

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 26492 of 2014 (J)

PETITIONER :

**MAJEESH T.P.,
S/O.KUNHIRAMAN T.P., THAZHEPUTHIYOTTIL AYANCHERY
VATAKARA, KOZHIKODE DISTRICT, PIN 673 544.**

**BY ADVS.SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ**

RESPONDENT(S) :

- 1. THE KERALA PUBLIC SERVICE COMMISSION
PATTON, THIRUVANANTHAPURAM - 695 033
REPRESENTED BY ITS SECRETARY**
- 2. REGIONAL OFFICER,
KERALA PUBLIC SERVICE COMMISSION, REGINAL OFFICE
KOLLAM - 691 001**
- 3. THE ASSISTANT DIRECTOR
BUREAU OF IMMIGRATION, MINISTRY OF HOME AFFAIRS
GOVT. OF INDIA, 5TH FLOOR, TTMC
A BLOCK, BMTC, SHANTHINAGAR
BANGALORE 560 027.**

**R1 & R2 BY ADV. SRI.P.C.SASIDHARAN, SC
R3 BY ADV. SRI.N.NAGARESH, ASGI**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE NOTIFICATION DATED 31/12/2011.
- EXT.P2 COPY OF LETTER DATED 22/1/2012 SUBMITTED BY THE PETITIONER TO THE ASSISTANT DIRECTOR/E.B.O.I., BANGALORE ALONG WITH THE PRINTOUT OF DULY FILLED IN ON LINE APPLICATION.
- EXT.P3 COPY OF THE LETTER DATED 30/1/2012 OF THE JOINT DEPUTY DIRECTOR/E.BUREAU OF IMMIGRATION, GOVERNMENT OF INDIA, BANGALORE.
- EXT.P4 COPY OF THE LETTER NO. CR II (2) 76961/14/CW-DY DATED 10/7/2014 FROM THE 1ST RESPONDENT.
- EXT.P4(a) TRUE ENGLISH TRANSLATION OF EXHIBIT P4.
- EXT.P5 COPY OF THE LETTER DATED 8/7/2014 SUBMITTED BY THE PETITIONER TO THE ASSISTANT DIRECTOR, BUREAU OF IMMIGRATION, BANGALORE.
- EXT.P5(a) TRUE FROM OF RECEIPT.
- EXT.P6 COPY OF THE LETTER DATED 15/7/2014 OF THE 3RD RESPONDENT ASSISTANT DIRECTOR, BUREAU OF IMMIGRATION, BANGALORE.
- EXT.P7 COPY OF THE LETTER DATED 21/7/2014 SUBMITTED BY THE PETITIONER TO REGIONAL OFFICER, KPSC, KOZHIKODE.
- EXT.P7(a) ENGLISH TRANSLATION OF EXHIBIT P7.
- EXT.P8 COPY OF LETTER K.L.R. II(1) 1793/13 DATED 12/9/2014 OF THE 2ND RESPONDENT.

(Contd...)

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EXT.P8(a) TRUE ENGLISH TRANSLATION OF EXHIBIT P8.

EXT.P9 COPY OF THE 1ST PAGE, PAGE NO. 187, PAGE NO. 236 AND THE LAST PAGE OF THE RANK LIST NO. 569/14/ROQ FOR THE POST OF JUNIOR ASSISTANT/CASHIER/ASSISTANT GR II ETC IN KSFE/KSEB/THRISSUR CORPORATION ETC.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.26492 of 2014

Dated this the 21st day of January, 2015

J U D G M E N T

A short question that falls for consideration is whether an employee working other than the State Government service in Kerala has to submit an application in the 'Form of Receipt' as contemplated in condition No.20 in Part-II General Condition notification of the Kerala Public Service Commission (for short the P.S.C.) The petitioner has appeared for the written test and interview pursuant to the notification issued by the PSC for the posts of Junior Assistant/Cashier/Assistant Grade II/Clerk Grade I/Time Keeper Grade II/Senior Assistant/Assistant/Junior Clerk etc. under various public undertakings and Corporations under the Government of Kerala. On verification, it is found that the 'Form of Receipt' produced by the petitioner is defective as it is not in conformity with the general conditions. Therefore, the petitioner is not included in the final rank list published by the PSC for the above recruitment.

2. The petitioner's case is that he is working as Security Assistant in the Bureau of Immigration, Government of India. It is further submits that 'Form of Receipt' is only meant for the employees working in the Government services in Kerala and the petitioner having produced consent in terms of Note-2 under the Condition No.20 satisfies the procedure for consent for considering him for selection.

3. The 'Form of Receipt' as contemplated under Condition No.20 is a requisite form for a Government servant, who is applying for post notified under PSC in general Condition No.20 which stipulates as follows:

“When a Government Servant is applying for a post notified by the Kerala Public Service Commission:-

A Government Servant employed in a Service under the Administrative Control of the Government of Kerala applying for a post in another Office or Department of the Government of Kerala shall obtain a receipt in the following form at the time of applying for the post from the Head of Office and shall produce the same to the Commission as and when called for.”

4. The object of the above condition is that an employee who is in the service of Government of Kerala shall obtain the consent from the Head of Office for applying for any post. It is specifically indicates that 'Form of Receipt' as referred in the above, has to be submitted by any candidate who is under the service of Government of Kerala applying for the post under the Administrative Control of the Government of Kerala. This is also discernable from Note-2, wherein a different procedure has been prescribed for the employees under the Government of India or other State Government. Note-2 stipulates that application should be forwarded through proper channel with necessary endorsement to the effect that the application has been made in accordance with the Rules made by the Government concerned. It further stipulates that consent of the Government concerned will be insisted upon, if the application is not forwarded properly. So as far as Note-2 is concerned, that would only apply to any candidates, who are employed other than with the Government of Kerala. PSC

has no case that Note-2 would also apply to the employees under the Government of Kerala. Therefore, it is clear that Note-2 is only applicable for the Government employees working either under the Government of India or any other State. Therefore, PSC cannot insist that the petitioner being an employee under the Government of India, to obtain a 'Form of Receipt' as prescribed in Condition No.20 in the same format, as the same is only applicable to employees under the Government of Kerala. However the question arises that whether the petitioner has obtained a consent in terms of Note 2. It is admitted that now the application by the candidates need not be routed through the Head of the Department. On the other hand, the application is made through the online. Therefore, it is not possible to forward the application through proper channel and that part of the Note 2 has become now redundant in the sense that no application can be made through the Head of the Department. Now the question is whether the petitioner had complied the requirement of the consent which can be insisted by

the PSC for considering the petitioner for selection. It is to be noted that Note 2 clearly indicates that consent of the Government concerned will be insisted upon, if the application is not forwarded properly. Therefore, it is always open for the PSC to insist the consent from the employer to be produced by the candidate, if he is employed under the Government of India or other State Government. There is no prescribed format for consent perhaps it was for that reason Note-2 initial part insist upon submission of an application through proper channel. The petitioner submits that he had already submitted a consent as per Exts.P3 and P6.

5. The learned Standing counsel for PSC would submit that Exts.P3 and P6 would not indicate that any consent has been obtained by the petitioner. On the other hand, it is only a permission granted for appearing the examination. PSC in fact rejected the petitioner's application for want of 'Form of receipt' and not for want of consent. Since the rejection is only on the ground of non-production of 'Form of Receipt' which cannot be

insisted upon the employees who is working under the Government of India, I am of the view that an opportunity should be given to the petitioner to produce the consent. As rightly pointed out by the learned Standing Counsel for the PSC that Exts.P3 and P6 do not reflect the consent of the employer.

6. In this matter a statement has been filed by the Assistant Solicitor General on behalf of the 3rd respondent. Paragraph 11 of the statement reads as follows:

“As stated above, and since it is revealed now that the Form of Receipt under question has actually been prescribed by the KPSC, there is no impediment for the Bureau of Immigration in issuing the same, it is still required by the KPSC or if the Hon’ble Court so directs”

The Bureau of Immigration has no impediment in issuing consent in terms of form of receipt. In view of the above, the 3rd respondent is directed to issue a consent letter to the petitioner within a period of four weeks. If the petitioner produces the consent, within further period of four weeks, the petitioner shall be

included in the rank list and a suitable ranking shall be assigned to the petitioner.

The writ petition is disposed of as above. No costs.

Sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/