

CASE NO.:
Appeal (civil) 865-867 of 2005

PETITIONER:
R.S. Jayakumar & Ors

RESPONDENT:
State of Kerala & Ors

DATE OF JUDGMENT: 12/10/2007

BENCH:
A.K..MATHUR & D.K. Jain

JUDGMENT:
J U D G M E N T
With:

Civil Appeal No. 871/05, Civil Appeal No. 868/05 and
Civil Appeal No. 869-870/05

A.K.MATHUR, J.

1. These appeals are directed against the orders dated 27th November, 2002 in WA No. 2830/2002 and 7th November, 2002 in WANo. 2646/02 & 2690/2002 passed by the Division Bench of the Kerala High Court whereby the Division Bench has upheld the order passed by the learned Single Judge and dismissed the Writ Applications. The writ appeal was filed by the appellant as well as State of Kerala. Hence, the present appeals.
2. For the convenient disposal of these appeals, facts given in the case of R.S. Jayakumar are taken into consideration.

The promotion as a Ranger in the Kerala Forest Subordinate Service from among Departmental candidates i.e. Deputy Rangers and Foresters was provided by the Kerala Forest Subordinate Service Rules (hereinafter referred to as the Rules) framed under proviso to Article 309 of the constitution of India. Rule 2 prescribes the mode of appointment of Rangers which is partly by Direct recruitment (25%), partly by appointment of Forest Apprentices (25%), partly by promotion of Deputy Rangers/Foresters (25%) who had undergone Foresters\022 Training.

3. We are concerned with the third category i.e. the appointment of Rangers by way of promotion of Deputy Rangers/Foresters. The Rangers\022 Training has to be undergone in the Forest Colleges at Coimbatore or Dehradun for which the departmental candidates have to be selected by the Kerala Public service Commission (hereinafter referred to as the KPSC). Such selection is made in accordance with Rule 10 of the Rules, namely (a) that the qualification prescribed by the Government of India for admission to the Rangers\022 Course, (b) that the candidate should have passed the qualifying examination of the KPSC. By notification dated 30th May, 2005, the KPSC invited applications for selection to the Forest Rangers\022 Course 2001-2003.

4. The last date for receipt of application was 26th July, 2007. The number of vacancies were notified as 5 (provisionally) subject to change according to the allotment of seats by the Government of India. The petitioners/appellants (herein) applied for the course along with other candidates who were on probation and were not approved probationers/full members of the service. A certificate was given by the

Controlling Authority in favour of the candidates that they were approved probationers (though they were not). The select list of 34 candidates prepared by the KPSC included ineligible candidates who were probationers and not approved probationers or full members of service. As a result, the appellants who were approved probationers could not be selected for the vacancies notified for the course 2001-2003 and other persons who were probationers were selected. Therefore, this action was challenged by filing a separate writ petition by the appellants and others. A counter affidavit was filed in the main writ petition No. 33355/2000 by the State and State accepted the contention of the appellants herein and stated that the selection and inclusion of the contesting respondents in the select list was not legal or justified. The KPSC also attempted to justify its list stating that the inclusion of these candidates were on the basis of the certificate issued by the Controlling Authority. Learned Single Judge after hearing both the parties dismissed the writ petition and held that it is only for the purpose of sending the selected candidates for training and not for promotion or appointment. The Division Bench affirmed the order of the learned Single Judge. Hence the present appeals.

5. We have heard learned counsel for the parties and perused the records. Only limited question which is called for our consideration is whether the respondents, the selected candidates were approved probationers or full members in respective categories or not?

6. Before we proceed to decide the question, it would be relevant to refer to necessary provisions of the Kerala Rules bearing on the subject.

7. Rule 2 of the Rules deals with the appointment, which reads as under:

\023(1) \005\005\005

(2) \005\005\005

(3) Promotion of Dy. Rangers and Foresters trained as Rangers in either of the Regional Forest Ranger\022s College

(4) Promotion of Dy. Rangers and Foresters who have not been trained as Rangers but have had training as Foresters;

Note: :25% of ;the vacancies shall be filled up by direct recruits who have satisfactorily completed the practical training, 25% by appointment of Forest Apprentices who have satisfactorily completed training in the Forest Colleges at Dehra Dun or Coimbatore and the practical training: 25% by promotion of Dy. Rangers/Foresters who have undergone Rangers training and 25% by promotion of Dy. Rangers/Foresters who have undergone Foresters training.

Provided that when required number of suitable candidates for appointment to the quota fixed for direct recruitment are not available such vacancies shall also be filled up by appointment of Forest Apprentices under method (2)

Note 2: Direct recruitment and selection of Forest Apprentices and Deputy Rangers/Foresters for training as rangers shall be made by the Kerala Public service Commission.

Note 3: No senior trained Foresters/Deputy Rangers will be superseded by a Junior Deputy Ranger/Forester who has not received Ranger\022s Training on the ground that 25% posts of Rangers

earmarked for trained Deputy Rangers/Foresters have already been filled up. If suitable trained Deputy Rangers/Foresters are not available for promotion, the vacancies allotted to them can be filled provisionally under Rule 31(a)(i) of the General Rules for the Kerala State and Subordinate Services by promotion of Deputy Rangers/Foresters who have undergone Foresters\022 training in a Regional Foresters training in a Regional Foresters School. Such persons shall be replaced immediately on persons trained as Rangers becoming available.

Note 4: A candidate who has secured that 1st Rank in the Regional Forester\022s School and has put in more than ten year\022s service in the Department of which 5 years are spent as Forester will be considered eligible for promotion on the quota allocated for promotion of Deputy Rangers and Foresters trained as Rangers.

7. Rule 6 deals with the other qualifications: which reads as under:

\0236. Other qualifications: No persons shall be eligible for appointment to the Class, Category or Grade specified in column (1) and by the method specified in column (2) of the Table below, unless he possesses the qualification specified in the corresponding entry in column (3) thereof:-

TABLE

Class,
Category
& Grade
(1)
Method

(2)
Qualification

(3)
1. Rangers
Direct
Recruitment
Xxxxx

Appointment
from Forest
Apprentice
Must possess the
qualification prescribed
by the Government of
India from time to time
for admission to the
Rangers Course.

Promotion
Must possess the minimum
general education of the
SSLC Std. prescribed in
the Schedule to the
General Rules and must
have undergone either
Forester\022s training or
Rangers Training.

Deputy
Rangers
Promotion of
Foresters

1. Must possess the minimum general educational qualification of SSLC Std. prescribed in the schedule to the General Rules and

2. Must have undergone training in a Regional Forester's School. Foresters who have put in 15 years of service and who are over 35 years of age shall be exempted from the Forester's training.

8. Rule 7 deals with the tests for appointment to the post of Rangers and Deputy Rangers:

Category	Tests
Rangers & Executive and Forest Apprentices:	I. Forest Test for Controlling Officers (comprising 3 papers namely:- 1. General Law 2. Forest Acts and Rules and 3. Forest Code and Departmental Rules. II. Account test (Lower)
3. Deputy Rangers, Foresters and Curater	: Forest Test for clerical and protective staff (comprising two papers namely: 1. Forest Acts and Rules, and 2. Forest Code and Departmental Rules.

Note: The Forest Officers; Examination (forest Law, forest Revenue, Office Procedure, and Account Matters); The Forest Departmental Test and the Account Test for Executive Officers, Part I of the Government of Madras will be treated as sufficient Qualification in lieu of the test prescribed above in the case of Officers allotted to the Kerala State on 1.11.1956 consequent on the Reorganisation of States.

9. Rule 8 deals with the probation which is reproduced as under:

48. Probation Every person appointed to a category or class shall, from the date on which he joins duty, be on probation in such category or class as follows:-

1. if appointed by direct recruitment or by

transfer, for a period of 2 years on duty within a continuous period of 3 years, and

2. if promoted, for a period of one year on duty within a continuous period of 2 years.

The period of probation prescribed above excludes the period of training, if any.\024

10. Rule 10 deals with the promotion of Deputy Rangers and Foresters, as Rangers, which is reproduced as under:

\02310. Promotion of Deputy Rangers and Foresters, as Rangers, -

(a) Selection of Departmental candidates for deputation to the Rangers Course shall be made in accordance with the following rules:-

(1) The qualifications prescribed for the Forest Subordinate from time to time by the Government of India for admission to the Ranger\022s Course will be followed.

(2) The candidate should have passed the qualifying examination held by the Kerala Public Service Commission.

Note: The final selection from among those who have passed the qualifying examination shall be made by the Public Service Commission on the basis of merit after conducting a physical test:

Provided that as between candidates, of fairly equal merit, seniority in the Department shall be determining factor.

(b) A candidate selected shall be deputed to the College for training for a period of not more than two years at govt. cost.

) During the period of this preliminary training and his training in the Forest College, he shall be paid his pay and allowances and travelling allowance according to rules.

d) He shall, before he is deputed to the College, execute a bond with two sureties for Rs. 8000/- each, and also a separate agreement in such forms as may, from time to time, be prescribed by the State Government undertaking to serve the said Government in the Forest Department for a period of five years after successfully completing the training at the College.

(e) The period of training shall be counted as service qualifying for leave, increment, pension, etc.

(f) The seniority among the departmental candidates appointed as Rangers shall be determined according to the rank obtained in the Rangers College as provided in rule 9 (A). to (g).\024

11. In pursuance of Rule 10(2), the Kerala Public Service Commission undertook the selection of the candidates for sending them for Rangers\022 Course and in pursuance thereof a notification dated 30.5.2000 was issued and in that the cut off date was 26th July, 2000. The relevant portion of the notification reads as under:

\023xxxxxxx

xxxxxxx

7. Qualification:

Candidate must have passed the Intermediate Science Examination (10+2) of any recognised University or State Education Board or its equivalent with two or more of the following subjects:

Mathematics, Physics, Chemistry, Botany and Zoology

xxxxxx \023

12. It further lays down that the Forester/Deputy Ranger standing first in the final examination in the State shall be exempted from the condition regarding the competitive examination as stipulated in para 8 of the notification. Para 8 of the notification reads as under :-

\0238. Competitive Examination: Candidates will be required to sit for a competitive examination to be conducted by the Kerala Public Service Commission on the following subjects:-

- (i) English (Essay, Precis Writing, etc. 100 marks.
- (ii) General knowledge 100 marks
- (iii) Any two papers out of the following 200 marks each

subjects- Maths, Physics, chemistry, Botany,
Zoology, Forestry, Geology, Agriculture, Civil
Engineering, Mechanical Engineering, Electrical
Engineering and Chemical Engineering.

The stands of examination in the above subjects will be of Intermediate of Science or equivalent.

xxxxx

The minimum marks to be obtained for each paper is 40%.

Note:

A Forester/Deputy Ranger standing first in the final examination in the State Foresters\022 training school shall be exempted from the conditions regarding the Competitive examinations mentioned in Para 8. He should however possess the minimum educational qualification of SSLC.\024

13. Another relevant i.e. Clause 11 of the notification reads as under:

\02311. Health Certificate and Service Certificate:-

The candidates shall produce Medical Certificate issued by a Medical Officer not below the rank of Civil surgeon/Chief Medical Officer of Health, testifying the candidates sound health and general physical fitness for rough out-door work in the Forest Department.

Notes:- Physically handicapped candidates are not eligible to apply for this training course. The candidates holding the post of foresters/Deputy Rangers in the Kerala Government Service on a regular basis and who are approved probationers/Full members in the respective category shall submit the application alongwith a service certificate showing the service particulars of the applicant in the form appended.\024

14. As per this note, the candidates who were approved probationers / Full Member of service in respective category shall submit the application alongwith the service certificate showing service particulars of the applicant in the form appended. The form already appended reads as under:
\023SERVICE CERTIFICATE TO BE PRODUCED BY THE DEPARTMENTAL CANDIDATES ALONGWITH THE APPLICATION FOR FOREST RANGERS COURSE 2001-2003.

1. Name of candidate :
2. Post now held :
3. Scale of pay and pay as on
the date of application :
4. Department with circle :
5. Total Service in Forest Department

with details regarding posts held
scale of pay, duration, etc. :
6, State whether a probationer/
Approved probationer/full member:\024

15. Now reading of the form as mentioned above and alongwith Item No. 6 of the form makes it clear that the persons who were eligible to apply for this test for undergoing Rangers training at Dehradun must be either approved probationers/Full Members of the service. An approved probationer though has not been defined in these rules but it has been defined in the Kerala State Subordinate Service Rules, 1958 Sub-Rule 3 of rule 2 defines \023Approved probationer\024 reads as under: \023Approved probationer\024 in a service, class or category means a member of that service, class or category who has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category.\024

16. A member of a service has been defined in Clause 9 which reads as under:-
\023Member of a service\024 means a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service, or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service.\024

17. In this legal back-ground, the question now emerges is whether a person who has been selected is in fact approved probationer or not? As mentioned above, in order to become the approved probationer one has to undergo training. If appointment by direct recruitment or by transfer shall be on duty for the period of two years on duty within a continuous period of three years and if permitted for a period of one year on duty within a continuous period of 2 years. This includes the period of training, if any. In order to get confirmation, one has to undergo certain required tests i.e. he has to pass certain departmental tests as laid down in the Rules, thereafter he acquires an eligibility for the confirmation. In case, he fails to pass the desired tests as laid down in the rules, then he will not be eligible for confirmation. The tests are provided in Rule 7, i.e., he has to undergo clerical test comprising of papers namely, Forest Acts and Rules and Forest Code and Departmental Rules. After completing successfully these tests then alone he acquires the eligibility to be confirmed on the post. In case he fails to pass then he cannot be confirmed on the post. The approved probationer as has been defined in the Rules of 1958 clearly says that the approved probationer means the Member of that service or who has satisfactorily completed its probation and awaits appointment as a full member of such service. Therefore, in order to become an approved probationer it is not simple, one has to successfully pass all departmental tests. The probation is of duration of two years out of three years of continuous service and he should successfully pass departmental test then of course, he can be eligible for promotion and become a member of service. As per the circular issued by the KPSC, the persons eligible for tests are persons either who have come on the category of approved probationer or they are the member of the service. It is the admitted position that the respondents were not appointed either as approved probationer or as a member of the service but they were only probationers and permitted to appear in the selection for undergoing Rangers\022 training at Dehradun by the

Commission. Therefore, the grievance of appellants was genuine that these persons who were not eligible to appear in the tests were permitted to appear on the basis of so called certificate issued by the controlling authority. In fact the Public Service Commission has justified their appearance on the basis of so called certificates given by the Controlling authority but that certificate which was issued by the Controlling authority was not correct. The State of Kerala in its affidavit in opposition has categorically stated that certificate was wrongly issued by controlling authority. But learned single Judge proceeded to decide the matter treating that since they were probationers and there is no such provision in the Rules that for permitting to appear in the Public Service Commission tests one has to be an approved probationer. Therefore, the learned Single Judge held that the probationers were eligible to be included in the select list on their successfully qualifying competitive test. We regret, this approach was totally erroneous on the part of the learned Single Judge as well as of the Division Bench. The Public Service Commission once laid down the eligibility being an approved probationer or member of service, then each incumbent has to fulfil that eligibility or otherwise he will not be permitted to appear in that test. The task of selecting the persons for training is entrusted to the Public Service Commission as required under sub-Rule 2 of Rule 10 & the Public Service Commission laid down the Condition of eligibility, one has to abide by it. There cannot be any departure from that. The Public Service Commission was competent body to make the selection of persons for training and, then the selection has to be made as per the condition in the advertisement. It is not correct to say that since rules do not say that only approved probationers and service members shall be eligible for test, therefore, condition laid down by the Public Service Commission is alien to Rules. The view taken by the Courts below is absolutely erroneous. Once the condition of selection is laid down then all the candidates have to fulfil the same and no departure from that is possible. One who lays down the procedural sword then same shall be slain by that. Once a body has been entrusted the job of selection & lays down the criteria which is not contrary to the Rules, in that case only eligible candidates should be selected as per conditions laid down by the selection body. The KPSC has laid down the eligibility that candidates should be approved probationers or members of service, which is not contrary to Rules, as Rules, nowhere lays to the contrary.

18. There appears to be a rationale behind it if incumbent is only probationer & he is not confirmed on his failure to qualify departmental tests then he has to be discharged from service. If the candidate successfully passes the departmental examination and vacancies are available then he can straightway be confirmed & on confirmation he becomes the member of the service. In case vacancies are not available then after successfully passing of examination he will be treated as approved probationer. Once he is approved probationer, it means that he has acquired eligibility to be confirmed as soon as vacancies are available. But if one is not a member of service or approved probationer then just because he is probationer he cannot be considered for sending on the training. Therefore, the idea behind that incumbent be a member of a service i.e. substantive or permanent or who has acquired eligibility for being appointed as permanent member should be sent for training appears to be well founded. As the State Exchequer has to spend money for training and they cannot afford to spend money on a person who is probationer/temporary. There was a rationale behind this

condition and is not inconsistent with Rules. In this view of the matter, the decision of learned Single Judge and the Division Bench cannot be sustained.

19. Our attention was invited to the case of Jose Mathew who is also respondent herein. He belongs to exempted category from the competitive test as he stood first in the forester training. He need not to go for the competitive test because of the Clause 8 of the Note of the advertisement.

20. However, the conditions laid down by the Public Service Commission in their advertisement have to be fulfilled by all the candidates. As it is more than apparent that the respondents except Jose Mathew did not fulfil the condition required in the advertisement issued by the Public Service Commission for sending the candidates for training at Dehradun. Therefore, their selection cannot be sustained. But they were sent for training and they have undergone the training and sufficient amount has been spent on their training. But they were not eligible to be sent for the training. It is declared that they will not be entitled to avail benefit of their training qua the petitioners/appellants. We allow these Appeals and set aside the order of the High Court & hold that the selection of the respondents for sending them for training was bad and that cannot be used in the service career vis a vis the petitioners/appellants. However, the training undergone by them cannot be withdrawn but they will not get the benefit of it vis a vis the petitioners/appellants and this will not permit them to have a march over the petitioners/appellants.

21. All the appeals are accordingly allowed with no order as to costs.