Sri.P.C.Sasidharan, learned counsel appearing for the Commission submitted that the writ petitioners have not challenged the competence or the power of the Commission to prescribe the form in which the experience certificates are required to be given, that they have no case that the experience certificates produced by them are in the prescribed format and therefore, the learned single Judge erred in directing the Commission to include the names of the writ petitioners in the ranked list. Inviting our attention to paragraph 22 of the General Conditions in Part II of the notification inviting applications and the proforma of the certificate of experience, learned counsel for the Commission contended that the officer attesting the certificate has to certify that the experience mentioned in the certificate is borne out by the registers kept by the employer, that the attesting officer is competent under the relevant law to inspect the registers kept by the employer and referred to by the attesting officer, that the experience certificates produced by the writ petitioners in the instant cases were not in the prescribed form and therefore, they were rejected as stipulated in paragraph 29 of the General Conditions. Learned counsel for the Commission contended that the form was prescribed having regard to the malpractices committed by candidates seeking appointment and by erring officers

and that the purpose sought to be achieved by insisting on the verification of the registers maintained by the employer was omitted to be noticed by the learned single Judge, when W.P.(C)No.7587 of 2011 was decided.

10. Learned counsel for the Commission further submitted that as the insistence on verification by a duly authorised officer is to prevent malpractices, notwithstanding the fact that in a given case it may cause hardship to a few candidates, the Commission cannot be compelled to dilute the standards set by it and to select candidates for appointment, ignoring the stipulation in the notification inviting applications after leaving it to the discretion of the competent authority under the relevant laws to determine without reference to any records as to whether the candidate seeking appointment has the requisite experience. Learned counsel also submitted that it is only if an experience certificate in the proforma prescribed by the Commission is submitted that the Commission can ascertain whether the certificate is bogus or not and take action against the erring candidate/officer and that it cannot, in the absence of records, conduct a roving enquiry or adduce evidence for the purpose of deciding whether the countersigning officer has countersigned the experience certificate after being satisfied about the genuineness of the certificate issued by the employer to the employee or that the

applicant has the requisite experience. Learned counsel lastly submitted that though in the notification it is stipulated that experience certificate shall be in the proforma set out therein, none of the petitioners have challenged the proforma as such or the power of the Commission to prescribe the proforma of the certificate and therefore, for that reason also, the impugned judgment is liable to be set aside. The learned Government Pleader appearing for the State of Kerala submitted that going by the proforma of the experience certificate prescribed by the Commission, the experience certificates produced in the instant cases are not in order and, therefore, no objection can be taken to the stand of the Commission. Learned standing counsel appearing for the Corporation also supported the stand taken by the Commission.

11. Per contra, Sri.T.A.Shaji, learned Senior Advocate appearing for the writ petitioners/party respondents submitted that the writ petitioners cannot be held responsible for their employers not maintaining the registers required to be maintained under the Payment of Wages Act/the Minimum Wages Act/the Shops and Commercial Establishment Act and other relevant laws, that if in a given case, the candidate had really worked and gained the requisite experience, the Commission is bound to accept the experience certificate notwithstanding the fact that the employer has not

maintained the relevant records as otherwise it will cause serious prejudice to such candidates and therefore, no interference is called for with the impugned judgments, which safeguard the rights of such persons. Learned Senior Counsel also submitted that the Commission has not challenged Ext.P6 judgment delivered by the learned single Judge of this court in similar circumstances on 4.4.2011 in W.P.(C) No.7587 of 2011 and therefore, as the said judgment has become final and it binds the Commission, it could not have rejected the applications submitted by the writ petitioners on the ground that the certificates have not been attested by the attesting officers after verifying the relevant entries in the registers kept by the employer. Learned Senior Counsel also submitted that the stipulation in the notification inviting applications that the certificates should be in the prescribed form is not so fundamental a condition as to warrant a rejection of the applications submitted by the writ petitioners for the reason that the Commission has not doubted the genuineness of the certificates or the veracity of the entries therein.

12. We have considered the submissions made at the Bar by the learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The first ground raised is that in view of paragraph 7 of Ext.P6 judgment in W.P.(C) No.7587 of 2011 which binds the Commission, the Commission could

not have rejected the applications submitted by the writ petitioners. The second ground raised is that the rejection is on untenable grounds and that it is not on a ground which is mentioned in the notification. The notification inviting applications, which was published in the Kerala Gazette Extra Ordinary No.2464 dated 30.12.2009 contains the General Conditions that have to be complied with by candidates seeking appointment to the post of Blacksmith Grade-II in the Corporation. Paragraph 22 thereof stipulates that the certificate to be produced in proof of experience shall be in the form prescribed by the Commission. The proforma of the certificate is also set out therein. Paragraph 29 of the General Conditions directs candidates to fill-up the application carefully and in accordance with the terms and conditions laid down in the notification and the directions contained in the brochure supplied along with the application form. They are alerted that applications, which do not conform to the instructions are liable to be rejected. Paragraph 30 of the General Conditions stipulates, inter alia, that the making of any false statement in the application form or any document produced in connection with the selection or suppression of any material fact relevant to the selection from the Commission, will entail disqualification for being considered for a particular post, or debarment from applying to the Commission either permanently or for a specified period or the invalidation of the

answer scripts of the written test/the product of the practical test or the initiation of criminal or other proceedings against them or removal or dismissal from office or the ordering of any disciplinary action against them if they have been appointed or any one more of the above.

13. In paragraph 7 of Ext.P1 notification it is stipulated that the candidates seeking appointment shall have not less than three years experience in a body building or body repair workshop having SSI registration. It is also stipulated that the experience certificate shall be in the proforma given therein. The writ petitioners do not have a case that experience certificates produced by them are in accordance with the proforma prescribed by the Commission. Their case is that as the experience certificates issued by their employers have been duly verified and countersigned by the Assistant Labour Officers having jurisdiction, the Commission is bound to accept them, though they may not be in the form prescribed by the Commission. They also rely on Ext.P6 judgment delivered by a learned single Judge of this court on 4.4.2011 in W.P.(C)No.7587 of 2011. In that judgment, a learned single Judge of this court held that the Assistant Labour Officer, Thrissur, IIIrd Circle, who was the second respondent therein, cannot simply say that since the employer is not maintaining records, he will not countersign the experience certificate. It was held that it was the

duty of the second respondent therein to ensure that the employer complies with the statutory requirements by keeping appropriate registers, that he has also a duty to inspect the workshops periodically to ensure that the employer maintains the statutory registers and therefore, he cannot refuse to countersign the experience certificate merely on the ground that records are not available with the employer to verify whether the candidate was employed as stated by the employer. In that view of the matter, the learned single Judge directed the second respondent in W.P.(C) No.7587 of 2011 to conduct an enquiry with the employer, the other employees of the establishment and persons residing nearby for the purpose of ascertaining whether the petitioner in that case had in fact worked in the establishment concerned during the period mentioned in the certificate and countersign the experience certificate, if it is found on such enquiry that the petitioner had in fact worked in the establishment. The learned single Judge did not consider the challenge to the prescription regarding countersignature and left it open.

14. It is only in a case where the entries in the experience certificate can be verified with the registers maintained by the employer, that the Commission can, as set out in Paragraph 30 of the General Conditions, take appropriate action against the candidates

who commit malpractices by producing false certificates. The Commission will be deprived or denuded of the power to take action against erring candidates/countersigning officers, if candidates are permitted to produce an experience certificate countersigned after an oral enquiry is conducted by the countersigning officer and the Commission is compelled to accept such a certificate as valid. That apart, none of the candidates in the instant cases has challenged the competence of the Commission to prescribe the proforma of the experience certificate. The petitioners in the instant cases have no case that their employers were maintaining registers and records. However, relying on the observation in the certificate of experience produced in the instant cases, it is contended that the countersigning officers were satisfied that though the employers were not maintaining the records the writ petitioners were actually working in the different establishments and such satisfaction fulfills the requirement of the notification. The said contention is in our opinion plainly untenable. If power is conceded to countersigning officers to conduct an oral enquiry by examining the employer or other workers of the establishment concerned or the neighbouring residents, it will lead to a situation where bogus certificates can be issued to prove the experience of the candidates, thereby depriving the Commission of the opportunity to take action against them. The Commission will

also be deprived of the right to verify the authenticity of the genuineness of the certificates for the reason that it cannot refer to or rely on any document to ascertain the genuineness of the certificate. The very purpose of introducing a form to ensure that bogus claims are not made will be defeated, if such a course of action is adopted.

15. Paragraph 29 of Part II of the General Conditions stipulates that applications which do not conform to the instructions given by the Commission and the guidelines therein are liable to be rejected. Candidates applying for the post are therefore bound to submit an experience certificate in the prescribed form. It is explicit from a reading of paragraph 29 of the General Conditions that applications which do not conform to the conditions laid down by the Commission are liable to be rejected. The writ petitioners in the instant cases have not produced experience certificates in the form prescribed by the Commission. Their applications were, therefore, liable to be rejected as invalid. The writ petitioners who have not produced experience certificates in the form prescribed by the Commission cannot in our opinion, be heard to contend that notwithstanding the defective experience certificates produced by them, their applications should be entertained. Though in a few cases, insistence on the production of an experience certificate in the prescribed form may lead to inconvenience and cause hardship to applicants and a few

persons may be disabled from applying for the post, having regard to the purpose underlying the stipulation made by the Commission that the attesting officer shall attest the experience certificates only after verification of the registers maintained by the employer, we find no reason to take a different view and hold that the stipulation is not mandatory in nature. It is only if an experience certificate in the proforma prescribed by the Commission is submitted that the Commission can ascertain whether the certificate is bogus or not and take action against the erring candidate/officer. The Commission cannot, in the absence of records, conduct a roving enquiry or adduce evidence for the purpose of deciding whether the countersigning officer has countersigned the experience certificate after being satisfied about the genuineness of the certificate issued by the employer to the employee or that the applicant has the requisite experience. These aspects of the matter have not been considered either in Ext.P6 judgment or by the learned single Judge in the impugned judgments. We accordingly hold that the impugned judgments are liable to be reversed and the writ petitions dismissed.

For the reasons stated above, we allow these writ appeals, reverse the judgments delivered by the learned single Judge in W.P. (C)Nos.33110 of 2014, 15759 of 2015, 8941 of 2015, 8885 of 2015, 8993 of 2015 and 4863 of 2015 and dismiss the writ petitions. In

view of the dismissal of the writ petitions, the order passed by the Division Bench of this court on 23.7.2015 directing the Government to file an affidavit shall stand recalled. The parties shall suffer their respective costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. To Judge

vpv/ks