

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 29686 of 2006 (H)

PETITIONER(S) :

M.P.SHALINI,
ARACKAMATTATHIL HOUSE, KOTTAYAM SOUTH P.O., KODIMATHA
KOTTAYAM-686 039.

BY ADVS.SRI.T.C.GOVINDA SWAMY
SRI.G.SHYAM RAJ

RESPONDENT(S) :

1. THE CHAIRMAN,
RUBBER ROAD, KEEZHUKUNNU P.O., KOTTAYAM-686 002.

2. SRI.K.C.SASIDHARA KUMAR,
WATCHMAN, RUBBER BOARD, KEEZHUKUNNU P.O.
KOTTAYAM-686 002.

3. SMT.SINDHU T., W/O.PREMARAJAN,
DRIVER, RUBBER BOARD, KEZZUKUNNU P.O.
KOTTAYAM-686 002.

4. ANIL KUMAR M.S.
POOR BOYS HOME, MUTTAMPALOM P.O,
KOTTAYAM

5. ANEESH N.V., NEDUMTHUNDATHIL HOUSE
ATHIRAMPUZHA, KOTTAYAM

6. SANTY JOSEPH, THEKKUMKATTIL HOUSE
ANICKAMPOLI PO., KKD

7. KURIAN ZACHARIAH, KANNOTHRA KAROTT
MUTTAMBALAM P.O., KOTTAYAM

8. JOJIMON JOSEPH
PUTHENPARAMBIL, GABNDHI NAGAR
KOTTAYAM

9. AJITHKUMAR P.T
PADICKAMYALIL HOUSE, KARIKODE PO

10. AJIMON.K
RUBBER BOARD WOOD TESTING LABORATORY
MANGANAM PO, KOTTAYAM

11. SREEJAMOL KL
KANDEKATTUBELY, MUHAMMA PO, ALAPPUZHA

12. ABOOBACKER CT
PETTIYANTHODIKA, MALAPPURAM - 679 327

13. MANJU.S., MANJUSHALAYAM
NEELESWARAM PO, KOTTRAKKARA
14. SUALIMAN TP
THEKKAEPAINKAL, KUTTIPIPURAM
MALAPPURAM
15. ANSAHAR K. SALIM
KANNUPARAMBIL HOUSE
ATHIRAMPUZHA, KOTTAYAM
16. SHABEER C
CHEMBAKATH, URUMGATTIRI PO,, AREACODE
17. MADHU S., PRAMBUNILAM
PADAHARAM, THAKAZHY PO, ALAPPUZHA
18. AJITH A.A., ARRIKANEZHATH HOUSE
KOCHI -20.
19. MAYA C.P. THICHAKKALAPADAM, KALOOR PO, KOCHI - 17.
20. RAJU T.V., KANNADIKKOLLI
EPPOM PO, PANAMARAM, WAYANAD

R,R1 BY ADV. SRI.JOSEPH KODIANTHARA (SR.)
R,R1 BY ADV. SRI.MITHUN MARKOS
R,R18 BY ADV. SRI.C.S.AJITH PRAKASH
R,R18 BY ADV. SRI.RAJAKRISHNAN. K
R,R8 BY ADV. SRI.MANSOOR.B.H.
R,R4,5,7,9, BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
R,R15,16,20 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
R,R4,5,7,9, BY ADV. SMT.N.SANTHA
R,R15,16,20 BY ADV. SMT.N.SANTHA
R,R4,5,7,9, BY ADV. SRI.PETER JOSE CHRISTO
R,R15,16,20 BY ADV. SRI.PETER JOSE CHRISTO
R,R4,5,7,9, BY ADV. SRI.S.A.ANAND
R,R15,16,20 BY ADV. SRI.S.A.ANAND
R,R6,10,11,12,14, BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
R,R17,19 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
R,R6,10,11,12,14 BY ADV. SMT.N.SANTHA
R,R17,19 BY ADV. SMT.N.SANTHA
R,R6,19,11,12,14, BY ADV. SRI.PETER JOSE CHRISTO
R,R17,19 BY ADV. SRI.PETER JOSE CHRISTO
R1 BY ADV. SRI.V.ABRAHAM MARKOS
R1 BY ADV. SRI.BINU MATHEW
R1 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)
R1 BY ADV. SRI.ISAAC THOMAS
R BY SRI.JOSEPH MARKOSE, SC, RUBBER BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 29686/2006

PETITIONER'S EXTs:

EXT.P1A: TRUE COPY OF ABSTRACT OF ADMISSION REGISTER DT.14.6.2006
SIGNIFYING EDUCATIONAL QUALIFICATION OF THE PETITIONER

EXT.P1B: -DO- COMMUNITY CERTIFICATE NO:B1 5318/06(45) DT.22.6.2006
ISSUED BY THE TAHSILDAR, KOTTAYAM TO THE PETITIONER

EXT.P1C: CERTIFICATE DT.25.2.2003 ISSUED BY THE DISTRICT HOSPITAL,
KOTTAYAM CERTIFYING THE DISABILITY OF THE PETITIONER AT 40%

EXT.P2: TRUE COPY OF THE MEMORANDUM NO:3/23/2006/.EST/133
DT.30.5.2006 ISSUED BY THE RUBBER BOARD INVITING THE PETITIONER FOR
AN INTERVIEW

EXT.P3: -DO- OF THE RUBBER BOARD (SERVICE) RULES, 1961

EXT.P4: -DO- RELEVANT RECRUITMENT RULE FOR APPOINTMENT TO THE POST
OF PEON/WATCHER

EXT.P5: -DO- ADVERTISEMENT NO:4/2005 THAT HAS APPEARED IN EMPLOYMENT
NEWS INVITING APPLICATIONS FOR APPOINTMENT OF PEON/WATCHER ETC.

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN, J.

W.P(C) NO: 29686 OF 2006

Dated this the 4th March, 2015.

JUDGMENT

The petitioner who was one of the candidates at an interview that was conducted by the Rubber Board for recruitment to the post of Peon, has filed this writ petition challenging the selection process contemplated by Ext.P5.

2. The petitioner is a person who has passed her standard IX . She belongs to a Scheduled Caste and is a visually challenged person suffering from 40% disability as evident from Ext.P1 series documents. She was an applicant for appointment to the post of Peon notified by the Rubber Board. She was directed to attend an interview on 27.6.2006 by Ext.P2 communication. Accordingly, she attended the interview that was conducted by a committee consisting of three members. Though she answered all the questions put to her by the Board, she was not even called for the second

interview that was conducted. Her allegation is that had the selection process been conducted strictly following the Recruitment Rules, she would not have been eliminated at the first interview itself. Therefore she has filed this writ petition challenging the entire selection process.

3. According to the petitioner, the appointment to the various posts under the Rubber Board is regulated by the provisions of the Rubber Board (Services) Rules, 1961 ('Rules' for short), a true copy of which is produced as Ext.P3. The appointment to the post of Peon/Watcher has to be made in accordance with the schedule attached to Ext.P3 rules, which is produced as Ext.P5. The Rubber Board had apart from obtaining nomination from the Employment Exchanges also published notifications inviting applications by open advertisement in the Employment News and other periodicals. Ext.P5 is the copy of the said advertisement. More than 5000 candidates participated in response to the notification.

4. The Rubber Board conducted a preliminary interview as well as a final interview. The preliminary interview was conducted at 26 centres spread all over India on the 26th and 27th June, 2006. The interview was conducted by an independent Interview Board. The second and final interview was also conducted by an independent Interview Board. Thereafter a select list of 28 candidates was published on 28.12.2006 for appointment to the notified post. The contention of the petitioner is that, the entire selection process is vitiated and is in contravention of the Recruitment Rules, Ext.P3.

5. According to Adv.T.R.Mohan Kumar who appears for the petitioner, as per Rule 6, the maximum age limit stipulated for appointment by direct recruitment is 25 years with permission for relaxation of the same in the case of candidates specified in the said rule. According to the petitioner, overaged candidates have been recruited and appointed in violation of the above stipulation contained in

Rule 6. It is also contended that, as per Rule 7, recruitment could be undertaken only by obtaining names of suitable candidates from the Employment Exchanges. Therefore, the action of the Rubber Board in issuing advertisement and enlarging the scope of selection process by permitting outside candidates also to apply is violative of Rule 7. Apart from the above, it is contended by the counsel for the petitioner that the selection in the present case made entirely on the basis of an interview conducted is impermissible in the light of the dicta laid down by the Hon'ble Supreme Court in various decisions on the point. It was absolutely necessary for the interview to have been preceded by a written test or some other reliable process of selection so as to ensure that the selection was fair and free of other influences. The counsel also takes strong exception to the fact that casual employees of the Rubber Board were granted age relaxation and permitted to participate in the selection process, without being notified in the advertisement that was published inviting

applications for appointment to the post. Consequently the persons who have been selected and appointed are mostly relatives of the employees of the Rubber Board who have been granted appointments relaxing even the age limit stipulated by the rules. The counsel attacks the procedure that was adopted for selection, of having a preliminary as well as final interview conducted at 28 different centres spread over the country to contend that, no uniform procedure of selection was followed. With respect to the objection regarding non-joinder of necessary parties the answer of the counsel is that, since what is under challenge in the present writ petition is the selection process itself the selected candidates are not necessary parties hereto. The counsel has also placed reliance on a number of decisions of the Apex Court to support his contentions. The counsel therefore seeks the issue of appropriate directions setting aside the selection that was conducted.

6. Adv. Isaac Thomas who appears for the first respondent refutes the contentions of the petitioner by pointing out that a selection process in the first place has to be consistent with the principles of fair play, justice and equal opportunity. If the above principles are satisfied in general, a selection cannot be set aside for the mere fact that, some minor defect or infirmity exists therein. According to the learned counsel the scope for interference with a selection process in exercise of the jurisdiction under Art.226 of the Constitution by this Court is limited, inasmuch as this Court is not expected to act as an Appellate Authority over the selection that was conducted. It is pointed out placing reliance on the decisions of the Apex Court that where the candidates are large in number it is within the powers of the authority to evolve suitable procedure to screen the candidates and to bring down the number to a manageable limit rendering the selection process more meaningful. It is the further contention of the counsel that, the failure to conduct a

written test as a method of selection is not fatal to the validity of the selection process, especially considering the nature of the duties to be discharged by the selected persons. In the present case, since the post is that of a Peon/Watcher, the capabilities of the competing candidates that require assessment are matters capable of being evaluated at an interview. No special skill or expertise that require evaluation through a written test is expected of a person who is considered for appointment to the post of a Peon. With respect to the relaxation in age granted to persons who are working as casual employees of the Rubber Board, the answer of the counsel for the first respondent is that with respect to matters on which the rules are silent, it is the rules prescribed by the Central Government that apply. Reliance is placed on the provisions of Central Civil Services and Civil Posts (Upper Age-Limit for Direct Recruitment) Rules, 1998 to point out that, relaxation in age limit to persons working as casual employees was permissible to the extent of the period spent

as casual employees. According to the learned Counsel the selection process does not suffer from any infirmity justifying an interference by this Court.

7. The selected candidates who are made parties to this writ petition as respondents 2 to 20 have also entered appearance and addressed their arguments separately.

8. Heard. The selection that is under challenge in this writ petition is to the post of Peon/Watcher in the Rubber Board. The interview in question was conducted on 27.6.2006. It is not in dispute that the petitioner had attended the interview. The case of the first respondent in the counter affidavit is that since the number of applicants who had responded to the advertisement exceeded 5000 in number, it was not possible for all the candidates to be interviewed together. Therefore, the candidates were interviewed in two stages. At the first and preliminary stage, the interview was conducted at 28 different centres spread all over the country. It is not disputed by the petitioner also

that the interview was conducted by an independent board. According to the first respondent, in order to ensure uniformity in the process of interview, the members of the interview board had been confidentially instructed regarding the questions to be put to the candidates. According to the counter affidavit no preference was given to the relatives of employees of the Rubber Board. Nor was any weightage given to experience for which 15 marks had been stipulated initially. Therefore, 20 marks were given for the interview and 20 marks were given to all candidates who possessed the minimum qualification. The reason for not conducting a written test is that, the candidates were comprised of persons holding qualifications covering a wide spectrum ranging from pass in Standard VIII to holders of Post Graduate degrees. Holding of a common written test would have resulted in elimination of persons with lesser qualifications. It was with the object of bringing in uniformity of the standards of appointment that the selection process was confined to

interview alone. At the initial interview persons including the petitioner were excluded. Thereafter, the final interview was conducted and the selection was made. With respect to the persons mentioned in ground E of the writ petition, who are stated to be relatives of employees of the Rubber Board, according to the learned counsel for the first respondent, other than the tenth respondent who is the relative of a retired employee, no other relative has been selected. Therefore, the question to be considered is whether in the light of the dicta laid down by the Hon'ble Supreme Court in the various decisions, the selection process was proper.

9. The first question is whether the method of recruitment should have been confined to candidates sponsored by the Employment Exchange alone. Rule 7 of Ext.P3 Rules provides as follows:–

“7. Method of recruitment

The method of recruitment and other matters relating thereto shall be as specified in columns 7 and 8 of the Schedule.

Provided that all vacancies in the scientific posts and in any other Class I and II posts classified as technical posts shall be advertised and such vacancies and all vacancies in other post shall be notified to the concerned Regional Employment Exchange and appointments shall be made from among the candidates applying in pursuance of such advertisement or the candidates recommended by such Employment Exchange, as the case may be.”

As per the schedule, Ext.P4 the qualification for the post is a pass in Standard VIII and the recruitment process prescribed is direct recruitment. The proviso to the above rule stipulates that technical posts shall be advertised and such vacancies and all vacancies in other posts shall be notified to the concerned regional Employment Exchange and appointments shall be made from among the candidates acquired in

pursuance of such advertisement or the candidates recommended by such Employment Exchange as the case may be. Therefore, the proviso permits not only recruitment through Employment Exchanges but also by advertisements. In the present case it is not in dispute that the Employment Exchanges had been notified and that advertisements had also been published. It cannot be said that the procedure adopted violates Rule 7.

10. The other question that arises is whether confining the selection process to interview alone is permissible. The counsel for the petitioner has relied on the decision in *P.Mohanan Pillai v. State of Kerala* [(2007) 2 SCC (L&S) 542]. In the said case, what was involved was appointment to the post of Watchman/Messenger/Attender, to which the ordinary rules that were prevailing at that time were applicable. In the present case, as already noticed above, the rules do not stipulate any particular mode of selection. The counsel for the petitioner has placed reliance on the

decision in *Shyma v. State* [1996(1)KLT 311] wherein while considering selection to the post of Primary department teachers it has been held by this Court that selection made solely on the basis of an interview was unfair. It is to be noticed that in the case of a teacher there are various aspects that require to be assessed relating to the expertise of the person concerned, to discharge the duties of a teacher. Many of the qualities to be assessed are incapable of being assessed at an interview. However, the same is not the case with respect to the post of a peon. Considering the nature of the duties that are expected to be discharged by a Peon/Watcher it is worth noticing that there are not many aspects that are capable of being assessed by conducting a written test. While considering a similar situation, where a large number of candidates had participated in an interview and only a very limited time was taken for the process of interview of each candidate the Supreme Court has held in *Joginder Singh and others v. Roshan Lal and others* [(2002)9SCC 765] as follows

in paragraph 5 of the said judgment:–

“5. On the facts on record we see no justification for the High Court to have come to this conclusion. The High Court in exercise of its jurisdiction under Article 226 of the Constitution is not supposed to act as an Appellate Authority over the decision of the Departmental Selection Committee. If the Committee has been properly constituted, as in this case, and the post is advertised and a selection process known to law which is fair to all, is followed, then the High Court could have no jurisdiction to go into a question whether the Departmental Selection Committee conducted the test properly or not when there is no allegation of mala fides or bias against any member of the Committee. Merely because there were a large number of candidates who appeared on two days, cannot ipso facto lead to the conclusion that the process of selection was a farce and fair chance was not given. Normally, experienced persons are appointed as members of the Selection Committee and how much time should be spent with a candidate would vary

from person to person. Merely because only two days were spent in conducting the interviews for the selection of Class IV posts cannot lead to the conclusion that the process of selection was not proper.”

In view of the above, it is not open to assail a selection process merely on the ground that, due to the presence of a large number of candidates the interview was conducted taking up only a very small duration of time for each candidate. With respect to confining the applicants to the Employment Exchange, the Hon'ble Supreme Court has held in *Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N.Visweshwara Rao and others* [(1996)6SCC 216] that advertisements from the general public would be more conducive to providing equal opportunity to all. In the light of the dicta referred to above, it cannot be said that confining the selection to interview alone has vitiated the selection process.

11. As rightly pointed out by the counsel for the first respondent the petitioner is a person who has participated in the selection process. She has been eliminated after the first interview that was conducted on 27.6.2006. This writ petition was filed only much later on 10.11.2006. It is held by the Supreme Court in the decision reported in [(2002)9 SCC 765] (supra) that it is not open to a candidate to challenge the selection process after having participated in the recruitment process and failed to succeed. It is also worth noticing that the candidates who were selected as stated above have already joined service and have been working, since no interim order was granted in this case. It is further to be noticed that though more than 5000 candidates had taken part in the process of selection the petitioner is the only person who has raised complaints against the same. As noticed above, no specific details regarding any violation that has been committed in the selection process is made out. Though it is alleged that relatives of Rubber Board have been given

relaxation in age, no details of any such candidates are forthcoming. It has been repeatedly held by the Hon'ble Supreme Court that it is not for this Court to make a roving enquiry into such matters, in exercise of the jurisdiction under Art.226 of the Constitution. If the selection is found to be proper, the same is to be sustained especially in view of the fact that such a large volume of candidates had participated in the process.

For the foregoing reasons I find no grounds to interfere with the selection process or to grant any of the reliefs sought for. This writ petition is therefore dismissed.

Sd/-

K. SURENDRA MOHAN
Judge

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