

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 11517 of 2015 (L)

PETITIONER:

ELBIN ALIAS,
MAROKKIL HOUSE, KANJIRAMATTOM P.O, ERNAKULAM DISTRICT,
682 315.

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.V.VARGHESE
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.ANNAPOORNA

RESPONDENTS:

1. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM, 695 004.
2. DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION, ERNAKULAM 682 011.
3. THE DISTRICT CO-OPERATIVE BANK,
ERNAKULAM, HEADQUARTERS, KAKKANAD,
682 030, REPRESENTED BY ITS GENERAL MANAGER.

R1-R2 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
R3 BY SMT.I.SHEELADEVI, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1. COPY OF THE RELEVANT EXTRACT OF THE GAZETTE NOTIFICATION DATED 30.4.11 DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC.

EXHIBIT P2. COPY OF THE HALL TICKET ISSUED TO THE PETITIONER BY THE IST RESPONDENT FOR ATTENDING OMR TEST.

EXHIBIT P3. COPY OF THE RELEVANT EXTRACT OF THE SHORT LIST NO.2/2014/DOE DATED 25.3.14.

EXHIBIT P4. COPY OF THE RANK LIST NO.62/15/DOE (CATEGORY NO.63/2011).

EXHIBIT P5. COPY OF THE DRIVING LICENCE OF THE PETITIONER.

EXHIBIT P6. COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE IST RESPONDENT.

EXHIBIT P7: TRUE COPY OF THE LETTER NO.D.RV(3)35054/99/GW DATED 01.11.2014 OF THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION.

RESPONDENTS' EXHIBITS:

EXT.R1(a): TRUE COPY OF THE MALAYALAM VERSION OF THE NOTIFICATION.

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P.(C). No. 11517 of 2015 (L)

Dated this the 6th day of November, 2015.

JUDGMENT

The petitioner, said to be fully qualified, in response to Ext.P1 notification dated 30.04.2011 issued by the first respondent-Kerala Public Service Commission, applied for the post of Driver in the service of the third respondent Bank,

2. As can be seen from the record, based on the marks he secured in the written test held on 20.01.2012, the petitioner's name was shortlisted in Ext.P3 dated 25.03.2014. Thereafter he underwent medical fitness test and also the practical test, both of which he cleared. Nevertheless, the petitioner's name was not included in Ext.P4 final selection list. Aggrieved, the petitioner has approached this Court.

3. The learned counsel for the petitioner has submitted that though the petitioner has been eminently qualified in every respect, the first respondent has denied to him selection without any justification. He has further submitted that, having found that his name was not reflected in Ext.P4 final list, the petitioner submitted Ext.P6 representation. It was, in fact, rejected by the first respondent through Ext.P7.

4. Summing up his submissions, the learned counsel has

submitted that both Exts.P4 and P7 are unsustainable and are required to be set aside with a consequential direction to the first respondent to include the petitioner's name in Ext.P4 rank list.

5. The learned Standing Counsel for the first respondent has strenuously contended that the petitioner did not meet the qualification criteria. In elaboration, he has submitted that, to be qualified, the petitioner should not only have a driving licence but also have a current driver's badge obtained three years prior to the petitioner's applying for the post.

6. Going by the record, this Court queried with the learned Standing Counsel that the time stipulation applies to the driving licence, but not the driver's badge. He has, however, submitted that the petitioner has relied on the English version of the notification, whereas the vernacular version mandates that both the driving licence and the driver's badge should have been obtained three years before the petitioner applied for the post.

7. As regards the eligibility, which version—the vernacular or the English one—is to be relied on has generated much controversy. As a result, this Court has asked both the respondent Bank, the employer, and the Public Service Commission, the recruiting authority, to clarify which of the two versions was issued first.

8. When the Commission, in response, has filed as many as three affidavits, this Court directed the respondent Bank to file the necessary material before the Court concerning the Recruitment Rules, especially concerning the qualification for the post of Driver. This Court has also required the respondent Bank to inform the Court whether the Recruitment Rules have been originally framed in English or in the vernacular.

9. Smt. I. Sheela Devi, the learned Standing Counsel for the 3rd respondent Bank, has submitted that the Recruitment Rules had been originally framed in English and later sent to the first respondent Commission, which, in fact, issued the notification in the vernacular, thereby translating the Recruitment Rules.

10. Heard the learned counsel for the petitioner, the learned Standing Counsel for the Kerala Public Service Commission and the learned Standing Counsel for the respondent Bank, apart from perusing the record.

11. Indeed, it is not in dispute that the petitioner successfully cleared all the hurdles and hoped that his name would be incorporated in Ext.P4 final selection list. The singular contention on the part of the first respondent is that the petitioner has not been qualified. In other words, the bone of contention is that the petitioner, apart from possessing a driving

licence issued three years ago, ought to have possessed the driver's badge issued before the same time span.

12. The learned counsel for the parties on both sides have agreed that in the vernacular notification the requirement is to the effect that both the driving licence and the driver's badge must be of the same period. Nevertheless, the learned counsel for the petitioner has strenuously contested the correctness of the notification in the vernacular. According to him, in English, it has been made very explicit that only the driving licence should have been issued three years ago, but not the driver's badge, which could have been obtained even just prior to an applicant's applying to the post.

13. Of vital importance is the fact that the first respondent Commission in its additional counter affidavit has submitted that the Recruitment Rules were originally framed in English in 1998. As such, it is appropriate to refer to the said Rules concerning the qualification for the post of Driver. From a copy of the Recruitment Rules placed before me by the learned Standing Counsel for the respondent Bank, it is very evident that the applicant for the post of Driver must possess 'light duty vehicle driving licence' of at least three years' standing and driver's badge. It needs not much cogitation to hold that the temporal

stipulation is with regard to the driving licence, but not the driver's badge.

14. Under these circumstances, given the fact that the petitioner has been qualified and successfully cleared all the qualifying parameters, it is imperative that the first respondent Commission shall incorporate the petitioner's name in the selection list. As a corollary, Exts.P4 and P7 are set aside with a consequential direction to the first respondent Commission to include the petitioner's name in the selection list and proceed further.

15. It is made clear that the petitioner's selection shall not affect the prospects of any other successful candidates, provided those candidates are more meritorious than the petitioner.

16. It is further made clear that the first respondent Commission shall complete the entire process, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

This writ petition is allowed as above. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

