

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

OP (KAT) .No. 2904 of 2013 (Z)

(AGAINST THE ORDER/JUDGMENT IN OA 613/2012 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 08-06-2012)

PETITIONERS:

1. THE KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY
THIRUVANANTHAPURAM-695 004.

2. THE DISTRICT OFFICER
KERALA PUBLIC SERVICE COMMISSION, DISTRICT OFFICE
WAYANAD-673 121.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

RESPONDENTS:

1. DIVYA.P, AGED 27 YEARS
W/O.MANOJ N., PAROLLATHIL HOUSE, VILAKKOOTTUR P.O.
THOOVAKKUNNU VIA, KANNUR-670 693.

2. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION, SECRETRIAT
THIRUVANANTHAPURAM-695 001.

R1 BY ADV. SRI.K.C.SANTHOSHKUMAR

BY ADV. SMT.K.K.CHANDRALEKHA

R2 BY SR. GOVERNMENT PLEADE MR. JOSEPH GEORGE

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 21-07-2015, ALONG WITH O.P.(KAT)No.222 OF 2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (KAT) .No. 2904 of 2013 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1.TRUE COPY OF THE ORIGINAL APPLICATION NO.613/2012.
EXHIBIT P2.TRUE COPY OF THE REPLY STATEMENT FILED BY THE PUBLIC SERVICE
COMMISSION
EXHIBIT P3.TRUE COPY OF THE ORDER NO.613/2012 OF THE KERALA
ADMINISTRATIVE TRIBUNAL.

RESPONDENT(S) ' EXHIBITS

/TRUE COPY/

P.S. TO JUDGE.

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

.....
**O.P.(KAT) No. 2904 OF 2013
&
O.P.(KAT)No.222 OF 2015**
.....

Dated this the 21st July, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Whether learning of Physics and Chemistry (at least as subsidiary subjects, if not as main subject) is mandatory for the purpose of getting appointment as HSA(Physics) in terms of the notified qualification, is the basic issue to be answered in these Original Petitions. The incidental question is whether the party respondent in OP.(KAT)No.2904 of 2013 and the petitioner in O.P.(KAT) 222 of 2015, who have studied 'Polymer Chemistry' as their main subject and have not studied Physics at any level for graduation or Post Graduation, could aspire the benefit to be included in the list, based on the orders passed by the Tribunal, the judgment passed by this Court and orders passed by the Apex Court governing the issue. Still one more issue is

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remaining, as to whether what shall be the benefit, if at all any to be given, by virtue of the verdict passed by the Apex Court in respect of the very same selection as HSA (a copy of which has been produced as Ext.P9 in O.P.(KAT)No.222 of 2015) and whether it could be made applicable to all similarly situated persons.

2. In response to the notification issued by the PSC, the petitioner in O.P.(KAT) 222 of 2015 and the party respondent in O.P.(KAT) 2904 of 2013 submitted their applications projecting their credentials. The qualifications notified as per Ext.P1 are in the following terms:

" A Degree in the concerned subject and B.Ed/BT conferred or recognized by the Universities in Kerala (Concerned subjects are specified in Note 3 below)

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(3) Applicants should have taken Physics/Chemistry/Home Science as main subject for graduation. Degree in Geology (Main) with Physics and Chemistry as subsidiary subjects and B.Ed Degree (Physical

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*Science) can also be considered as an
alternative qualification for the post (G.O.
(MS)No.195/96/G.Edn. Dated 22.07.1996)”*

3. It is pointed out, during the course of hearing, that the Degree in 'Home Science', which was originally notified as an alternate qualification was subsequently deleted, for the fact that in respect of persons having such Degree, there was no chance to have studied Physics at least in the subsidiary level. The intention of the qualification prescribed is that the Teachers appointed as 'HSA (Physical Science)' will have to teach both Physics as well as Chemistry and as such, knowledge to the required level in both these subjects is essential. It was accordingly, that an alternate qualification was mentioned in respect of persons, who were having 'Geology', insisting that Physics and Chemistry should have been studied at the subsidiary level. After culmination of the selection of HSAs, a rank list was published by the PSC, wherein the party respondent in O.P.(KAT) 2904 of 2013 and the petitioner in O.P.(KAT) 222 of 2015 were not included. The first respondent in O.P(KAT) 2904 of 2013

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approached the Tribunal seeking for a direction to be given to the PSC to include her name in the rank list by virtue of possessing a Degree in 'Polymer Chemistry'. After hearing both the sides., the version put forth by the applicant was accepted and a direction was given, to have her included in the rank list . But on finding that the reasoning given by the Tribunal, i.e. with regard to the presumption that such candidate would have studied Physics at least in subsidiary level, which obviously was not the position in so far as the first respondent (in O.P(KAT) 2904 of 2013) was concerned, a review application was filed by the PSC with reference to the actual facts and figures. But interference was declined by the Tribunal, holding that power of review could not have been exercised by virtue of statutory bar, the cause of action having been barred by limitation. This made the PSC to approach this Court by filing O.P(KAT)No.2904 of 2013.

4. In the case of the petitioner in O.P.(KAT) 222 of 2015, she is also graduate in 'Polymer Chemistry'. The prayer raised

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before the Tribunal was to have her included in the Rank list published by the PSC. But interference was declined and the O.A. was dismissed as per Ex.P3 order dated 18.09.2012, placing reliance on the course already pursued by the Tribunal, vide order dated 19.06.2012 in O.A.No.370 of 2012 . A copy of the said order has been produced as Ext.P4 in O.P.(KAT)222 of 2015. On going through the contents of the said order, it is seen that the Tribunal has specifically observed that a Physical Science Teacher has to teach Physics and Chemistry in the High School classes and as such, the applicant should have studied atleast those subjects, either as 'main' or as 'subsidiary subjects'. Going by the admitted version, the applicant had never studied Physics, either as 'main' or as a 'subsidiary subject' and hence, she was ineligible to be appointed to the post of HSA (Physics).

5. Pointing out the diverging views taken by the Tribunal, (one in O.A.243 of 2012 and the other one in O.A. 370 of 2012), the petitioner has approached this Court by filing O.P

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(KAT)222 of 2015, challenging the order dated 18.09.2012, virtually about three years after passing the said verdict; however contending that the verdict passed by the Tribunal does require interference, in view of finality to the issue, by virtue of the judgment rendered by the Apex Court in respect of the very same selection in a batch of cases (a copy of which has been produced as Ext.P9 along with O.P.(KAT) 222 of 2015)

6. Heard the learned Counsel for the petitioners in both the cases, the learned standing counsel for the PSC, as well as the learned Government Pleader.

7. The learned Counsel for the petitioner in O.P.(KAT) 222 of 2015 submits that, even prior to approaching the Tribunal by filing O.A. seeking to include the petitioner in the rank list, a common interim order was passed by the Tribunal in O.A. 243 of 2012 and connected cases, directing the PSC to include all similarly situated candidates in the rank list on a provisional basis; holding that it will be subject to finalisation of the proceedings. Based on the said order, Ext.P2 addendum

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notification was issued on 20.07.2012, whereby the said petitioner/applicant was included in the rank list by assigning rank at appropriate place (at Sl.No..69A). On finalisation of the proceedings in O.A.243 of 2012 and connected cases, **Ext.P7 Erratum Notification dated 27.05.2014** was published, deleting the ineligible entries (also made with reference to the Addendum Notification dated 07.05.2012) and a revised rank list was issued. Still, the petitioner's name is not included in the rank list. The learned Counsel for the PSC submits that the issue had come up for consideration before a Full Bench of this Court in **Suma vs. Kerala Public Service Commission** [(2011(1) KLT 1 (FB)] and after meticulous analysis of the facts, figures and relevant provisions of law , the said Bench (to which one of us was a member) declared the law as to the necessity to have studied Physics and Chemistry at least in graduate level, for appointment as HSA (Physical Science) as the nature of duty to be performed contemplates teaching in both the subjects.

8. It is also brought to the notice of this Court that, some

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of the aggrieved parties had taken up the matter before the Apex Court by filing SLPs, which came to be finalised as per Ext.P9 judgment dated 08.01.2015. The learned Counsel for the petitioner in O.P.(KAT) 222 of 2015 seeks to place reliance on Ext.P9 judgment and seeks for the benefit extended to the petitioners therein, notwithstanding the fact that the case filed by her before the Tribunal had been dismissed way back on 18.09.2012. It is also stated that the petitioner is also a similarly situated person, and as such, the verdict passed by the Apex Court has to be given effect to, in a uniform manner and that the petitioner cannot be non-suited in such circumstance. The said submission is sought to be rebutted by the learned Counsel for the PSC pointing out that the Supreme Court extended the benefit as per Ext.P9 **only to the persons who were parties to the proceedings before the Supreme Court** and that it was in the particular facts and circumstances, as mentioned in the judgment itself.

9. On going through the pleadings and proceedings, it is

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seen that the case considered by the Apex Court, as given in the opening paragraph itself, was with reference to candidates who were having graduation in Chemistry. The case does not refer to the cause of action of anybody having any other qualification. It is stated by the learned Standing Counsel for the PSC that, in some streams where Chemistry was one of the main subjects, Physics was not there and still, the matter had to be considered with reference to the notified qualification; i.e. either Chemistry or Physics as the main subject, as an enabling qualification.

10. It is to be noted that the grievance projected before the Apex Court was with reference to the subsequent deletion of names of the concerned persons from the rank list already published by the PSC, allegedly for not possessing the requisite qualification (Para 10 of the judgment). It was after taking note of the particular facts and circumstances, that the Apex Court observed (in paragraph 11) that, without setting up a precedent in future selections, the PSC could be directed to carry out the

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exercise to the requisite extent as specified therein, in connection with the placement given in the ranked list and the consequence resulted because of subsequent deletion. It was accordingly, that an observation was made in paragraph 13 of the verdict, that the proceedings of the PSC, particularly the show cause notice referred to in the statement filed, pursuant to which deletion of names of the appellants was made from the rank list, was set aside.

11. The exercise to be pursued by the PSC as per Ext.P9 judgment is contained in paragraph 14, which reads as follows:

“14. The names of the appellants in the Ranking list dated 14th June, 2011, 18th October, 2011 , 28th November, 2012, 28th December, 2011, 4th January, 2012, 2nd February, 2012, 6th February, 2012, 15th February, 2012, 21st February, 2012 and 12th March, 2012, shall stand restored and the respondents are directed to operate the said Ranking List on its own merits and wherever it finds the appellants suitable and vacancies remain, appointment order shall be issued expeditiously. The first respondent and the second respondent-Commission shall carry out the

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above-said exercise in accordance with the procedure prescribed expeditiously preferably within a period of two months. ”

The position made clear in the next paragraph, i.e. 15, is also extracted hereunder:-

“15. We make it clear that we pass the above said order in the peculiar facts of these cases. This cannot be, however, quoted as a precedent in future recruitments. Since the appellants were fighting this litigation by approaching the Tribunal at the earliest point of time and have come up to this Court, it is needless to state that the expiry of the Ranking List should not stand in the way for considering the names of the appellants for issuing the appointment orders in accordance with the procedure prescribed as directed in this order. ”

From the above, it is evident that the benefit of Ext.P9 verdict of the Apex Court was intended to be extended only to those who were parties before the Supreme Court, particularly considering the long standing litigations being pursued by the parties at different levels and in turn directing the PSC to have the names of the appellants to be considered for issuing appointment

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orders. The Apex Court did not give any general direction to recast the entire rank list, based on the observations therein, and no law has been declared to the effect that the judgment under challenge was wrong or unsustainable in law, but for moulding the reliefs in respect of the persons, who were appellants before the Apex Court. It is for this reason, that the Apex Court said it point-blank, that the same shall never be treated as a precedent for future recruitment. It is also relevant to note that, some other persons sought to have the benefit as prayed for by the parties before the Supreme Court, by filing separate I.As.. But no interference was made and the I.As. were dismissed by the Apex Court, with liberty to the parties to work out their remedy, if any, before the appropriate forum, as held in paragraph 16 of the judgment. This being the position, this Court finds that the benefit of Ext.P9 judgment is not liable to be extended to the petitioner in O.P.(KAT) 222 of 2015, who lost the case before the Tribunal way back in 2012, when her O.A. was dismissed as per Ext.P3 judgment dated 18.09.2012, who

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did not choose to challenge the proceedings either by filing a Review Petition or by way of Original Petition or by moving the Apex Court in accordance with law.

12. The learned Counsel for the petitioner (in OP.(KAT) 222 of 2015) submits that the name of the petitioner was included in the rank list by the PSC and despite issuance of addendum notification effecting necessary corrections, the name of the petitioner is not deleted so far.

13. The said version is sought to be rebutted by the learned Standing Counsel for the PSC with reference to Ext.P8(a) dated 21.05.2015 issued by the PSC informing the petitioner specifically, that as per the proceedings of the PSC (dated 27.09.2013), the name of the petitioner stands deleted. The contention putforth by the learned Counsel for the petitioner is that, no such factual deletion has taken place as evident from the notification (copy of which has been produced as Ext.P7). This Court finds that Ext.P7 is not with reference to Ext.P2 inclusion of the petitioner in the rank list. Ext.P7 is dated 27.05.2014 and

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the reference made therein to the Addendum Notification is dated 07.05.2012, whereas Ext.P2 Addendum Notification is of the date 20.07.2012 and the deletion stated as made by the PSC vide Ext.P8(a) dated 21.05.2015 is with reference to the proceedings of 27.09.2013. Even otherwise, inclusion or non-inclusion in the rank list pursuant to a mistake, if it be so, cannot confer any right upon the party concerned to contend that he has to be advised and given appointment, based on such wrong entry.

14. Another aspect to be considered is the version of the petitioner in O.P.(KAT)222 of 2015, that he came to be included in the rank list pursuant to the interim order, cannot be true. This is for the reason that the O.A. filed by the petitioner came up for admission before the Tribunal on 18.09.2012 and Ext.P3 verdict was passed on the same day, by dismissing the O.A. 'in limine'. There was no need, necessity or occasion for the Tribunal to have passed any interim order in favour of the petitioner, so as to cause the name of the petitioner to be

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included in the ranked list . Still, it might be true that the PSC, because of pendency of orders passed by the Tribunal, had given placement to the petitioner by including her name in the ranked list , as borne by Ext.P2. If it were a mistake, it was still open for the PSC to to have it corrected.

15. The fact remains that the judgment rendered by the Division Bench of this Court declaring the law, still stands and the same has not been overruled by the Apex Court, though interference has been made vide Ext.P9 based on the facts and circumstances as to the course to be pursued, limiting the extension of benefits only to the parties before the Apex Court and nobody else. This being the position, the case projected by the petitioner in O.P(KAT)222 of 2015 fails and the Original Petition stands dismissed.

16. Coming to O.P.(KAT) 2904 of 2013, it is true that the benefit ordered to be given by the Apex Court vide Ext.P9 (produced in O.P.(KAT) 222 of 2015) is only in respect of the persons, who were parties before the Apex Court. But the case

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of the first respondent herein is that, the Tribunal granted the relief at the first instance , which was sought to be challenged by the PSC by filing O.P.(KAT) 2904 of 2013. It is possible to think, if interference was declined by the Tribunal, the first respondent might have pursued further steps either by filing a Review, or by approaching this Court or even taking up the matter before the Supreme Court, so as to have been included as a party **to have the greivance redressed along with the cause projected by others, which was considered by the Apex Court while passing Ext.P9 order** (in O.P(KAT)222 OF 2015). This being the position, this Court does not find that any interference is to be made with regard to the direction given by the Tribunal; more so , in the light of Ext.P9 order in OP(KAT) 222 of 2015. The petition preferred by the PSC is dismissed in the said circumstance and the benefit, as ordered by the Apex Court, could be extended to the first respondent as well, to the extent as ordered therein.

The submission made by the learned Standing Counsel for

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the PSC that the validity of the rank list stands extended till
30.09.2015, is recorded.

**P.R. RAMACHANDRA MENON,
JUDGE**

**BABU MATHEW P. JOSEPH,
JUDGE**

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