

S. GOPA KUMAR

v.

B STATE OF KERALA & KERALA PUBLIC  
SERVICE COMMISSION

September 21, 1981

[R.S. PATHAK AND BAHARUL ISLAM, JJ.]

C *Practice and Procedure—Inadvertant error in the order of Supreme Court—  
If could be corrected.*

D For selection of candidates for the post of junior engineers in the Public Works Department, the State Public Service Commission prescribed a written test in which persons qualified in Civil Engineering could answer questions in category I and those qualified in Mechanical Engineering could answer questions in category II, both of which were contained in the same question paper.

E After the test and interview but before the common rank list was prepared some candidates impugned the method of selection alleging that the categories of Civil Engineering branch and Mechanical Engineering branch could not be rationally included in a common rank list.

A single Judge of the High Court directed the Service Commission to prepare separate lists in respect of each of the two branches. A Division Bench of the High Court dismissed appeals of some of the aggrieved candidates.

F Dismissing the petition for grant of special leave filed by one candidate this Court observed that it was open to the petitioner to choose the Civil or Mechanical Engineering from the "common list" prepared by the Service Commission. When the State came to this Court for clarification of the earlier order, this Court again said that if the candidate's turn came in the "common list" he was entitled to claim the post under the earlier orders of this Court.

G Seeking clarification and directions, the State Government prayed that the expression 'common list' prepared by the Public Service Commission be deleted from the earlier orders of this Court so as to enable the Commission to prepare separate lists in conformity with the High Court's directions.

H HELD : The words "common list" mentioned in the two earlier orders of this Court were used through inadvertance. The High Court directed the Public Service Commission to prepare two separate rank lists: one for Civil Engineering Graduates and other for Mechanical Engineering Graduates on the basis of examination already conducted. The Public Service Commission

accordingly prepared two rank lists. The name of the petitioner herein appeared in the list of Mechanical Engineering Graduates and he would be appointed when his turn came. [749 C-E]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil)  
Nos. 2081-84 of 1980.

From the judgment and order dated the 23rd November, 1979 of the High Court of Kerala at Ernakulam in W.A. Nos. 149, 167, 169 and 170 of 1979.

*A.S. Nambiar* and *P. Parameswaran* for the Petitioner.

*K. Sudhakaran* Adv. Gen. of Kerala, *V. J. Francis* and *Mustafakani Rowthor* for Respondent No. 2.

*M. M. Abdul Khader* and *K.M.K. Nair* for Respondent no. 4, Kerala Public Service Commission.

*P. Govindan Nair* and *Mrs. Baby Krishnan* for Respondent No. 5.

*K. Prabhakaran* for the Intervener.

The Judgment of the Court was delivered by

BAHARUL ISLAM, J. In these special leave petitions, the petitioner assails the judgment and order dated 23rd November, 1979 of a Division Bench of the Kerala High Court dismissing a number of writ appeals. The relevant facts may be stated thus :

2. The Kerala Public Service Commission (hereinafter 'KPSC') invited applications for filling up 130 expected vacancies in the posts of Junior Engineers in the Public Works Department, as per notification published in the Kerala Gazette dated 16th May, 1978. The qualifications specified for the posts were B.Sc. in Civil Engineering or Mechanical Engineering of the Kerala University or its equivalent as prescribed by the special rules of the Kerala Engineering Subordinate Service (General Branch). The applicants had to appear in the written test conducted by the KPSC and thereafter in an interview held by it. There was a common question paper which contained, in category I, questions in Civil Engineering and in Category II, questions in Mechanical Engineering. Applicants who were qualified in Civil Engineering had to answer the

**A** questions in Category I, and those qualified in Mechanical Engineering the questions in Category II.

**B** 3. After the written test and the interview, but before a common rank list was prepared by the KPSC as was intended, 8 Writ Petitions were filed in the Kerala High Court by applicants holding Civil Engineering degrees. By these Writ Petitions the preparation of a common rank list and also the procedure of the examination and a method of selection were challenged. It was prayed in the Writ Petitions that the KPSC be directed to effect selection and prepare and publish separate rank lists of selected applicants holding Civil and Mechanical Engineering degrees. It was contended in the applications that the applicants who had qualified in Civil Engineering question paper and answered the questions in Category I on the one hand and those who had qualified in Mechanical Engineering and answered questions indicated in Category II in the question paper could not rationally be included in a common rank list after the interview.

**C** 4. The learned Single Judge of the Kerala High Court by a common judgment dated 2nd April, 1979 allowed the Writ Petitions and directed the Government of Kerala and the KPSC to prepare "two lists, namely, one for the Civil Bench and the other for the Mechanical Branch on the basis of examination already conducted". He proceeded: "With respect to it the Service Commission has not yet published the rank list. On receiving information from the Government on the above lines, the Public Service Commission is directed to prepare the two separate rank lists, one for the Civil Bench and other for the Mechanical Branch. On publication of the two lists the Government can request the Service Commission to advise the candidates for appointment to these branches on the basis of the vacancies available in these two branches."

**D** 5. The Kerala Government and the KPSC accepted the directions given by the learned Single Judge and proceeded to take steps for the implementation thereof. However, some of the aggrieved respondents in the Writ Petitions filed appeals before the Division Bench of the High Court. The appeals were ultimately dismissed, in view of the fact that the KPSC had advised 239 candidates according to the separate lists for Civil and Mechanical Engineering prepared on the basis of directions given by the learned Single Judge and that these candidates had already been appointed.

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6. One of the respondents, Shri S. Gopa Kumar, who held a Mechanical Engineering degree, was one of the Special Leave Petitioners before us. He challenged the judgment of the Division Bench of the Kerala High Court dated 23rd March, 1979. This Court by an ex-parte order dated 23rd April, 1980 dismissed the Special Leave Petition with the following observations :

“The prejudice that the petitioner complains of is taking care of by the High Court emphasizing the fact that the petitioner is entitled to exercise his option. It is stated that he has come high in the *Common list* prepared by the Public Service Commission. It is open to him to choose which wing, Civil or Mechanical, suits him most. In that view, we are unable to perceive any prejudice especially because on his option being exercised for the general or mechanical wing, as the case may be, he will be chosen in terms of his willingness.

All SL.Ps dismissed.”

(Emphasis supplied)

7. It may be mentioned that preparation of no common list was directed either by the Single Judge or by the Division Bench of the Kerala High Court. On the contrary the direction expressly was for preparation of *separate* lists for Civil Engineer and Mechanical Engineer candidates as stated above. It has also been stated above that in pursuance of the directions given by the learned Single Judge in his judgment in effect upheld by the Division Bench of the High Court, the Government and the Public Service Commission of Kerala proceeded to prepare separate lists. But facing difficulties, in view of the observation of this Court in its Order dated 23rd April 1980 quoted above, the State of Kerala filed a petition before this Court for clarifications. This Court passed the following order dated 11th November, 1980 :

“We have heard learned Advocate General and Shri A.S. Nambiar on the modification or clarification sought. The actual position has already been explained in the Order by this Court dated 28.4.80. There it has been stated clearly that the petitioner will be entitled to exercise his option and then take his turn according to his rank in the common list prepared by the Public Service Commission.

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Therefore the petitioner will be entitled to a post, if he has exercised his option in terms of this Court's order and he is high enough in the *common list* for claiming the post. We have no idea, nor are we concerned, whether such a vacancy has arisen. If a post has become vacant and the petitioner's turn comes in the *common list* he is entitled to claim that post under the orders of this Court..... "

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8. The above order, as it appears, also refers to a common list although no common list was directed to be prepared or was prepared by the KPSC. This was obviously an inadvertent mistake.

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9. Since there was no common list and since no option was given to the Special Leave Petitioners before us by the judgment of the Kerala High Court, the KPSC faced difficulties in giving effect to the directions given by the High Court. The KPSC therefore has made the Misc. Petition before us for clarifications and directions, particularly praying that the expression "the common list prepared by the Public Service Commission should be deleted."

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10. We have heard learned counsel of the parties and perused the judgments of the Kerala High Court passed by the learned Single Judge and the Division Bench. This Court by its order dated 28th April, 1980 dismissed all the S.L.Ps. with observations referred to above. This Order as well as the order dated 11th November, 1980 has been subsequently recalled by this Court by its Order dated 7th April, 1981, and we do not find any valid ground to reverse the judgments of the High Court. But in view of the difficulties faced by the KPSC and the Government of Kerala, it is necessary to clarify the position and give necessary directions.

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11. Clause 4 of the Government Order No. G.O.MS.101/79/PWD&E dated 27th September, 1979 the Government constituted the Kerala Engineering Service (Mechanical Branch) and Kerala Engineering Subordinate Service (Mechanical Branch) with posts prescribed therein. It reads thus :

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"Government also order that all those who have submitted unconditional options and who possess the required qualifications prescribed in the rules will be appointed by transfer to the respective service. In the case of any category for which the number of options is more than the

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appointment by transfer and the junior persons will be admitted, to the services as and when vacancies arise. In case where the number of officers who had submitted options is less than the number of posts, the remaining vacancies will be provided by direct recruitment as provided in rule (9) of the respective special rules. The Chief Engineer B & R will implement the above orders forthwith."

Clause 4 gave unconditional options to those in the Kerala Engineering Service (General Branch) to remain in the said branch or to choose the newly constituted Kerala Engineering Subordinate Service (Mechanical Branch). As stated earlier the Kerala Government or the KPSC was not directed to prepare a common list. Common List was referred to in the earlier orders in this Court through certain misapprehensions. The KPSC has stated in its counter affidavit to the S.L.P. filed by Shri S. Gopa Kumar against the judgment of the High Court that there were directions to the KPSC to prepare two separate rank lists one for Civil Engineering graduates and the other for Mechanical Engineering graduates on the basis of examination already conducted. Accordingly the KPSC prepared the two rank lists-one for Civil Engineering and other for the Mechanical Engineering graduates. The name of Gopa Kumar appears in the latter list. The rank list for Engineering (Civil) contains names of 152 candidates and the other (Mechanical) contains 202 candidates. All the Civil Engineering selected have already been appointed. Shri Gopa Kumar's rank was 138 in the rank list of Engineers (Mechanical). He will be appointed when his turn comes.

We think that the Division Bench of the High Court was right in dismissing the writ appeals, having regard to the developments which have taken place.

Accordingly, the special leave petitions are dismissed. There is no order as to costs.

P.B.R.

*Petitions dismissed.*