

Kerala High Court

Sirajudheen vs Kerala Public Service Commission on 11 April, 2001

Author: K Radhakrishnan

Bench: J K Radhakrishnan, J G Sasidharan

JUDGMENT K.S. Radhakrishnan, J.

1. Common question arises for consideration in all these cases. When the matter came up for hearing we heard counsel appearing for the appellant in W.A. 984/1999 Sri. P. Ravindran, counsel appearing for Public Service Commission Sri. O.V. Radhakrishnan and Government Pleader Sri. C.K. Pavithran.

2. Short facts which are necessary for disposal of these cases is as follows: Kerala Public Service Commission invited applications for recruitment to the post of Assistant Motor Vehicles Inspector as per gazette notification dated 18.7.1995. The last date for receipt of application was 30.8.1995. Qualifications prescribed in the gazette notification for selection to the post were as follows:

i) Minimum General Educational Qualification of pass in Xth Standard.

ii) A Diploma in Automobile Engineering (3 years course) awarded by the State Board of Technical Education or Diploma in Mechanical Engineering awarded by the State Board of Technical Education (3 years course) or any qualification in either of the above disciplines declared equivalent by the Central Government or State Government.

iii) Working experience of atleast one year in a reputed (Government approved) Automobile Workshop which undertakes repairs of both Light Motor Vehicles, Heavy Goods Vehicles and Heavy Passenger Motor Vehicles fitted with petrol and diesel engine.

The working experience prescribed for this post should be one acquired after the acquisition of the basic qualification prescribed for this post. The experience should be from a Government approved workshop. Experience in the capacities of paid and unpaid apprentices, trainees and casual labourers will not be accepted.

iv) Must hold a driving licence authorising him to drive Motor Cycle, Heavy Goods Vehicles and Heavy Passenger Motor Vehicles.

Appellants conceded that they have gained working experience not after acquisition of the basic qualification. The question that has come up for consideration is whether insistence of working experience after acquisition of the basic qualification is legal or not. Counsel for the appellants maintained the stand that the minimum qualification have already been laid down by the Central Government vide notification issued under S. 213(4) of the Motor Vehicles Act wherein there is no indication that the working experience should be gained after acquisition of the prescribed qualification.

3. Counsel appearing for the appellant Sri. P. Raveendran submitted Kerala State and Subordinate Service Rules, 1958 was enacted by the State Government i exercise of the powers conferred under Art. 309 of the Constitution of India, which enables the State Government to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of any State. According to the counsel, R. 10 (ab) of the Kerala State and Subordinate Service Rules refers only to Special Rules or Recruitment Rules framed by the State Government. Counsel submitted that the Special Rules for the Kerala Transport Subordinate Service also do not stipulate the qualification that the working experience should be gained after the acquisition of the basic qualification. Counsel submitted the Special Rules and Recruitment Rules referred to in R. 10(ab) of the K.S. & S.S.R. would take in only the above mentioned rules and not the notification framed by the Central Government under S. 213(4) of the Motor Vehicles Act. In order to establish his contentions counsel referred to the decision of the Apex Court in (1993) 2 SCC 429, (2000) 1 SCC 128 etc.

4. Counsel appearing for the Public Service Commission Sri. O. V. Radhakrishnan on the other hand submitted that as per Motor Vehicles Act Central Government is laying down the minimum qualification. Counsel submitted whether 213(1) specifically says that the State Government may, for the purpose of carrying into effect the provisions of the Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit. The above mentioned statutory provision would enable the State Government to lay down its own rules over and above minimum qualification laid down by Central Government in accordance with S. 213(4) of the Motor Vehicles Act. Counsel submitted notification issued by the Central Government laying down the minimum qualification be read along with R. 10(ab) of K.S. & S.S.R.

5. We are of the view in order to resolve the controversy we have to examine the scope of S. 213 of the Motor Vehicles Act, the requirement laid down by the Central Government in excise of the powers conferred under S. 213(4) as well as the general qualification prescribed by the State Government under the Kerala State and Subordinate Service Rules. We may extract the relevant provision of S. 213 of the Motor Vehicles Act as follows:

"213. Appointment of Motor Vehicles Officers-(1) The State Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

XXX XXX XXX XXX XXX (4) the Central Government may, having regard to the objects of the Act, by notification in the Official Gazette, prescribe the minimum qualifications which the said officers or any class thereof shall possess for being appointed as such."

S. 213 of the Motor Vehicles Act, 1988 empowers the State Government to establish Motor Vehicles Department and appoint officers for the purpose of carrying into effect the provisions of the Act. Therefore the power of appointment is given to State Government. Motor Vehicles Act has also given power to Central Government to prescribe minimum qualifications which the said officers or any class of officers thereof shall possess for being appointed as such. In accordance with powers conferred under S. 213(4) of the Motor Vehicles Act the Central Government has issued the

following notification which we shall extract hereunder for easy reference.

"NOTIFICATION UNDER S. 213 S.O. 443 (E) dated June 12, 1989 :- In exercise of the powers conferred by sub-s. (4) of S.213 of the Motor Vehicles Act, 1988 (59 of 1988), the Central Government hereby prescribes that the minimum qualification for the class of officers consisting of the category of Inspector of Motor Vehicles or Assistant Inspector of Motor Vehicles (by whatever names called) shall be as under:-

(1) Minimum general education qualification of a pass in X Standard; and (2) a diploma in Automobile Engineering (3 years course) or Diploma in Mechanical Engineering awarded by the State Board of Technical Education (3 years course); and (3) working experience of atleast one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine; and (4) must hold a licence authorising him to drive motor cycle, heavy goods vehicles and heavy passenger motor vehicles.

(2) Nothing contained in the notification shall apply to an officer appointed to such post before the first day of July 1989 and to an officer appointed to discharge function of a non-technical nature.

(3) This notification shall come into force on the first day of July 1989.

Published in Gazette on India, Extra, Pt. II, S.3(ii), dated 12.6.1989."

It is true there is no indication in the above mentioned notification that the working experience should be after the acquisition of basic qualification.

6. The State Government however, in exercise of the powers conferred by the proviso to Art. 309 of the Constitution of India and of all other powers hereunto enabling, and suppression of the rules on the subject enacted the Kerala State and Subordinate Services Rules 1956. Part II of K.S. & S.S.R. deals with General Rules of which R.10 deals with qualification of which we are concerned with R.10(ab). We may extract the said provision hereunder for easy reference.

(ab) Where the Special Rules or Recruitment Rules for a post in any service prescribe qualification of experience, it shall, unless otherwise specified, be one gained by persons on temporary or regular appointment in capacities other than paid or unpaid apprentices, trainees and casual labourers in Central or State Government service in Public Sector Undertaking or Registered Private Sector Undertaking, after acquiring the basic qualification prescribed for the post:

Provided that the experience gained as factory workers on daily wages of a permanent nature may be accepted, if the service is continuous and not of a casual nature".

7. R.10(ab) uses the expression 'Special Rules' as well as 'Recruitment Rules'. 'Special Rules' has been defined in the Kerala State and Subordinate Services Rules under R.2(16) as follows: "Special Rules, shall mean the rules in Part II applicable to each service or class of service. We notice the

expression 'Recruitment Rules' has not been defined in the Kerala State and Subordinate Services Rules. We are therefore of the view the same should be given a wider meaning. Recruitment Rules take in not only the Recruitment Rules framed by the State Legislature, even executive orders framed for recruitment. When we give a wider meaning to the words "Recruitment Rules" there is no reason why the rules framed by the Central Government under S.213(4) be not come within the meaning of "Recruitment" under R.10(ab) of K.S.& S.S.R. We are of the view the recruitment rules framed by Central Government in exercise of powers conferred under S.213(4) would satisfy the definition of "recruitment rules" under R.10(ab) of the Kerala State and Subordinate Services Rules.

8. We also indicate when we read together the notification framed by the Central Government under S.213(4) of the Motor Vehicles Act and R.10(ab) the requirement that the working of experience should be gained after acquisition of the basic qualification is a mandatory requirement. In this connection we may also refer to the decision of the Apex Court in Sheshrao Janguluji Bagde v. Baiyya, AIR 1991 SC 76 wherein the Apex Court held that normally when one talks of an experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and, therefore, necessarily will have to be posterior to the acquisition of the qualification.

9. In view of the above mentioned legal position we are of the view we have to read the qualification laid down by the Central Government along with general qualification laid down under R.10(ab) together, in the event of which the working experience gained by an applicant must be after the acquisition of the basic qualification. Appellants do not satisfy the above legal requirement and therefore not eligible to apply for the post of Assistant Motor Vehicles Inspector.

Therefore the appeals fail and they are accordingly dismissed.