

S. Gopa Kumar

Vs

State of Kerala and Kerala Public Service Commission

Special Leave Petitions (Civil) Nos. 2081-2084 of 1980

(R.S. Pathak, Baharul Islam JJ)

21.09.1981

JUDGMENT

ISLAM, J. –

1. In these special leave petitions, the petitioner assails the judgment and order dated November 23, 1979 of a Division Bench of the Kerala High Court dismissing a number of writ appeals. The relevant facts may be stated thus :
2. The Kerala Public Service Commission (hereinafter KPSC) invited applications for filling up 130 expected vacancies in the posts of Junior Engineers in the Public Works Department, as per notification published in Kerala Gazette dated May 16, 1978. The qualifications specified for the posts were B.Sc. in Civil Engineering or Mechanical Engineering of the Kerala University or its equivalent as prescribed by the special rules of the Kerala Engineering Subordinate Service (General Branch). The applicants had to appear in the written test conducted by the KPSC and thereafter in an interview held by it. There was common question paper which contained, in Category I, questions in Civil Engineering and in Category II, questions in Mechanical Engineering. Applicants who were qualified in Civil Engineering had to answer the questions in Category I, and those qualified in Mechanical Engineering the questions in Category II.
3. After the written test and the interview, but before common rank list was prepared by the KPSC as was intended, eight writ petitions were filed in the Kerala High Court by applicants holding Civil Engineering degrees. By these writ petitions the preparation of a common rank list and also the procedure of the examination and a method of selection were challenged. It was prayed in the writ petitions that the KPSC be directed to effect selection and prepare and publish separate rank lists of selected applicants holding Civil and Mechanical Engineering degrees. It was contended in the applications that the applicants who had qualified in Civil Engineering question paper and answered the questions in Category I on the one hand and those who had qualified in Mechanical Engineering and answered questions indicated in Category II in the question paper could not rationally be included in a common rank list after the interview.
4. The learned Single Judge of the Kerala High Court by a common judgment dated April 2, 1979 allowed the writ petitions and directed the Government of Kerala and the KPSC to prepare "two lists, namely, one for the Civil Branch and the other for the Mechanical Branch on the basis of examination already conducted". He proceeded : "With the respect to it the Service Commission has not yet published the rank list. On receiving information from the Government on the above lines, the Public Service Commission is directed to prepare the two separate rank lists, one for the Civil Branch and other for the Mechanical Branch. On publication of the two lists the Government can

request the Service Commission to advise the candidates for appointment to these branches on the basis of the vacancies available in these two branches."

5. The Kerala Government and the KPSC accepted the directions given by the learned Single Judge and proceeded to take steps for the implementation thereof. However, some of the aggrieved respondents in the writ petitions filed appeals before the Division Bench of the High Court. The appeals were ultimately dismissed, in view of the fact that the KPSC had advised 239 candidates according to the separate lists for Civil and Mechanical Engineers prepared on the basis of directions given by the learned Single Judge and that these candidates had already been appointed.

6. One of the respondents, Shri S. Gopa Kumar, who held a Mechanical Engineering degree, was one of the special leave petitioners before us. He challenged the judgment of the Division Bench of the Kerala High Court dated March 23, 1979. This Court by an ex parte Order dated April 23, 1980 dismissed the special leave petition with the following observations :

The prejudice that the petitioner complains of is taking care of by the High Court emphasizing the fact that the petitioner is entitled to exercise his option. It is stated that he has come high in the common list prepared by the Public Service Commission. It is open to him to choose which wing, Civil or Mechanical, suits him most. In that view, we are unable to perceive any prejudice especially because on his option being exercised for the general or mechanical wing, as the case may be, he will be chosen in terms of his willingness.

All S.L.Ps. dismissed

7. It may be mentioned that preparation of no common list was directed either by the Single Judge or by the Division Bench of the Kerala High Court. On the contrary the direction expressly was for preparation of separate lists for Civil Engineer and Mechanical Engineer candidates as stated above. It has also been stated above that in pursuance of the directions given by the learned Single Judge in his judgment in effect upheld by the Division Bench of the High Court, the Government and the Public Service Commission of Kerala proceeded to prepare separate lists. But facing difficulties, in view of the observations of this Court in its Order dated April 23, 1980 quoted above, the State of Kerala filed a petition before this Court for clarifications. This Court passed the following Order dated November 11, 1980 :

We have headed learned Advocate General and Shri A.S. Nambiar on the modification or clarification sought. The actual position has already been explained in the Order by this Court dated 28-4-80. There it has been stated clearly that the petitioner will be entitled to exercise his option and then take his turn according to his rank in the common list prepared by the Public Service Commission.

Therefore the petitioner will be entitled to a post, if he has exercised his option in terms of this Court's Order and he is high enough in the common list for claiming the post. We have no idea, nor are we concerned, whether such a vacancy has arisen. If a post has become vacant and the petitioner's turn comes in the common list he is entitled to claim that post under the Orders of this Court...

8. The above Order, as it appears, also refers to a common list although no common list was directed to be prepared by the KPSC. This was obviously an inadvertent mistake.

9. Since there was no common list and since no option was given to the special leave petitioners before us by the judgment of the Kerala High Court, the KPSC faced difficulties in giving effect to the directions given by the High Court. The KPSC therefore has made the miscellaneous petition before us for clarification and directions, particularly praying that the expression "the common list prepared by the Public Service Commission" should be deleted.

10. We have heard learned counsel of the parties and perused the judgments of the Kerala High Court passed by the learned Single Judge and the Division Bench. This Court by its Order dated April 28, 1980 dismissed all the S.L.Ps. with observations referred to above. This Order as well as the Order dated November 11, 1980 has been subsequently recalled by this court by its Order dated April 7, 1981, and we do not find any valid ground to reverse the judgments of the High Court. But in view of the difficulties faced by the KPSC and the Government of Kerala, it is necessary to clarify the position and give necessary directions.

11. Clause 4 of the Government Order No. G.O.Ms. 101/79/PWD & E dated September 27, 1979, the Government constituted the Kerala Engineering Service (Mechanical Branch) and Kerala Engineering Subordinate Service (Mechanical Branch) with posts prescribed therein. It reads thus :

Government also order that all those who have submitted unconditional options and who possess the required qualifications prescribed in the Rules will be appointed by transfer to the respective service. In the case of any category for which the number of options is more than the appointed by transfer and the junior persons will be admitted, to the services as and when vacancies arise. In case where the number of officers who had submitted options is less than the number of posts, the remaining vacancies will be provided by direct recruitment as provided in Rule (9) of the respective special rules. The Chief Engineer B&R will implement the above orders forthwith.

12. Clause 4 gave unconditional options to those in the Kerala Engineering Service (General Branch) to remain in the said branch or to choose the newly constituted Kerala Engineering Subordinate Service (Mechanical Branch). As stated earlier the Kerala Government or the KPSC was not directed to prepare a common list. Common list was referred to in the earlier Orders in this Court through certain misapprehensions. The KPSC has stated in its counter-affidavit to the special leave petition filed by Shri S. Gopa Kumar against the judgment of the High Court that there were directions to the KPSC to prepare two separate rank lists one for Civil Engineering graduates and the other for Mechanical Engineering graduates on the basis of examination already conducted. Accordingly the KPSC prepared the two rank lists - one for Civil Engineering and other for the Mechanical Engineering graduates. The name of Gopa Kumar appears in the latter list. The rank list for Engineers (Civil) contains names of 152 candidates and the other (Mechanical) contains 202 candidates. All the Civil Engineers selected have already been appointed. Shri Gopa Kumar's rank was 138 in the rank list of Engineers (Mechanical). He will be appointed when his turn comes.

13. We think that the Division Bench of the High Court was right in dismissing the writ appeals, having regard to the developments which have taken place.

14. Accordingly, the special leave petitions are dismissed. There is no order as to costs.

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