

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

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

**THE HONOURABLE SMT. JUSTICE P.V.ASHA**

**MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937**

**OP(KAT).NO. 223 OF 2015 (Z)**  
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**OA 785/2014 OF KERALA ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM**

**PETITIONER(S):**  
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1. **NAVEEN CHANDRA N., AGED 44 YEARS,  
S/O. V, NARAYANA MALLAYA, 8/307, R.G. PAI ROAD,  
SOUTH CHERLAI, MATTANCHERRY, COCHIN - 682 002,  
WORKING AS SCDO-II PARAKKADAVU BLOCK PANCHAYATH,  
KURUMASSERY, KERALA - 683 579.**
2. **CHAKRADHAR R., AGED 48 YEARS, S/O. RAMACHANDREN,  
LAKSHMI NIVAS, ARAMPADOM, TATTAMANGALAM P.O.,  
PALAKKAD - 678 102 WORKING AS SCDO - II, TANUR BLOCK  
PANCHAYATH, MALAPPURAM, KERALA - 676 302.**
3. **HONEY T., AGED 39 YEARS, S/O. N. TULASIDHARAN,  
DHANYA, SREENIVASAPURAM, P.O. VARKALA - 695 145,  
PALAKKAD - 678 102, WORKING AS SCDO -II, TANUR BLOCK  
PANCHAYATH, MALAPPURAM, KERALA - 691 013.**
4. **ARUL KUMAR A., AGED 37 YEARS, S/O. ARUMUGHAN,  
PADALIKADU HOUSE, KOTTEKKADU, PALAKKAD - 678 732,  
WORKING AS HEAD CLERK, MALAPPURAM DISTRICT DEVELOPMENT  
OFFICE, MALAPPURAM, KERALA - 676 505.**

**BY ADV. SRI.BENNY GERVACIS**

**RESPONDENT(S):**  
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1. **PRASANTH N.P., AGED 34 YEARS, S/O NARAYAN NAIR K.,  
KALIYIL VEEDU, KURIYATHY PANACODE P.O., ARYNAD,  
THIRUVANANTHAPURAM, KERALA - 695 542.**
2. **BIJU T., AGED 33 YEARS, S/O. C. CHANDU,  
CHENNAPPOYIL HOUSE, MENACHODY, VAYANNUR P.O.,  
KANNUR KERALA - 670 650.**
3. **VISHNU S., AGED 31 YEARS, S/O SASIDHARAN S.,  
SREKAILAS, PANDAKASALA, CHIRAYINKEEZHU P.O.  
THIRUVANANTHAPURAM, KERALA - 695 304.**

**OP(KAT).NO. 223 OF 2015**

- 4. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT,  
DEPARTMENT OF SCHEDULED CASTE DEVELOPMENT, SECRETARIAT,  
THIRUVANANTHAPURAM, KERALA - 695 001.**
- 5. THE DIRECTOR, DIRECTORATE OF SCHEDULED CASTE DEVELOPMENT  
DEPARTMENT, AYYANKALI BHAVAN, VELLAYAMBALAM,  
THIRUVANANTHAPURAM , KERALA - 695 001.**
- 6. KERALA PUBLIC SERVICE COMMISSION, REPRESENTED BY THE SECRETARY,  
KERALA PUBLIC SERVICE COMMISSION, PATTOM,  
THIRUVANANTHAPURAM, KERALA 695 004.**

**R4 & R5 BY SENIOR GOVERNMENT PLEADER SRI. MOHAMMED SHAFI  
R6 BY SRI.P.C.SASIDHARAN SC, KPSC**

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR  
ADMISSION ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

EXHIBIT P1: COPY OF THE O.A.(EKM) NO.785 OF 2014 ALONG WITH ITS ANNEXURES.

ANNEXURE A1: COPY OF THE RANKED LIST DATED 12.11.2012

ANNEXURE A2: COPY OF THE ADVICE MEMO DATED 16.6.2014 ISSUED TO THE 1ST APPLICANT.

ANNEXURE A3: COPY OF THE ADVICE MEMO DATED 16.6.2014 ISSUED TO THE 2ND APPLICANT.

ANNEXURE A4: COPY OF THE ADVICE MEMO DATED 16.6.2014 ISSUED TO THE 3RD APPLICANT.

ANNEXURE A5: COPY OF THE REPRESENTATION DATED 25.9.2014 SUBMITTED BEFORE THE 2ND RESPONDENT

ANNEXURE A6: COPY OF G.O.(RT.) NO.1815/2013, DATED 6.12.2013.

ANNEXURE A7: COPY OF THE ORDER DATED 28.2.2014 IN O.A. NO,1444/2013.

ANNEXURE A8: COPY OF THE APPOINTMENT CHART DOWNLOADED FROM THE OFFICIAL WEBSITE OF KPSC.

EXHIBIT P2: COPY OF THE REPLY STATEMENT PREFERRED BY THE PETITIONERS.

ANNEXURE R4(A): COPY OF THE PSC NOTIFICATION PUBLISHED IN THE KERALA GAZETTE DATED 27.2.2009.

ANNEXURE R4(B): COPY OF THE GOVERNMENT ORDER G.O.(RT.) NO. 436/2013/SCSTDD, DATED 23.3.2013.

ANNEXURE R4(C): COPY OF THE COMMUNICATION DATED 31.7.2013 FROM THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

ANNEXURE R4(D): COPY OF THE COMMUNICATION DATED 28.12.2013 FROM THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

ANNEXURE R4(E): COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT DATED 1.7.2014.

EXHIBIT P3: COPY OF THE ORDER BY THE HON'BLE TRIBUNAL IN O.A. (EKM) NO.785 OF 2014 DATED 30.3.2015.

RESPONDENTS EXHIBITS: NIL

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/TRUE COPY/

SKV

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

P.V.ASHA, JJ

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OP(KAT) NO.223 OF 2015

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Dated this the 6<sup>th</sup> day of July, 2015

JUDGMENT

Asha,J

The employees of Scheduled Caste Development Department who got impleaded as additional respondents 4 to 7 before the Kerala Administrative Tribunal in OA (EKM) 785/2015 have filed this OP(KAT) against the order passed by the Tribunal on 30.3.2015.

2. The O.A was filed by candidates included in the ranked list for appointment to the post of Scheduled Caste Development Officers Grade –II based on notification, dated 27.2.2009, inviting application for selection, issued by the Kerala Public Service Commission (PSC for short). Annexure A1 ranked list came into force on 12.11.2012. Annexure A2 to A4 advice memos were issued to applicants by the PSC for appointment to the post on 16.6.2014. Normally appointments are to be made, within a period of 3 months of the advice. Seeing the delay applicants approached the 2<sup>nd</sup> respondent requesting for orders of appointment. On

coming to know that Government had issued an order Annexure A6 on 6.12.2013- GO(RT)No.1815/2013, they approached the Tribunal praying for directions to the respondents to appoint them as Scheduled Caste Development Officers Grade II on the basis of advice memo. They sought a declaration to the effect that they are entitled to be appointed against the vacancies in the post reported and received by the PSC on or before 29.12.2002.

3. As per the Special Rules for Kerala Scheduled Caste Development Department Subordinate Service, method of appointment to the post of SC Development Officer Gr II is 50% by transfer from among departmental hands and 50% by direct recruitment. By Annexure A6 the Secretary to Government had on 6.12.2013, ordered that till the Special Rules for appointment to the post of Scheduled Caste Development Offices Grade-II. are amended, further appointments through PSC shall be stopped, once vacancies already reported to the Public Service Commission are filled up. It was mentioned therein that the Government had, on the basis of order in OA No.2311/2012, taken a decision to amend the special Rules for the post of Scheduled Caste

Development Officers whereby direct recruitment need be resorted to only in the contingency of non availability of qualified hands for promotion.

4. The case of the petitioners in the O.A is that they are advised against vacancies which arose prior to 29.12.2012, when there was no decision to stop or suspend direct recruitment. With the support of Annexure A8 appointment chart, they claimed that their advices were against 3 NJD vacancies and one fresh vacancy which arose much prior to 29. 12.2012.

5. The departmental hands who got impleaded in the OA as additional respondents 4 to 7 filed a reply statement opposing the claim for direct recruitment, stating that the department had already taken a conscious decision that direct recruitment need not be resorted to until the Special Rules are amended. They produced Ext.R4(b) issued on 23.3.2013, which was issued after considering a representation of departmental hands pursuant to a direction of the Administrative Tribunal in OA No.2311/2012 in which the Tribunal had directed to consider and pass orders on their representation. By

Annexure R4(b) order Government decided to take action to amend the Kerala Scheduled Caste Development Subordinate Service (Amendment) Rules 2010 to the effect that direct recruitment to the cadre of Schedule Caste Development Officer Grade II need be resorted to only in the contingency of non-availability of qualified hands from the feeder categories.

6. After hearing the PSC hands as well as the departmental hands the Tribunal passed Ext.P3 order. In view of the Annexure A6 order produced by the applicants, Tribunal ordered that the same would have only prospective effect and vacancies which arose upto 6.12.2013 should be filled up in the light of unamended special Rules. It was further observed that in respect of vacancies which arose after the said date, there may be circumstances when there are no qualified hands for promotion, such vacancies also should be reported to PSC. Therefore it was directed that in respect of the vacancies which arose after 6.12.2013 the 2<sup>nd</sup> respondent appointing authority shall conduct a review and decide whether there were qualified hands available for promotions and as on the date and in case it was found that

there is no qualified hand available in the feeder category for promotion, the said vacancy shall also be reported to the PSC. In the light of Rule 28(iA) of the KS&SSR, the 2<sup>nd</sup> respondent was therefore directed to verify whether there were vacancies to accommodate the applicants and to inform the same to PSC, in which event the advice memos returned to PSC shall be re-transmitted to 2<sup>nd</sup> respondent by the PSC and thereafter to appoint the persons eligible as per the advice list. Petitioners are challenging this order of KAT.

7. We heard Sri. Benny Gervacis, learned counsel appearing for the petitioners. Main grievance of the petitioners is against the direction to report vacancies to PSC in case it is found in the review to be conducted, that there was no qualified hand available for promotion.

8. We find that the Special Rules governing for appointment to the post of Scheduled Caste Development Officers are yet to be amended, despite the fact that Annexure A6 was issued on 6.12.2013. Therefore direct recruitment is not so far discarded from the Special Rules in terms of the proposed amendment.

9. Normal rule is that appointment shall be

governed by the Rules in force as on the date of occurrence of vacancies. Therefore unless and until the amendment is effected, no method other than that provided in the Special Rules can be resorted to. In this case Tribunal has only directed a review as provided in Rule 28(iA), without disturbing the alleged conscious decision, despite the settled legal position in a catena of decisions starting from James Thomas Vs Chief Justice High Court of Kerala 1977 KLT 622 of this court and ***Y.V. Rangaiah v. J. Sreenivasa Rao*** (1983) 3 SCC 384 of the Apex Court, that the vacancies are liable to be filled up in accordance with the Rules which are in force as on the date of occurrence of vacancies.

10. Of course in case there is a conscious decision to amend the special Rules on justifiable and bonafide reasons govt may suspend the operation of Special Rules. In this context it is pertinent to note the following observations of the Apex Court in Mohd. Raisul Islam v. Gokul Mohan Hazarika, (2010) 7 SCC 560 :

“ 36. xxxxx In K. Ramulu case (1997) 3SCC 59 no process had been initiated for the purpose of filling up any of the vacancies. In such circumstances, where no candidate had either been invited or interviewed or selected for appointment, as has been done in the instant case, this Court rightly held that the Government was competent to take a decision not to fill up the vacancies.

37. There can be no dispute that as a matter of policy the Government may take a conscious decision not to fill up vacancies for justifiable reasons, but at the same time, having started a process of selection under the unamended Rules, it cannot take the stand that it still was entitled not to make appointments of persons from amongst the candidates selected in terms of the process initiated under the old Rules. In fact, in the instant case, the recommendation made by APSC was submitted to the Government on 22-6-1986, before the amended Rules came into operation on 21-7-1986 whereby the quota system was discarded. In such a situation, in our view, the decision in K. Ramulu case cannot be applied to the facts of this case."

There the apex court was considering the question of inter-se-seniority of direct recruits and promotees consequent to the amendment effected at the time of their appointment. In this case it is stated that a decision is taken to amend the Special Rules. While considering the representation submitted by the Departmental hands seeking to stop direct recruitment, the 2<sup>nd</sup> respondent has passed Annexure A6 order granting permission to the Director not to make appointment by direct recruitment saying that Government have decided to amend the Special Rules.

11. At any rate, the Tribunal has only directed to undertake the review, in terms of Rule 28(iA) alone, which the respondents are bound to do, even after the amendment of the Special Rules. Vacancies are directed to

be reported only if no qualified hand is available in the department eligible for promotion.

In view of the above circumstances we do not find any reason to interfere with the orders passed by the Tribunal. Hence this OP(KAT) is dismissed.

(P.R. RAMACHANDRA MENON, JUDGE)

(P.V.ASHA, JUDGE)

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