

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WA.No. 981 of 2014 () IN WP(C.19902/2012

AGAINST THE JUDGMENT IN WP(C) 19902/2012 of HIGH COURT OF KERALA DATED
22-05-2014

APPELLANTS/PETITIONERS 3, 4, 5 AND 9 IN THE WRIT PETITION:

1. SANAL KUMAR K.R
KALATHIL HOUSE, MUHAMMA P.O., ALAPPUZHA - 688 525.

2. THULASEEDHARA KURUP C.R.
ADVAITHAM, KAITHA SOUTH, CHETTikulANGARA P.O.
MAVELIKKARA - 690 106.

3. SABU K. PAUL
KALIYAMPURATHU HOUSE, PIRAVOM POST, ERNAKULAM-686 664.

4. REJIMON C. N.
"JYOTHIS", KAPPIL EAST, KRISHNAPURAM P.O.
ALAPPUZHA - 690 633.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

RESPONDENTS/RESPONDENTS IN THE WRIT PETITION:

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
FOOD AND CIVIL SUPPLIES DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE COMMISSIONER OF CIVIL SUPPLIES DEPARTMENT
COMMISSIONERATE OF CIVIL SUPPLIES DEPARTMENT
THIRUVANANTHAPURAM.

3. KERALA STATE CIVIL SUPPLIES CORPORATION LTD.,
MAVELI BHAVAN, MAVELI ROAD, GANDHI NAGAR
COCHIN-682010
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR.

4. THE CHAIRMAN AND MANAGING DIRECTOR
KERALA STATE CIVIL SUPPLIES CORPORATION LTD.
MAVELI BHAVAN, MAVELI ROAD, GANDHI NAGAR
COCHIN - 682 010.

5. THE DIRECTOR
COMMISSIONERATE OF CIVIL SUPPLIES DEPARTMENT
THIRUVANANTHAPURAM.

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

BY GOVERNMENT PLEADER: SRI.P.P.PADMALAYAN
BY SRI.P.C.SASIDHARAN, SC, KPSC
BY SMT.MOLLY JACOB, SC, SUPPLYCO

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-06-2015,
ALONG WITH WA. 984/2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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W.A.Nos.981 and 984 of 2014

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Dated this the 18th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

These writ appeals are by the writ petitioners in W.P(C).
No.19902 of 2012.

2. We have heard the respective learned counsel appearing for the appellants in both the appeals and the learned Standing Counsel for the Civil Supplies Corporation.

3. Ext.P2 are the Kerala State Civil Supplies Recruitment/Promotion Rules, 1997. Those Rules would govern recruitments, promotions and also provide for deputation as a method of appointments. Those Rules would apply to all directly recruited employees of the Corporation who were in the service of the Corporation as on the date on which those Rules came into force and would also apply to the direct recruits who would come in through that channel after the Rules came into force. This necessarily means that after the Rules started operating, all employees who were directly recruited, promoted or deputed after coming into force of those Rules would be governed by those Rules,

though any deputationist who had been in Civil Supplies Corporation as on the date of commencement of those Rules could not be governed by that set of Rules.

4. Rule 3 deals with appointments, which provide that appointments to the various posts specified in column (2) of Annexure to those Rules shall be made following the method specified in column (6) from the persons who satisfy the qualifications specified in column (4) thereto. Reverting to the Annexure to those Rules, the method of recruitment to the cadre of Junior Manager is by way of direct recruitment and deputation from ATSOs from the Civil Supplies Corporation department. 'ATSOs' mean Assistant Taluk Supply Officers. The method of recruitment prescribes the ratio of 10% of the posts for direct recruitment with a further clause that in the absence of qualified candidates for direct recruitment, those vacancies will also be filled up by deputation.

5. The writ petitioners, who are the appellants, have three fold contentions. First is that the restriction of direct recruitment to 10% results in hostile discrimination as much as there is a wholesome exclusion for all practical purposes and therefore, the prescription authorising 90% recruitment by deputation is arbitrary,

unreasonable, unjust, inequitable and unconstitutional. The second argument is that while unfilled vacancies in the direct recruit quota are reverted to be filled up by deputation, the absence of a corollary clause providing unfilled deputation quota posts for direct recruitment results in an imbalance of the quota rules and this itself is arbitrary. The third contention is that while qualifications prescribed for appointment include the graduation from a recognized University and M.B.A, almost all among the deputationists are those who do not possess M.B.A and therefore, unqualified persons are holding the posts against public interest and if the quota rule is appropriately modified, it would result in large chunk of vacancies being available for recruitment by appointment from the open market by direct recruitment.

6. Per contra, the learned standing counsel for the Civil Supplies Corporation argued that as is discernible from the Preamble of the Rules, those Rules apply to only directly recruited employees of the Corporation and not to deputationists and promotees. It is further argued that no unconstitutionality or legal infirmity can be found in the impugned Rules, particularly the prescription of the direct recruitment quota and therefore, writ petitioners will not have any ground to attack the qualifications of

the deputationists.

7. We are unable to accept the submission on behalf of the Corporation that Ext.P2 Rules applies only to direct recruits and not to deputationists. All that is mentioned in clause (iii) of the first paragraph relating to short title, extent and application of those Rules is that the said Rules would apply to all direct recruits who are in the service of the Corporation as on the date of commencement of those Rules and also to those direct recruits who come thereafter. That does not mean that those Rules would not apply to promotions and deputations. We say this, particularly because it is self saying bunch of Rules which prescribe through Rule (3) that appointments shall be made in accordance with the prescriptions in the Annexure. Such prescriptions include the methods of appointment, qualifications, quota etc. The classification and category of the cadres are also done through the Appendix. We cannot, therefore, hold that the deputationists are not covered by those Rules.

8. Be that as it may, the prescription of a smaller quota for direct recruitment and also visualizing the priority of the direct recruitment quota being left unfilled, owing to dearth of persons in

the open market, are matters essentially within the domain of an employer. The management of the institution in question is under the governmental gaze as well. The Rules are those approved by the Government. Whatever that be, when the power to make Rules cannot be disputed, the competence to make those Rules cannot but be upheld. Then, the only question is as to whether the Rule providing for a classification of 90:10 out of 100 is irrational or arbitrary; and, whether the non-prescription of the reversion of unfilled vacancies among the deputationists quota to the direct recruitment quota would vitiate the said Rule. The materials on record predominantly indicate that the field of choice for deputation is the Assistant Taluk Supplies Officers in the Civil Supplies department. The quality of work and duties and responsibilities attached to such posts in the Civil Supplies sector might have been one of the guiding factors which prompted the Rule to be made in this particular manner. We are not to examine the wisdom of the framer of the Rule as if we are sitting in appeal. The Rule is not bereft of any wisdom at all. There is sustainable foundation for the Rules and it has been made to meet the situational and institutional requirement of the Civil Supplies Corporation. Here, we may also note that the scale of pay for the direct recruit is much higher than

the scale of pay that would be enjoyed by the deputationist to the same post. This is one indicator of the priority that comes to the deputationists group. We are unable to see any arbitrariness to the conclusion that the impugned Rule is violative of Article 14 or 16 of the Constitution of India.

9. While it may be true that the prescription for qualifications in column (4) of the Annexure, in so far as it relates to the cadre concerned, requires a person to possess graduation and M.B.A, it is normal rule of deputation that possession of qualification for the post to which a person is deputed is a relevant consideration. Petitioners cannot challenge the absence of qualification of any of the deputationists, as of now. We say this, because the eligibility of the petitioners would be only to aspire for 10% direct recruitment quota. There is nothing in the writ petition to indicate as to whether there is any deputationist occupying any post which could be identified as a direct recruitment post, that is to say, falling within the 10% quota. To all queries in that regard during hearing, the petitioners have not been able to tell us as to whether there is any person who is a deputationist for holding direct recruitment quota. If there is any such person and that person does not satisfy the prescribed qualification of graduation

and M.B.A., may be, the petitioners could have made out a case. More importantly, there is no private respondent arrayed in the writ petition among the writ petitioners whose appointment stood challenged before the learned single Judge. For all these reasons, we cannot examine the question as to whether any of the deputationists in the Civil Supplies Corporation as Junior Manager possesses the qualification prescribed under column (4) of the Annexure I of Ext.P2 Rules. This contention also therefore fails.

In the result, these writ appeals are dismissed confirming the judgment of the learned single Judge.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

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