

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**

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

OP(KAT).No. 205 of 2015 (Z)

**AGAINST THE JUDGMENT IN OA 433/2015 of KERALA ADMINISTRATIVETRIBUNAL,
THIRUVANANTHAPURAM DATED 22-05-2015**

PETITIONER(S)/APPLICANTS:

- 1. DHANYA V AGED 32 YEARS
W/O. AJITH PRASAD, POOZHIKKUNNATH HOUSE
NAMBOORI CHALLA, VILAYODI POST
PALAKKAD DISTRICT - 678 103.**
- 2. RAMYA P
W/O. GIREESH, MANIYIL HOUSE, PATTANCHERI P.O.
PALAKKAD - 678 532.**

**BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH**

RESPONDENT(S)/RESPONDENTS:

- 1. THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION
THULASI HILLS, PATTOM P.O.
THIRUVANANTHAPURAM - 695 004.**
- 2. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, STATE SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**

**R2 BY ADV. GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI
R BY SRI.P.C.SASIDHARAN, SC, KPSC**

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 17-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP(KAT).No. 205 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE MEMORANDUM OF O.A (EKM) 433/2015.

**EXHIBIT-P2-TRUE COPY OF THE ORDER DATED 22/05/2015 OF THE KERALA
ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH IN O.A (EKM)
433/2015.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

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

O.P.(KAT)No.205 of 2015

Dated this the 17th day of August, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J

Grievance of the petitioners is mainly with regard to the non-reporting of vacancies, in the cadre of Lower Division Clerk in the Palakkad District, to the PSC and the denial of the opportunities to the persons like the petitioners herein to get advised and appointed against the vacancies before expiry of the rank list.

2. The grievance of the petitioner was sought to be projected by filing O.A.No.(EKM)No.433/2015 before the Tribunal. The rank list was published by the PSC on 30.3.2012 and the same came to be expired on 29.3.2015. A fresh rank list was published on 31.3.2015. The prayers raised in the O.A. were mainly to set aside or modify Annexure A2 dated 21.3.2015 issued by the 1st respondent. They are in the following terms:-

- “(i) *to set aside or modify Annexure A2 dated 21.3.2015 issued by the 1st respondent by directing to extent the ranked list of LOWER DIVISION CLERK for Palakkad District in VARIOUS DEPARTMENTS- DIRECT RECRUITMENT (Category No: 477/2010) based on the OMR Test held on 25.6.2011 with effect from 31.3.2015 to one year or to create supernumery post for a period of one year*
- (ii) *grant such other reliefs as this Hon'ble Tribunal may deem fit and proper as on the facts and circumstances of the case.”*

The Tribunal observed that extension of the rank list ordered by the PSC cannot have any effect, in so far as Rule 13 of Kerala Public Service Commission Rules of Procedure enabled the PSC to give effect to the newly published rank list and as such, the claim of the petitioners/applicants was not liable to be entertained. As a natural consequence, there cannot be any advice of candidates in respect of the vacancies which arose subsequent to the publication of new rank list. It was accordingly, that interference was declined and the O.A was dismissed as not maintainable. This is sought to be challenged by filing this original petition.

3. When the matter came up for consideration before this Court earlier, the learned Counsel for the petitioners pointed out that the specific pleadings and prayers raised by the petitioners/applicants with reference to Annexure A3 G.O.(P). No.13/2015/P&ARD dated 21.3.2015 were not considered by the Tribunal. As per the said G.O, taking note of the sequence of events, the Government had passed a specific order to create 'supernumery posts' with reference to the 'anticipated vacancies' which were to arise till the end of 2015 and to have the said vacancies reported to the PSC before 30.3.2015,i.e, before expiry of the concerned rank list; giving appropriate directions/instructions to all the departments concerned. The manner in which those vacancies were to be filled up and other relevant aspects were also specified in crystal clear terms. It was further mentioned that a

separate register had to be maintained with regard to supernumerary vacancies created and that whenever regular vacancies arose and regular appointments were given to the eligible hands who get appointed against the supernumerary posts, such supernumerary posts were to come to an end. It was clearly stipulated that the aforesaid G.O. would be having application only in respect of the post of L.D.Clerks in different departments and that the same was for effecting appointment of the persons who were already included in the concerned rank list.

4. When the matter came for consideration before this Court on 29.6.2015, the learned Government Pleader was required to get instructions with reference to Annexure A3 and as to whether all the vacancies which were to be resulted by virtue of Annexure A3 were reported to the PSC before the expiry of rank list on 29.9.2015. The 2nd respondent has filed a detailed counter affidavit pointing out the actual facts and figures; the crux of which is to the effect that pursuant to Annexure A3 G.O.;as many as '**1145 vacancies**' were **reported to the PSC from various departments;** before expiry of the rank list. On reporting the vacancies as above, a communication was issued by the 1st respondent/PSC on 28.7.2015 as to the factum of reporting '1145 vacancies' distributed in different districts; wherein the number of vacancies in respect of **Palakkad district** is stated as '**71**'. A copy of the said communication is produced as Ext. R2 (a).

The version of the 2nd respondent/Government as contained in paragraph 3,4 and 5 of the counter affidavit are worthwhile to be extracted and hence they are reproduced below :

"3. With regard to the averments contained in paragraph of the Writ Petition, it is submitted that as per G.O.(P).No.154/2009/Fin dated 24.04.2009, it was decided that all the Government employees and teachers who attain the age of 55 years during the course of the financial year will continue in service till the end of that financial year. The date of retirement of Government employees and teachers will be 31st March every year. As per G.O.(P). No.262/2009/Fin dated 04.07.2009, it was also decided that in order to ensure that new recruitments are not affected, vacancies at relevant entry levels that would have arise but for this unification, were decided to be filled up, by creating supernumerary posts. But Government have withdrawn the unification of date of retirement as per G.O.(P). No.170/2012/Fin dated 22.03.2012, as a result retirement occurred normally during the end of every month. Hence creation of supernumerary post was not necessary after 22.3.2012. The said rank list came into effect on 30.03.2012. Therefore, LDC vacancies those arose after 30.03.2012 were filled from the new rank list only and not from the previous LDC rank list. Therefore, no appointments were made from the previous LDC rank list after 01.4.2012.

4. With regard to the averments contained in paragraphs 4 and 5 of the Writ petition, it is submitted that as per the conditions in Kerala Public Service Commission Rules of Procedure, the minimum validity of a rank list is one year and it may be further extended upto 3 years, if new rank list does not come to force before it. Under certain special conditions validity of a ranked list may be extended upto a maximum of 4 ½ years. In all these cases, rank list may expire if new one came to force in its place. In the present case, the new rank list came on 31.3.2015 and the old one expired on 30.3.2015. but meanwhile in order to speed up the appointment process, Government issued circulars

25085/Adv.C3/2014/P & ARD dated 3.12.2014 and 15.12.2014, directing all the Heads of Departments and Appointing Authorities to report anticipated LDC vacancies to Kerala Public Service Commission and as per the Government Order G.O.(P). 13/2015/P& ARD dated 21.3.2015 (Annexure A3), they were also directed to create supernumerary posts in these anticipated vacancies and to report the same to Kerala Public Service Commission on or before 30.3.2015 so that benefit may be utilized by the candidates in the previous LDC ranked lists in which the petitioner is also included. 1145 vacancies were reported to KPSC from various department pursuant to the above Government Order.

5. With regard to the averments raised in Grounds of the Writ Petition, it is submitted that the Government have issued G.O.(P).No.13/2015/P & ARD dated 21/3/2015 to give appointment to maximum candidates from the said list, in which the petitioner is also included. About 1145 LDC supernumerary Lower Division Clerk posts were created statewide and reported to kerala Public Service Commission before 30.3.2015 i.e, the expiry date of the ranked list. It is also acknowledged by the 1st respondent Public Service Commission. A true copy of the communication dated 28.7.2015 issued by 1st respondent to 2nd respondent is produced herewith and marked as Ext.R2 (a). District-wise supernumerary LDC vacancies reported to KPSC are : Thiruvananthapuram - 156, Kollam - 107, Pathanamthitta -65, Alappuzha - 96, Kottayam - 54, Idukki - 30, Ernakulam - 121, Thrissur - 114, Palakkad - 71, Malappuram - 78, Kozhikkode - 94, Wayanad - 33, Kannur - 80, Kasargod - 46. The appointment procedures are going on in these posts from the previous ranked list. In Palakkad District, 71 supernumerary posts were created in various Government Departments and reported to KPSC. As per KPSC Rules of Procedure, the minimum period of a rank list is one year provided that the said list will continue to be in force till the publication of a new rank list after the expiry of the minimum period of one year or till the expiry of 3 years whichever is earlier. The previous LDC rank list expired on 30.3.2015 after completing the period of 3 years and the new rank list came into force on 31.3.2015.

Government have made all efforts to provide maximum appointment from the previous list and even created supernumerary post for the anticipatory vacancies upto 30.6.2015. In fact, the candidates are benefited with these vacancies in addition to the normal vacancies available to them."

5. After hearing both the sides, this Court finds that the concerned number of vacancies have already been reported to the PSC and the remaining task is only to give effect to Annexure A3 by facilitating 'advice' in respect of such vacancies as mentioned in Ext.R2 (a) issued by the PSC. The proceedings in this regard shall be completed by the PSC at the earliest, if not already done, at any rate within one month from the date of receipt of copy of the judgment. The original petition is disposed of accordingly.

**Sd/-
P.R.RAMACHANDRA MENON
JUDGE**

**Sd/-
BABU MATHEW P.JOSEPH
JUDGE**

//TRUE COPY//

PA TO JUDGE

avk