

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 15373 of 2015 (V)

PETITIONER:

PRADEESH KUMAR.V.B., S/O. V.BALAKRISHNAN,
VALAPPIL HOUSE, PALACE ROAD,
SOUTH VELLARAPPILLY P.O., 683 580.

BY ADVS.SRI.R.KRISHNA RAJ
SRI.BIJITH S.KHAN

RESPONDENTS:

1. PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM-695 004.
2. DISTRICT OFFICER, KERALA PUBLIC SERVICE
COMMISSION DISTRICT OFFICE,
KAKKANAD, ERNAKULAM-682 030.
3. DISTRICT COOPERATIVE BANK, HEAD OFFICE,
KAKKANADU, ERNAKULAM-682 030.
4. SAMOD A.K., AMBALAPRAMBIL, PANANGADU P.O., 682 506.

R4 BY ADV. SRI.SABU GEORGE
R4 BY ADV. SRI.NIDHI BALACHANDRAN
R4 BY ADV. SRI.JAYAKRISHNAN.C.H
R1& R2 BY ADV. SRI.P.C.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 15373 of 2015 (V)

PETITIONER'S EXHIBITS:

EXHIBIT P1- COPY OF THE NOTIFICATION OF THE FIRST RESPONDENT DATED 30-4-2011.

EXHIBIT P2- COPY OF THE RANK LIST PUBLISHED BY THE FIRST RESPONDENT DATED 3-3-2015.

EXHIBIT P3- COPY OF THE RANK LIST PUBLISHED BY THE FIRST RESPONDENT DATED 3-9-2013.

EXHIBIT P4- COPY OF THE RANK LIST PUBLISHED BY THE FIRST RESPONDENT DATED 30-12-2013.

EXHIBIT P5- COPY OF THE RANK LIST PUBLISHED BY THE FIRST RESPONDENT DATED 29-6-2012.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.15373 of 2015 V

Dated this the 7th day of September, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondents 1 and 2, apart from perusing the record.

2. The petitioner, a prospective job seeker, secured 105 marks in the recruitment test conducted by the first respondent Commission to the post of Driver in the District Co-operative Bank, Ernakulam. Incidentally, both the petitioner and the fourth respondent secured the same rank having scored identical marks. Accordingly, the respondent Commission chose to advice the fourth respondent instead of the petitioner. Under these circumstances, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has submitted that the fourth respondent has already been gainfully

employed in Government service and that the petitioner, who is 37 years old, being unemployed, does not have much job prospect in near future. In other words, according to the learned counsel for the petitioner, since both the petitioner and the fourth respondent have secured the same rank, and the fourth respondent has already been gainfully employed in Government service, the respondent Commission ought to have considered the petitioner's case favourably for advice.

4. The learned Standing Counsel for the respondent Commission, on his part, has submitted that Clause 206 of the Public Service Commission Recruitment Manual is clear on this aspect. In elaboration of his submissions, the learned Standing Counsel has submitted that once there is any 'tie' in the marks secured by the candidates, the dates of birth are required to be considered, and the person who was born earlier should be given preference. According to him, the fourth respondent, who is elder than the petitioner, has been preferred by the respondent Commission only in accordance

with Clause 206 of the Manuel. He has further contended that the issue whether the fourth respondent has been employed in Government service is not germane for determining his claim for the post in question.

5. Indeed, there is no much factual dispute in the matter. Admittedly, though both the petitioner and the fourth respondent have secured the same marks and accordingly the same rank, the fourth respondent is older than the petitioner. Clause 206 of the Manuel, which holds the key for determining the issue reads as follows:

“206. In cases where more than once candidate secures equal marks, the relative position among them is to be fixed on the basis of the order of their dates of birth, i.e., the elder should be given preference over the younger. When the marks secured by more than one candidate are the same and their date of birth falls on the same date, they will be ranked in the alphabetical order of the names as written in English. If the first alphabets of the names of candidates are also same, the name should be arranged in the Dictionary Order. If the name of the candidates also happens to be same, then the initials of the candidates will be considered and arranged in the Dictionary Order (English). If two candidates one with initials to his name and other without initials to his name secure same marks and their dates of birth and names are also the same then the candidate without initials to his name shall be ranked

above the candidate with initials. If the initials are also same, the full expansion of the initials will be taken into consideration for the purpose of ranking.”

6. A perusal of the above guidelines leaves no manner of doubt that older of the candidates who secured equal rank should be given preference. The contention raised by the petitioner that the fourth respondent has already been gainfully employed, as has been rightly contended by the learned Standing Counsel for the respondent Commission, does not have the effect of defeating the fourth respondent's right to choose a profession of his choice.

Under these circumstances, I do not find any merit in the writ petition and accordingly, it is dismissed. No order as to costs.

Dama Seshadri Naidu, Judge

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