

**REPORT OF THE LEGAL COMMITTEE OF THE NATIONAL
CONFERENCE OF CHAIRPERSONS OF STATE PUBLIC SERVICE
COMMISSIONS**

PREAMBLE:

Indian Constitution under Article 315 constituted Public Service Commissions Union and for each State. The Constitution also gave independent status and ensured permanency of Public Service Commissions as far as their tenures, pay and allowances and functions are concerned. Constitution has maintained the independence of the Public Service Commissions.

Union and State Public Service Commissions are entrusted with the paramount duty to

- a) conduct examination for appointments to the services of the Union and State, respectively
- b) advise on any matter so referred to them and on any matter referred to it by the President or Governor, respectively, etc., etc.

Further, under Article 320 (3), the Commission shall be consulted on

- a) all matters relating to methods of recruitment to Civil Services and for all civil posts.
- b) The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidate for such. appointments, promotions or transfers.
- c) On all disciplinary matters affecting a person serving under the Government in a civil capacity, etc., etc.

Functions of the Public Service Commissions are only advisory. In State of U.P-V-Mambodhan Lal Srivastava (AIR 1957 S.C 912) the Supreme Court has held that the use of words 'shall be consulted' in the Article 320(3)(c) were directory and not mandatory. An argument based on the use of the word 'shall' was rejected by the court on the following : Art 320 shows that the word 'shall' appears in every clause or sub-clause therein. If Art.320 (3) (c) is held mandatory because of the use of the word 'shall', then every clause or sub-clause of that article must also be held to be mandatory; and if so held, any appointment made without conforming to the requirements would become invalid for no fault on the part of the person so appointed – a result which could not have been contemplated by the makers of the Constitution.

In exercise of the functions conferred on the Public Service Commissions, disputes have arisen between the aggrieved individuals aspiring for jobs and the public Service Commissions. In our legal system, the aggrieved party has the freedom to approach the

court of law, using this principle of the system candidates who felt aggrieved have approached the courts sometimes successfully, many times unsuccessfully. In the Indian scenario, getting into a Government job is a status symbol and given the Indian population, the government jobs are far below the number of aspirants aspiring for them. Obviously, there will be many aggrieved persons who may approach the courts of law sometimes correctly and many times on frivolous grounds. This is something which cannot be totally avoided.

The Public Service Commissions have been following the rules, regulations in an objective way by careful scrutiny of the process. In spite of it, may be because the personnel scrutinizing the applications may not have a correct idea as to the judicially accepted procedures to be followed, some mistakes might have taken place. The statistics indicate that there are 17,730 cases pending in different courts of various Public Service Commissions as on 5.9.2009. Of these, Kerala has the maximum number of 5,057 followed by Rajasthan with 2404 cases and Uttar Pradesh with 2376 cases. Small states like Sikkim, Meghalaya, Nagaland and Mizoram have 1, 2, 5 and 7 cases respectively. The higher number of cases in Kerala may be attributed to the higher percentage of literacy and rights awareness. Moreover, all government recruitments are made through Public Service Commission in Kerala. In the north-eastern states the lesser number is because of the lesser population and may be because of migrations of people to other states and many other reasons.

Public Service Commissions deliberated and introspected on how to be more transparent and reduce the number of litigations so that the image of the Public Service Commissions is better projected among the public. Hence, a national Conference of Chairpersons of Public Service Commissions was held on 8th & 9th January, 2009 at Thiruvananthapuram (Kerala). The outcome of serious discussions was the constitution of a Legal Committee of the Public Service Commissions, entrusted with the responsibility of, (1) finding out the reasons for increase in the number of Court Cases and (2) to suggest ways and means to reduce the Court litigations.

The National Conference invited the following to be on the said Committee:

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| 1. Sri Gonal Bhimappa | ... | Chairman, Karnataka P.S.C. |
| 2. Sri Surjit Kishore Das | ... | Chairman, Uttarkhand P.S.C. |
| 3. Thiru A.Kasivishwanathan | ... | Chairman, Tamil Nadu P.S.C |
| 4. Dr.Geeta Basumatary | ... | Chairperson, Assam P.S.C |
| 5. Sri. Bharat Bhushan Batra | ... | Chairman, Haryana P.S.C |
| 6. Dr.K.Salabuddin | ... | Chairman, Kerala P.S.C. |

According to the directions given by the National Conference, the Legal Committee set itself on the task. The Committee had its first meeting at Nainital, Uttarkhand on 30th May, 2009. It held its second meeting on 25th July, 2009 at Chennai.

The third meeting is convened at Bangalore to consider the suggestions made by the Hon'ble Chairpersons and other invitees at the earlier meetings and the statistical figures supplied by different Public Service Commissions.

INTRODUCTION

India is a sovereign, democratic Republic. The Constitution of India, secures amongst other things, justice, social, economic and political. To realize these objectives among other Constitutional bodies Union/State Public Service Commissions are established to help the citizens to achieve these ideals.

Amongst various fundamental rights, Article 16 declares that in matters of employment or appointment to any office under the State, there shall be equal opportunity. Equality before law or equal protection of laws, is also guaranteed under Article 14 for all persons.

In the process of implementing the reservation policy, there has been number of confusions because of the government notifications issued from time to time. The formats in which the certificates will have to be furnished has also been undergoing changes from time to time as per notifications of the government. As a result, there are good number of cases challenging the application of reservation policy in selecting the candidates by the Public Service Commission. To handle this problem, there has to be better coordination between the Public Service Commission and the Government. Public Service Commissions before issuing notifications will have to check up with the Government about the latest policy and accordingly issue notifications / advertisements. In the advertisement, it can be clearly mentioned that the reservations is subject to policy changes likely to be made by the governments.

The other reason for the litigation is incomplete applications or improperly filled up applications. So these applications when rejected, the aggrieved candidates are approaching the courts of law. It is observed that the courts are not consistent in either dismissing the cases or admitting the cases. In such a situation, the Public Service Commission may have to clearly mention in their advertisements/ notification that incomplete applications or improperly filled in applications or applications not supported by necessary documents will be summarily rejected. In spite of it, if there is litigation, the dispute will have to be taken upto the Apex court and get the law settled. In this process, the Public Service Commission will have to have the freedom of engaging their own Senior Counsel.

Chairman, Tamil Nadu Public Service Commission has listed the cases where candidates have approached the Courts on different grounds, some of them flimsy and frivolous.

The following are the general grounds on which the Commissions have rejected the applications of candidature:

1. Rejection of unsigned application forms
2. Rejection of late applications
3. Rejection for non-payment of examination fees
4. Rejection for failure to enclose necessary documents, supporting the application. e.g. educational qualification, birth, caste certificate etc.
5. Determining communal status of candidates
6. Wrong questions asked for examination
7. Wrong key answers supplied by experts
8. Pattern of examination
9. Out of syllabus questions asked
10. Marking in the answer script disclosing candidates identity
11. Retotalling of marks
12. Revaluation of answer scripts
13. Awarding of marks for written examination
14. Awarding of marks for oral test
15. Withholding of results pending production of Reservation/Caste Certificates
16. Challenging the recruitment rules framed by the respective departments
17. Rules regarding reservation in appointments
18. Apportioning of the vacancies for direct appointment and promotions
19. Reducing the vacancies already notified.
20. Operation of the reserve lists drawn for the recruitment

In addition to this, Karnataka Public Service Commission, has different grounds on which action is challenged. They are

1. Equivalence of qualification
2. Experience - whether acquired after basic qualification or gained earlier can be considered
3. Rejecting horizontal reservation claimed by candidates
4. Qualification prescribed for the post in Technical Education Department is Degree/Diploma in Civil Engineering.
5. Withdrawing the posts after issuing recruitment notification
6. Government Order is issued giving clarification about equivalence of qualification after the publication of the recruitment notification pertaining to recruitment to the post of Head Master.

It is likely that similar situations must be existing in other State Public Service Commissions.

The Legal Committee at its meeting held on 30.5.2009 at Nainital, keeping in view the trend of cases before the Court, Chairman, Karnataka Public Service Commission, circulated a discussion paper on the subject which inter-alia classified categories of court cases in broad divisions, as enumerated below. This enabled the Committee to focus on these broad categories as reasons/grounds for challenging the action of Public Service Commissions.

Following five broad categories, as approved by other Chairpersons, are as under

1. Questioning the validity of the Government Rules, Orders, notifications, etc., relating to recruitment of Civil Servants.
2. Questioning the validity of the notification inviting applications or orders made or action taken by the Commission during the course of selection process.
3. Questioning the correctness of action taken by the Chairman and Members in awarding marks or preparing the select lists.
4. Staff of the Commission challenging the orders relating to their service conditions, and
5. Challenging some action relating to appointment, seniority and the time taken by the Government in relation to persons selected by the Commission subsequent to the selection by the Commission where the Commission is made a formal party.

PROBLEMS FACED BY THE PUBLIC SERVICE COMMISSIONS

In spite of the best efforts by the Public Service Commission, human mind is so ingenious that they keep finding faults with its functioning. So the aim of the Public Service Commissions must be to see how best they can visualize the possible ways the candidates may interpret the rules, notifications, orders and decisions of the Public Service Commission and make these things reasonable and objective. This will certainly help in reducing the number of litigations. Of course in a country like ours it is not possible to eliminate litigation totally, despite care being taken at the Commissions' end, still the litigant public try to find out some loop holes in the system and file cases. This cannot be helped. Considering the immense size and scale of the Public Service Commissions and the nature of their functions, a certain amount of litigation is inevitable and in fact, healthy. However, the number of cases currently is very high which seems to point towards certain flaws in some areas of administration. Strict compliance with procedure would itself vastly reduce the litigation in many areas. So the main task before all the State Commissions is, to reduce, if not, eliminate, litigation.

The two main grounds for focusing the attention of all Public Service Commissions are, firstly, how litigation can be reduced and secondly, what additional steps are required to be undertaken by the Commission. Apart from the reputation being at stake, cost factor

for both Commission and the petitioner candidates has to be reduced. Thirdly, any other preliminary steps to be taken -like holding orientation programmes or awareness camps, before candidates apply for any post.

ANALYSIS OF THE CASES PENDING BEFORE THE COURTS

Sl. No	Name of P.S.C	Cate-gory-1	Cate-gory-2	Cate-gory-3	Cate-gory-4	Cate-gory-5	Total
1.	Andhra Pradesh	---	1029	Nil	02	30	1061
2.	Arunachal Pradesh	01	05	Nil	Nil	09	15
3.	Assam	15	10	01	---	285	311
4.	Bihar	613			34	194	841
5.	Chattisgarh	20	84	02	02	36	144
6.	Goa	-	02			31	33
7	Gujarath	15	82	36	15	172	320
8	Harayana	42	30	93	01	29	195
9	Himachal Pradesh	55	84	44	10	76	269
10	Karnataka	174	480	05	08	63	730
11	Kerala	2448	1191	287	58	402	4386
12	Madhya Pradesh	206	120	63	04	367	760
13	Maharashtra	328	791	00	00	342	1461
14	Manipur	00	02	08	00	01	11
15	Maghalaya	00	00	01	00	01	02
16	Mizoram	02	00	00	00	05	07
17	Nagaland	00	05	00	00	00	05
18	Orissa	253	330	00	07	814	1404
19	Punjab	25	32	205	18	85	365
20	Rajasthan	23	71	00	08	25	127
21	Sikkim	00	01	00	00	00	01
22	Tamil Nadu	197	510	00	19	175	901
23	Tripura	03	03	00	00	15	21
24	Uttarkhand	41	56	00	03	07	107
25	Uttar Pradesh	337	722	434	196	687	2376
26	West Bengal	03	07	58	03	00	71
	Total	4,801	5,647	1,237	388	3,851	15,924

Out of 15,924 cases pending in different High Courts and Supreme Court, a total of 4,801 cases fall under Category-I, 5,647 cases under category-2, 1,237 cases under Category-3, 388 cases under Category-4 and 3,851 cases under Category-5.

Of these cases under Category-1 form 30.15%, Category-2 form 35.46%, Category-3 form 7.77%, Category-4 form 2.44% and Category-5 form 24.18% of the total cases.

If we take pre-examination or application filing stage i.e. by combining Category 1 and 2, the total works out to 65.61 % (30.15 + 35.46).

It is possible to reduce litigation under the first two categories, if the Government of the State and respective Public Service Commissions take due care while issuing the Government Orders, Rules, Notifications and Advertisements. If the cause for litigation is found from the judgments of the Courts, concerted effort can be made to drastically reduce litigation under these categories.

It is felt that some of these cases - nature and requisition/relief demanded be taken up as guidelines on which steps can be taken to eliminate if possible, the ambiguity or offending clauses/provisions.

Such information is readily available with Karnataka Public Service Commission. These figures and matters are used herein just by way of illustration. In other States similar situations might be prevailing.

Under Category-1 (questioning the validity of Government Rules, Orders, Notifications, etc. relating to recruitment of civil servants), cases are further classified depending on nature of cases as under:

- a) Reservation
- b) Age Relaxation
- c) Rules /Notifications/Orders
- d) Challenging Lower Court Orders
- e) Miscellaneous cases

39 cases 32 cases 84 cases 09 cases 10 cases

a) This class contains cases relating to

- 1) Women's reservation
- 2) Reservation for physically handicapped in each of the reserved Categories
- 3) Excess reservation under SC/ST categories
- 4) Quashing the provision pertaining to reservation for rural and Kannada medium candidates

- 5) To announce the list of candidates eligible to the main examination by excluding 30% women reservation.
- 6) Not to have more than 50% reservation - vertical as well as horizontal as per Supreme Court decision - (Anil Kumar Vs State of U.P) (1995) (5) S.C.C 173)
- 7) Demanding 10% reservation for Ex -Servicemen
- 8) To declare reservation in favour of ex-servicemen as unconstitutional

b) Age relaxation

- 1) To grant age relaxation for not conducting examinations every year
- 2) Relaxation for Central Govt. employees
- 3) Relaxation of age limit for Ex-MP
- 4) Relaxation for in service candidates considering the period of Govt. service rendered in different Govt. departments.
- 5) Relaxing the age for applicants to the posts of Lecturer in History and Education.
- 6) Age relaxation for rural candidates
- 7) Quashing of weightage

c) Rules/Orders/Notifications

- 1) Quashing the Notification as the qualifications prescribed are not in consonance with C & R Rules.

For the recruitment to 35 posts of Motor Vehicles Inspector initiated pursuant to notification dated 3.1.1997, the qualification prescribed by the Central Government as per notification dated 12.6.1989 namely, Diploma in Automobile Engineering or Diploma in Mechanical Engineering among others was prescribed. The same was challenged on the ground that the qualifications prescribed was not in conformity with C&R Rules, namely, Karnataka General Services (Motor Vehicles Branch) (Recruitment) (Amendment) Rules, 1987 which prescribed only Diploma in Automobile Engineering and not Diploma in Mechanical Engineering.

- 2) Anthropology is not equivalent to Sociology
- 3) Prescribing cut off date for acquiring M.Phil to make one-self eligible for Post
- 4) To direct the Respondents to comply with UGC Regulations passing of NET Examination.
- 5) Not to insist on 55% in the qualifying examination relating to recruitment to the post of lecturer
- 6) To restrict selection and appointment to the post based on certificate issued by Govt. Library Training School.

- 7) To direct K.P.S.C. to revalue all the answer scripts of Main Examination and to conduct personality test by full Commission in G.P. Recruitment.
- 8) Re-do the select list keeping 5 % of the total marks assigned for written test for personality test as per the 58th Amendment Rules, 2001 - Cadre and Recruitment Rules.

Under Gazetted Probationers Rules personality test carries 200 marks. In K.C.S. (General Recruitment) (58th Amendment) Rules, 2001 maximum marks for personality test should not exceed 5% of the total marks prescribed for the written test i.e., maximum of 90 marks since the maximum marks prescribed for written test are 1800. G.P. Rules being self-contained rules shall have the effect notwithstanding anything contrary contained in K.C.S. (General Recruitment) Rules.

- 9) Non-conduct of examination by Public Service Commission as per the syllabus prescribed.
- 10) Without proper amendment to the Cadre and Recruitment Rules, exempting Ph.D, M.Phil candidate from taking NET or S.L.E.T. examination is illegal.
- 11) Declaring as ultra vires the Constitution the Karnataka PWD Services Competitive Examination Rules, 2007 pertaining to recruitment of Assistant Executive Engineer.
- 12) To declare that the applicant is qualified for personality test and to interview him
- 13) Prescribing minimum marks in Kannada and English paper qualifying for personality test as ultra vires.
- 14) Selection list published is contrary to Karnataka Civil Services (Recruitment) to the post of Stenographers (Typists Rules, 1983) and be declared as void and quashed.

The applicant an unsuccessful candidate has challenged the select list on the ground that the procedure adopted by the Commission in short-listing candidates in the ratio of 1:2 for verification of documents is not contemplated under the Rules and that there is variation between cutoff marks under GM category prepared for the purpose of short-listing in the ratio of 1:2 and cutoff marks under GM category for preparing the select list.

- 15) To quash the Govt. Order No. ED 74 DCE 2006 and not to proceed with selection process.

By an Executive Order No.ED 74 DCE 2006 dated 23.11.2006 candidates possessing M.Phil or Ph.D. degree have been exempted from passing NET/SLET which is one of the qualifications prescribed for the post of lecturer in Govt. I Grade Colleges.

- 16) Non inclusion of subject MSW as eligibility for a post is bad in law
- 17) To consider M.A, Ph.D in Criminology and Forensic Science as equivalent to Military Science and to appoint him
- 18) To set aside the notification reducing the posts of Motor Vehicles Inspector from 245 to 145.
- 19) Amendment to the Rules of Technical Education Department as unconstitutional.
- 20) To direct Respondents to redo selection by keeping 50% posts of lecturer in Biology in P.U. Colleges for candidates with M.Sc. in Zoology

d) Challenging the lower court orders:

- 1) Requesting the High Court to quash the order passed by K.A.T.

In the recruitment to the post of High School Head Master KAT as per common order dated 5.2.2009 in A.No.5789/2008 and connected cases has upheld the action of the Commission in rejecting the applications of candidates possessing Hindi Shikshak/Hindi Snathak/Hindi B.Ed., holding that in the absence of a notification under Rule 2(1)(h) of General Recruitment Rules declaring the same as equivalent to B.Ed. prescribed for the post of High School Head Master, equivalence declared in case of some other posts cannot be made applicable to the post of Head Master.

- 2) Stay the order of High Court of Karnataka - appeal to Supreme Court.

Rural weightage provided under Rule 3B of K.C.S. (General Recruitment) Rules, 1977, was quashed as unconstitutional in W.P.No.13157/98 as per order dated 11.11.98 but saved the selection and appointment made with the aid of rural weightage till the date of the order i.e., 11.11.1998. This was challenged in Writ Appeal No.5807/98 which was dismissed as per order dated 26.11.1999. The said order has been challenged before Supreme Court in this S.L.P.

- 3) Seeking Special Leave to appeal to the Supreme Court.

The petitioner was a candidate for 136 posts of lecturer in different subjects in Govt. Colleges carried out by the Commission pursuant to notification dated 11.3.1980. Classification of vacancies was done by Govt. faculty-wise for the entire cadre of lecturers as a single unit and not subject-wise without considering the roster for individual subjects as per Government notification in force. The petitioner claiming that if classification of vacancies was done subjectwise she would have become eligible for selection against 8 vacancies in Kannada subject and filed application before KAT. KAT as per order dated 28.5.1987 disposed of the application to the effect that the parties shall be governed by the orders of the Supreme Court in Gayathri's case (SLP 12774/84) wherein it was held that vacancies should be classified subject-wise. Petitioner approached KAT for contempt in Contempt Petition No.446/95 and the same

was dismissed. The petitioner approached High Court in W.P.No.8440/07 which was dismissed considering the fact that the petitioner was already aged 53 years and already working as lecturer in Junior Colleges and promoted as Principal. Against that order the petitioner has filed this SLP.

e) Miscellaneous grounds:

1. Quashing of selection lists
2. Applicant's qualification not considered
3. Transfer of recruitment process of Municipalities to K.P.S.C. is unconstitutional.
4. To permit the applicant to participate in the selection process
5. To consider the post-graduate degree

In the recruitment to the post of lecturer in Political Science in P.U. Colleges applicant possessing M.A. in Public Administration has sought for a direction to consider for selection to the post of lecturer in Political science. Similarly, a candidate possessing post graduate degree in Life Science has sought for a direction to consider it as cognate subject to Biology.

Sample case study of category -2 cases

(Questioning the validity of the notification inviting applications and action taken by the Commission during the course of selection process)

These cases under this category are further classified under 12 groups:

a) Reservation	: 34
b) Age relaxation	: 08
c) Rules/Orders/Notifications	: 80
d) Challenging lower court orders	: 20
e) Revaluation / Re-totalling of marks	: 32
f) Incomplete applications card, caste certificate, application not in the prescribed format	- no marks : 24
g) Re-allotment of department, orders/ preference	: 43
h) Challenging the provisional/ final select list	: 39
i) Wrong key answers/out of syllabus	: 33
j) Miscellaneous	: 158

a) Reservations:

- 1) Reservation for physically handicapped

- 2) To consider rural reservation
- 3) To select petitioner under 2A rural quota
- 4) Considering the rural certificate, the petitioner be considered for the post of Health Inspector under 3-B rural quota
- 5) To prepare fresh list after excluding rural weightage
- 6) Demanding 3A reservation
- 7) Consider the applicant for the post of Asst. Executive Engineer under 2B
- 8) Consider the applicant for the post of Asst. Executive Engineer under 2A
- 9) Consider the applicant for the post of Asst. Executive Engineer under 3A
- 10) Reservation of posts beyond 50% is unconstitutional

b) Age relaxation:

1. Relaxation of age on the basis of service

In the recruitment to the post of Asst. Executive Engineer the applicant who is over aged under the Recruitment Rules has sought for age relaxation as in-service candidate under K.C.S. (General Recruitment) Rules contending that he has 17 years teaching experience as lecturer in V.I.S.S.J. Polytechnic which has since been taken over by the State of Karnataka.

2. Relaxation of upper age limit, as he was selected under Group-B, but was denied due to subsequent moderation process

c) Rules/Orders/Notifications:

1. To quash the order canceling the applicant's candidature and directing him not to apply thereafter for any competitive examinations conducted by Karnataka Public Service Commission

Applicant's candidature for G.P. 2005 Recruitment was cancelled for examination misconduct - for highlighting the answers contrary to instructions after holding inquiry which he has challenged in this case.

2. Strike down rule 3 of Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examination) Rules, 1997 and to select the petitioner on the basis of merit.

3. Questioning the order of K.P.S.C. cancelling the application on the ground of non possession of required educational qualification.

Applicant's application for the post of Veterinary Inspector has been rejected as he possesses J.O.C. in Dairy and Poultry Science as against the qualification namely, PUC with Biology as one the subjects prescribed for the post.

4. Directing the Commission not fill up the posts

In the recruitment to the posts of Gram Panchayat Secretary Grade- I & II petitioner working as Bill Collector has sought for promotion as Secretary and for a direction not to fill the posts through direct recruitment.

5. Regarding working out the formula for equating grade awarded by Agricultural Universities with percentage of marks awarded by other Universities and to select lecturer in Home Science as per this formula

6. Directing the Commission to conduct personality test for recruiting Asst. Executive Engineer

7. Quash the endorsement dt. 16.09.2008 and to appoint the applicant for the post.

In this recruitment for the post of Junior Engineer (Civil) in the Department of Water Resources the applicant who has claimed reservation under 3A/Rural category has not produced rural certificate in the prescribed form. Hence considered under 3A category, his marks being less than the cutoff marks for interview under 3A category not called for interview. Endorsement issued accordingly.

8. To direct the Commission to consider the applicant for the post of lecturer in Kannada

The applicant being P.U. College lecturer coming within creamy layer concept his claim under 2B category has been cancelled and considered under GM category and his marks being less than the cutoff marks for interview under GM category not interviewed.

9. To allow the applicant to participate in the interview process for the post of Library Assistant

In this case pertaining to recruitment to the post of Library Assistant in the Department of Library the applicant's application has been rejected as he does not possess one year's experience as prescribed under the Rules and an endorsement has been given giving the reason for rejection of his candidature. The Apprenticeship Certificate produced by the applicant for having undergone training as Technician, Vocational Apprentice for one year in the Karnataka Government Secretariat Library has not been accepted as experience prescribed under the Rules.

d) Challenging the order of lower Court:

1. To stay the order of High Court and to pass suitable orders in favour of petitioner. This is the only appeal to the Supreme Court from the orders of High Court.

[Already referred to under para-c) Rules/Orders/Notifications 3) Seeking Special Leave to appeal to the Supreme Court]

All remaining cases seeking quashing of orders of KAT.

e) Revaluation of answer scripts:

1. Most of the cases pertain to granting revaluation of answer scripts
2. Wrong translation of questions in Kannada version
3. Getting the answer script valued by third valuer
4. Directing K.P.S.C. to allot 90 marks for viva-voce test, in accordance with Govt. Notification of 2.3.2002
5. To direct the Commission to revalue petitioner's answer script and to allow him to peruse the script.

f) In complete marks card, non-inclusion of other certificates etc.

1. Not producing caste certificate
2. To consider rural resident category for the post of Tahsildar
3. Claim of rural reservation cancelled for not submitting Form-1
4. Canceling applicant's candidature for producing only driving license

Applicant a candidate for the post of Motor Vehicles Inspector had no badge to drive heavy passenger vehicle (HPV) as on the last date fixed for receipt of applications and hence held ineligible.

5. Non production of original SSLC marks card at the time of verification resulting in cancellation - challenged

6. Consider the application for Political Science Lecturer under category 2A

The applicant candidate for the post of lecturer in Govt. I Grade Colleges claiming reservation under 2A category, has not produced 2A reservation certificate in the prescribed form. Hence claim of 2A category cancelled and he being overaged under GM category his application has been rejected.

7. Consider the application for Chemistry Lecturer under Category 3B rural

Out of 17 posts of lecturer in Chemistry in Govt. I Grade Colleges only one post has been reserved under 3B/Rural category. The applicant under 3B/Rural/KMS category has not produced certificate to show that he has studied in Kannada medium from 1st std. to 3rd std., hence has been treated under GM/Others category. As he has secured 60.40% in M.Sc. Chemistry as against cutoff marks of 73.17 under GM/Others category not called for interview.

8. Reserve a post for the applicant under Category 2 B for Kannada Lecturer alleging that 3rd respondent who has secured less marks has been selected under 2B/Rural in excess of rural quota contrary to the decision in Rajesh Kumar Daria (2007) 8 SCC 785 and Government Circular dated 1.9.2008.

g) Reallotment of department/preference:

1. Transfer of petitioner from Judicial Department to Town Planning Department
2. Not to return the petitioner from the post of First Division Assistant in Commercial Tax Department.
3. Not to disturb the applicant by transferring to different departments
4. To retain the services of the applicant till transferred
5. Candidate not allotted to the department of her preference
6. Re-allotment or redoing the selection on the basis of merit/preference
7. Challenging the allotment made by K.P.S.C. to new department – Directorate of Employment and Training
8. Challenging non selection of the applicant for failure to indicate his preference for ear-marked posts/services

In this recruitment for the post of Assistant/FDA in various Government Departments carried out pursuant to notification dated 5.12.2007 the applicant who has claimed reservation under Cat-I/Rural/KMS by virtue of merit has been selected under GM/W and allotted to the Dept. of Public Instructions. The grievance of the applicant is that ignoring reservation and preference claimed by her she has been allotted to the Dept. of Public Instructions and candidates with lesser merit have been allotted to K.G.S./Excise Dept. to which the applicant has indicated her preference.

h) Challenging the provisional/final list:

1. To set aside the provisional select list as 6 persons who secured less marks than the applicant have been included.

In Gazetted Probationers 1998 Recruitment as the applicant has not indicated her preference as per rules and instructions contained in the application for the posts of

Assistant Chief Auditor, District Marketing Officer, Chief Officer, Asst. Director of Youth Service, Employment Officer, she has not been considered for selection against those posts though eligible for selection and respondents 4 to 9 who have secured less marks than her have been selected against the said posts. The applicant has challenged their selection.

2. Non selection in provisional list

3. To quash the selection of respondents 4 to 6

[Same as in (h)(1). The applicant has not been selected as he has not indicated his preference for the posts against which respondents 4 to 6 have been selected.]

4. To set aside the final select list by quashing the selection of respondents 4 and 10.

5. To set aside the final list to the extent of 11 respondents named therein.

6. To quash the list as some selected candidates have obtained degree certificates from unrecognized University and select the applicant for History Lecturer post.

i) Wrong key answers/out of syllabus questions:

1. Wrong model answers provided

2. Erratic setting of question papers and key answers

3. To provide grace marks for 20 out of syllabus questions

4. Declare ultra virus the release of revised key answers

5. To direct reconduct of Gazetted Probationers examination by cancelling the earlier examination, as illegal and violative - September 2008

6. To eliminate the candidates who got selected by virtue of incorrect answer and grace marks given.

j) Regarding Physical standard and efficiency test:

1. To redo the physical efficiency test in recruitment to the post of Sub Inspector of Excise

2. Not qualified in physical standard and efficiency test

Applicant a candidate for recruitment to the post of Sub Inspector of Excise carried by the Commission pursuant to notification dated 31.7.2002. To be eligible for selection to the post of Sub Inspector of Excise a candidate is required to fulfill the physical standard prescribed and also physical efficiency test. Out of 5 events prescribed for physical efficiency test the candidate has qualified in only 2 events and failed to qualify

in the remaining 3 events - to be eligible for selection candidate must qualify in 3 events out of 5 events.

k) Miscellaneous matters

1. For not considering him as rural candidate
2. To award grace marks for mistake in Kannada version question paper
3. To be exonerated from malpractice case
4. Challenging the action of PSC in declaring that he has no required experience
5. Claiming exemption from written examination on the ground that they are working now in the Department – Library Supervisor
6. Regularization of the services
7. To consider the applicants against vacancies now available with Higher Education Department - Part time Lecturers
8. To publish the marks secured at the physical test of all candidates
9. Not to equate M.A in Social Work with M.A Sociology for the post
10. To set aside selection of 4th Respondent as Assistant Commissioner and to allot the post to the applicant retrospectively.

The applicant who has been selected and appointed as Dy.S.P. under Cat-2A in Gazetted Probationers 1999 Recruitment has challenged the selection and appointment of 4th respondent as Assistant Commission under-2A contending that the 4th respondent actually belongs to 3B category and he being next in the order of merit is entitled to be selected as Assistant Commission under 2A category.

11. Challenging the award of grace marks to respondents 3 & 4 and placing them above the applicant, as no such benefit was given to the selection in 2003

12. To declare the result of the applicant

In this case (ANo.1055/2008) pertaining to recruitment to the post of Assistant Engineer in the Department of Water Resources the application of the applicant was rejected as he had not enclosed marks card of Supplementary Examination in Computer Concepts and 'C' Programming. However, in view of his representation he was permitted to appear for compulsory Kannada Examination subject to the decision of the Commission as per hall ticket and his examination result was withheld. Therefore, the applicant has approached KAT for declaring his result.

13. To allow the applicant to appear for the interview - January 2008

14. Direct the PSC that the applicant is fully qualified for personality test so he be called for personality test

15. Applicant being more meritorious than respondents .3, 4, 5 and so he is entitled for selection

16. To initiate contempt proceedings against respondents for disobedience to the orders dated 25.2.2008 in ANo.513412007

17. Declare that the disqualification of candidature for the post of Junior Engineer (Civil) and denial of interview is illegal and improper

In this recruitment to the post of Junior Engineer (Civil) in the Dept. of Water Resources the applicant working as S.D.A in Taluk Office, Pandavapura, has not forwarded his application through the Appointing Authority as required under Rule-11 of K.C.S. (General Recruitment) Rules and contrary to the instructions contained in the recruitment notification and information booklet. Hence he has been disqualified.

18. To declare that the applicant is eligible to be appointed to the post of Motor Vehicles Inspector and to appoint him immediately.

19. To select the applicant for the post of Lecturer in Kannada in Govt. First Grade College under 2B/Rural/KMS category.

RESULT:

All these above and many more such cases suggest that either there are lacunae found by the courts in the system which is being operated or that the grounds on which the candidates have approached the courts are frivolous and vexatious.

To plug these cases, the Commissions have to work out the modalities to be followed in the process of recruitment. Conducting examinations and recommending the candidates for recruitment to Civil Services, is a paramount constitutional duty. This has to be discharged sincerely, methodically and without doing any injustice to any candidate. Utmost care has to be taken before the process is launched.

SUGGESTIONS:

Keeping in mind the problems identified in the earlier paragraphs, the following suggestions are submitted for consideration of the National Conference of the Chairpersons of Public Service Commissions.

The problems can be grouped as under:

Group - A

Stage of issuing notification/order/rules of the Government for recruitment.

Group - B

Issuing notification inviting applications for the posts to be filled up.

Group - C

Supply of candidate's data i.e. when the form is filled up by the candidates

Group - D

Conduct of examination - written and oral, question paper preparation, key answers, model answers for descriptive questions, evaluation, moderation or scrutiny, not random but 100%, declaration of results, conduct of viva for eligible candidates.

Group - E

Notifying the list of selected candidates as per the reservation policy

Group - F

In service candidates - promotion, seniority, pay fixation etc.

The responsibility to see that all the norms prescribed under the Rules/Regulations/Orders/Notification are complied with is on the staff. Among the staff, the supervisory staff will have to scrutinize the work done by the subordinates meticulously.

A. As far as matters mentioned in Group A are concerned though the rules, orders or notifications or circulars, governing the recruitment are issued by the Government it will go a long way if the Public Service Commission gets the same verified for removing any error/ambiguity before initiating recruitment.

Considering the high stakes involved for job seekers, the Govt. Orders etc. governing recruitment must be free from defects. For example, Government Order or notification issued, may be exceeding the authority conferred or there may not be any delegation at all or may be contrary to the Constitution or the law laid down by the Supreme Court. Though the Supreme Court, has time and again, declared that any reservation (vertical) beyond 50% of the posts to be filled up, is void, still we find reservations (vertical) beyond 50% of the posts.

B. Matters covered by Group B cases also deserve the same meticulous attention. Notifications issued by the Public Service Commission must be constitutionally valid. This has to be checked by a constitutional law expert - percentage of reservation, categories of persons to be accommodated for, the eligibility requirement etc. are also to be examined.

Before issuing notifications, there has to be proper scrutiny of the notification and the reservation positions, qualifications, etc., by a Committee preferably headed by a person with adequate legal knowledge.

C. Matters which arise under this group

Candidate is expected to fill up the form and provide all details about him so as to find out his eligibility to write the examination. Along with the application, a check list be sent. The candidate must check as per the questionnaire prepared and sign at the bottom that all the required columns are filled up correctly. At the end of the application a declaration from the candidate to the effect that he is aware that incomplete/improperly filled applications will be rejected, can be obtained.

Here the responsibility is solely on the stake holder namely candidate applying, to provide all information.

D. In respect of situations arising under this group, main accountability is on the examination wing of the Commission. The Commission has to get it done with the assistance of different experts - paper setter, evaluator, scrutinizer and the office staff entrusted with this work.

1. Paper setters must not set questions which are out of syllabus
2. Questions must be clear and unambiguous
3. Key answers must be supported by reference/source
4. Model answers must be precise and concise
5. Questions set, key answers or model answers must be checked by another expert.
6. Ambiguous model answers must be avoided
7. Questions outside the syllabus must be dropped
8. Valuers must be objective in assessment
9. Scrutinizers must check/verify that the total is correct, no question or part of it is left unassessed and that the valuation is uniform.
10. Examiners must check the total twice, leaving no scope for any correction.
11. There should be double valuation of the scripts.

12. Maximum marks per paper may be reduced, so as to reduce wide variation between the two examiners.

13. In case of multiple choice question answers, before starting evaluation, the list of answers can be notified on the Website inviting objections from the candidates and after a reasonable time given to the candidates, collect all the objections and refer to an expert committee for reviewing it and based on the expert committee's decision, evaluation can be done. This provision will have to be incorporated in the Notification itself at the time of issuing the same.

E. Litigations can arise when the select list is put up. List must be prepared as per the

i) Notification issued and

ii) Reservation of posts, leaving no scope for litigation. This has to be verified by a senior official in the Commission.

F. Last group relates to cases where in service candidates, aggrieved by denial of seniority or promotion, approach the Court. The task in this category is 'advisory'. The advice so given is not binding on the State Government.

Before the advice on seniority, promotion, pension is given, Commission should consult legal experts or even expert in service matters. Moreover, the role of Public Service Commission is advisory. Therefore, if impleaded as a party, it is nominal party. Provisions of Civil Procedure Code require that there should be proper joinder of parties. As per C.P.C. Commission is a necessary/proper party. But when no relief is claimed, the Commission becomes a formal party when the advice is not binding on the Government or Governor, technically there is nothing to defend for the Commission. In such cases the Commission need not contest the cases.

RECOMMENDATIONS:

In the light of the above observations, Public Service Commissions can take following steps to reduce litigation involving Public Service Commission as respondent before Information Commission, Administrative Tribunal, High Court or Supreme Court.

The Legal Committee of Chairmen of Public Service Commission recommends to National Conference of Chairpersons of State Public Service Commissions as under:

1. Notifications, orders, rules etc. issued by the State Government governing recruitment should be verified and certified by a legal expert.
2. Notifications issued by the Public Service Commission must be checked by a legal expert to see that it is in order and in compliance with the Laws of the land in matters of

reservation, qualification, experience, age limit etc.

These notifications are to be issued only after the Legal Advisor and the Legal Cell clearing them.

3. Scrutiny of applications received in the Commission's office must be done, keeping in view the legal provisions, under which recruitment is being made.

4. In addition to this, to ensure that the candidate sends his application which is in order, a check list be enclosed, to be checked and signed by the applicant.

5. Application, after signature, must carry a separate paragraph called an undertaking to the effect that ' If my application is incomplete or have not furnished the information asked for, with supporting documents, I authorize the Commission to reject my application', with his signature

6. If the candidates are required to write an objective type examination, the model questions be got set by an expert in the subject. The key answers be got checked before the examination by another. In case of wrong ambiguous questions or question having two correct answers be deleted and replaced by another question/questions.

7. In case of descriptive type examination, questions set are to be cross checked by another, model answers should be given by the paper setter, double valuation and scrutiny by a third subject expert be introduced. In case of variation beyond 15% marks between the two, refer it to a third valuer. Average of the nearest two scores be worked out and awarded to the candidate.

8. Scrutiniser for each subject must check the total and that each question, sub question is valued, this must also ensure uniformity in the two valuations.

9. While preparing the select list, legal cell must ensure that the list is in accordance with the notification issued keeping in mind the several reservations like women, ex-servicemen, physically challenged etc.

10. An active and vibrant legal cell must be established with a retired District Judge having academic bent of mind/or an advocate with at least 10 years standing in the High Court. The Cell should have assistants qualified in Law or Law Officers having at least 3 years practice in the High Court.

11. Commission staff must be given orientation in the concerned fields of Law and Procedure. This knowledge has to be updated every year or once in two years to know the new legislations or trends or amendments.

12. Financial power to engage Standing Counsel for High Court, State Administrative Tribunal and Supreme Court.

13. These Counsel may be requested to appear on behalf of Commission by taking notices in the High Court etc. and oppose/contest at the time of admission itself.

14. Senior Counsel may be engaged in important cases whenever desired, to defend the cases in State Administrative Tribunal/High Court/Supreme Court.

15. A compendium of cases may be prepared and kept for future guidance. The cases decided by different courts may be indexed in to subjectwise etc. This will help the office in eliminating the earlier mistakes. This compendium of cases should include cases decided by different High Courts, Administrative Tribunals and Supreme Court.

Karnataka Public Service Commission has already brought out two volumes of compilation of judgments pertaining to Public Service Commissions. Third volume will be brought out shortly. This task may be entrusted to other Public service Commissions by turn.

16. Orientation Programme for staff of the Commission can have the following syllabus. (Details can be worked later)

A. Constitutional Law:

- i) Constitutional provisions relating to U.P.S.C, and State Public Service Commissions
- ii) Fundamental Rights with special reference to Articles 14, 15, 16, 32 & 226
- iii) Reservations and judicial response under Articles 15(4), 16(4) & Art.335 iv) Gender justice under Article 15(3)
- v) Diverse jurisdictions of Supreme Court and High Courts under the Constitution

B. Administrative Law

- i) Delegated legislation and judicial control of delegated legislation, doctrine of ultra vires.
- ii) Principles of natural justice
- iii) Constitutional remedies especially
 - a) writ of mandamus
 - b) writ of certiorari
 - c) writ of prohibition
 - d) writ of quo warranto
- iv) Administrative and judicial control

C. Right to Information Act

Courses may be conducted in places where offices of Public Service Commissions are situated. Otherwise National Law School of India University, Bangalore, may be approached to offer orientation or training.

17. Whenever a judgment is delivered by High Court or the Supreme Court, for or against Union Public Service Commission or State Public Service Commission involving substantial question as to the interpretation of the Constitution, the concerned Public Service Commission should send a copy of the judgment to the other Public Service Commissions so that the Constitutional functionaries of the Public Service Commissions are aware of the latest judicial response in the field. This is to enable each one to take precautions to act or function in conformity with the judgment so as to avoid repetition of Constitutional Proceedings in future and unnecessary waste of economic resources and human efforts.

CONCLUSION:

The Chairman expresses his gratitude to all the Hon'ble Members of the Legal Committee and other invitees, for their contribution and suggestions. All of them have enabled me to prepare this Report. Views expressed by all, either oral or written are duly acknowledged and included.

Thanking you all once again for your co-operation and for giving all the necessary statistics and information.

(SURJIT KISHORE DAS)

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(A.KASIVISHWANATHAN)

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