

## **Jyoti K.K. And Ors. vs Kerala Public Service Commission And ... on 13 March, 2002**

**Equivalent citations:** [2002(93)FLR1205], JT2002(SUPPL1)SC85, 2002(2)UJ941(SC), AIRONLINE 2002 SC 320, (2002) 1 JT (SUPP) 85, 2010 (15) SCC 596, (2002) 93 FAC LR 1205, 2002 UJ(SC) 941, 2002 UJ(SC) 2 941

**Bench:** S. Rajendra Babu, P. Venkatarama Reddi

ORDER

1. Delay condoned in filing SLP (C) Nos. 13684-13685/2001.
2. Leave granted.
3. These appeals arise out of an order made by the High Court in original petitions filed under Article 226 of the Constitution.
4. The Kerala Public Service Commission invited applications for selection to the post of sub-engineers (electrical) in the Kerala State Electricity Board as per the notification dated 21.6.1994. The said notification provided that the qualifications for the post would be as follows:

" 1. SSLC or its equivalent 2. Technical qualifications -

a) Diploma in electrical engineering of a recognised institution after 3 years course of study.

Or

b) A certificate in electrical engineering from any one of the recognised technical school's shown below with five years service under Kerala State Electricity Board.

( Not fully extracted as not relevant) Or

c) MGTE/KGTE in electrical light and power (higher) with five years experience as II grade overseer (electrical) under the Board."

5. The appellants before us are holders of B. Tech. degree in electrical engineering or bachelor's degree in electrical engineering. On the basis that the appellants did not possess the necessary qualifications, the commission held that they were not eligible for selection. In the writ petitions, the same having been challenged, it was contended that they possess higher qualifications and therefore non consideration of their cases is not correct. They sought for a direction to the commission to consider them as eligible candidates. It was also pointed out that ever since the inception of the

board, persons possessing higher qualifications have been considered and appointed in terms of Rule 13(1) of the Kerala State and Subordinate Services Rules, 1956 and the board having accepted higher qualifications to be applicable in all such cases could not exclude them in the present cases.

6. The commission contended before the High Court as is done before us now that the graduates in engineering or persons possessing other qualifications, as held by the appellants, that may not be taken as higher qualifications, they are not equivalent qualifications prescribed for that post and persons who possessed higher qualifications can only be taken note of, in cases where they acquired such higher qualifications after acquiring the prescribed qualifications. Rule 10 (a) (ii) of part I of the rules was also adverted to contend that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall be sufficient forth post. The qualifications, it was stated, possessed by the appellants do not presuppose the acquisition of the prescribed lower qualifications and, therefore, they were not eligible to be considered.

7. On the question that the said rules are applicable to the selection posts in the board, there is no dispute. The High Court after setting out the contentions noticed that there were no executive orders in relation to equivalent qualifications prescribed by the government. The High Court stated that the position is that, the qualifications possessed by the appellants do not presuppose the acquisition of prescribed lower qualifications and when qualification has been prescribed for a post, the same cannot be diluted and persons not possessing those qualifications cannot be permitted to be eligible. It was noticed that all those who had similar or even better qualifications than those candidates would not have applied for the post because they did not possess the qualifications mentioned in the advertisement and such a position would result in "fraud on public to appoint persons with inferior qualifications, in such circumstances, unless it is clearly stated that qualifications are relaxable". On that basis, the High Court dismissed the petitions filed by the appellants. The contentions urged before the High Court are reiterated on either side before us.

8. Rule 10 (a) (ii) reads as follows:

"Notwithstanding anything contained in these rules or in the special rules, the qualifications recognised by executive orders or standing orders of government as equivalent to a qualification specified for a post in the special rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post."

9. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant rules, for the post of assistant

engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of sub-engineer. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the government is of the view that only diploma holders should have applied to post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand rules do not disqualify per se the holders of higher qualifications in the same faculty, it becomes clear that the rule could be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be sustained. In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory rules have been published and those rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public.

10. However, we must notice one aspect of the matter. The diploma holders who had been selected by the Public Service Commission have already been appointed and, therefore, it would not be appropriate for us to disturb those appointments. They shall continue in such appointments. Such of those eligible degree holders who fulfil the qualifications referred to above and found suitable to be appointed shall be appointed taking note of the vacancies which are available within a period of three months from the date of receipt of this order.

11. Subject to what is stated above, these appeals shall stand allowed. No orders as to costs.