

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 2579 of 2013 (V)

PETITIONER:

**GEETHA KUMARI N.R., AGED 30 YEARS,
D/O.S.NARAYANA PILLAI, "N.R.BHAVAN", CHATTACODE,
NEYYATTINKARA P.O, THIRUVANANTHAPURAM-695121.**

**BY ADVS.SRI.V.N.GOPALAKRISHNAN NAIR
SMT.JULIA PRIYARESHMI
SRI.G.ARUN
SRI.G.VARUN
SRI.N.N.SUGUNAPALAN (SR.)**

RESPONDENTS:

- 1. KERALA STATE BEVERAGES,
(MANUFACTURING AND MARKETING) CORPORATION LTD.,
REP.BY ITS MANAGING DIRECTOR, SASTHAMANGALAM,
THIRUVANANTHAPURAM-695001.**
- 2. KERALA PUBLIC SERVICE COMMISSION,
REP.BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM-695001.**

**R2 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
R BY SRI.C.S.AJITH PRAKASH,SC,BEVERAGES CORP**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE GAZETTE NOTIFICATION DATED 14/10/2008.**
- EXHIBIT P2: TRUE COPY OF THE DEGREE CERTIFICATE DT. 23-12-2003.**
- EXHIBIT P3: TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 27/5/2011
ISSUED BY EXTOLUTIONSOFTWARE PVT. LTD.**
- EXHIBIT P4: TRUE COPY OF THE CERTIFICATE DT. 27-10-2004 ISSUED BY THE
SECRETARY, STATE COUNCIL FOR VOCATIONAL TRAINING.**
- EXHIBIT P5: TRUE COPY OF THE CERTIFICATE DATED 1-4-2004.**
- EXHIBIT P6: TRUE COPY OF THE SIX MONTH COURSE APPROVED BY THE STATE
GOVERNMENT CERTIFICATE DT. 10-6-2005.**
- EXHIBIT P7: TRUE COPY OF THE CERTIFICATE DATED 30-3-2009 ISSUED BY THE
COURSE DIRECTOR.**
- EXHIBIT P8: TRUE COPY OF THE PROVISIONAL CERTIFICATE DATED 23/08/2012
ISSUED BY REGISTRAR.**
- EXHIBIT P9: TRUE COPY OF THE CERTIFICATE DATED 24-12-2012 ISSUED BY THE
MUNICIPAL SECRETARY.**
- EXHIBIT P10: TRUE COPY OF THE MEMO ISSUED BY THE 2ND RESPONDENT TO
THE PETITIONER, NO. 6028/10EW DATED 3-5-2011.**
- EXHIBIT P11: TRUE COPY OF THE LETTER NO. ERIV(2)6028/2010/EW DATED
30/11/2012.**
- EXHIBIT P12: TRUE COPY OF THE CERTIFICATE ISSUED BY THE PROPRIETOR
DATED 05.12.2012.**
- EXHIBIT P13: TRUE COPY OF THE BILL DATED 16.2.2005 OF ASIANET SATELLITE
COMMUNICATION LTD.**
- EXHIBIT P14 (a): TRUE COPY OF RECEIPT ISSUED BY ETP LTD FOR THE PERIOD
FROM 08.03.05 TO 07.04.05 DATED 20.04.05.**
- EXHIBIT P14 (b): TRUE COPY OF RECEIPT ISSUED BY ETP LTD FOR THE PERIOD
FROM 08.04.05 TO 07.05.05 DATED 12.05.05.**
- EXHIBIT P14 (c): TRUE COPY OF RECEIPT ISSUED BY ETP LTD FOR THE PERIOD OF
MAY, 2005 DATED 17.06.05.**

EXHIBIT P15: TRUE COPY OF THE LICENSE AGREEMENT EXECUTED ON 15.6.2006.

EXHIBIT P16: TRUE COPY OF THE CERTIFICATE ISSUED BY ESPL DATED 5.2.2013

RESPONDENT(S)' EXHIBITS:

NIL

TRUE COPY

P.A. TO JUDGE

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ANIL K. NARENDRA, J

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W.P.(C).No. 2579 of 2013

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Dated this the 19th day of October, 2015

JUDGMENT

The petitioner is an applicant for the post of Computer Programmer-cum-Operator in the Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd., the 1st respondent herein, based on Exhibit P1 notification issued by the Kerala Public Service Commission, the 2nd respondent herein. The petitioner has filed this writ petition seeking a writ of certiorari to quash Exhibit P11 letter dated 30.11.2012 issued by the 2nd respondent and seeking a writ of mandamus commanding the respondents to proceed with the publication of final rank list of candidates pursuant to Exhibit P1 notification considering her as qualified and ignoring Exhibit P11 communication.

2. By Exhibit P1 notification, the 2nd respondent invited application for the post of Computer Programmer-cum-Operator in the 1st respondent Corporation with the scale of pay of Rs. 4600-7125 (Pre-Revised). The total number of vacancies notified in Exhibit P1 is 38. The qualifications prescribed for the post read thus;

- i) BA/BSc/BCom or equivalent 3 years degree awarded by a recognized university.
- ii) Three years experience in programming and Computer Operations under a Public Sector Undertaking or an industrial undertaking recognized under Companies Act.

It was also provided in Exhibit P1 that the experience should be one acquired after obtaining the academic or other basic qualification and that the veracity of the experience will be subjected to scrutiny and those who issue or produce bogus certificate will be subject to legal proceedings. The experience certificate obtained from private institutions shall be attested by one authorized officer of the State/Central Government. Further the experience should be one obtained from the Institution mentioned in Para 21 of the general conditions of Gazette Notification and that the experience certificate should be in the form prescribed in Exhibit P1 notification.

3. Pursuant to Exhibit P1 notification, the petitioner submitted application. As evident from Exhibit P2, the petitioner possess B.com degree from Kerala University with 58% marks. She is also having three years experience as Software Programmer in an organization developing software applications, which was subsequently registered as a Private Limited Company under the Companies Act, 1956. Exhibit P3 is the certificate issued in this regard. As evident from Exhibit P4, she has obtained certificate in

Computer Operator and Programming Assistant (CO&PA) having one year duration from the Industrial Training Department, Government of Kerala. As evident from Exhibit P5, the petitioner has secured certificate in M.S.Office with six months duration conducted by Information Technology Education Council, Thiruvananthapuram. Exhibit P6 certificate shows that she has passed six months course approved by the State Government in SMART ACCOUNTANT CERTIFICATE for DACEasy, Tally, Peachtree, Tata Ex, Project.

4. Based on the application submitted by the petitioner, she was called for a general test and thereafter the 2nd respondent published the probability list of qualified candidates on 2.5.2011. The petitioner was Serial No.36 in the aforesaid list. Later the 2nd respondent issued Exhibit P10 memo dated 3.5.2011 requesting the petitioner to appear for document verification on 24.5.2011, pertaining to date of birth and qualifications. The petitioner appeared before the 2nd respondent and thereafter she was issued with Exhibit P11 letter dated 30.11.2012 stating that, her application pursuant to Exhibit P1 notification stand rejected for the reason that she did not have three years of working experience in a registered firm. It is aggrieved by Exhibit P11 the petitioner is before this Court in this writ petition seeking various reliefs.

5. A counter affidavit has been filed on behalf of the 2nd respondent stating that, the petitioner does not have the required experience prescribed in Exhibit P1 notification. At the time of verification of documents, it was seen that the experience gained by the petitioner was from an institution which does not satisfy the general conditions of Gazette notification. As per Para 21 of general conditions of Gazette notification, the experience prescribed shall be one gained by a candidate holding temporary or regular appointments in Central or State government service or in Public Sector Undertaking or Registered Private Sector Undertakings, after acquiring the basic qualification prescribed for the post. Since the experience certificate produced by the petitioner lacks the above mandatory requirement, she is not qualified for recruitment to the post and as such her application was rightly rejected by Exhibit P11.

6. On receipt of the copy of the counter affidavit, the petitioner filed reply affidavit. Relying on the aforesaid documents, the petitioner would contend that the experience certificate produced by her along with the application is strictly in terms of Exhibit P1 notification and as such the rejection of her candidature by Exhibit P11 is legally unsustainable.

7. I have considered the contentions raised in the writ petition by the petitioner and also that in the counter affidavit filed

by the 2nd respondent.

8. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of Exhibit P11 communication issued by the 2nd respondent by which the application submitted by the petitioner pursuant to Exhibit P1 notification stands rejected on the ground that she does not have the required experience.

9. As I have already noticed, Exhibit P1 notification categorically provides that, the experience required is three years experience in Programming and Computer Operation under a Public Sector Undertaking or an Industrial undertaking recognized under the Companies Act. Exhibit P1 notification is subject to the general conditions of Gazette notification issued by the Public Service Commission. Para 21 of the general conditions stipulates that, experience prescribed as qualification shall be one gained by candidate holding temporary or regular appointments in Central or State Government service or any Public Sector Undertaking or Registered Private Sector undertaking, after acquiring the basic qualification prescribed for the post. A Registered Private sector undertaking as described in the Note to Para 21 of the general conditions reads thus:

- (i) Co-operative Societies registered under the Kerala Co-operative Societies Act, 1969, Societies Registered under the Societies Registration Act, 1860 or the Travancore Cochin Literacy, Scientific Charitable Societies Registration Act, 1955 or Companies registered under the Companies Act, 1956, or any Institution, Firm or Company which has legal entity under any law for the time being in force.
- (ii) Small Scale Industrial Units registered with the Industrial Development Commissioner and
- (iii) Industrial Institutions where in Government have investments.

10. Exhibits P12 and P16 certificates produced along with the reply affidavit by the petitioner make it explicitly clear that, the undertaking which has issued Exhibit P3 experience certificate to the petitioner was only a proprietary concern till the year 2005 and it was incorporated as a company only in the year 2006. In Exhibit P3 certificate dated 27.05.2011, it is certified that, the petitioner had worked as a Computer Programmer in the said undertaking for the period from 01.09.2005 to 31.12.2008. The aforesaid certificate would also show that, the said establishment was registered as a company only with effect from 27.12.2006. Therefore, it cannot be contended that, the petitioner is having the requisite qualification of three years experience in an Industrial undertaking recognized under the Companies Act, when the said undertaking was

incorporated as a company only with effect from 27.12.2006. In that view of the matter, I find absolutely no illegality in Exhibit P11 communication issued by the 2nd respondent.

In the result, this writ petition fails and the same is dismissed.

Sd/-
ANIL K. NARENDRAN,
JUDGE.

//True copy//

P.A. to Judge

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