

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 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

OP(KAT).No. 128 of 2015 (Z)

AGAINST THE ORDER IN TA 6842/2012 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 28-05-2014

PETITIONER:

JAMES M. I.,
MALIYEKKAL HOUSE, VATTANATHRA P.O.
PACHALIPURAM ALAGAPPANAGAR VIA, THRISSUR 680 302.

BY ADVS. SRI.P.SANKARANKUTTY NAIR
SRI.K.SANDESH RAJA
SRI.R.V.RAGHUNATHAN THAMPURAN

RESPONDENTS:

1. THE SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695001.
2. THE CHIEF ENGINEER (ADMN),
PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM 695001.
3. THE SUPERINTENDING ENGINEER (ELECTRICAL)
OFFICE OF THE CHIEF ENGINEER
P.W.D (ADM) THIRUVANANTHAPURAM-695001.
4. THE EXECUTIVE ENGINEER,
P.W.D.ELECTRICAL DIVISION CHEMPUKAVU, THRISSUR-680594.
5. THE EXECUTIVE ENGINEER,
MINOR IRRIGATION DIVISION, THRISSUR-680594.
6. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY THE SECRETARY, PATTOM
THIRUVANANTHAPURAM-695004.
7. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION, THRISSUR-680584.

R1-R7 BY SR. ADV. GOVERNMENT PLEADER SRI.JOSEPH GEORGE
BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 128 of 2015 (Z)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. TRUE COPY OF THE TRANSFER APPLICATION NO.6842/2012 IN W.P.(C) NO.28539/2008 DATED 23/9/2008.

EXT.P2. TRUE COPY OF THE ORDER IN W.P.(C) NO.28539/2008 OF THE HON'BLE HIGH COURT DATED 24/9/2008.

EXT.P3. TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT.

EXT.P4. TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT.

EXT.P5. TRUE COPY OF THE ORDER IN T.A.NO.6842/2012 IN W.P.(C) NO.28539/2008 DATED 28/5/2014.

EXT.P6. TRUE COPY OF THE ATTENDANCE REGISTER ELECTRICAL WING OF IRRIGATION, CHALAKKUDY DEPARTMENT OF THE MONTH OF MAY 2008.

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

O. P. (KAT) No.128 of 2015

Dated this the 9th day of June, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

Grievance of the petitioner is with regard to the non-reporting of the vacancies in the post of Lineman (Electrical) to the PSC, so as to enable the PSC to advise the candidates included in the rank list.

2. The case of the petitioner is that, though he was included as rank No.16 in Ext.P1 rank list published by the PSC, he has not been advised by the PSC despite availability of a clear vacancy. The lapse on the part of the concerned department made the petitioner to approach this Court by filing W.P.(C) No.28539 of 2008, wherein Ext.P2 interim order was passed on 24/09/2008 directing the department to report as many as 'eight' vacancies. It is stated that,

pursuant to the said interim order, eight vacancies were provisionally reported to the PSC. Subsequently, the matter came to be transferred to the KAT, where it was numbered as T.A. No.6842 of 2012.

3. The case projected by the petitioner before the Tribunal was that, by virtue of the documents produced as Exts.P2 and P3 before the Tribunal, existence of clear vacancies could not have been disputed under any circumstances. The post of 'Helper' were merged with the post of 'Lineman', even though there were separate categories of posts of Lineman Gr.-I and Lineman Gr.-II. By virtue of relevant orders passed by the Government, the above distinction was taken away and pursuant to the said exercise, sufficient vacancies were available to have accommodated the petitioner as well. The petitioner was placed at rank No.16. Pursuant to reporting of the vacancies, persons placed at Rank No.1 to 11 were already advised by

the PSC. The persons placed at Rank Nos.12 and 15 obtained alternate employment and as such, they are stated as no more interested to get appointed under the respondents. In the said circumstances, if 'six' more vacancies were reported to the PSC, it was certain for the petitioner to have obtained advice from the PSC. Lapse on the part of the concerned respondent is the subject matter of challenge.

4. The stand taken by the Government before the Tribunal was that, by virtue of G.O.(Ms.) No.6/09/PWD dated 24/01/2009, the re-designation of post of 'Helper' was not to result in any vacancies. As such, re-designation was to be effected by accommodating the concerned Helpers in the supernumerary posts, which were to be adjusted against the vacancies arising in future, in the sanctioned posts of Lineman. The said stand of the Government was sought to be rebutted by the petitioner on the basis of the G.O.(Rt.) No.812/2012/PWD dated 09/05/2012, wherein it is clarified

that the cadre strength of Lineman will be the sanctioned strength of the 3 categories existed earlier and will be governed by the notification dated 01/04/2009. Even though the clarification was issued only in the year 2012, the earlier Government Order which was sought to be relied on from the part of the Government (which is already clarified in the light of G.O.(Rt) No.812/2012/PWD dated 09/05/2012) has no relevance at all and necessary advice is to be effected by the PSC.

5. Taking note of the 'six' vacancies and the order already passed by this Court to report the vacancies during the currency of the rank list published on 25/09/2005 (which expired on 25/09/2008) and on going through the impugned order of the Tribunal, the only question to be considered is whether clear vacancies were available, so as to have the candidates advised in respect of the vacancies reported. The first respondent Government was directed to examine the

matter with reference to the vacancies mentioned therein and other relevant aspects. The operative portion, as contained in paragraph No.8 of the impugned order of the Tribunal, reads as follows:-

“The first respondent is directed to examine whether the one vacancy available in PWD Electrical Wing South Section and the three vacancies available in PWD Electrical North Section Thrissur in the Cadre of Helper could also be filled up from the PSC list, in the light of Ext.P3 and also the decision of the Government merging the posts of Lineman with Helper. This the first respondent shall do within 3 months from the date of receipt of a copy of this order. In case the decision is in favour of the applicant, the first respondent shall inform the PSC to advise candidates to those four vacancies also. In that event, the PSC shall advise candidates to those four vacancies without delay.”

The specific case projected by the petitioner is that the directions given by the Tribunal (to be pursued by the first respondent Government) ought not to have been confined to the 'three vacancies' mentioned in the Thrissur district and that direction ought to have been given with reference to all

available vacancies, so as to have had redressal of the grievance.

6. The matter came up for consideration before this Court on different occasions. After getting instructions, the learned Senior Government Pleader submits that, the matter was verified with regard to the actual availability of vacancies during the currency of the rank list. It is stated that, pursuant to Ext.P2 order, 'eight' vacancies were provisionally reported to the PSC on 24/09/2008. Thereafter, in the year 2008 itself, three more vacancies were identified and reported in the Thrissur district. The matter was verified further, when it was observed that actually 'two' vacancies were in existence and necessary communication has been forwarded to the PSC on 07/02/2015 in this regard.

7. It is pointed out by the learned Government Pleader that, altogether 'eight' vacancies were available in the post of Lineman, during the currency of the rank list, i.e., from

25/09/2005 to 25/09/2008, to have advised andidates from the concerned rank list. Since vacancies have already been reported pursuant to Ext.P2 interim order and since the factual position has been verified and ascertained by the Government (pursuant to order dated 28/05/2014 passed by the Tribunal) and has pointed out that 'eight' clear vacancies were available during the currency of the rank list for the period from 25/09/2005 to 25/09/2008, this Court finds that the petitioner is entitled to succeed by getting advice from the PSC, depending upon the turn. The 'eight' vacancies reported pursuant to Ext.P2 interim order passed by this Court are to be held as clear vacancies and as such, it is for the department to furnish further particulars/intimation to the PSC, in the prescribed format in respect of those vacancies. This shall be done at the earliest, and at any rate, within 'two weeks' from the date of receipt of a copy of this judgment. Further steps shall be pursued by the seventh

respondent to advice candidates in respect of such vacancies from the rank list, depending upon the turn and in accordance with law.

This original petition is disposed of as above.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE