



J U D G M E N T

These writ petitions are preferred by aspirants to the post of Lower Division Clerk (LDC) in the Kerala Water Authority. Their grievance in this writ petition concerns the probable list and the ranked list published by the Public Service Commission to the extent that it includes candidates who do not have the prescribed qualifications as per the notification to the post of LDC.

2. As common issues are involved, both these writ petitions are heard and disposed of by a common judgment. The parties and Exhibits shall be as described in W.P.(C) No. 19463/2023.

3. A brief conspectus of the facts is as under:

a) Ext.P1 notification was issued by the Kerala Public Service Commission (KPSC) inviting applications for the post of LDC. The qualification prescribed in the notification is given in clause No. (7) of the notification, which reads as under:



7. Qualifications:

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

b) The petitioners, who had the requisite qualifications, submitted their applications and appeared for the examination. While so, one of the aspirants approached this Court contending that Degree/Diploma in Computer Application (DCA) is the higher qualification for the post of LDC and that he is eligible to apply for the post. A learned Single Judge of this Court initially stayed the selection process and later disposed of the matter, holding that candidates with higher qualifications would also be eligible for the post of LDC. While disposing of the matter, directions were issued to the PSC to issue a revised notification incorporating the qualifications and also to specify whether equivalent or higher qualifications should also be accepted and a chance to the eligible candidates be given to apply for the post. Though a review petition was filed by the KPSC, the same was rejected.

- c) Challenging the judgment, an appeal was preferred, which was



allowed by the Division Bench. Noting the stand taken by the KPSC and also the facts and circumstances, it was held that as no changes have been made by the KPSC with respect to the qualifications after the issuance of Ext.P1, and as the PSC had taken a decision that DCA was not an equivalent qualification for the post in question, there was no justification for the learned Single Judge to issue the directions as has been issued in the impugned judgment. It was also held that even if a person with higher qualifications had applied, the same would have been rejected when the scrutiny took place before shortlisting the candidate for the interview.

d) Pursuant to the judgment rendered by the Division Bench, Ext.P5 shortlist was published. According to the petitioner, the aforesaid rank list includes unqualified candidates holding qualifications other than what is prescribed in Ext.P1.

e) The petitioners assert that there were only 102 notified vacancies and 43 anticipated vacancies, whereas there were 1192 applicants for the above posts. If unqualified candidates who have qualifications other than what is stated in Ext.P1 are included, the petitioners would most likely be excluded from the shortlist. It is on these common assertions that the writ



petitions are filed.

4. The prayers sought for in W.P.(C) No.19463/2023 are as under:

a) To issue a writ of certiorari setting aside Ext. P5 short list to the extent it contains unqualified candidates deviant from the prescribed qualifications in Ext. P1 as unjust, illegal and arbitrary;

a(i). To issue a writ of certiorari setting aside Ext. P6 ranked list to the extent to which it contains unqualified candidates who have obtained Diploma in Computer Application (DCA) and such other qualifications deviating from the prescribed qualifications in Ext. P1, as unjust, illegal and arbitrary;

b. To declare that Ext. P5 short list is liable to be reworked by excluding unqualified candidates and by including the petitioners in the correct place after such reworking:

b(i). To declare that Ext.P6 ranked list is liable to be reworked by excluding unqualified candidates and by including the petitioners in the correct place after such reworking;

c. To direct the 1st respondent to rework Ext.P5 short list by excluding unqualified hands, ie, who are not qualified as per Ext.P4 or otherwise and by including the petitioners in accordance with the marks obtained by the petitioners;

c(i). To direct the 1st respondent to rework Ext.P6 ranked list by excluding unqualified hands, ie, who are not qualified as per Exts. P1 and P4 and by including the petitioners in accordance with the marks obtained by the petitioners;

d. To direct the 1st respondent to issue a fresh short list after



cancelling Ext. P5 short list and rework the short list by including the petitioners in the correct place;

d. (i). to direct the 1st respondent to issue a fresh ranked list after cancelling Ext.P6 ranked list and rework the ranked list by including the petitioners in the correct place;

5. The prayers sought for in W.P.(C) No. 23679/2023 are as under:

i) To call for the records leading to Exhibit P5 and P6 and quash the same to the extent it includes the register numbers and names of candidates who are not having the prescribed qualifications notified as per Exhibit P1 to the post of Lower Division Clerk in the Kerala Water Authority, by the issuance of a Writ of Certiorari;

ii) to issue a writ of Mandamus directing the 2nd respondent to publish a modified ranked list for the post of Lower Division Clerk in the Kerala Water Authority, including only the candidates who are having the qualification notified as per Exhibit P1 and make necessary advises thereafter.

iii) To issue a Writ of Mandamus directing the 3rd respondent not to make any appointments to the post of Lower Division Clerk in the Kerala Water Authority from Exhibit P6, who are not having the qualifications notified as per Exhibit P1;

iv) To declare that only candidates who are having the prescribed qualifications notified as per Exhibit P1 are entitled to be advised and appointed to the post of Lower Division Clerk in the Kerala Water Authority.

6. A counter affidavit has been filed by the 1st respondent wherein,



after narrating the sequence of events, it is stated that after the Division Bench had rendered the judgment, the selection to the post of LDC in KWA was proceeded with and an OMR examination was conducted. On the basis of the results, a probability list was published on 3.06.23 by including the candidates who have secured 40 marks and above in the main list and subsequent supplementary lists. Since higher qualification is not barred, the qualification covered under Rule 10a(ii) of the KS & SSR is considered for the preparation of the probability list that was issued. By applying the above provision, candidates with DCA qualifications were also included in the ranked list. It is stated that if the higher qualification is in the same faculty, it will certainly presuppose the acquisition of a lower qualification for the post. It is further stated that non-mentioning of Rule 10 (a) (ii) of Part II KS & SSR in the notification will not take away the applicability of the Rule. Since the inclusion of higher qualifications is permissible as per Rule 10 (a) (ii), the commission finalized the selection process by including higher qualifications in the notified qualification.

7. In the counter affidavit filed by additional Respondents, it is stated that as the petitioners have not chosen to challenge the final rank list, they



are not entitled to the reliefs prayed for in the Writ Petition. It is further stated that the party Respondents possess higher qualifications than the qualifications prescribed in Ext.P1. However, as the additional Respondents possess qualifications higher than that of the prescribed one as per Ext.P1, the principles laid down in the judgment rendered by the Division Bench will not apply.

8. The Writ petition was amended with an additional prayer to quash Exhibit P6 ranked list. The petitioners have also sought to exclude unqualified candidates by including the petitioners in the correct place after reworking.

9. I have heard the submissions of Sri. Kaleeswaram Raj, the learned counsel appearing for the petitioners in W.P(C) No.19463 of 2023, Sri.P.Nandakumar, the learned counsel appearing for the petitioners in W.P(C) No.23679 of 2023, Sri P.C. Sasidharan, the learned Standing Counsel appearing for the Commission and the learned standing counsel appearing for the Water Authority.

10. I have considered the submissions advanced and have gone through the records. I have carefully considered the reasons which



persuaded their Lordships of the Division Bench in interfering with the judgment rendered by the learned Single Judge in the earlier proceeding touching the very same notification.

11. I find that the stand taken by the Commission before this Court is contrary to the stand taken by them in the appeal filed by them challenging the judgment rendered by this Court in the earlier round of litigation. A learned Single Judge had set aside the notification, and directions were issued to the Commission to issue a revised notification in the manner specified in the Rules, and also incorporating the qualifications specifying whether equivalent or higher qualifications could also be accepted, and it was ordered that a chance be given to the eligible aspirants to apply for the post. It is clear from Ext. P2 judgment that the learned Single Judge was persuaded by the law laid down by the Apex Court in **Jyothi K.K. and Ors. v Kerala Public Service Commission**¹ and also Rule 10 (a) (ii) of Part II KS & SSR.

12. In the appeal, which was preferred by the Commission, various contentions were raised, which is clearly at variance to the stand taken by the Commission in this proceeding. The contentions in the counter affidavit

¹ [JT 2002 Suppl 1 SC 85]



filed by the Commission in the earlier proceeding and which was noted by the Division Bench have been detailed in paragraph No.4 of Exhibit P4 judgment. The same reads as follows:

'4. The appellant filed a counter affidavit specifically pointing out that the allegation of the petitioner that the PSC had decided to accept the applications of candidates of DCA qualifications is absolutely incorrect and denied the same and also submitted that candidates possessing equivalent/higher qualification could apply for the post by adding such equivalent/higher qualification in their profile as qualification possessed by entering the details of the same in the remarks column of the notification. That the above procedure was made known to all the candidates and that there is no bar for anybody with higher qualification to apply as the scrutiny of the applications comes only at a later stage. It is further stated that as far as the instant case is concerned, a candidate with DCA qualification is not entitled to be considered for the post and the words similar/equivalent bearing in Ext.P1 notification is only with reference to the institute from which the certificate in Data Entry and Office Automation should have been obtained. It is reiterated that equivalency of an institution is entirely different from equivalency of qualification and that since DCA was not treated as an equivalent qualification, the applications with DCA qualification were rejected. In short, it was the contention of the PSC that there is no change in the qualification made since Ext.P1 and that if anybody with DCA had applied, they were doing so at their risk as it was not an equivalent qualification, but there was no bar for applying as such since the scrutiny happens only later.'

13. The emphatic stand was that a candidate with DCA qualification is not entitled to be considered for the post, and the words similar/equivalent bearing in Ext.P1 notification is only with reference to the institution from



which the Certificate in data entry and Office Automation should have been obtained. It was asserted that the equivalency of an institution is entirely different from the equivalency of qualification and that since DCA was not treated as an equivalent qualification, the applications with DCA qualifications were liable to be rejected. It was also emphatically stated that there is no change in the qualification made in the original notification. However, there is no bar in submitting their application as the scrutiny would occur only later.

14. The Division Bench of this Court has dealt with the contentions and its conclusions in paragraphs 6 and 7 of the judgment, which reads as under:

6. Before us, the learned counsel for the appellant submits that the factual reasoning in the judgment is wrong as the PSC had never notified any change in the qualification after Ext.P1 notification and that candidates with DCA qualification had applied, but the Commission had already decided that DCA is not an equivalent qualification for the post in question and the equivalency mentioned in the notification was only with respect to the institution. It is also submitted that they had rejected about 590 applications received with DCA qualification. The direction of the learned single Judge was unwarranted in this situation as qualification as notified in Ext.P1 stands and no change was brought about by the Commission.

7. After hearing the learned counsel for the parties and on a consideration of the factual aspects involved, we feel that since no change has been made by the PSC with respect to the qualifications after the issuance of Ext.P1, and as a matter of fact the Commission



had decided that DCA was not an equivalent qualification for the post in question, which fact was put in the form of an affidavit before the learned single Judge itself, there was no warrant for allowing the writ petition and issuing the directions impugned in the judgment under appeal. Even if a person with higher qualification had applied, the same would have been rejected when the scrutiny takes place before shortlisting the candidates for the interview. We also note that in the instant case since the very foundation on which the writ petition is filed, namely, that candidates with DCA were permitted to apply and was being considered for selection is found to be wrong, the petitioner could not have been prejudiced in any manner from his inability to apply as he was not qualified for the post in question. Under these circumstances the directions issued in the impugned judgment will turn out to be a futile exercise. In that view of the matter we hold that the directions were not warranted in the facts of case and accordingly, we set aside the judgment of the learned single Judge by allowing the writ appeal and dismissing the writ petition.

15. In other words, the Commission had stated before the Court that they had rejected 590 applications of persons with DCA qualifications. The Division Bench held that even if a person with higher qualifications had applied, the same would have been rejected when the scrutiny took place before shortlisting the candidates for the interview. It was holding so that the appeal was allowed, and the Writ petitions were dismissed.

16. However, the Commission changed its stance after the judgment



was rendered by the Division Bench. They have permitted persons with higher qualifications to participate in the OMR test and have included their register numbers in the probability list and included the name in the rank list as well. It is apparent that candidates who have DCA qualifications, as well as candidates with other qualifications like PGDCA, MCA, BCA Computer Science, BTech, B.Sc Computer Science, and candidates who have passed Office Automation from unrecognized institutions have been included in Ext. P6 ranked list.

17. The question is whether such action of the Commission in including persons with higher qualifications in the rank list is an exercise that can be permitted under law.

18. In **Gorie Gouri Naidu (Minor) v. Thandrothu Bodemma**², it was held by the Hon'ble Apex Court that the law is well settled that even if erroneous, an inter-party judgment binds the party if the court of competent jurisdiction has decided the lis.

19. In **Makhija Construction & Engg. (P) Ltd. v. Indore Development Authority and Others**³, the Apex Court Court clarified the

² (1997) 2 SCC 552

³ [(2005) 6 SCC 304]



distinction between a precedent and the operation of the doctrine of res judicata in the following terms:—

“19. ...A precedent operates to bind in similar situations in a distinct case. Res judicata operates to bind parties to proceedings for no other reason but that there should be an end to litigation.”

20. In **Union of India v. Major S.P. Sharma**⁴, a three-judge Bench of the Apex Court has held as under:—

76. A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be “confusion and chaos and the finality of proceedings would cease to have any meaning”.

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81. Thus, the principle of finality of litigation is based on a sound firm principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end to litigation. The doctrine of res judicata has been evolved to prevent such anarchy.

82. In a country governed by the rule of law, the finality of a judgment is absolutely imperative and great sanctity is attached to the finality of the judgment and it is not permissible for the parties to reopen the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far-reaching adverse effect on the

⁴ [(2014) 6 SCC 351]



administration of justice. It would also nullify the doctrine of stare decisis, a well-established valuable principle of precedent which cannot be departed from unless there are compelling circumstances to do so. The judgments of the court and particularly of the Apex Court of a country cannot and should not be unsettled lightly.

21. In **Naresh Shridhar Mirajkar v. State of Maharashtra**⁵ the Apex Court has laid down the law in this regard as under:—

“When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court.”

In our opinion, if the parties are allowed to re-agitate issues which have been decided by a court of competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux (*Kalinga Mining Corporation v Union of India and Others* 2013 5 SCC 252.

22. In **S. Ramachandra Rao Vs S. Nagabhushana Rao and Others**⁶ it was held as under:

31.....This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be

⁵ (AIR 1967 SC 1)

⁶ [(2022) SCC OnLine SC 1460]



ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.

23. In light of the aforementioned legal principles, it is imperative to recognize that the Public Service Commission, having steadfastly maintained a particular stance in the earlier proceedings and vigorously objected to the acceptance of candidates with advanced qualifications, cannot justifiably alter its stance by subsequently admitting individuals with higher qualifications. Such a reversal of position, if sanctioned, holds the potential to reopen previously concluded judgments of the Court. This not only raises concerns regarding the abuse of the judicial process but also carries significant ramifications for the overall administration of justice. It is essential to recall that the Commission had unequivocally asserted before the Division Bench, through its counter, that it had declined 590 applications from individuals possessing DCA qualifications. The importance of this statement cannot be overstated. The Commission's rejection of applications on the basis of their higher qualifications by holding that such applications are not acceptable had persuaded this Court to pass a judgment on its basis. They cannot now take



a change of stance and accept higher qualifications. This would result in serious miscarriage of justice. Such actions would not only undermine the integrity of the Commission's initial decisions but also erode the principle of consistency and fairness in the recruitment process. The law is well settled that even if erroneous, an inter-party judgment binds the party if the court of competent jurisdiction has decided the lis.

24. In **Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi**⁷, the Apex Court had emphasized the injustice that is likely to be caused when the notification mentions a particular qualification and appointment is made disregarding the same. it was held as follows in paragraph 6 of the report

6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such

⁷ (1990) 3 S655



circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice.

The observations above would apply on all fours to the facts of the instant case.

In view of the discussion above, the petitioners are entitled to succeed.

These writ petitions are ordered, and the following directions are issued:

- a) The ranked list produced as Ext.P6 in W.P(C) No.19463 of 2023 to the extent it includes candidates holding higher qualifications like Diploma in Computer Application (DCA) and such other qualifications deviating from the prescribed qualifications is quashed.
- b) It is held that only candidates who have the prescribed qualifications as notified in Ext.P1 notification dated 16.07.2012 in category No.345/2012 are entitled to be advised and appointed to the post of LDC in the Water Authority.
- c) There will be a direction to the Kerala Public Service Commission to recast and rework Ext.P6 ranked list by excluding candidates who are not qualified and publish a modified ranked list for the



post of LD Clerk in the Kerala Water Authority by including candidates who possess the requisite qualifications as notified in Ext.P1 notification dated 16.07.2012 in category No.345/2012.

- d) The needful shall be done as ordered above within a period of six weeks from the date of receipt of a copy of this judgment.

Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE



APPENDIX OF WP(C) 19463/2023

PETITIONERS' EXHIBITS:

- Exhibit P1 TRUE COPY OF THE NOTIFICATION ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION DATED 16.07.2012 FOR CATEGORY NO.345/2012.
- Exhibit P2 TRUE COPY OF THE JUDGMENT DATED 01.08.2014 IN W.P(C)NO.24279/2012 PASSED BY THIS HON'BLE HIGH COURT.
- Exhibit P3 TRUE COPY OF THE JUDGMENT IN RP NO. 884/2014 PASSED BY THE HON'BLE HIGH COURT OF KERALA DATED 24.02.2015
- Exhibit P4 TRUE COPY OF THE JUDGMENT DATED 13.06.2022 IN W.A.NO.1501/2015
- Exhibit P5 TRUE COPY OF THE SHORT LIST PUBLISHED ON 03.06.2023 BY THE PSC
- Exhibit P6 TRUE COPY OF THE NOTIFICATION WITH RANKED LIST NO.588/2023/ER XIV DATED 14.07.2023 FOR CATEGORY NO.345/2012 PUBLISHED BY THE KERALA PUBLIC SERVICE COMMISSION.



APPENDIX OF WP (C) 23679/2023

PETITIONERS' EXHIBITS:

- Exhibit P1 TRUE COPY OF NOTIFICATION DATED 16.07.2012 FOR THE POST OF LOWER DIVISION CLERK IN THE KERALA WATER AUTHORITY.
- Exhibit P2 TRUE COPY OF SPECIAL RULES FOR KERALA WATER AUTHORITY (ADMINISTRATIVE, MINISTERIAL AND LAST GRADE) SERVICE, 2011
- Exhibit P3 TRUE COPY OF JUDGMENT DATED 01.08.2014 IN WP(C)NO.24279 OF 2012
- Exhibit P4 TRUE COPY OF JUDGMENT DATED 13.06.2022 IN WA NO.1501 OF 2015
- Exhibit P5 TRUE COPY OF PROBABILITY LIST PUBLISHED ON 03.06.2023 BY THE 2ND RESPONDENT FOR THE POST OF L.D CLERK IN THE KERALA WATER AUTHORITY
- Exhibit P6 TRUE COPY OF RANKED LIST DATED 14.07.2023 FOR THE POST OF L.D CLERK IN THE KERALA WATER AUTHORITY