

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 27<sup>TH</sup> DAY OF JULY 2022 / 5TH SRAVANA, 1944

WA NO. 174 OF 2021

AGAINST THE JUDGMENT IN WP(C) 35894/2019 OF HIGH COURT OF  
KERALA

APPELLANT/PETITIONER:

SMITHA.M.G, AGED 43 YEARS  
W/O.RAJU.K.N, KARIYATUPARAMBIL,  
KALADY, MANICKAMANGALAM, ERNAKULAM,  
NOW RESIDING AT KARIYATTUPARAMBIL HOUSE,  
MEENANGADI.P.O, WAYANAD-673591.

BY ADVS. KALEESWARAM RAJ  
SRI.VARUN C.VIJAY  
SMT.MAITREYI SACHIDANANDA HEGDE

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY ITS CHIEF SECRETARY,  
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
- 2 THE KERALA PUBLIC SERVICE COMMISSION,  
REPRESENTED BY ITS SECRETARY,  
PATTOM, THIRUVANANTHAPURAM-695004.
- 3 THE SECRETARY,  
KERALA PUBLIC SERVICE COMMISSION,  
PATTOM, THIRUVANANTHAPURAM-695004.
- 4 SINDHU.J,  
'DEEPTHI', (NEAR GOVERNMENT H.S),  
CHERUNNIYOOR.P.O, THIRUVANANTHAPURAM-695142.

BY SR.G.P. SMT.B.VINITHA  
SRI.P.C.SASIDHARAN, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
27.07.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**P.B.SURESH KUMAR & C.S.SUDHA, JJ.**

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**Writ Appeal No.174 of 2021**  
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**Dated this the 27<sup>th</sup> day of July, 2022**

**JUDGMENT**

**P.B.Suresh Kumar, J.**

This appeal is directed against the judgment dated 07.10.2020 in W.P.(C) No.35894 of 2019. The appellant was the petitioner in the writ petition. Parties and documents are referred to in this judgment, as they appear in the writ petition.

2. The petitioner participated in the selection conducted by the Kerala Public Service Commission (the Commission) for appointment to the post of Computer Assistant Grade II in various Universities in the State. She was assigned Rank No.3 in the supplementary ranked list of candidates belonging to Viswakarma community published on 03.10.2016 pursuant to the said selection. The fourth respondent was the candidate who was assigned rank No.2 in the said supplementary ranked list. The fourth respondent relinquished her claim for appointment on 07.08.2019 in terms

of Ext.P3 letter addressed to the Commission. The Commission rejected Ext.P3 relinquishment letter and advised the fourth respondent herself for appointment in a vacancy reported to it. No other advice was issued from the said ranked list thereafter till its expiry, for want of vacancy. The case set out by the petitioner in the writ petition was that insofar as the relinquishment of the claim made by the fourth respondent was in accordance with the provisions contained in Rule 18 of the Kerala Public Service Commission Rules of Procedure (the Rules), the Commission ought to have advised the petitioner for appointment in the place of the fourth respondent. The relief sought in the writ petition, in the circumstances, was for a direction to the respondents to appoint the petitioner in the vacancy in which the fourth respondent was advised for appointment.

3. A counter affidavit was filed in the writ petition on behalf of the Commission contending, *inter alia*, that the relinquishment letter of the fourth respondent was rejected since the same was not in accordance with Rule18(ii) of the Rules and the petitioner is, therefore, not entitled to any relief.

4. A counter affidavit was filed by the fourth

respondent affirming the submission of Ext.P3 relinquishment letter declaring that since she was otherwise employed, she did not join the post pursuant to the advice of the Commission.

5. The learned Single Judge took the view that insofar as the petitioner has not challenged the decision of the Commission in rejecting the relinquishment letter of the fourth respondent, the petitioner is not entitled to the relief sought for, and dismissed the writ petition accordingly. It is aggrieved by the said decision of the learned Single Judge that the petitioner has come up in this appeal.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel for the Commission.

7. It was argued by the learned counsel for the petitioner that insofar as the Commission does not have a case that the relinquishment letter submitted by the fourth respondent does not contain the requisite particulars or that it does not contain her signature duly attested by a gazetted officer with his signature, name, designation and office seal or that the relinquishment was not on or before the date of receipt of requisition for advice based on which the fourth respondent was to be advised, it cannot be contended that

there is non-compliance of the requirement of Rule18(ii). It was also argued by the learned counsel that if it is found that the Commission was not justified in not acting upon the relinquishment letter submitted by the fourth respondent, the petitioner is entitled to succeed in the writ petition.

8. Per contra, the learned Standing Counsel for the Commission submitted that Ext.P3 relinquishment letter does not indicate that the signature of the fourth respondent contained therein is one affixed by the fourth respondent herself in the presence of a Gazetted officer and therefore, it cannot be said that there is compliance of the requirements contained in Rule 18(ii). The learned Standing Counsel elaborated the said argument pointing out that even though Ext.P3 relinquishment letter contains the signature of the fourth respondent, she has only earmarked a place in relinquishment letter to affix her signature in the presence of the Gazetted officer and that she has not affixed her signature at that place in Ext.P3. According to the learned Standing Counsel, the petitioner cannot, therefore, be heard to contend that the signature of the fourth respondent has been duly attested by a Gazetted officer in Ext.P3 relinquishment letter

as provided for in Rule 18(ii). It was also argued that there is no challenge in the writ petition against Ext.R1 communication issued by the Commission rejecting the relinquishment letter submitted by the fourth respondent and it is all the more so since such a challenge could be raised only by the fourth respondent and not by the petitioner. It was further argued by the learned Standing Counsel that the rules framed in respect of recruitment for selections conducted by the Commission are binding on the candidates as also the Commission and the same cannot be whittled down in favour of any candidate. The learned Standing Counsel also contended that the Commission being a constitutional body, it can neither go beyond the established rules and procedure nor relax the existing rules for a particular candidate. It was pointed out that if such relaxations are allowed, it will set a precedent and will adversely affect the smooth completion of the selection processes undertaken by the Commission. The learned Standing Counsel has relied on the decision of the Full Bench of this court in **Kerala Public Service Commission v. Reshmi K.R**, 2019 (5) KHC 875 and the decision of the Division Bench of this court in **Rangaswamy v. KPSC**, 1982 KHC 138, in

support of the argument that the Rules are to be followed scrupulously.

9. On a query from the court, the learned Standing Counsel for the Commission conceded that no form has been prescribed by the Commission for submission of relinquishment letters and the same can be submitted on a white paper and will be accepted as valid, if it conforms to the requirements contained in Rule 18(ii).

10. Rule 18 (ii) of the Rules which deals with relinquishment letter reads thus:

“18(ii) Any candidate whose name has been included in a ranked list prepared by the Commission may relinquish his claim for appointment in writing, giving his/her full address and signature, duly attested by a Gazetted Officer of State/Central Government with signature, name, designation and office seal, on or before the date of receipt of requisition for advice based on which he/she is to be advised. The Commission shall thereupon remove his/her name from the ranked list and advise another candidate according to rules. The candidate whose name has been so removed from the ranked list shall be informed of such removal by the Commission.”

As evident from the extracted Rule, it is permissible for a candidate whose name has been included in a ranked list to submit a written application giving his/her full address and signature, duly attested by a Gazetted Officer of the

State/Central Government with signature, name, designation and office seal, to the Commission on or before the date of receipt of requisition for advice based on which he/she is to be advised. As the Rule provides that if an application is filed for the said purpose in the manner indicated herein-above, the name of that candidate will be removed, there cannot be any doubt to the position that if the name of the candidate who has relinquished his/her claim is removed from the ranked list, the next candidate in the order of merit is entitled to be advised against the vacancy in which the candidate who has relinquished his claim was to be advised.

11. Reverting to the facts, a close scrutiny of Ext.P3 relinquishment letter indicates that the requisites of Rule 18(ii) for relinquishing her claim have been duly met, which includes her name, address, signature and date. It also contains the signature of a Gazetted officer of the State under his seal. There is also an endorsement in the letter above the signature of the Gazetted officer to the effect that the fourth respondent has appeared before him and he has accordingly attested her signature in the document. The relevant endorsement which is in vernacular reads thus:

"മുകളിൽ പരാമർശിച്ചിട്ടുള്ള വ്യക്തി എന്റെ സമക്ഷം ഹാജരായിട്ടുള്ളതും ഈ വ്യക്തി തന്നെയാണ്

ഈ സമ്മതപത്രത്തിൽ ഒപ്പ് വച്ചിരിക്കുന്നത് എന്തും ഞാൻ സാക്ഷ്യപ്പെടുത്തുന്നു.”

Ext.R1 is the communication issued by the Commission to the fourth respondent concerning the rejection of Ext.P3 relinquishment letter. The said communication reads thus:

“Your request for relinquishment dated 16.08.2019 for the post of Computer Assistant in Universities in Kerala is not honoured because you have not affixed your signature in the prescribed column”.

The statement in Ext.R1 that Ext.P3 does not contain the signature of the fourth respondent is incorrect as Ext.P3 admittedly contains her signature. As pointed out by the learned counsel for the petitioner, the only defect found by the Commission in Ext.P3 relinquishment letter is that even though it contains the signature of the fourth respondent, she has earmarked a rectangular box therein to affix her signature in the presence of the Gazetted officer and that she has omitted to affix her signature at that place. The pointed question therefore is whether the said omission on the part of the fourth respondent in affixing her signature in the box provided in the relinquishment letter would remove the same out of the purview of Rule 18(ii).

12. As noted, the requirement in terms of Rule

18(ii) is only that there should be a communication addressed to the Commission by the candidate in writing giving his/her full address and signature, duly attested by a Gazetted Officer with his signature, name, designation and office seal. As indicated, all the said requirements have been fulfilled in Ext.P3 relinquishment letter. True, the fourth respondent has provided a box in the document to affix her signature another time just above the attestation to be made by the Gazetted officer and she had not affixed her signature therein. In the absence of any requirement under the Rules for dual signatures of the candidate, one for affirming the declaration and the other for enabling the Gazetted Officer to attest his/her signature, according to us, merely for the reason that the candidate has provided a box for affixing her signature another time in the relinquishment letter, it cannot be said that the requirement of Rule 18(ii) has not been complied with.

13. To a specific question put to the learned Standing Counsel for the Commission as to the basis on which they maintain that there is non-compliance of Rule 18(ii), the answer given by the learned Standing Counsel was that insofar as the signature of the fourth respondent was absent in the

box, the Commission entertains a *bona fide* doubt as to whether the signature is one affixed by the fourth respondent herself before the Gazetted Officer. Insofar as the document contains the signature of the fourth respondent and the same has been attested by a Gazetted officer of the State under his seal, that too, with an endorsement to the effect that he is satisfied that the signature is one affixed by the fourth respondent, we are of the view that the mere suspicion of the Commission as to whether the fourth respondent has affixed the signature in the presence of the Gazetted Officer is not sufficient to reject Ext.P3 relinquishment letter. Had this been a case where the Commission prescribed a form containing a box as provided by the fourth respondent in Ext.P3, the situation would have been different, for in that event, the Commission would certainly be entitled to contend that the requirement of the Rule is that the document should contain two signatures of the candidate, one below the declaration and the other above the attestation of the Gazetted Officer.

14. No doubt, it is trite that stipulations insisted upon by the Commission prescribing the manner in which applications are to be submitted by the candidates have to be

strictly and scrupulously complied with; that any lapse on the part of the candidate in complying with such stipulations shall result in rejection of application and that any dilution of the stipulations by courts on a finding that the stipulations have been substantially complied with would only be counter productive. It is also trite that since a vast majority of candidates succeed in submitting flawless applications, indulgence to a few who are unable to do so cannot be justified and such indulgence would certainly create unnecessary hurdles for the Commission in the matter of discharging its functions. The aforesaid principles would apply with all vigour in the case of relinquishment letter insisted by the Commission also, especially when the right given to a candidate who has secured a place in the ranked list to relinquish the same is likely to be exercised for monetary consideration as well. But that does not mean that in a case where this court finds that the requirements of the Rule have been scrupulously complied with by a candidate, the benefit of the same cannot be availed by the candidate next in the order of merit. As noted, the case of the petitioner in the writ petition is that the decision taken by the Commission to reject the relinquishment letter

submitted by the fourth respondent is unsustainable in law, for had the said decision been otherwise, the petitioner would have been advised for appointment in the place of the fourth respondent. As such, there is also no merit in the contention taken by the learned Standing Counsel for the Commission that the petitioner is not entitled to raise a challenge against Ext.R1 Communication.

15. As noted, the reason stated by the learned Single Judge for declining relief to the petitioner is that she has not challenged Ext.R1 communication issued by the Commission to the fourth respondent. Even though there was no specific relief sought for in the writ petition in that regard, the writ petition was essentially one challenging the said decision and merely for the reason that a specific relief has not been sought in the writ petition, it is not an impediment for the court exercising power under Article 226 of the Constitution to grant a relief which a party is entitled to.

In the result, the writ appeal is allowed, the impugned judgment is set aside and the writ petition is disposed of directing the Commission to advise the petitioner for appointment in the vacancy in which the fourth respondent

was advised for appointment. This shall be done within two months from the date of receipt of a copy of this judgment.

Sd/-

**P.. B.SURESH KUMAR, JUDGE**

Sd/-

**C.S.SUDHA, JUDGE**

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