

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

OP(KAT).No. 213 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 404/2015 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 19-03-2015

PETITIONER:

ANIL GEORGE AGED 40 YEARS
S/O. PV.GEORGE ANIL NIVAS, MATHILIL PO, KOLLAM 691 601

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT ANNEX
THIRUVANANTHAPURAM 695001
2. THE DIRECTOR OF PUBLIC INSTRUCTION
DIRECTORATE OF PUBLIC INSTRUCTION, JAGATHY
THIRUVANANTHAPURAM 695014
3. DEPUTY DIRECTOR OF EDUCATION
DEPUTY DIRECTOR OF EDUCATION'S OFFICE, KOLLAM 691001
4. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM
THIRUVANANTHAPURAM 695004
5. THE DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION
CORPORATION BUILDING, ANDMUKKAM KOLLAM 691001

BY SR..GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI
BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 09-07-2015, ALONG WITH OPKAT. 215/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

OP(KAT).No. 213 of 2015 (Z)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER DATED 19.3.201 IN OA NO.404/2015

EXHIBIT P2: TRUE COPY OF THE MEMORANDUM OF OA 404/2015 TOGETHER WITH
ANNEXURES

RESPONDENTS' EXHIBITS:NIL

TRUE COPY

P.A.TO JUDGE

**P.R.RAMACHANDRA MENON &
ANU SIVARAMAN, JJ.**
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O.P.(KAT).Nos.213 & 215 of 2015
= = = = =
Dated this the 9th day of July, 2015

JUDGMENT

Anu Sivaraman, J.

The original petitions arise from a common order of the Kerala Administrative Tribunal in O.A.No.1607 of 2014 and O.A.No.404 of 2015. The petitioners in these O.P.(KAT) are the applicants before the Tribunal. The applicants are persons included in Annexure A1 ranked list prepared by the Kerala Public Service Commission for appointment to the post of High School Assistant Malayalam for Kollam District. The list came into force with effect from 27.01.2011. O.A.No.404 of 2015 was filed contending that 11 additional posts of H.S.A Malayalam were sanctioned in the Kollam district consequent on the staff fixation for the academic year 2014-2015. Four of such posts are to be set apart for direct recruitment through Kerala Public Service Commission in terms of the orders governing appointment to the post. Four vacancies of H.S.A. Malayalam were reported to the Kerala Public Service Commission in August 2014. It was the case of the petitioners/applicants that two of such vacancies were retirement vacancies and the other two are newly created vacancies on account

of staff fixation. Since no advice was made against the vacancies reported and pending before it by the Kerala Public Service Commission, the applicant in O.A.No.404 of 2015 had approached the Tribunal seeking the following reliefs:-

“i) To issue an order directing respondents 1 to 3 to report 4 vacancies detailed in Annexure A2 and 1 vacancy arising under RMSA to the fifth respondent for recruiting from Annexure A1 rank list.

ii) Issue such other directions or orders as this Honourable Tribunal deems fit and proper in the facts and circumstances of the case, in the interest of justice.”

2. They had also produced Annexure A4 communication issued by the Deputy Director of Education, Kollam stating that out of the vacancies reported to the Kerala Public Service Commission, two vacancies are additional vacancies and advice against the same need be made only after obtaining orders of approval from the Director of Public Instruction. In reply to an application made by the candidate under the Right to Information Act, the third respondent by Annexure A6 had admitted that 11 new posts of HSA Malayalam had been created in Kollam district in the staff fixation for the year 2014-2015 and that no sanction had been obtained for the new posts from the Government.

3.The third respondent had filed the reply statement before the Tribunal *inter alia* contending that four vacancies of HSA Malayalam have

been reported to the Kerala Public Service Commission on 05.08.2014. It is further stated that even the reported vacancies were reduced after the staff fixation and only one vacancy is existing in the cadre for appointment from the ranked list. The Deputy Director contended that the cadre strength of HSA Malayalam after finalising the staff fixation for the year 2014-2015 is 211. 30% of the vacancies are to be filled by direct recruitment through Kerala Public Service Commission. It is stated that 211 teachers are working against the approved cadre strength and there is no vacancy to accommodate any further direct recruits. The applicants are seen to have filed a rejoinder as well as a miscellaneous application, producing further documents, but the rejoinder and the miscellaneous application are not a part of the records in this case. After considering the contentions advanced on either side, the Tribunal accepted the assertion of the third respondent that there are no vacancies and held that in the absence of materials to dispel the assertion, no direction can be issued to report any further vacancies. It was directed that if the applicants filed representation before the second respondent DPI pointing out the existence of additional vacancies, the respondents shall pass appropriate orders within one month from the date of receipt of the representation.

4. In O.A. No. 1607 of 2014, order in which the subject matter of challenge in O.P.(KAT) No.215 of 2015, the applicants were included

as rank No.35 and 38 in the ranked list. They had filed Annexure A5 representation before the Government giving details of the existing vacancies and seeking directions to report all existing vacancies to the Kerala Public Service Commission. The prayer in the Original Application was to report all existing vacancies to the Public Service Commission. In that case, the Tribunal found that the applicant had brought on record materials to show that though four vacancies were reported to the Kerala Public Service Commission, advice was made only to two of them. Since two of the vacancies were newly sanctioned in the staff fixation for the year 2014-15, approval from the Director of Public Instruction was necessary and the clarification sought for by the Kerala Public Service Commission was not forwarded due to the non-availability of such approval. In that case, the Tribunal directed the second respondent to consider whether permission could be granted for filling up of those two vacancies from Annexure A1 list. The second respondent was directed to take a decision thereon and to forward appropriate instruction to the Kerala Public Service Commission within one month from the date of receipt of copy of order. The said common order is challenged in these original petitions.

5. We have heard Sri.Kaleeswaram Raj, learned counsel appearing for the petitioners, Sri.M.Mohammed Shafi, learned Senior Government Pleader appearing for respondents 1 to 3 and Sri.P.C.Sasidharan,

learned Standing Counsel appearing for respondents 4 and 5. It is contended by the counsel appearing for the petitioners that several vacancies are actually in existence in the cadre or HSA Malayalam in Kollam district and the details of such vacancies had been produced before the Tribunal by way of production of additional documents in O.A.No.404 of 2015 as well. It is contended that the fact of existence of the vacancies which were liable to be reported to the Kerala Public Service Commission has not been properly considered by the Tribunal in the impugned order. It is further contended that since both the cases were heard together, the order of the Tribunal to the extent it issued different orders in the instant cases is not justified. It is contended that the Government may be directed to pass the orders with regard to the availability of the vacancies as well as the sanction of posts instead of the second respondent.

6. When the original petitions came up for admission on 01.07.2015, the learned Government Pleader had sought time to get instructions. It is submitted by the learned Government Pleader today that the Director of Public Instruction has forwarded the proposal for sanction of additional posts in the staff fixation for the academic year 2014-15 to the Government for approval. It is therefore stated that two of the vacancies reported on 05.08.2014 can be said to be in existence only if the approval is received. On receipt of such approval it is submitted

that the clarification will be issued by the Kerala Public Service Commission by the Deputy Director of Education.

7. Having heard the learned counsel on either side and having considered the pleadings and materials on record, we are of the opinion that the original petitions can be disposed of directing the Government to consider the proposal forwarded by the Director of Public Instruction for according of sanction for the two posts already reported to the Kerala Public Service Commission on 05.08.2014. It is submitted by the learned Government Pleader also that the matter has been placed before the Government by the second respondent. Though the learned counsel for the petitioner submitted that in view of the fact that the vacancies have already been reported to the Kerala Public Service Commission, no discretion is available with the Government to withhold or refuse sanction for the same, we are of the view that this is a matter for the Government to consider in the first instance. The existence of further vacancies as has been pointed out by the applicant in O.A.No.1607 of 2014 shall also be considered by the Government. If the Government finds that approval can be accorded for the two newly sanctioned posts of H.S.A.Malayalam which have already been reported to the Kerala Public Service Commission on 05.08.2014, it shall immediately issue clarifications to that effect to the Kerala Public Service Commission. In that event the Kerala Public Service

Commission shall make advice from Annexure A1 ranked list to those two vacancies as well. Orders on the proposal forwarded by the Director of Public Instruction shall be passed by the Government expeditiously and at any rate within two months from the date of receipt of a copy of the judgment. The Government shall also consider and pass orders on Annexure A5 representation submitted by the applicant in O.A.No.1607 of 2014 within the aforesaid period of two months from the date of receipt of a copy of the judgment. The original petitions are disposed of accordingly.

Sd/-

P.R.Ramachandra Menon,Judge

Sd/-

Anu Sivaraman, Judge

sj

O.P.(KAT).Nos.213 & 215 of 2015