

Kerala High Court

Ida Scadar Anslam vs The Kerala Public Service ... on 11 November, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 10233 of 2009(Y)

1. IDA SCADAR ANSLAM,AGED 37, D/O.DAISY
... Petitioner

Vs

1. THE KERALA PUBLIC SERVICE COMMISSION
... Respondent

2. THE SECRETARY,DEPARTMENT OF PUBLIC

3. THE SECRETARY,DEPARTMENT OF IRRIGATION

For Petitioner :SRI.R.T.PRADEEP

For Respondent :SRI.ALEXANDER THOMAS,SC,KPSC

The Hon'ble MR. Justice ANTONY DOMINIC

Dated :11/11/2009

O R D E R

ANTONY DOMINIC, J.

W.P.(C.) Nos.10233 & 15485 of 2009

Dated, this the 11th day of November, 2009

J U D G M E N T

Common issues have been raised in these writ petitions. Therefore, these writ petitions are heard and disposed of together.

2. The petitioner in WP(C) No.10233/2009 possesses National Trade Certificate in the trade of Draughtsman Civil. She is a person with a visual disability of 40%. The medical certificate is Ext.P2. In response to the notification issued by the PSC, she applied for the post of Draughtsman Grade II

(Civil). In so far as WP (C) No.15485/2009 is concerned, the petitioner is 100% blind and he applied for the post of Last Grade Servant in various Departments in Palakkad District. Both the petitioners are claiming appointment under the 3% reservation provided under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

3. Answer of the PSC is that under Section 32 of the Act, the Government have identified various posts and issued Ext.R1(a), GO(P) No.20/98/P&ARD dated 14/07/1998 which contains the WP(C) Nos.10233 & 15485 of 2009 posts identified. It is stated that though various posts have been identified for appointment of physically handicapped persons, the posts of Draughtsman (Civil) and Last Grade Servant applied for by the petitioners are not posts so identified for appointment from among persons with disability like the petitioners.

4. This contention of the PSC is sought to be contradicted by the learned counsel for the petitioners referring to GO(P) No.46/2008/SWD dated 19/07/2008. According to the counsel, Ext.R1(a) has been modified and the PSC is bound to advise candidates out of turn as provided in the Government Order dated 19/07/2008. Another contention raised by the learned counsel for the petitioners is that the identification of posts as done by the Government Order dated 14/07/1998, is for special recruitment and that the petitioners having applied for General Recruitment, could not have been eliminated applying the provisions of the said notification. In support of this contention, the learned counsel placed reliance on the judgment of this Court in (Sreelekha v. Kerala Public Service Commission (2008(1) KLT 966).

5. Section 32 of the Act provides that the appropriate Government shall identify posts in the establishment, which can be WP(C) Nos.10233 & 15485 of 2009 reserved for persons with disability. Section 33 provides that every appropriate Government shall appoint in every establishment such percent of vacancies not less than 3% for persons / class of persons with disability in the manner provided in the Section. Therefore, appointment extending the benefit of reservation as provided under Section 33 can only be to posts identified under Section 32 of the Act. A reading of the Government Order dated 14/07/1998 shows that by this order the Government ordered that 3% vacancies in Classes III & IV in public service will be reserved for appointment of physically handicapped persons, as done by the Government of India in accordance with the provisions of the Act. Appendix to the said order lists out the identified posts, to which appointments could be made. Annexure-I contains the posts suitable for appointment of physically handicapped persons in the subordinate service and last grade service. Annexure-II contains the posts suitable for appointment of different categories of physically handicapped persons. Therefore, this is the order that is issued by the Government of Kerala in discharge of its duty under Section 32 of the Act by identifying the posts which can be reserved for persons with disability. Although, subsequently, the Government of WP(C) Nos.10233 & 15485 of 2009 Kerala have issued order dated 19/07/2008, that order only directs the PSC to advise handicapped persons in the manner specified therein, against serial Nos.33, 66 & 99 in a cycle of 100 vacancies on out of turn basis, from among persons suffering from disabilities. Therefore, apart from directing the PSC to advise candidates in the manner as provided in the Government Order dated 19/07/2008, the identification of the posts done by the Government in the order dated 14/07/1998 has no undergone any change. Therefore, the petitioners can claim advice extending the benefit of reservation as provided under the Act, only if the posts which they

have applied for, are posts which are identified by the Government and enumerated in Ext.R1(a) Government Order dated 14/07/1998. In this case, admittedly, the posts against which the petitioners have applied for are not identified posts as per the Government Order dated 14/07/1998, and if so, the PSC cannot be faulted for not advising the petitioners against the posts in question extending them the benefit of reservation as provided under the Act.

6. In so far as the judgment of this Court in Sreelekha v. Kerala Public Service Commission (2008(1) KLT 966) is concerned, WP(C) Nos.10233 & 15485 of 2009 all that the judgment laid down is that when a physically handicapped person competes in an open competition, provisions of the Act cannot be interpreted, as creating any further disability, for his candidature for the post. Therefore that judgment can have relevance only if the petitioners have competed in open competition and not to posts availing of the benefit of reservation as provided under the Act. In this case, the petitioners aspire to be advised against vacancies reserved under the provisions of the Act and if so, the law laid down in the judgment relied on by them can have no application.

Further contention raised by the learned counsel for the petitioners is that they having competed against open competition their suitability has not been assessed by the PSC. Referring to the counter affidavit filed by the PSC, the learned standing counsel submits that the petitioners did not secure sufficient marks to be included in the short list. In such situation, this contention also does not merit acceptance.

In the result, these writ petitions fail and are dismissed.

(ANTONY DOMINIC, JUDGE) jg