

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 5TH DAY OF MARCH, 2015/14TH PHALGUNA, 1936

WP(C).No. 4159 of 2014 (T)

PETITIONER:-

ANILKUMAR K., AGED 39 YEARS,
S/O.V.KARUNAKARAN PILLAI, THUNDATHIL HOUSE
THURUTHIKKARA P.O., KUNNATHUR, KOLLAM - 690 540.

BY ADV. SRI.M.K.CHANDRAMOHANDAS

RESPONDENTS:-

1. THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM - 695 001.
2. THE KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY THE MANAGING DIRECTOR,
TRANSPORT BHAVAN, THIRUVANANTHAPURAM - 695 001.
3. THE CHAIRMAN & MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, THIRUVANANTHAPURAM - 695 001.
4. THE SECRETARY,
KERALA STATE PUBLIC SERVICE COMMISSION, PATTOM,
THIRUVANANTHAPURAM - 695 002.

R2,R3 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA,SC,KSRTC
R4 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
R BY SRI. RAJESH M.R., GOVERNMENT PLEADER
R2 & R3 BY SRI. M.G.K. NAMBIAR, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1. A TRUE COPY OF DEGREE CERTIFICATE OF M.COM DATED 29.04.1999 ISSUED BY THE UNIVERSITY OF KERALA.

EXHIBIT P2. A TRUE COPY OF THE PROVISIONAL CERTIFICATE OF M.B.A. DEGREE ISSUED BY THE MAHATMA GANDHI UNIVERSITY.

EXHIBIT P3. A TRUE COPY OF THE PROVISIONAL CERTIFICATE FOR THE B.ED COURSE ISSUED BY THE GAUHATI UNIVERSITY.

EXHIBIT P4. A TRUE COPY OF THE CERTIFICATE FOR STATE ELIGIBILITY TEST ISSUED BY THE GOVERNMENT OF KERALA, DIRECTORATE OF HIGHER SECONDARY EDUCATION.

EXHIBIT P5. A TRUE COPY OF THE RELEVANT PAGES OF THE REGULATION [KSRTC (QUALIFICATION & METHOD OF APPOINTMENT OF HIGHER DIVISION OFFICERS) REGULATIONS, 2012)].

EXHIBIT P6. A TRUE COPY OF THE G.O.(MS)NO.17/2013/TRAN DATED 16.03.2013.

EXHIBIT P7. A TRUE COPY OF THE GAZETTE DATED 15.11.2013 CATEGORY NO.401/2013 PUBLISHED BY THE 4TH RESPONDENT.

EXHIBIT P8. A TRUE COPY OF THE GAZETTE DATED 15.11.2013 CATEGORY NO.400/2013 PUBLISHED BY THE PUBLIC SERVICE COMMISSION.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 4159 of 2014 (T)

Dated this the 5th day of March, 2015.

JUDGMENT

The petitioner, an employee of the second respondent Corporation, has a grievance that though he is eminently eligible to be promoted or appointed as Assistant Transport Officer, the Corporation has shown patent discrimination in prescribing qualifications.

2. According to the petitioner, though MBA was shown as one of the essential qualifications for the candidates under direct recruitment, the same has not been prescribed as qualification insofar as the candidates through internal recruitment are concerned. Thus, assailing Ext.P5 regulations, namely Kerala State Road Transport Corporation (Qualification & Method of Appointment of Higher Division Officers) Regulations, 2012 (for brevity 'the Regulations'), he

has filed the present writ petition.

3. The learned counsel for the petitioner has strenuously contended that the petitioner, an in-service candidate, apart from possessing degree in post graduation, has also got MBA and B.Ed from the recognised Universities. According to him, it is patently discriminatory to prescribe MBA as a minimum qualification for the candidates under direct recruitment, while not applying the same standard for the candidates under internal recruitment. It is the singular contention of learned counsel for the petitioner that for the purpose of increasing efficiency in the administration, the respondent Corporation ought to have prescribed MBA as a qualification at the middle management level, to which position the post of Assistant transport Officer belongs.

4. The learned Standing Counsel for the respondent Corporation, on the other hand, has strenuously opposed the claims and contentions of the petitioner. Making elaborate submissions and taking this Court through the history of Ext.P5

regulations and under what circumstances the management brought in the present regulations of 2012, she has contended that it is the prerogative of the employer to prescribe qualifications, keeping in view the overall interest of the organisation and administrative efficacy. She has also submitted that the internal candidates cannot be equated with direct recruitees, for the experience of the internal candidates in the organisation is to be given due recognition. At any rate, the learned Standing Counsel would contend that this Court, while exercising the powers under Article 226 of the Constitution of India, cannot direct what qualifications are to be prescribed concerning the post, inasmuch as the Corporation has taken an informed decision in that regard after an elaborate consideration of all the issues involved.

5. The learned Standing Counsel for the 4th respondent has, nevertheless, submitted that Ext.P5 regulations are illegal, inasmuch as the respondent Corporation has proceeded with the recruitment and confirmation without the concurrence of the 4th

respondent.

6. In reply to the contention raised by the learned Standing Counsel for the 4th respondent, the learned Standing Counsel for the respondent Corporation has submitted that the issue of not obtaining the permission or concurrence from the 4th respondent does not pertain to the controversy raised in the present writ petition. Accordingly, she has submitted that on earlier occasion, prior to the introduction of Ext.P5 regulations, when two persons were recruited, despite the rejection of the 4th respondent, the Government subsequently issued further orders regularising their services with effect from 2006.

7. Heard the learned counsel for the petitioner, the learned Standing Counsel for the Kerala State Road Transport Corporation and the learned Standing Counsel for the Kerala Public Service Commission, apart from perusing the record.

8. The scope of controversy in the present writ petition is whether, under the extant regulations of Ext.P5, MBA is to be a mandatory qualification for candidates under internal

recruitment also.

9. As has been rightly contended by the learned Standing Counsel for the respondent Corporation, it is the prerogative of the management to decide or determine what qualifications are to be prescribed for each post in its administrative set up. This Court has neither the necessary wherewithal nor expertise to make any foray into that administrative arena meant exclusively for the management. This principle stands affirmed by the Hon'ble Supreme Court in *Surinder Singh v. Union of India*, (2007) 11 SCC 599.

10. In *Official Liquidator v. Dayanand*, (2008) 10 SCC 1, the Supreme Court has emphatically laid down the scope of judicial review vis-à-vis the prerogatives of an employer thus:

“59. The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a

particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.

11. Indeed, the candidates under direct recruitment cannot be equated with those under internal recruitments. It is, in my considered view, inequitable to insist that candidates with sufficient experience internally should also go through the same rigmarole of qualification and other selection criteria as the rank outsiders do. As such, the decision of the respondent Corporation in terms of the regnant regulatory regime concerning fixing of qualification under Ext.P5 cannot be found fault with.

In the facts and circumstances, the writ petition stands dismissed. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

