

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

O.P.(KAT).No. 324 of 2015 (Z)

AGAINST THE ORDER IN O.A.(EKM) NO.377/2015 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 06.08.2015.

PETITIONERS/4TH & 3RD RESPONDENTS:

1. KERALA LAND REVENUE STAFF ASSOCIATION
REPRESENTED BY ITS GENERAL SECRETARY, REVENUE BHAVAN,
FORT P.O., THIRUVANANTHAPURAM-695 023.
2. K.R.RAVINDRAN,
S/O. SANKARAN NAIR, TAHSILDAR, IRITTY TALUK,
KANNUR DISTRICT, RESIDING AT VARENYAM, ADOOR,
KADACHIRA, KANNUR DISTRICT-673 614, KERALA.

BY ADVS.SRI.PRAVINDRAN (SR.)
SRI.K.PRAVEEN KUMAR

RESPONDENTS/APPLICANTS & RESPONDENTS 1 & 2:

1. JAYAMOHAN.V, AGED 34 YEARS,
S/O. K.K.VIJAYAKUMAR, RESIDING AT KEEZHE VEEDU,
TC 2/2167-2, ADARSH NAGAR, 34:B, PATTOM P.O.,
THIRUVANANTHAPURAM, KERALA-695 004.
2. P.N.PURUSHOTHAMAN, AGED 38 YEARS,
S/O. A.NARAYANAN, PERUMBARAPURATH HOUSE,
THIRURKKAD P.O., MALAPPURAM, KERALA-679 321.
3. VINEETH T.K., AGED 32 YEARS,
S/O. KALADHARAN
THOTTATHIL PARAMBIL MAYITHARA MARKET P.O., CHERTHALA,
ALAPPUZHA DISTRICT, PIN-688 539, KERALA.
4. MUHAMMADU SAFEER E., AGED 43 YEARS,
S/O. ESMAIL KUNJU, THANAL, EDAVATTOM
VELLIMON P.O., KOLLAM, KERALA-691 511.

P.T.O.

5. MOBY J., AGED 32 YEARS,
S/O. K.P. JAYARAM,
KALATHIL PARAMBIL, KEZHUKUNNU, COLLECTORATE P.O.,
KOTTAYAM, KERALA-686 002.
 6. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,
KERALA-695 001.
 7. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE KERALA PUBLIC SERVICE COMMISSION,
PATTON, THIRUVANANTHAPURAM, KERALA-695 004.
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- *ADDL.R8 K.K. VIJAYAN, S/O. RAMAN, AGED 55 YEARS,
KARAKKUNNUMMAL HOUSE, KIZHAKKOTH P.O.,
KODUVALLY, KOZHIKODE (DEPUTY COLLECTOR LA),
COLLECTORATE, WAYANAD.
- *ADDL.R9 GOVINDAN PALANGAT, S/O. GOVINDAN NAIR,
SREELAKSHMI, EDEKKEPURAM NORTH,
CHERUMUNU P.O., KANNUR (SPECIAL DEPUTY TAHSILDAR (LA),
NATIONAL HIGHWAY, KASARAGOD.
- *ADDL.R10 KRISHNA KUMAR B., S/O. BHASKARAN NAIR,
THEVALASSERIL HOUSE, ADINADU NORTH P.O.,
KOLLAM - 690 542 (DEPUTY COLLECTOR (DM),
COLLECTORATE, KOZHIKODE.
- *ADDL.R11 PRABHAKARAN N., S/O. KUTTIAPPA,
PALLAVI NILAYAM, R.D. NAGAR P.O.,
KUDLU, KASARAGOD TALUK,
KASARAGOD (SPECIAL DEPUTY COLLECTOR (LR),
WAYANAD.
- *ADDL.R12 A. UNNIKRIISHNAN, S/O. A. KRISHNA GUPTHAN (LATE),
ACHARATTU HOUSE, KATAMPAZHIPPURAM P.O.,
PALAKKAD (DEPUTY COLLECTOR (ELECTION),
WAYANAD.
- *ADDL.R13 R. VIJAYAKUMAR, S/O. RAMACHANDRAN PILLAI K.,
SREE BHAVAN, THRIKKOLVILVATTOM,
MUKATHALA P.O., KOLLAM (DEPUTY COLLECTOR (ELECTION),
PALAKKAD.
- *ADDL.R14 JOHN V.D., S/O DEVASSIA ULAHANNAN,
VETTUVELIL HOUSE, ATHIRAMPUZHA,
KOTTAYAM - 686 562 (DEPUTY COLLECTOR (RR),
COLLECTORATE, KOTTAYAM.

*ADDL.R15 JOSE M.P., S/O. M.A. PAUL, MADACKAL HOUSE,
MOOVATTUPUZHA P.O., ERNAKULAM (DEPUTY COLLECTOR (LR),
COLLECTORATE, KOTTAYAM.

*ADDL.16 RAJAN P.,
"THIRUVATHIRA", CHATHANKOD,
KANHILERI (PO), MATTANUR (VIA),
KANNUR - 670 702 (ASSISTANT CARDAMOM SETTLEMENT
OFFICER, KUMILY, IDUKKI).

(*ADDL.R-8 TO R16 ARE IMPEADED AS PER ORDER IN I.A.NO.15746/2015
DATED 04.11.2015).

R1, 4 & 5 BY ADVS. SRI.S.P.PARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.SAJU JOHN
SRI.V.VARGHESE
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.ANNAPOORNA
SRI.V.HARIPRASAD

R2 BY ADVS. SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI

R3 BY ADVS. SRI.ELVIN PETER P.J.
SRI.K.R.GANESH

R6 BY ADDL. ADVOCATE GENERAL, SRI. K.A. JALEEL
R7 BY SRI.P.C.SASIDHARAN, SC, KPSC
ADDL. R-8 TO R-16 BY ADV. SRI.CIBI THOMAS

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON
04-11-2015 ALONG WITH O.P.(KAT) NO.339/2015, THE COURT ON 23.12.2015 DELIVERED
THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1- TRUE COPY OF THE NOTIFICATION ISSUED BY THE PSC DATED 31-12-2010.
- EXHIBIT P2- TRUE COPY OF THE O.A.(EKM) NO. 377/2015.
- EXHIBIT P3- TRUE COPY OF THE REPLY STATMENT FILED BY THE 6TH RESPONDENT HEREIN (1ST RESPONDENT IN THE ABOVE OA).
- EXHIBIT P4- TRUE COPY OF THE M.A.NO. 1554 OF 2015 FILED BY THE 2ND PETITIONER HEREIN FOR IMPEADING HIMSELF IN THE ABOVE OA.
- EXHIBIT P5- TRUE COPY OF THE MA NO. 1608/15 FILED BY THE APPLICANTS IN THE ABOVE OA FOR INTERIM ORDER.
- EXHIBIT P6- TRUE COPY OF THE M.A.NO. 1624/15 FILED BY THE 1ST PETITIONER HEREIN FOR IMPEADING ITSELF IN THE ABOVE O.A.
- EXHIBIT P7- TRUE COPY OF THE REPLY STATEMENT FILED BY 2ND PETITIONER HEREIN (ADDITIONAL 3RD RESPONDENT IN THE OA).
- EXHIBIT P8- TRUE COPY OF THE REJOINDER FILED BY THE APPLICANTS AGAINST THE REPLY STATMENT OF THE ADDITIONAL 3RD RESPONDENT (2ND PETITIONER HEREIN).
- EXHIBIT P9- TRUE COPY OF THE M.A.NO. 1941/15 FILED BY THE APPLICANTS PRODUCING ADDITIONAL DOCUMENTS.
- EXHIBIT P10- TRUE COPY OF THE REPLY STATMENT FILED BY THE ADDITIONAL 4TH RESPONDENT IN OA (THE 1ST PETITIONER HEREIN).
- EXHIBIT P11- TRUE COPY OF THE ORDER OF THE TRIBUNAL DATED 06-08-2015 IN O.A.NO. 377/2015.
- EXHIBIT P12- TRUE COPY OF THE LIST, PUBLISHED BY DEPARTMENTAL PROMOTION COMMITTEE (HIGHER) OF TAHSILDAR ELIGIBLE FOR PROMOTION AS DEPUTY COLLECTOR DATED 24-06-15.

RESPONDENT(S)' EXHIBITS:

- EXHIBIT R1(A): TRUE COPY OF THE PRINT OUT OF APPOINTMENT CHART DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE K.P.S.C.

P.T.O.

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: -2- :

EXHIBIT R1(B): TRUE COPY OF THE DETAILS OF DEPUTY COLLECTORS AS ON 01.09.2015 KEPT IN THE OFFICE OF 6TH RESPONDENT.

EXHIBIT R1(C): TRUE COPY OF THE INTERIM ORDER DATED 21.05.2015 ON M.A. (EKM) 208/2015 IN O.A.(EKM)238/2014 OF THE HON'BLE KAT.

EXHIBIT R1(D): TRUE COPY OF THE G.O.(RT) NO.3708/2015/RD DATED 16.07.2015.

//TRUE COPY//

P.S. TO JUDGE

St/-

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

O.P.(KAT) Nos.324 & 339 of 2015

Dated this the 23rd day of December, 2015

JUDGMENT

Shaji P. Chaly, J.

These Original Petitions are filed against the order of the Kerala Administrative Tribunal in O.A.(Ekm.) No.377 of 2015 dated 06.08.2015 by Respondents 4 and 3 respectively and the order in O.A.(Ekm.) No.238 of 2014 dated 06.08.2015 by the 7th Respondent. The Original Applications filed by the petitioners were allowed by the Administrative Tribunal by a common order and the State of Kerala who are Respondents 6 and 3 respectively in the Original Petitions are directed to report 9 vacancies of Deputy Collector to the Kerala Public Service Commission (for short, "K.P.S.C"), who are also Respondents in the Original Petitions. The Original Applications were disposed of by the Tribunal as per a common order, since the subject matter of the Original Applications were of similar nature. Therefore, we are also disposing of the Original Petitions by a common judgment.

2. Brief facts for the disposal of the Original Petitions as narrated in O.P.(KAT) No.324 of 2015 are stated hereunder. The judgment in the said case will guide the fate of the other Original Petition.

3. 1st petitioner is an Association of the Land Revenue Staff and the 2nd petitioner is one of the members of the 1st Respondent Association and working as Deputy Collector. Respondents 1 to 5 were the applicants who were included in the rank list published by the K.P.S.C for appointment to the posts of Deputy Collector, which is a post borne on the Kerala Civil Service - (Executive), which is the Special Rules for appointment of Deputy Collectors. Petitioners had filed the Original Applications complaining that the vacancies available in the quota set apart for direct recruits as per the Special Rules are not being reported to the P.S.C and they are being filled up with promotees from the cadre of Tahsildar. Respondents 1 to 5 are candidates included in Annexure-A1 rank list published by the K.P.S.C for appointment to the post of Deputy Collector on 17.01.2014. Respondents 1 to 5 have contended that the present cadre strength of Deputy Collectors is 78. When Annexure-A1 rank list was published on

17.01.2014, 5 direct recruits were actually working. Thereafter, 7 candidates were advised as per the two advice lists, containing 2 and 5 candidates respectively. They were appointed by the Government taking the total number of direct recruits to 12. The Special Rules for appointment to the post of Deputy Collector provides that 1/5th of the substantive posts in the permanent cadre in the category of Deputy Collectors shall be filled up by direct recruitment, which thus means, 20% of the cadre strength to the said post is to be set apart for direct recruits. It, therefore follows that out of the total 78 Deputy Collectors, 16 must be from the stream of direct recruitment, as provided under the Special Rules.

4. Thereafter, by Annexure-A5 order dated 13.03.2015, four direct recruits were promoted as Deputy Collectors (Higher Grade), which is a post also taken care of under the Special Rules. Therefore, consequent to the said promotion, the strength of direct recruits in the cadre of Deputy Collector was brought down to 8. Thereafter, by Annexure-A8 order dated 07.07.2015, yet another direct recruit was promoted as Deputy Collector (Higher Grade), raising the number of vacancies of Deputy Collectors to 9.

Thereupon, Respondents 1 to 5 sought a direction to report the vacancies of the Deputy Collectors to the P.S.C so as to enable them to get appointed from Annexure-A1 rank list.

5. Respondents 1 to 5 have contended that without resorting to make direct recruitment, the State Government is considering a proposal to amend the Special Rules for applying the ratio between direct recruits and promotees taking into account the total cadre strength of Deputy Collectors and Deputy Collectors (Higher Grade). In such circumstances, it is contended that without the amendment, the State Government have started filling up the vacancies in accordance with the amendment which is not yet fructified. Therefore, Respondents 1 to 5 contended that the said action of the State Government is to be interfered with and sought direction for reporting the vacancies set apart to the direct recruits as per Rule 2 of the Special Rules cited supra.

6. While filing the Original Application, the vacancies existing in the post of Deputy Collectors were 5 and consequent to the promotion made during the pendency of the Applications, 9 vacancies arose in the cadre of Deputy Collector. The State Government has filed a reply statement

by which the cadre strength of the Deputy Collectors is admitted as 78. The thrust of the contention advanced by the State Government was that, it has decided to amend the Special Rules and that the P.S.C has concurred with it and the process is going on and therefore temporary promotions are ordered in accordance with the proposed amendment. Apart from the same, it is the contention of the State Government that for calculating the vacancies for direct recruitment, substantive posts in the cadre of Deputy Collector as a whole is to be taken into account, though the constitution of the service as per the Special Rules consists of Deputy Collector and Deputy Collector (Higher Grade).

7. It is also contended that this Court in the judgment in W.P.(C) No.33112 of 2006 dated 25.06.2008 filed by one P.K.Sudheer Babu and others, observed that the cadre strength of Deputy Collector for the purpose of determining the number of posts available for direct recruitment comprehends only the posts of Deputy Collectors and not that of Deputy Collectors (Higher Grade). So also, it is contended that the said provisions were incorporated in the scheme of Rules by an amendment made on 06.05.1980 and at that point of time, the

Rule making authority could not foresee a situation where due to direct recruitment, promotional avenues of a large number of employees in the Land Revenue Department were going to be affected. It is also contended, even though the Government filed Writ Appeal No.503 of 2009 against the judgment referred *supra*, the same was dismissed as per the judgment dated 11.06.2009.

8. It is also contended that the dispute in the case at hand arose due to an ambiguity in the literal meaning of the provisions of Rule 2 in the Special Rules and it is against the purpose of the Rule as intended by the Government. That apart, it is contended that appointment to the posts of Deputy Collectors (Higher Grade) is not a cadre promotion as envisaged under Rule 28(b)(i) of KS&SSR and it is merely placement of Deputy Collector in the Higher Grade in the ratio of 3:1, by virtue of the Pay Revision order. It is also contended that if the Rule is interpreted taking into account the cadre strength of Deputy Collectors as 78 and not the whole cadre strength of 110 inclusive of Deputy Collectors and Deputy Collectors (Higher Grade), there will arise a situation in which only directly recruited Deputy Collectors will get Higher

Grade promotion in the cadre of Deputy Collectors in the nearby future as the direct recruits are young and have more service as compared to those Deputy Collectors promoted from the category of Tahsildar. Since in order to tide over the aforementioned aspects and also to avoid ambiguity in the Special Rules, Government have decided to amend Rules 1 and 2 of the Special Rules cited *supra*, which was agreed to by the K.P.S.C and the amendment proposal is under consideration of the Subject Committee, it is contended. The specific contention raised by Respondents 1 to 5 in the O.A. that the Subject Committee of Kerala Legislative Assembly held on 29.10.2014 rejected the proposal to amend the Special Rules, is denied and it is specifically contended that the subject matter with regard to the amendment is still pending with the Subject Committee.

9. With the above contentions, State Government has submitted that 20% of the total 110 substantive posts of Deputy Collectors and Deputy Collectors (Higher Grade) together will come to 22 posts in the category of direct recruitment and presently 16 directly recruited Deputy Collectors are having Higher Grade and further that 5

candidates from the list of direct recruits were advised by the P.S.C by its order dated 31.03.2014 and they were appointed. Therefore, it is contended that the entire 20% of the substantive posts of Deputy Collectors have been filled up from direct recruits and therefore there are no vacancies existing and sought for dismissal of the Original Applications.

10. Petitioners herein got themselves impleaded and have filed counter affidavits. The 2nd petitioner in its reply statement has supported the decision of the Government and the appointments made by promotion, and the 1st petitioner in its reply statement has contended that the Respondents are not entitled to compel the State Government to make appointments merely because they are candidates included in Annexure-A1 rank list. It is also contended that the affected persons are not made parties to the Original Application.

11. Respondents 1 to 5 have filed a rejoinder to the reply statement filed by the 2nd petitioner, reiterating the contentions raised by them in the Original Application and also contending that there are only 78 substantive posts of Deputy Collectors in the permanent cadre and taking into account the cadre strength in accordance with Rule 2 of the Special Rules,

8 vacancies have to be filled up by direct recruitment out of the total 18 vacancies of Deputy Collectors.

12. The Administrative Tribunal after considering the rival contentions and the evidence on record, has arrived at a decision that the substantive posts, as per the Special Rules available in the cadre of Deputy Collectors is 78, which is admitted by the State Government and the cadre strength of the Deputy Collectors is to be taken from the total strength in the cadre of Deputy Collectors and therefore 16 vacancies are totally available for the direct recruits. After evaluating the facts and circumstances and assimilating the fact situation at the time of considering the Application, it was found that 9 vacancies in the post of Deputy Collectors for direct recruitment was remaining vacant and thus the State Government was directed to report 9 vacancies of Deputy Collectors to the P.S.C within six weeks from the date of receipt of a copy of the order. It is challenging the said order that this Original Petition is filed.

13. Heard Sri. P. Ravindran, learned Senior Counsel appearing for the petitioners, Advocate Sri. S.P. Aravindakshan Pillai, appearing for Respondents 1, 4 and 5, Senior Advocate,

Sri. K. Jaju Babu, appearing for Respondent No.2, Advocate Sri. Elvin Peter P.J., appearing for Respondent No.3 and learned Senior Government Pleader for the State and Sri. P.C. Sasidharan, learned Standing Counsel for the K.P.S.C.

14. Having considered the rival submissions and on perusal of the records, it is specific, categoric and clear that the cadre strength of Deputy Collectors in accordance with the stipulations contained in the Special Rules is 78 and if that is the cadre strength, as provided under Rule 2 of the Special Rules, $\frac{1}{5}^{\text{th}}$ of the cadre strength of Deputy Collectors will come to 16 candidates. But the learned Senior Counsel for the petitioners contended that the ratio should be applied with reference to the cadre strength of Deputy Collectors and Deputy Collectors (Higher Grade) together in order to find out the total cadre strength and ratio of 20% i.e. $\frac{1}{5}^{\text{th}}$ of the total cadre strength is to be calculated accordingly, and then the total number of posts entitled for direct recruits will be 22 and since already there are 16 Deputy Collectors (Higher Grade) from the direct recruit candidates and 5 Deputy Collectors are occupying as per the advise made from Annexure-A1 list, no more vacancies are available for direct recruits. The said

argument is also supported by the learned Senior Government Pleader. Therefore, the question to be considered is whether the cadre strength of Deputy Collectors alone is to be taken into account for fixing the cadre strength of direct recruits or the total cadre strength of Deputy Collectors and Deputy Collectors (Higher Grade) is to be taken into account.

15. Learned Senior Counsel for the petitioners contended that the cadre strength, as per the Special Rules is the category of Deputy Collector and Deputy Collector (Higher Grade) taken together. To substantiate the said contention, learned Senior Counsel has invited our attention to Rule 2 of Part-I of K.S&S.S.R under which 'cadre' is defined as the permanent cadre of each service, class, category and grade. So also, learned Senior Counsel has invited our attention to Rule 5 of Part-II K.S.&S.S.R, where method of recruitment is provided and he has specifically invited our attention to Note (3) appended to the said Rule which reads as follows:

"Note (3) Whenever a ratio or percentage is fixed for different methods of recruitment/appointment to a post, the number of vacancies to be filled up by candidates from each method shall be decided by applying the fixed ratio or percentage to the cadre strength of the post to which the recruitment/transfer

is made and not to the vacancies existing at that time”.

By placing reliance on the aforesaid Rules, learned Senior Counsel contended that as per the said Rules, the service is defined and consists of Deputy Collectors (Higher Grade) and Deputy Collectors, and therefore the total strength of the said two categories will have to be taken together in order to find out the 1/5th substantive posts in the permanent cadre in the category of Deputy Collectors and therefore if the rule is appreciated in that manner, party Respondents are not entitled to get any relief as sought for in the Original Applications.

16. Learned Senior Counsel has also contended that party Respondents are not entitled to insist the Government to appoint them, merely because they find a place in the rank list. To substantiate the said contention, learned Senior Counsel has invited our attention to Rule 3(b) of Part-I K.S& SSR, which stipulates that the inclusion in the rank list shall not confer on any candidate right to claim for appointment to the service/class or category and it is for the Government to decide whether to fill up the vacancies or keep them vacant. The learned Senior Counsel, in order to substantiate the contention so put forth, has invited our attention to the

judgments of the Apex Court in '**Shankarsan Dash v. Union of India**' [(1991) 3 SCC 47], '**State of Bihar and others v. Md. Kalimuddin and others**' [(1996) 2 SCC 7], and the judgment of a Full Bench of this Court in '**Vimala Kumari v. State**' [1994 (2) KLT 47 (F.B.)]. Therefore, learned Senior Counsel contended that the Original Petition is liable to be allowed for the foregoing reasons alone.

17. It is also contended by learned Senior Counsel that party Respondents are not at liberty to contend that the appointment made by the State Government otherwise than by direct recruitment cannot be done if a conscious decision is taken by the Government not to fill up the posts by direct recruitment. It is also contended that it is the master's choice, the manner in which the appointments are to be made. To substantiate the said contention, the judgment of the Apex Court in '**Food Corporation of India and others v. Bhanu Lodh and others**' [(2005) 3 SCC 618] was pressed into service and invited our attention to paragraph 16, wherein, it is held that it is not possible for the candidate of Deputy Manager's post to claim that he had been discriminated because a Joint Manager had been appointed, for there is

nothing common between these two posts and that it is perfectly valid for the employer to fill up one category of post and decline to do so the other for various business reasons.

18. On the contrary, Sri. S.P.Aravindakshan Pillai has contended that the 1st petitioner is an Association, which has no *locus standi* to file the Original Petition or to get themselves impleaded in the Original Application and seek dismissal of the reliefs sought for by the petitioners. It was also contended by him that there is no grievance as such for the Association. So far as the law relating to service jurisprudence is concerned, individual grievances need alone be considered and nobody can espouse the cause of others in the guise of an aggrieved person. Therefore, the learned counsel contended that the Original Petition is to be dismissed on the said sole ground. We find force in the said contention but in view of fact that the 2nd petitioner is already on the party array, we cannot now non-suit/hold that the Original Petition is not maintainable under law. That apart, the connected Original Petition is filed by a person allegedly aggrieved. Apart from the same, learned counsel has reiterated the stand taken in the Original Applications filed by the party Respondents and contended that

the cadre strength of the Deputy Collectors going by Rule 2 is to be taken as 78 and not the total cadre strength 110, of Deputy Collectors and Deputy Collectors (Higher Grade). Therefore, learned counsel contended that viewed in that manner, the findings entered by the Tribunal are correct and no interference is warranted, especially when the cadre strength in the post of Deputy Collectors is admitted by the Government to be 78. It is also contended that the State Government has no case that, a conscious decision is taken by it not to make any appointments to the post of Deputy Collectors.

19. Sri. Elvin Peter P.J., learned counsel appearing for Respondent No.3 invited our attention to the reply statement filed by the petitioners and contended that the sole contention advanced by the petitioners was that the party Respondents had no right to compel the Government to make appointments from the rank list and therefore that, the petitioners are not entitled to raise new contentions in the Original Petitions with regard to the method of calculation of cadre strength on the basis of the total cadre strength of Deputy Collectors and Deputy Collectors (Higher Grade) together. Anyhow, the State

Government has taken such a contention in the reply statement of the Original Application, therefore the said contention advanced is to be considered by us.

20. Learned counsel has also invited our attention to a Division Bench judgment of this Court in '**Kerala Land Revenue Staff Association v. P.K. Sudheer Babu and others**' [2009 (3) KLT 402] and contended that therein the very same question was considered and in paragraph 6, it was held that the cadre strength of the Deputy Collectors is to be taken into account as per Rule 2 in the ratio of 4:1. By placing reliance on the said judgment, learned counsel contended that in Rule 2, it is categorically stated that 1/5th of the substantive posts in the permanent cadre in the category of Deputy Collectors shall be filled by direct recruitment and therefore the calculation of the cadre strength of Deputy Collectors and Deputy Collectors (Higher Grade) cannot be pressed into service and going by the tenor of the said judgment of the Division Bench also, the view taken by the Administrative Tribunal is legal and correct and therefore no interference is called for in the impugned order of the Administrative Tribunal.

21. The learned counsel also invited our attention to the judgment dated 21.12.2001 in W.A.No.1075 of 2001, wherein, it was held that from a perusal of the files made available on direction, the Court could not come across any conscious decision taken by the Government not to fill up the existing vacancies on the basis of the then existing Special Rules. It was also held that, vacancies which were in existence when the Special Rules were in force had to be filled up by those Rules and not by the amended Special Rules. It was further held that the existing vacancies are required to be filled up as on the date of occurrence of the vacancy unless the Government takes a conscious decision not to fill up the existing vacancies pending amendment of the Rules.

22. Sri. K. Jaju Babu, learned Senior Counsel appearing for Respondent No.2 contended that the 1st petitioner cannot be termed as an aggrieved person since it is an Association. Learned Senior Counsel further contended that a person can be considered to be aggrieved only if he is directly aggrieved by any action of a Court or authority. Since the 1st petitioner is not aggrieved by the order passed by the Administrative Tribunal, the 1st petitioner is not at liberty to approach this

court by filing the Original Petition. Yet another contention advanced by the learned Senior Counsel is that the 1st petitioner is the appellant in the judgment in '**Kerala Land Revenue Staff Association**' *supra* and therefore by virtue of the said judgment, 1st petitioner is not entitled to seek for a re-opening of the issue, by filing a fresh Original Petition.

23. Having considered the rival submissions and perusal of the entire evidence on record, the Special Rules and the provisions of the Kerala State and Subordinate Services Rules referred *supra*, we are of the considered opinion that the issue revolves round the fixing of cadre strength as per the Special Rules. On a perusal of the Special Rules, Rule 2 specifically stipulates that the appointment is to be made by direct recruitment, by which it is categoric and clear that 1/5th of the substantive posts in the permanent cadre in the category of Deputy Collectors shall be filled by direct recruitment, which thus means, the post of Deputy Collectors and not the post of Deputy Collectors and Deputy Collectors (Higher Grade) together is to be taken into account for fixing the cadre strength of Deputy Collectors. On a perusal of Rule 1, it is clear that the entire service is consisting of Deputy Collectors

(Higher Grade) and Deputy Collectors. But, so far as appointment to be made by direct recruitment is concerned, Rule 2 is specific that the direct recruitment of 1/5th is earmarked in the permanent cadre of substantive posts in the category of Deputy Collectors alone. Therefore, there is no scope for any contention as raised by learned Senior Counsel for the petitioners that the total cadre strength of Deputy Collectors and Deputy Collectors (Higher Grade) are to be taken into account for fixing the ratio. It is true that as recited in the judgments cited by the learned Senior Counsel referred to *supra*, no candidates included in the rank list are entitled to compel the Government to make appointments from the same. But, when the substantive rights and vested rights of the candidates included in the rank list are infringed by the act of State Government, they are entitled to seek legal remedies in order to protect their interests provided under the Special Rules. Therefore, the judgments cited *supra* by the learned Senior Counsel for the petitioners have no bearing to the facts and circumstances of these Original Petitions. Moreover, the proposition of law laid down by the Apex Court in paragraph 7 of the judgment in '**Shankarsan Dash**' *supra* assumes

importance where it has been held that the State does not have the licence to act in an arbitrary manner. We find force in the contentions advanced by the learned counsel for the party Respondents.

24. A specific contention is raised by the party Respondents in the Original Application, that the State has not taken any conscious decision not to appoint any candidate to the post of Deputy Collectors. The said contention is not denied by the State in its reply statement nor has it made an affirmative statement to that effect. It has also not produced any document to the effect that the State has taken a conscious decision not to make appointments to the posts of Deputy Collectors. Moreover, the files also were not produced before the Tribunal in order to establish that a conscious decision was taken not to make any appointments to the posts of Deputy Collectors. Therefore, the contention advanced by the learned Senior Counsel for the petitioners to that effect also cannot be sustained. Moreover, if there was such a conscious decision by the State, it was its duty to establish the same and the said burden can never be shouldered on the party Respondents at any point of the proceedings.

25. We are also of the considered opinion that either before the Tribunal or before this Court the State has not produced any record or files to show that an amendment of the Special Rules is in contemplation or that the Government has prepared a draft of the said Rules. Therefore, we are of the opinion that in the absence of any such circumstances, it cannot be presumed that the Government has taken any steps even to amend the Special Rules. Furthermore, there is no contention at all by the State Government before this Court that a conscious decision is taken by the Government not to make any appointments to the post of Deputy Collector. Rather, the contention of the Government is that it has taken a conscious decision to amend the said Rules. According to us, that by itself is not a sufficient ground to make the appointments in accordance with the Special Rules as it existed when the vacancy arose for appointment to Deputy Collectors, taking into account the cadre strength of Deputy Collectors fixed under Rule 2 of the Special Rules. Though the non-joinder of necessary parties was not pressed into service by the petitioners in these Original Petitions, it is only proper and apposite to observe that the Tribunal has met the said

contention made by the petitioners before it legally and correctly taking into account the fact situations involved in the case and therefore no manner of interference is called for on that score also.

26. In that view of the matter and taking into account the entirety of the facts and circumstances, the law involved in the subject and the settled legal position, we are of the considered opinion that the Administrative Tribunal has arrived at fair and reasonable conclusions. We do not find any illegality, other legal infirmities or violation of any settled proposition of law warranting our interference under Article 227 of the Constitution of India.

Resultantly, the Original Petitions fail and they are accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
23.12.2015