

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

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

OP(KAT).No. 78 of 2014 (Z)

(AGAINST THE ORDER/JUDGMENT IN OA 239/2014 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 29-01-2014)

PETITIONER(S)/APPLICANT:-:

DIVYA NARAYANAN K.K
W/O.GOPAKUMAR G.K., AKKOOL HOUSE, VENDUTTAYI
P.O.PINARAYI, KANNUR DISTRICT, PIN - 670 741.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

RESPONDENT(S)/RESPONDENTS/RESPONDENTS IN O.A.:-:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM - 695 001.

3. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR - 670 674.

4. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION, DISTRICT OFFICE
KANNUR - 670 674.
R1-R3 BY SR. GOVERNMENT PLEADER MR. JOSEPH GEORGE
R4 BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP (KAT) .No. 78 of 2014 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE O.A.NO.239/2014 OF THE KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

EXHIBIT P2. TRUE COPY OF THE ORDER DATED 29.01.2014 IN O.A.NO.239 OF
2014 OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

RESPONDENT(S) ' EXHIBITS

/TRUE COPY/

P.S. TO JUDGE.

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

.....
O.P.(KAT)No.78 OF 2014
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Dated this the 23rd June, 2015

J U D G M E N T

P.R.Ramachandra Menon, J:

Non appointment of the petitioner inspite of the Advice Memo issued by the PSC, allegedly for want of vacancy, is the subject matter of this Original Petition.

2. The petitioner, who was an aspirant to the post of HSA (Natural Science) in Kannur district, on coming out successful in the selection process conducted by the PSC, was included in Annexure A1 rank list, which was published in the year 2009. By virtue of the relevant orders issued by the Government, validity of the rank list was extended till 16.03.2014. The petitioner was given to understand, as per the information procured under the RTI Act from the authorities of the Education Department, that 'four' vacancies in the cadre of HSA (Natural Science) would arise as a result of retirements on 31.03.2014. It was in the said circumstance, that the petitioner approached

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the Tribunal by filing O.A.No.239 of 2014 to direct the third respondent/Dy. Director of Education to report the said vacancies to the PSC and to have the petitioner advised and appointed against one of the vacancies. When the matter came up for consideration before the Tribunal, it was observed that the rank list was to expire on '16.03.2014' and as such, no positive relief could have been given to the petitioner in respect of any vacancy, if at all to arise on '01.04.2014'; as the retirements will only be on 31.03.2014, so as to make the seats vacant. It was accordingly, that interference was declined and O.A. was dismissed, which is sought to be challenged by filing this Original Petition.

3. During pendency of the proceedings, the petitioner filed I.A.No.7507 of 2015 referring to the subsequent developments as to the adverse consequences resulted because of enhancement of the age limit from 55 to 56 years and non-advice of candidates from the existing rank list, in turn affecting the rights and interests of the persons concerned, who are already included in the rank list . It was also pointed out that the matter was brought up for consideration of the Government and

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accordingly, grievance of all the similarly situated persons, totalling a number of 186 persons was considered; and Ext.P4 Government Order dated 28.04.2015 was issued, making it clear that the persons included in the rank list shall be given accommodation in the next arising vacancies and that all other modes of recruitment to fill up the vacancies which may arise in the concerned districts by way of by-promotion transfer appointment, inter-district transfer and deputation etc., was to be kept in abeyance till such exercise was completed.

4. In the meanwhile, the third respondent/Deputy Director of Education informed the PSC that the advice given by the PSC could not be implemented for want of vacancies; on receipt of which, the PSC replied that the petitioner was to be accommodated in the next arising vacancy. The factual position in this regard was communicated to the petitioner as well, as per the letter dated 22.05.2015. In I.A. 7507 of 2015, the petitioner has asserted as to the existence of 'three' vacancies of HSA (Natural Science) on 31.03.2015 and 'two' more vacancies in the same category which arose on 31.05.2015; particulars of which have been given in paragraph 2 of the affidavit filed in

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support thereof. It is in the said circumstance, that a direction was sought for by filing the said I.A. for appointing the petitioner against one of the vacancies of HSA (Natural Science) in Kannur district

5. When the matter came up for consideration before this Court on 10.06.2015, the factual sequence was taken note of. The matter was adjourned for getting instructions from the part of the respondents. The third respondent/Deputy Director of Education has filed an affidavit dated 19.06.2015, pursuant to the direction issued by the Court on 18.06.2015 with reference to the vacancies pointed out by the petitioner in I.A and the present situation. The main case mooted by the third respondent as borne out from the pleadings was that there were excess appointment of HSAs (Natural Science) in Kannur district and hence the petitioner could not have been accommodated against any of the 'five vacancies' mentioned above. But in the affidavit, it has been pointed out that another vacancy has arisen due to appointment of a teacher as Higher Secondary School Teacher in the Higher Secondary School at Kozhichal on 01.06.2015 and hence appointment can be given to the

petitioner after accommodating the 'five' excess teachers, who are now retained in the ratio of 1:35; simultaneously adding that one month's time is necessary to complete the process of appointment of the petitioner.

In the above circumstance, the Original Petition is disposed of, directing the concerned respondents to give effect to the contents of the affidavit as aforesaid and to appoint the petitioner completing all the procedural formalities in accordance with law, at the earliest, at any rate, within one month from the date of receipt of a copy of the judgment. The petitioner shall produce a copy of the judgment along with a copy of the Original petition before the concerned respondent for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**BABU MATHEW P. JOSEPH,
JUDGE.**