

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 15678 of 2015 (H)

PETITIONER(S):

- 1. NASEER M. AGED 34 YEARS
S/O.MOHAMMED ABDUL KHADER O.S, PALLI STREET, PUTHUCODE
PALAKKAD 678 687**
- 2. GOPINATH V AGED 45 YEARS
S/O.VELAPPAN, SUNDARAN KANDATHU HOUSE, SEKHARIPURAM
PALAKKADU 678 010**
- 3. SUJITH S.M AGED 41 YEARS
S/O.SEKHARAN NAIR R, TC 522(9), MAHESWARISADANAM
KULATHAMAL, CHAIKOTTUKONAM P.O, TRIVANDRUM-695 122**
- 4. SHIBU S AGED 39 YEARS
S/O.SAMUEL, SHEEBA BHAVAN, THEVANCODE
MYLAKKARA P.O, 'TRIVANDRUM-695 572**
- 5. MANU M.S AGED 45 YEARS
S/O.MURALEEDHARAN NAIR.U, MURALEEVARAM
TC 7/999-MARUTHANKUZHI, TRIVANDRUM-695 030**
- 6. SHYNE KUMAR B AGED 39 YEARS
S/O.BALAKRISHNAN C, YESODABHAVAN, STUDIO ROAD
ESTATE P.O, TRIVANDRUM-695 019**
- 7. NITHIN V.N
S/O. V NARAYANAN, VELLUPARAMPIL, PURANATTUKARA
THRISSUR-680 551**

**BY ADVS.SRI.P.A.AHAMMED
SRI.THOUFEEK AHAMED
SRI.M.ABDUL SAMAD**

RESPONDENT(S):

- 1. KERALA PUBLIC SERVICE COMMISSION,
TRIVANDRUM REPRESENTED BY ITS SECRETARY, PATTOM
THIRUVANANTHAPURAM 695 003**
- 2. KERALA STATE FINANCIAL ENTERPRISES LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR, BADRATHA
HEAD OFFICE, MUSEUM ROAD, THRISSUR PIN 680 020**

**R1 BY ADV. SRI.P.C.SASIDHARAN, STANDING COUNSEL, KPSC
R2 BY SRI.M.GOPIKRISHNAN NAMBIAR, STANDING COUNSEL, KSFE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS:

- P1: COPY OF THE RELEVANT PAGE OF THE RECRUITMENT RULE OF THE 2ND RESPONDENT
- P2: COPY OF NOTIFICATION NO.151/2013 DATED 09.07.2013 ISSUED BY THE 1ST RESPONDENT
- P3: COPY OF ADMISSION TICKET OF 1ST PETITIONER ISSUED BY TEH 1ST RESPONDENT
- P3(A): COPY OF ADMISSION TICKET OF 2ND PETITIONER ISSUED BY TEH 1ST RESPONDENT
- P3(B): COPY OF ADMISSION TICKET OF 3RD PETITIONER ISSUED BY TEH 1ST RESPONDENT
- P3(C): COPY OF ADMISSION TICKET OF 4TH PETITIONER ISSUED BY TEH 1ST RESPONDENT
- P3(D): COPY OF ADMISSION TICKET OF 5TH PETITIONER ISSUED BY TEH 1ST RESPONDENT
- P3(E): COPY OF ADMISSION TICKET OF 6TH PETITIONER ISSUED BY TEH 1ST RESPONDENT
- P3(F): COPY OF ADMISSION TICKET OF 7TH PETITIONER ISSUED BY TEH 1ST RESPONDENT
- P4: COPY OF THE EXAMINATION CALENDAR PUBLISHED BY THE 1ST RESPONDENT FOR THE MONTH OF APRIL, 2015
- P5: COPY OF HTE SMS MESSAGE DATED 07.04.2015
- P6: COPY OF QUESTION PAPER OF THE LAST EXAMINATION CONDUCTED BY THE 1ST RESPONDENT
- P7: COPY OF THE QUESTION PAPER OF THE EXAMINATION HELD ON 28.04.2015
- P8: COPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DATED 07.05.2015
- P8(A): COPY OF THE NEWS ITEM PUBLISHED IN DESABHIMANI DATED 07.05.2015
- P8(B): COPY OF THE NEWS ITEM PUBLISHED IN THOZHIL VARTHA DATED 16.05.2015
- P8(C): COPY OF THE NEWS ITEM PUBLISHED IN THOZHIL VEEDHI DATED 16.05.2015

- P9: COPY OF THE REPRESENTATION FILED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT DATED 04.05.2015.
- P10: COPY OF ADMISSION TICKET OF SAID V.K. REG. NO.S200207
- P11: COPY OF PETITION FILED BEFORE THE CHAIRMAN OF 1ST RESPONDENT BY SOME EMPLOYEES OF THE 2ND RESPONDENT
- P12: COPY OF THE EXAMINATION CALENDAR FOR THE MONTH OF APRIL 2011 PUBLISHED BY 1ST RESPONDENT DATED 10.02.2011
- P13: COPY OF THE PETITION FILED BEFORE THE CHAIRMAN OF 1ST RESPONDENT BY ONE OF THE TWO UNIONS REPRESENTING THE EMPLOYEES OF HTE 2ND RESPONDENT
- P14: COPY OF THE PETITION FILED BY SAID V.K. BEFORE THE JOINT SECRETARY, DEPARTMENTAL TESTS OF 1ST RESPONDENT DATED 04.05.2015
- P15: COPY OF THE PETITION FILED BY MUHAMMED NAZAR BEFORE THE CHAIRMAN OF 1ST RESPONDENT DATED 04.05.2015
- P16: COPY OF THE PETITION FILED BY NOUSHAD H BEFORE THE JOINT SECRETARY, DEPARTMENTAL TEST OF 1ST RESPONDENT DATED 05.05.2015
- P17: COPY OF THE PETITION FILED BY KESAVAN AMBRAN N. BEFORE THE CHAIRMAN OF 1ST RESPONDENT DATED 02.05.2015.

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.15678 of 2015

Dated this the 4th day of August, 2015

JUDGMENT

The petitioners are working as subordinate staff in the Kerala State Financial Enterprises Limited (hereinafter referred to as 'the KSFE'). They have approached this Court in this writ petition seeking an order to call for the records relating to the eligibility test conducted by the Kerala Public Service Commission (hereinafter referred to as 'the Commission') pursuant to Ext.P2 notification dated 09.07.2013 for recruitment to the post of Junior Assistant in the KSFE and quash the same. They have also sought for a writ of mandamus commanding the 1st respondent to consider Ext.P9 representation and conduct the eligibility test afresh.

2. Going by the averments in the writ petition, the petitioners are working as subordinate staff in the KSFE in the category of Peon. As per Ext.P1 Recruitment Rules of the KSFE, the method of appointment to the post of Junior Assistant is by way of direct recruitment on the advice of the Commission and

the qualification prescribed is Degree of a recognized University. But the recruitment Rules provides that, 5% of the vacancies in the category of Junior Assistant may be filled up by selection from among Subordinate Staff in the KSFE who possess the minimum educational qualification of SSLC and possess not less than two years of service as Subordinate Staff. Going by the Recruitment Rules, in the case of Subordinate Staff, for claiming appointment under the 5% quota reserved for them, the Commission will conduct a suitability test and assess whether they are suitable for appointment as Junior Assistant.

3. The 1st respondent issued Ext.P2 notification dated 09.07.2013 inviting application for suitability/eligibility test for appointment as Junior Assistant. Pursuant to Ext.P2 notification, the petitioners submitted their application. Going by the averments in the writ petition, on 07.04.2015, the petitioners received an SMS message from the Commission informing that the eligibility test is scheduled to be held on 28.04.2015 at 9.30 am and that the Admission Ticket is available in the profile for Junior Assistant - eligibility test (Cat. No.151/2013). On receipt of the aforesaid SMS, a copy of which is produced as Ext.P5 in the writ petition, the petitioners downloaded Ext.P3

series of Admission Tickets.

4. The syllabus of examination mentioned in Ext.P3 series of Admission Tickets provides that the examination will be (1) General Knowledge, (2) General English, (3) Simple Arithmetic and (4) General Science. The grievance of the petitioners is that neither in the SMS received on 07.04.2015 nor in Ext.P3 series of Admission Tickets, the medium of examination was mentioned. Further, the 1st respondent has also not included the suitability test in question in the examination calender published for the month of April 2015. In order to substantiate the aforesaid contention, the petitioners would rely on Ext.P4 examination calender published by the 1st respondent for the month of April 2015.

5. According to the petitioners, for the previous examination, the medium of examination was Malayalam, which is evident from Ext.P6 question paper. But for the examination conducted on 28.04.2015, the medium of examination was English, as borne out from Ext.P7 question paper. The petitioners came to know about the medium of examination only when they opened the question paper booklet at the examination centre. As a result, they found it extremely difficult to answer

the questions within the stipulated time for the examination. The difficulties faced by the candidates were published in Ext.P8 series of news paper reports. It was in such circumstances, the petitioners have submitted Ext.P9 representation before the 1st respondent with a request to conduct a fresh test. Immediately after filing of the aforesaid representation, the petitioners have approached this Court in this writ petition seeking various reliefs.

6. A counter affidavit has been filed on behalf of the 1st respondent, contending that the eligibility test in question was conducted on 28.04.2015 pursuant to Ext.P2 notification. It was an OMR test with a duration of 1 hour and 15 minutes with a total mark of 100. Out of 305 candidates applied pursuant to Ext.P2 notification, 304 candidates were admitted, out of which 285 candidates appeared for the test. Therefore, the averment in the writ petition that several candidates who applied for the post did not receive the SMS and such candidates were not able to attend the examination is not true. The 1st respondent would contend that since the applications for the eligibility test were invited through online, the Commission has not issued individual Admission Tickets to the candidates and the candidates were

permitted to download the Admission Tickets themselves from their profile. They would also contend that, the examination details in respect of selection tests alone are being published in the examination calender by the Commission. But in departmental and eligibility tests, such practice is not being done. Hence the schedule of the suitability/eligibility test was not included in the examination calender published by the Commission. But press release was issued on 14.04.2015.

7. The 1st respondent has admitted the fact that, the previous test was conducted in Malayalam. But according to the 1st respondent, the Commission has decided to conduct the test in English. The 1st respondent would also point out that for direct recruitment for the post of Junior Assistant, the qualification prescribed is graduation. Since basic knowledge in English is essential for discharging of the functions of a Junior Assistant, the Commission has decided to fix the medium of examination as English and it is well within the power of the Commission to do so. The Commission is competent to adopt any mode of selection as it deem fit. The action of the Commission in this regard is only a bonafide action and no prejudice is caused to anybody. The 1st respondent has also pointed out that, if any

interference is made, it will adversely affect large number of candidates who have appeared in the eligibility test and awaiting their results. In such circumstances, no interference is possible in the selection process in a writ petition in which none of the affected persons are impleaded.

8. The petitioners have also filed a reply affidavit reiterating the contentions in the writ petition. The petitioners have also produced various representations submitted by those who appeared for the examination as well as Ext.P12 examination programme for the month of April 2011, in order to substantiate the fact that, during the year 2011, the eligibility test for Junior Assistant in the KSFE was also included in the examination calender published by the Commission.

9. I heard the arguments of the learned counsel for the petitioner, learned Standing Counsel for the 1st respondent and also the learned Standing Counsel for the 2nd respondent.

10. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of the eligibility test conducted by the 1st respondent pursuant to Ext.P2 notification.

11. It is not in dispute that the recruitment to the post of Junior Assistant in the KSFE is governed by Ext.P1 Recruitment

Rules. As I have already noticed, though the qualification prescribed for direct recruitment to the post of Junior Assistant is Degree of a recognized University, 5% of vacancies in that category can be filled up by selection from qualified Subordinate Staff in the KSFE, with the minimum educational qualification of SSLC and possess not less than two years of service. In respect of those subordinate staff, their selection will be on the basis of a suitability test and assessment made by the Commission. It was in terms of Ext.P1 Recruitment Rules, the 1st respondent issued Ext.P2 notification inviting application for eligibility test. A reading of Ext.P2 notification would show that the mode of examination prescribed is objective type (OMR test). It is the fact that, the medium of examination is not mentioned in Ext.P2. Based on the applications submitted pursuant to Ext.P2 notification, the petitioners were issued Ext.P3 series of Admission Tickets. Going by the averments in the writ petition, on 07.04.2015, the petitioners received Ext.P5 SMS asking them to download the Admission Tickets from their profile. It was pursuant to that, the petitioners downloaded Ext.P3 series of Admission Tickets. In Ext.P3 series of Tickets, the medium of examination is not mentioned. But the syllabus of examination is

mentioned in Ext.P3 series of Admission tickets. It is relying on Ext.P6 answer sheet for the year 2011, the petitioners are contending that the practice followed by the Commission for conducting eligibility test was that, the questions on papers other than General English will be either in Malayalam / Tamil / Kannada. The learned Standing Counsel for the Commission would point out that, only when the medium of examination is Malayalam, the Commission will prepare the question papers in Tamil as well as Kannada.

12. Ext.P7 is the question paper, based on which the petitioners participated in the selection process. A bare perusal of Ext.P7 would make it explicitly clear that, all the questions were of objective type, and most of them are questions of simple nature. Merely for the reason that for the previous recruitment, the question paper was set in Malayalam, the petitioners cannot insist that the Commission should conduct examination only in Malayalam. It is to be noticed that, the test conducted pursuant to Ext.P2 is a suitability test in order to assess the suitability of a candidate to be selected and appointed as Junior Assistant in the KSFE. It is also to be noticed that the educational qualification prescribed for Junior Assistant by way of direct recruitment is

Degree from a recognized University. If that be so, merely for the reason that, the Commission decided to conduct the examination in English it cannot be contended that any prejudice would be caused to the petitioners. Further, in the writ petition the petitioners have not raised any specific allegations of malafides or that any undue advantage was given to any category of candidates due to the medium of examination. In such circumstances, I find absolutely no merits to interfere with the selection process conducted by the Commission, pursuant to Ext.P2 notification.

13. The specific stand taken by the Commission in the counter affidavit is that out of the 305 candidates who appeared pursuant to Ext.P2 notification, 285 candidates appeared for the written test and they are awaiting their result. If any interference is made in this writ petition, it will seriously prejudice their right for consideration of their candidature in terms of Ext.P2 notification who are also not made parties to this writ petition. The petitioner failed to point out any vitiating circumstances in the conduct of eligibility test by the Commission.

I find absolutely no merits in the various grounds raised in

the Writ Petition. In the result, the Writ Petition fails and the same is dismissed.

No order as to costs.

JV

sd/-
ANIL K. NARENDRAN,
JUDGE