2024 INSC 828

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. ……. & ……..... of 2024
(@ Special Leave Petition (C) Nos. 5077-5078 of 2024)

Anoop M. and others … Appellants

Versus

Gireeshkumar T.M. and others ETC. … Respondents

with
Civil Appeal Nos. ……. & ……..... of 2024
(@ Special Leave Petition (C) Nos. 4709-4710 of 2024)

Civil Appeal Nos. ……. & ……..... of 2024
(@ Special Leave Petition (C) Nos. 4723-4724 of 2024)

Civil Appeal Nos. ……. & ……..... of 2024
(@ Special Leave Petition (C) Nos. 7538-7539 of 2024)

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.

2. With a tortuous trajectory spanning over a dozen years, this weary litigation craves closure. Hanging in balance is recruitment to several posts of Lower Division Clerk (LDC) in the Kerala Water Authority.

A notification was issued by the Kerala Public Service Commission (KPSC) in this regard on 16.07.2012 for filling up 102 existing vacancies and 43 anticipated vacancies in the said post. 1192 applications were received in response thereto. The qualifications prescribed in the notification were:

(i) Degree in any discipline and

(ii) Certificate in Data Entry and Office Automation of minimum 3 months (120 hours) duration awarded by Lal Bahadur Shastri Centre for Science and Technology (LBS), Institute of Human Resource Development (IHRD), or from similar/equivalent institution approved by the Government.

3. While so, one Shebin A.S., who held a Diploma in Computer Applications (DCA), filed WP (C) No. 24279 of 2012 before the High Court of Kerala contending that the qualifications, as prescribed, would eliminate candidates who held higher qualifications as it restricted the zone of consideration to certificate holders only. By judgment dated 01.08.2014, a learned Judge agreed with him and allowed the writ petition. The learned Judge opined that the notification should have been more transparent with regard to the qualifications, specifying whether equivalent/higher qualifications could also be accepted. The KPSC was accordingly directed to issue a revised notification, keeping this aspect in mind.

4. Aggrieved thereby, the KPSC filed Review Petition No. 884 of 2014 pointing out that there was no stipulation in the notification or in the

Special Rules applicable to the post of LDC that a higher/equivalent qualification is also acceptable. The KPSC further stated that it had examined the issue in detail and decided that applications of persons with DCA qualification could not be accepted for the said post. It specifically averred that 590 applications of persons having DCA qualification had been received but were not treated as valid. Asserting that the judgment, if complied with, would go against the Rules as DCA was not a notified qualification, the KPSC sought review of the direction to issue a revised notification. However, the Review Petition was dismissed on 24.02.2015.

5. The KPSC, thereupon, filed Writ Appeal No. 1501 of 2015. It asserted that, as an equivalent or higher qualification was not prescribed under the Rules, it was not accepting DCA qualification for the post of LDC. It further asserted that, at no point of time had it taken any decision to accept applications of candidates with DCA qualification as the qualification prescribed and notified for the post did not indicate that persons with DCA qualification would also be permitted to participate in the selection process. Accepting the stand of the KPSC, a Division Bench of the Kerala High Court allowed its writ appeal, *vide* judgment dated 13.06.2022. The Division Bench took note of the KPSC's contention that it had never notified any change in the qualifications and that it had already decided that DCA was

not an equivalent qualification for the post in question as the equivalence mentioned in the notification was only with respect to the institution. The Division Bench, therefore, opined that, as no change had been made by the KPSC with regard to the qualification after issuance of the notification and, as a matter of fact, the KPSC had decided that DCA was not an equivalent qualification for the post in question, there was no warrant for allowing the writ petition and issuing a direction to revise the notification. The Division Bench noted that even if a person with higher qualification had applied, the same would have been rejected during the scrutiny before shortlisting of candidates for interviews. The Division Bench accordingly set aside the judgment of the learned Judge and dismissed the writ petition.

6. Despite this judgment in its favour, the KPSC surprisingly chose to shortlist candidates in a ranked list by including persons who held DCA qualification or other higher qualifications. Aggrieved thereby, Gireeshkumar T.M. and six others, who held the prescribed Certificates in Data Entry and Office Automation, filed WP (C) No. 23679 of 2023 before the Kerala High Court. Their prayer therein was to quash the KPSC's ranked list, which included candidates who did not possess the prescribed qualification, and to direct the KPSC to publish a modified ranked list, including only such candidates who had the prescribed qualification. They

also sought a declaration that only candidates who had the prescribed qualification were entitled to be appointed as LDCs in the Kerala Water Authority. WP (C) No. 19463 of 2023 was filed on the same lines and with similar prayers by Sajitha S. and three others. It may be noted that, by the date of disposal of these cases, 29 candidates with DCA/higher qualification figured as respondents in WP (C) No. 23679 of 2023, while 72 such candidates were shown as respondents in WP (C) No. 19463 of 2023.

7. Notably, the KPSC filed a counter affidavit taking a position contrary to its earlier stand. According to it, after the Division Bench judgment, selection to the posts of LDC was taken up and an OMR examination was conducted. On the basis of the results thereof, a probability list was published on 03.06.2023 of candidates who had secured 40 marks or above. The KPSC claimed that, as a higher qualification was not barred, it had considered such candidates also while preparing the probability list and those with DCA/higher qualification were also included therein. Reference was made by the KPSC to Rule 10(a)(ii) of the Kerala State and Subordinate Service Rules, 1958.

8. A learned Judge of the Kerala High Court noted that the KPSC had changed its stance despite carrying the matter in appeal on the earlier occasion and held that the KPSC could not be permitted to alter its stand,

as permitting such reversal of position by it would mean reopening the previously concluded judgments. The learned Judge was of the opinion that, even if erroneous, an inter-party judgment would bind the parties thereto. The learned Judge, accordingly, allowed the writ petitions on 30.10.2023 and directed the KPSC to recast and rework the ranked list, by excluding candidates who were not qualified, and to publish a modified ranked list by including therein only those candidates who possessed the requisite qualification as prescribed in the Notification dated 16.07.2012.

9. The correctness of this common judgment dated 30.10.2023 was canvassed in Writ Appeal Nos. 1941 and 1945 of 2023 before a Division Bench of the Kerala High Court. Writ Appeal No. 1941 of 2023 was filed by Rikha Susheel and four candidates, who held DCA/higher qualifications, while Writ Appeal No. 1945 of 2023 was filed by Rikha Susheel and fifteen such other candidates. All of them had figured as respondents in the two writ petitions. These writ appeals were dismissed, *vide* common judgment dated 30.01.2024. The Division Bench held therein that there was no error in the reasoning of the learned Judge.

10. It is this judgment that is subjected to challenge before us. One set of appeals was filed by the KPSC while the other three sets of appeals were filed by candidates holding DCA/higher qualifications. One such set of

appeals was filed by Anoop M and twenty-nine candidates who were not parties to the subject proceedings before the Kerala High Court.

11. We may note, at this stage, that the issue of non-impleadment of all the affected candidates was not argued before us. However, as it has been raised in the grounds, we deem it proper to consider the same also. Rule 148 of the Kerala High Court Rules states that all persons directly affected should be made parties to the petition but where such persons are numerous, one or more of them may, with the permission of the Court, be impleaded on behalf of or for the benefit of all persons so affected, but notice of the original petition, on admission, should be given to all such persons either by personal service or by public advertisement. As already noted, several candidates possessing DCA/higher qualifications were either impleaded or got impleaded in the two writ petitions. In all, 101 of them figured as parties therein. This aspect was noted by the Division Bench and it was held that there was sufficient representation of their collective interest. Further, the very purpose of Rule 148 is to protect the interest of those affected persons who may be ignorant of the litigation and would be taken by surprise by the adverse developments therein. Given the long history of this litigation, none of the affected candidates can be presumed to have remained unaware of it. We, therefore, find no merit in this ground.

12. The qualification set out in the Notification dated 16.07.2012 for the post of LDC was strictly in keeping with the qualification prescribed therefor at Category No.27 in 'Wing II – Ministerial Service' in the Kerala Water Authority (Administrative, Ministerial and Last Grade) Service Rules, 2011 (for brevity, 'the Rules of 2011'). Rule 6 of the Rules of 2011 provides that the rules relating to reservation of appointments, i.e., General Rules 14 to 17 of the Kerala State and Subordinate Service Rules, 1958 (for brevity, 'the Rules of 1958'), shall apply to the appointments by direct recruitment to the categories of posts therein. Rule 10 of the Rules of 2011 speaks of the applicability of Parts I, II and III of the Rules of 1958 to the 'employees' of the Kerala Water Authority in matters of pay fixation, joining time, travelling allowances, leave, pension, other retirement benefits, etc.

13. Given the phraseology of the Rules of 2011, the Rules of 1958 will not have general and all-pervasive applicability at the stage of direct recruitment even before a candidate is selected and appointed to any of the posts in the categories covered by the Rules of 2011, i.e., before he/she becomes an 'employee' of the Kerala Water Authority. It is relevant to note that Rule 2 in Part II of the Rules of 1958, titled 'Relation to the Special Rules', states that if any provision in the General Rules contained in Part II thereof is repugnant to a provision in the Special Rules applicable to any

particular service contained in Part III thereof, the latter shall, in respect of that service, prevail over the provision in the General Rules in Part II of the Rules of 1958. The Rules of 2011 are Special Rules for the Kerala Water Authority. Therefore, to the extent the Rules of 2011 make special provision as to the qualification required for a particular post, the same would prevail over the general rule pertaining to qualifications in Part II of the Rules of 1958. However, this would be subject to Rule 10(a)(ii) of the Rules of 1958 which, as specifically provided therein, prevails over the Special Rules also.

14. Rule 10 in Part II (General Rules) of the Rules of 1958 deals with qualifications. It reads as follows:

> ***'10. Qualifications.- (a) (i)*** *The educational or other qualifications, if any, required for a post shall be as specified in the Special Rules applicable to the service in which that post is included or as specified in the executive orders of Government in cases where Special Rules have not been issued for the post/service.*
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> ***(ii)*** *Notwithstanding anything contained in these rules or in the Special Rules, the qualifications recognized by executive orders or standing orders of Government as equivalent to a qualification specified for a post, in the Special Rules or found acceptable by the Commission as per rule 13 (b) (i) of the said rules in cases where acceptance of equivalent qualifications is provided for in the rules and such of those qualifications which pre-suppose the acquisition of the lower qualification prescribed for the post, shall also be sufficient for the post.*

15. Pertinently, insofar as the post of LDC is concerned, the Rules of 2011 do not speak of a qualification 'equivalent' to a Certificate in Data Entry and Office Automation from Lal Bahadur Shastri Centre for Science and Technology, Institute of Human Resources Development, also being eligible. What is stated therein is that a Certificate in Data Entry and Office Automation from a similar/equivalent institution, approved by the Government, would be accepted as an eligible qualification. The equivalence is, thus, not of the qualification itself but of the institution from which the said Certificate in Data Entry and Office Automation is obtained.

16. Significantly, where they so intend, the Rules of 2011 specifically provide for 'equivalent qualifications' being eligible in relation to particular posts. For instance, for the post of Legal Assistant in 'Wing II – Ministerial Service' a Degree in Law from a University in Kerala or from a University recognized by any of the Universities in Kerala is the prescribed qualification, but its equivalent is also acceptable. Similarly, for the post of Confidential Assistant Grade II, equivalent qualifications to those prescribed are acceptable. So is the case with the post of Lower Division Typist, where equivalent qualifications are explicitly shown to be acceptable. In effect, the failure to mention an 'equivalent qualification' being acceptable for the post of LDC clearly manifests the deliberate design and intent of the Rules of

2011 to limit the equivalence in that context only to the institution from which the Certificate in Data Entry and Office Automation is obtained and not to enlarge the eligibility by encompassing equivalent qualifications also.

17. Given the aforestated rule position in the Rules of 2011 and the verbatim reproduction of the same in the Notification dated 16.07.2012, it is clear and certain that a qualification equivalent to a Certificate in Data Entry and Office Automation from Lal Bahadur Shastri Centre for Science and Technology, Institute of Human Resource Development, is not acceptable but a Certificate in Data Entry and Office Automation from a Government approved similar/equivalent institution would be valid. Without the prescription of an equivalent qualification being recognized, the first part of Rule 10(a)(ii) of the Rules of 1958 would not be attracted, as it speaks of applicability only in cases where acceptance of equivalent qualifications is provided for in the Special Rules. On the other hand, the latter part of Rule 10(a)(ii) speaks of qualifications that presuppose acquisition of the prescribed lower qualification being treated as sufficient. It is the case of the appellants before us that they would fall in this category as they possess either a Diploma in Computer Applications or other higher qualifications, such as a Diploma in Computer Engineering/Diploma in Data Entry and Console Operation/MCA/ M.Sc. in Software Engineering, etc.

18. The Secretary of the KPSC filed an additional affidavit on 20.04.2024 before us, wherein he brazenly stated that the submission before the High Court earlier was never that qualifications such as DCA from all institutions would be rejected. This statement is incorrect on the face of it as the KPSC had categorically stated, both in its review petition as well as the grounds of appeal in the earlier round, that DCA qualification would not be accepted by it as a qualification for selection to the notified post. It had also asserted that it examined the issue in detail and decided that applications of persons with DCA qualification could not be accepted.

19. The KPSC then filed an additional affidavit on 02.09.2024. Therein, it was stated by its Secretary that recognition of DCA as a higher qualification was not a one-time isolated decision but a well-considered practice that the KPSC consistently applied in various selections over several years. Instances were given of the KPSC accepting DCA as a higher qualification in selections made during the years 2017, 2018, 2019, 2023 and 2024. He stated that this practice was consistently implemented by the KPSC even before issuance of the subject ranked list. He pointed out that this 'equivalence' principle had been applied to selections made for a variety of posts, such as Data Entry Operator, Typist Grade-II, Lower Division Clerk, Computer Operator and Confidential Assistant Grade-II.

According to him, while finalizing the selections for the LDC posts, DCA/higher qualifications from institutions which were not recognized by the Government were rejected. He furnished the list of unrecognized institutions and said that about 120 institutions, offering DCA/PGDCA, were recognized by the Government. He gave the names of fifteen such institutions. He concluded by stating that 590 applications from candidates with DCA/higher qualifications from unrecognized institutions had been rejected, on the one hand, but more than 175 applications from candidates with DCA/higher qualifications from recognized institutions had been accepted. Reference was made to internal correspondence dated 13.06.2017 in relation to the selections for the post of Data Entry Operator in District Cooperative Banks, wherein the higher qualifications, which were to be accepted in lieu of a Certificate in Data Entry, were furnished. Reference was also made to File No. DR V(1)1223/13/GW, pertaining to the above mentioned post of Data Entry Operator, adverting to the acceptability of 38 qualifications and 8 experience certificates.

20. Notwithstanding this change in its approach, there is no getting over the fact that in the earlier round of this litigation, the KPSC was uncompromising in its refusal to consider DCA as an eligible qualification for appointment to the post of LDC in the Kerala Water Authority. So much

so that it felt aggrieved by the direction of a learned Judge to the contrary and went to the extent of filing a review petition and also a writ appeal thereafter. The Memorandum of Grounds filed by the KPSC in the said writ appeal clearly demonstrated its adamant stand that DCA was not a qualification to be considered eligible for appointment to the subject post. It is apparent that the KPSC did a *volte-face* thereafter, be it for whatever reason, and now seeks to adopt a stand that DCA should be treated as a higher qualification which presupposes the lesser qualification of the prescribed Certificate in Data Entry and Office Automation.

21. However, no material has been placed before us to demonstrate that the KPSC undertook any exercise to study the curriculum of each of the courses in question to assess and decide whether any of the so-called 'higher qualifications' can be said to presuppose acquisition of the lesser qualification prescribed for the post. The qualification prescribed, being a Certificate in Data Entry and Office Automation from the named Institute or from a similar/equivalent government approved institution, it was necessary for the KPSC to ascertain the number of hours of actual data entry and office automation that is put in by a candidate who possesses the so-called higher qualification to decide whether he/she can be treated as superior to a candidate with the prescribed qualification. Without undertaking this

exercise, the KPSC cannot straightaway assume that, merely because the higher qualification is a Degree/Diploma in a computer-related subject, a candidate possessing the same would have more experience and expertise in data entry and office automation than a candidate with the prescribed Certificate in Data Entry and Office Automation.

22. Useful reference in this regard may be made to the judgment of this Court in ***Ajith K and others vs. Aneesh K.S. and others***[1]. That was also a case from the State of Kerala and involved the post of Junior Health Inspector Grade-II in Municipal Common Service. Minimum qualifications were prescribed for the post in the alternative. While so, candidates possessing a Diploma in Health Inspector Course, a two-year course which was not included in the prescribed qualifications, also aspired for selection. In this context, this Court considered whether the said Diploma could be treated as a higher qualification which presupposed acquisition of the prescribed lower qualification. Relevantly, the KPSC did not undertake any exercise to come to a sustainable finding that acquisition of the Diploma would presuppose acquisition of the prescribed lesser qualification, ultimately leading to this Court rejecting such a claim. Similar is the position presently as the KPSC, except for furnishing data of the institutions offering DCA that were treated as eligible due to Government recognition, did not

[1] (2019) 17 SCC 147

undertake an independent assessment of the higher qualifications to determine whether candidates who possessed those qualifications would have put in equivalent or more number of hours in data entry and office automation than a candidate who underwent a three months course to obtain the prescribed Certificate in Data Entry and Office Automation.

23. The decision of this Court in ***Jyoti K.K. and others vs. Kerala Public Service Commission***[2] is distinguishable on facts, as that was a case where the higher qualification clearly presupposed acquisition of the lesser qualification. The prescribed qualification for the post in question in that case was a Diploma/Certificate in Electrical Engineering, whereas the higher qualifications which were under consideration were B.Tech/B.E Degrees in Electrical Engineering. The same cannot be said to be the case presently, as every computer-related Degree/Diploma course cannot be assumed to impart similar experience or expertise in data entry and office automation as the prescribed Certificate course.

24. In ***Sheo Shyam vs. State of U.P.***[3], this Court considered a recruitment process undertaken by the Union Public Service Commission. There was lack of consensus between the Commission and the State Government and the career of eleven candidates stood at risk owing to

[2] (2010) 15 SCC 596
[3] (2005) 10 SCC 314

such inconsistent and varying stands adopted by the State Government and the Commission at different stages for different purposes. In this context, this Court observed that, though there cannot be any estoppel in law, yet a statutory body like the Commission could not blow hot and cold in the same breath, as there has to be consistency in its view. To rule out unfortunate situations like the one in that case recurring again, this Court cautioned the State Government and the Commission to be more vigilant and constructive in their approach. This Court observed that, when dealing with careers of a large number of candidates, their stands have to be consistent and not varied to avoid giving room for unsavoury suspicions and to ensure that the system works more transparently.

25. Presently also, it is manifest that it is the KPSC, with its vacillating and dithering stance, that is largely responsible for this long-pending litigation, impacting the lives, hopes and aspirations of nearly twelve hundred candidates. The KPSC, as already noted *supra*, was steadfast in its stand in the earlier round that DCA was not a qualification to be considered eligible for appointment to the subject post of LDC in the Kerala Water Authority. Thereafter, the change in its stance, without any foundational inquiry to determine the superiority of the so-called higher qualifications over the prescribed qualification, leaves this Court with no

doubt that it was a purely whimsical and arbitrary exercise of discretion on its part without actual application of mind as per required parameters.

26. Recently, in ***Sivanandan C.T. and others vs. High Court of Kerala and others***[4], a Constitution Bench held thus:

> **'**In a constitutional system rooted in the rule of law, the discretion available with public authorities is confined within clearly defined limits. The primary principle underpinning the concept of rule of law is consistency and predictability in decision-making. A decision of a public authority taken without any basis in principle or rule is unpredictable and is, therefore, arbitrary and antithetical to the rule of law. [*S.G. Jaisinghani* v. *Union of India*, 1967 SCC OnLine SC 6] The rule of law promotes fairness by stabilising the expectations of citizens from public authorities. This was also considered in a recent decision of this Court in *SEBI* v. *Sunil Krishna Khaitan* [*SEBI* v. *Sunil Krishna Khaitan*, (2023) 2 SCC 643], wherein it was observed that regularity and predictability are hallmarks of good regulation and governance. [*SEBI* v. *Sunil Krishna Khaitan*, (2023) 2 SCC 643] This Court held that certainty and consistency are important facets of fairness in action and non-arbitrariness: (*Sunil Krishna Khaitan case, SCC pp 678-679, para 59*)
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> *"59….. Any good regulatory system must promote and adhere to principle of certainty and consistency, providing assurance to the individual as to the consequences of transactions forming part of his daily affairs. ……. This does not mean that the regulator/ authorities cannot deviate from the past practice, albeit any such deviation or change must be predicated on greater public interest or harm. This is the mandate of Article 14 of the Constitution of*

[4] (2024) 3 SCC 799

> *India which requires fairness in action by the State, and non-arbitrariness in essence and substance. Therefore, to examine the question of inconsistency, the analysis is to ascertain the need and functional value of the change, as consistency is a matter of operational effectiveness."* **'**

Earlier, in ***State of Bihar and others vs. Shyama Nandan Mishra***[5], this Court observed that the State cannot be allowed to change course and belie legitimate expectation as regularity, predictability, certainty and fairness are necessary concomitants of governmental action.

27. We, therefore, have no hesitation in placing the blame for this entire imbroglio on the KPSC as it laid the genesis for this litigation owing to its changing stances at different points of time. A State instrumentality seized of the solemn responsibility of making selections to public services must maintain a high standard of probity and transparency and is not expected to remain nebulous as to its norms or resort to falsehoods before the Court, contrary to what it had stated in its earlier sworn affidavits. We can only hope that the Kerala Public Service Commission learns from this experience and desists, at least in future, from trifling with the lives, hopes and aspirations of candidates who seek public employment.

28. On the above analysis, we hold that no error was committed by the Division Bench of the Kerala High Court in confirming the view taken by the

[5] 2022 SCC OnLine SC 554

learned Judge, non-suiting candidates with DCA/higher qualifications who aspired for selection to the post of Lower Division Clerk in the Kerala Water Authority.

The appeals are accordingly dismissed.

Pending applications, if any, shall stand disposed of.

Parties shall bear their own costs.

……..……..,J
(PAMIDIGHANTAM SRI NARASIMHA)

……..,J
(SANJAY KUMAR)

November 4, 2024;
New Delhi.