

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

OP(KAT).No. 293 of 2015 (Z)

**AGAINST THE ORDER/JUDGMENT IN OA 1375/2015 of KERALA ADMINISTRATIVE
TRIBUNAL, THIRUVANANTHAPURAM DATED 30-07-2015**

PETITIONER(S)/PETITIONER:

**1. MANJU K AGED 39 YEARS
W/O.SRI SANALKUMAR P R, PALAMITOM HOUSE, 32/263-CI
KALAPARAMBU LANE, OPP.ANANTHAPURAM KRISHNA TEMPLE
THAMMANAM KOCHI 682 032**

**2. SHEMLA M S
W/O.SRI SURESH K B, PULITHARANIKATHIL HOUSE
MULAVUKAD P O, PIN 682504, ERNAKULAM DISTRICT**

**BY ADVS.SRI.VIJAYAN. K.U.
SRI.K.V.VIMAL
SRI.K.S.FRIJO**

RESPONDENT(S)/RESPONDENT:

**1. STATE OF KERALA
REP BY THE SECRETARY TO GOVERNMENT
PERSONNEL & ADMINISTRATIVE REFORMS DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN 695001**

**2. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM P O
THIRUVANANTHAPURAM, PIN 695004**

**R1 BY GOVERNMENT PLEADER SRI JOSEPH GEORGE
R BY SRI.P.C.SASIDHARAN, SC, KPSC**

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY
HEARD ON 19-10-2015, ALONG WITH OPKAT. 192/2015, OPKAT. 299/2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

kkj

OP(KAT).No. 293 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:-TRUE COPY OF THE ORDER IN OA NO 1375 OF 2015 DTD 30/7/2015

P2:-TRUE COPY OF THE INTERIM ORDER IN OP (KAT) NO 192/2015 DTD 24/6/2015

**P3:-TRUE COPY OF THE RANKED LIST TO THE POST OF LAST GRADE SERVANT
(ERNAKULAM) ON 4510-6230 IN VARIOUS DEPARTMENT NO 265/DOE CAT 508/2009
DTD 29/6/2012 PUBLISHED BY KERALA PUBLIC SERVICE COMMISSION**

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

PA TO JUDGE

**K.SURENDRA MOHAN &
SHAJI P. CHALY, JJ.**

O.P.(KAT) Nos.293,192 & 299 of 2015

Dated this the 19th day of October, 2015

J U D G M E N T

Surendra Mohan, J.

Common questions arise for determination in these three Original Petitions. Therefore, they are considered and disposed of together. OP(KAT) No.293 of 2015 is considered as the leading case. The facts of the said case are the following:-

2. The first petitioner who belongs to the Viswakarma community along with the second petitioner had been ranked for selection and appointment to the last grade service of various departments under the first respondent in a rank list published by the second respondent on 30.06.2012. The rank list was in force for a period of three years. On 30.03.2015, the second respondent issued a notification extending the validity of the rank list by a period six months from the said date.

However, the notification contained a rider that such rank list shall cease to be in force on the date on which a fresh rank list for the same post is brought into effect. Thereafter, a fresh rank list was published on 30.06.2015. Therefore, the rank list in which the petitioners were ranked expired on 29.06.2015. The petitioners are aggrieved by the condition imposed by the Kerala Public Service Commission subject to which the period of validity of the rank list was extended.

3. We have heard Advocate K.U.Vijayan and Sri. George Mathew who appear for the petitioners in the respective cases, Standing Counsel Sri.P.C.Sasidharan who appears for the second respondent as well as the learned Government Pleader who appears for the first respondent.

4. According to the counsel for the petitioners, the second respondent Public Service Commission had taken a conscious decision to extend the period of validity of the rank list by six months. This was in view of the fact that,

due to various reasons including the stagnation created by extension of the age of retirement of Government employees by one year, delay had occurred in reporting of vacancies that would have been otherwise reported, within the period of validity of the rank list. The delay had consequently resulted in denying to the petitioners their chances of getting an employment. According to Sri.K.U.Vijayan who appears for the petitioners in OP(KAT) No.293 of 2015, the first petitioner being a person who is entitled to the benefits of reservation, his fundamental right under Article 16(4) of the Constitution also has been violated by denying the right to public employment. The list having been published by the Public Service Commission, should have been permitted to remain in force for the full period of 4½ years. Instead, by publishing a fresh list, the Public Service Commission had brought the validity of the list to an abrupt end depriving the petitioners of their legitimate right to get employment.

5. The contentions of the counsel for the petitioners are seriously opposed by the Standing Counsel for the Public Service Commission. According to the Standing Counsel, the fact that the petitioners had been included in a rank list, conferred on them no right for the reason that, in view of Rule 3(b) of the Part-II Kerala State & Subordinate Service Rules ('KS&SSR' for short), inclusion of a candidate in the rank list did not confer any right on him to claim an appointment. Apart from the above, Rule 13 of the PSC Rules of Procedure confers ample powers on the PSC to publish a rank list after the expiry of a minimum period of one year. The fresh list has been published, in exercise of the said power. Therefore, it is contended that the Kerala Administrative Tribunal ('KAT' for short) was absolutely justified in dismissing the Original Applications filed by the petitioners in these cases.

6. We have heard the respective counsel appearing for the petitioners at length. As rightly contended by the

counsel for the Public Service Commission, the fact that the petitioners had been included in the rank list does not clothe them with any right to claim appointment to the post that was notified. Therefore, it follows that no right of theirs had been denied by the notification that was challenged by them before the KAT.

7. It is not in dispute that, the present list came into force on 30.06.2012. On 30.03.2015, the second respondent had published the impugned notification, Annexure A6, which forms part of the Original Application filed before the KAT. Annexure A6 provided that, all rank lists that were alive on 31.03.2015 and those that would expire during the period from 31.03.2015 to 29.09.2015 would be extended by a period of six months. However, the above extension was made subject to the condition that, any rank list that was current shall cease to be in force on the date on which a fresh rank list to the same post is brought into effect. The contention of Sri.George Mathew who appears for some of

the petitioners is that, the notification having been issued under the 4th proviso to Rule 13 of the P.S.C. Rules of Procedure, the second respondent had no power to impose the condition. It is contended by the counsel that since no power to impose such a condition has been conferred by the proviso, imposition thereof was ultravires and unsustainable.

8. In order to appreciate the above contention it is necessary to read Rule 13 of the P.S.C. Rules of Procedure. For the sake of convenience Rule 13 is extracted below:-

13. The ranked lists published by the Commission shall remain in force for a period of one year from the date on which it was brought into force provided that the said list will continue to be in force till the publication of a new list after the expiry of the minimum period of one year or till the expiry of three years whichever is earlier:

Provided that the above rule shall not apply in respect of ranked lists of candidates for admission to Training Course that leads to automatic appointment to Services or posts and that in such cases the ranked lists shall cease to be in force after one year from the date of finalisation of the ranked lists or after one month from the

date of commencement of the course in respect of the last batch selected from the list within a period of one year from the date of finalisation of the ranked lists whichever is later:

Provided further that the provisions of the proviso above mentioned shall not be applicable for the selection for admission to the Forest Rangers Course and also for admission to the Diploma Course in Forestry for which selections have to be made annually in accordance with the instructions of the Government of India issued from time to time. For these selections, the ranked lists will be in force only for a period of three months from the date of finalisation of the ranked lists or one month from the date of commencement of the course whichever is later:

Provided further that the Commission may take steps for the preparation of a new ranked list wherever necessary even before the expiry of the period of one year of the ranked list, by inviting applications but that the ranked list prepared in pursuance of the said notification shall be brought into force only after the expiry of the period of one year of the existing ranked list.

Provided further that a ranked list from which no candidate is advised during the period of one year from the date on which it was brought into force shall be kept in force till the expiry of three years from the said date and in a case where no candidate is advised from the ranked list till the expiry of the said period of three years, the duration of the ranked list shall be extended by the

Commission for a further period of one year or till atleast one candidate is advised from the list whichever is earlier.

Provided further that if the Commission is satisfied of the existence of a period of general ban declared by the Government on the reporting of vacancies to the Public Service Commission or of any other circumstances or of any extra-ordinary situation in which the reporting of vacancies by the appointing authorities is prevented or restricted or delayed, the Commission shall have the power to keep alive the ranked list which are normally due to expire during the said period for such periods as may be decided by the Commission subject to a minimum period of three months or for such further periods but not exceeding one and a half year in the aggregate. If the Commission so decides it shall issue a notification, keeping alive the ranked lists in the above manner and shall advise candidates from such ranked lists to the vacancies reported during such extended period of validity of the ranked lists.

A perusal of the above provision shows that, the Rule provides for the rank list published by the Public Service Commission to be valid for a period of one year from the date on which it was brought into force. It is also specifically provided that, the list would continue to be in

force till the publication of a new list after the minimum period of one year or till the expiry of three years whichever is earlier. It is clear from the Rule that, the minimum period of validity of a rank list published by the second respondent is one year. Therefore, the normal period of validity of a rank list is one year or till the date of publication of a new list, which could be published at any time after the expiry of the minimum period. At any rate, a new list has to be published, after three years. The provisos to the said Rule are only intended to create exceptions to the normal rule referred to above. The 4th proviso confers power on the Public Service Commission to extend the period of validity of a rank list, beyond three years. However, the said power is limited to one year or till at least one candidate is advised from the list, whichever is earlier. The above being the scheme of the Rule, the proviso has to be understood as merely carving out an exception to the general rule that the normal period of

validity of a rank list would be three years and conferring power on the Public Service Commission to extend the period suitably. However the rider imposed by the Rule that a rank list in force shall cease to be operative upon publication of a new rank list cannot be excluded by the proviso. The said provision is independent of the operation of the proviso. The above being the position, we find no infirmity in the action of the Public Service Commission in imposing a condition in Annexure A6 notification that, the list shall cease to be operative on a fresh list being published by the Public Service Commission.

9. The power of the Public Service Commission to publish a fresh a rank list without waiting for the expiry of period of three years has been recognized and accepted by this Court in **Ravidas v. Public Service Commission** [2009(2) KLT 295 (FB)]. Considering the said contention, a Full Bench of this Court has held as follows in paragraph 42 of the said judgment.

Further, the petitioners have no right to claim that all the vacancies arising over a period of 3 years should be filled up from only one ranked list. As per the rules, the validity of a ranked list (except in the case of recruitment to posts involving training) is for a period of 3 years from the date of publication or till a fresh ranked list is published, whichever is earlier. The Commission is therefore free to notify vacancies and publish a fresh ranked list without waiting for the period of 3 years to run out. Further, recruitment by the Commission to the State Civil Service is a continuous and ongoing process. Every year hundreds of thousands of students pass out of schools and colleges in the State. If the contention of the petitioners that the Commission should publish ranked lists large enough to fill up all the vacancies arising during a period of 3 years from its publication is accepted, students who pass out of schools and colleges will have to wait for years after completion of their studies to even apply for employment.

In view of the above authoritative pronouncement, the second respondent cannot be found fault with for having published a fresh rank list on 30.05.2015.

10. The question as to whether the decision of the second respondent PSC to publish a rank list could be

assailed has also been considered by a Division Bench of this Court in **Public Service Commission v. Pylo** [1986 KLT 46]. The issue has been concluded in paragraph 20 of the said judgment by Kochu Thommen, J.(as he then was) in the following words:-

The decision of the Commission to publish the second list was one which related to policy or managerial discretion. The fact that that decision involved cancellation of the first list, or that the reasons stated by the Commission in justification of the cancellation of that list do not appeal to this Court as correct, cannot be a ground to characterise the decision as vitiated by reason of illegality, irrationality, procedural impropriety or any other like circumstance of abuse of power. In fact there is no finding that any such vitiating circumstance existed. This Court in the present proceedings does not sit in judgment over the merits of the decision.

11. It is pertinent to note that, no allegations of malafides against the respondents have been raised. Nor is any material available before us to warrant a conclusion that the said decision is tainted by any other vitiating factor.

The above being the position, we find no grounds to

-:13:-

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grant any of the reliefs sought for in these Original
Petitions. Therefore, they are dismissed.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
SHAJI P.CHALY
JUDGE

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