

Kerala High Court

Jayasankar C.Peon vs Director Of Technical Education on 2 April, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 551 of 2009(N)

1. JAYASANKAR C.PEON, GHS VELLINEZHI,  
... Petitioner

Vs

1. DIRECTOR OF TECHNICAL EDUCATION,  
... Respondent

For Petitioner :SMT.P.V.ASHA

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice P.N.RAVINDRAN

Dated :02/04/2009

O R D E R

P.N.Ravindran, J.

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W.P.(C) No.551 of 2009

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Dated this the 2nd day of April, 2009.

JUDGMENT

Heard Smt. P.V.Asha, the learned counsel appearing for the petitioner and Sri. A.J.Varghese, the learned Government Pleader appearing for the respondents.

2. The petitioner is at present working as a Peon in G.M.U.P. School in Palakkad District. He entered service as Peon on 17.3.2004 on advice by the Kerala Public Service Commission from a ranked list of candidates selected for appointment to last grade posts in various departments in Palakkad District. He has passed besides the S.S.L.C. examination, the National Trade Certificate in Instrument Mechanics from I.T.I., Malampuzha. With a view to better his prospects, the petitioner submitted Ext.P1 application dated 4.11.2006 to the Director of Technical Education through the

Headmaster of the school where he was employed seeking inter departmental transfer to the Technical Education Department. He also undertook that on such transfer being made he will take his position in the seniority list as the junior-most in the Technical Education Department on the date of joining duty in that department. The Headmaster of the school forwarded the application to the Director of Technical Education. The request made by the petitioner in Ext.P1 for inter departmental transfer was declined by the Director of Technical Education and the decision was communicated to the petitioner by Ext.P2 letter dated 21.6.2007. The reasons stated in Ext.P2 is that inter departmental transfer has been temporarily stopped in the year 2001. The petitioner states that at a meeting held on 15.12.2006 presided over by the Director of Technical Education a decision was taken to consider applications for inter departmental transfer which had been temporarily stopped in view of the Government order dated 2.12.1998. The petitioner also states that last grade servants who entered service in various departments were given inter departmental transfers by Ext.P4 series of orders and by Ext.P5 order, that the beneficiaries of the said orders are persons who entered service after 17.3.2004 and that the rejection of his application is therefore arbitrary. In view of Ext.P4 series of orders and Ext.P5 order, the petitioner submitted Ext.P6 application dated 11.6.2008 seeking inter departmental transfer to the Technical Education Department. That application was rejected by Ext.P7 letter dated 7.8.2008, merely stating that his application cannot be considered. Ext.P7 is under challenge in this Writ Petition.

3. The learned counsel for the petitioner contends that the reasons set out in Exts.P2 and P7 to reject the petitioner's application for inter departmental transfer are not sustainable in law. The learned counsel for the petitioner submits that persons who entered service after the petitioner have been given inter departmental transfer and therefore the reasons stated in Ext.P2 to deny inter departmental transfer to the petitioner cannot be sustained. The respondents have filed a counter affidavit contending inter alia that a ranked list of candidates selected for appointment to the post of last grade servants has been published by the Kerala Public Service Commission and that if the petitioner's request for inter departmental transfer is entertained, the candidates included in the ranked list will be prejudicially affected.

4. I have considered the submissions made at the Bar by the learned counsel appearing on either side. The first application submitted by the petitioner was rejected on the ground that inter departmental transfer has been stopped in the year 2001. However, Ext.P3 minutes and Ext.P4 series of orders and Ext.P5 order establish that persons who entered service after the petitioner have been given inter departmental transfer from various departments to the Technical Education Department. Further in Ext.P7 what is stated is that the petitioner's application cannot be considered. The petitioner's request is now resisted on the ground that if his request is granted, it will affect the candidates included in the ranked list published by the Kerala Public Service Commission for appointment to the post of last grade servants.

5. I have in W.P.(C) No.23355 of 2008 held that as appointments of last grade servants is made from a common ranked list, if a last grade servant in the General Education Department is transferred to the Technical Education Department in the very same district, a vacancy will arise in the General Education Department against which candidates recruited by the Commission can be advised and appointed. The Director of Technical Education is a party to the said judgment that was delivered on

20.11.2008. It is evident from the counter affidavit filed by the respondent that vacancies of Peon exist in the Technical Education Department in Palakkad District. In my opinion, the petitioner can be accommodated in one of such vacancies of Peon existing in the Technical Education Department in Palakkad District and in the resultant vacancy, a candidate selected by the Kerala Public Service Commission can be advised and appointed. I am therefore of the opinion that the stand taken by the respondent in Ext.P7 cannot be sustained.

In the result, this Writ Petition is allowed, Ext.P7 is quashed and the Director of Technical Education is directed to issue orders permitting inter departmental transfer of the petitioner to the Technical Education Department and to appoint the petitioner as Peon in Palakkad District. Orders in that regard shall be issued within two months from the date of receipt of a certified copy of this judgment.

P.N.Ravindran, Judge.

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