

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 14291 of 2014 (J)

PETITIONER(S):

1. ANEESH KUMAR M.M,
S/O.KUNHIKKANNAN.P, AGED 34 YEARS,
MANHERI MANIKKOTH HOUSE, NADUVIL POST,
KANNUR DISTRICT, PIN-670 582.
2. PRASAD K.V, S/O.M.KARUNAKARAN,
AGED 38 YEARS, KIZHAKKEVEETIL, EZHILODE.P.O.,
KUNHIMANGALAM VIA, KANNUR DISTRICT, PIN-670 309.
3. SHYBA K.K, W/O.P.V.PRADEEPAN,
'GOVONDHAN', KIZHUNNA POST, KANNUR-7.
4. DIVYA K.K, D/O.T.P.KUNHIKKANNA, 'DIVYA NIVAS',
MALAPPATTAM CENTRE, MALAPPATTAM POST,
SREEKANDAPURAM VIA, KANNUR DISTRICT. PIN-670 631.
5. MINI K.B, W/O.VENUGOPAL N.K,
PERUMPADAVU KARIPPAL POST,
KANNUR DISTRICT, PIN-670 581.
6. JISHA V, D/O.RAGHAVAN.P,
PUTHUKKAYI HOUSE, DHARMADAM POST,
TALASSERY, KANNUR DISTRICT, PIN-670 106.
7. SHAJAHAN A, S/O.ABDUL RAHMAN,
VALLIKKAD HOUSE, MANJALLOOR POST,
PALAKKAD DISTRICT, PIN-678 502.
8. SUKUMARAN C.K, S/O.(LATE) KRISHNANKUTTY,
AGED 42 YEARS, CHIRAYILPPALLIYAL HOUSE
KALLADIKKODE.P.O., PALAKKAD DISTRICT, PIN-678 596.
9. PREETHI MOHAN, THANDIKKAL HOUSE,
VANDIPPERIYAR.P.O., VIKAS NAGAR, IDUKKI DISTRICT.
10. BABU RAMESH R, S/O.RAGHAVAN, AGED 41 YEARS,
LAKSHMI NIVAS, ANGADIKADAVU.P.O.,
KIZHIYANTHARA VIA, IRITTY, KANNUR DISTRICT.

11. ANIL KUMAR T.S, S/O.SREEDHARAN, AGED 42 YEARS, THATTAN PARAMBIL, EZHACHERI POST, KOTTAYAM DISTRICT, PIN-686 651.
12. SUNIL KUMAR V, S/O.MADATHIL KANNAN, AGED 39 YEARS, MADATHIL HOUSE, KUTYATTOOR.P.O., KANNUR DISTRICT, PIN-670 602.
13. MANJU K.V, S/O.KUNHIRAMAN C.M, C.M.HOUSE, NADUVIL.P.O., KANNUR DISTRICT, PIN-670 582.
14. MAHESH T.K, S/O.BALAN V.V, AGED 36 YEARS, PADINJARA PADIKKAL, MELMURINGODE.P.O., PERAVOOR VIA, PIN-670 673.
15. RIJU A, S/O.DAMODHARAN, AGED 27 YEARS, KUNNUMMAL HOUSE, KEEZHOOR.P.O., IRITTY, KANNUR DISTRICT, PIN-670 703.
16. ANIL KUMAR P.V, S/O.C.C.RAMACHANDRAN, C.C.HOUSE, KANNAPURAM, MOTTAMMAL.P.O., KANNUR DISTRICT, PIN-670 331.
17. SUBHA S.S, W/O.MOHANAN, AGED 38 YEARS, 'CHITHRAKAM', PANTHALAYANI, KOYILANDY POST, KOZHIKODE DISTRICT, PIN-673 305.
18. B.SAJEEV, S/O.BHASKARAN, KOIKKATHU VEEDU, THINAVILA, KEEZHATTINGAL.P.O., THIRUVANANTHAPURAM DISTRICT, PIN-695 306.
19. RENJU R.NAIR, S/O.RAVEENDRAN NAIR, SREEBHAVAN, PARAYATHUKONAM.P.O., KIZHUVILAM, ATTINGAL, THIRUVANANTHAPURAM DISTRICT.
20. REJANI E.R, D/O.RAJAN, ELAYIDATH MADATHIL HOUSE, VADAKARA, THALAYOLAPARAMBU, KOTTAYAM DISTRICT.
21. SUJITH P.V, S/O.R.P.JANARDHANAN, SREESADANAM, KAKKANAD, PERAVOOR, KANNUR DISTRICT.
22. MADHUSUDHANAN K, KALLUVALAPPIL HOUSE, MUTHAPPANAR KAVU, KANHANGAD, KASARAGOD DISTRICT.
23. DEEPA K.KOKKADAN, KUNHIPPURAYIL HOUSE, MOOPPANPARA, VALAPATTANAM.P.O., PIN-670 010.
24. BIJESH P, POTHANCHERY HOUSE, CHETTIPADY, PARAPPANANGADI, MALAPPURAM DISTRICT.

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25. RASHEED K, KANAKAMPULLY HOUSE,
KARAKURISSI, PALAKKAD DISTRICT.

BY ADVS.SRI.S.RAMESH
SRI.S.D.ASOKAN

RESPONDENT(S):

1. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE KERALA PUBLIC SERVICE
COMMISSION, THULASI HILLS, PATTOM PALACE P.O.,
THIRUVANANTHAPURAM-695 004.
2. FOAM MATTINGS (INDIA) LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
POST BOX NO.4619, BEACH ROAD,
ALAPPUZHA, PIN-688 001.
3. FOREST INDUSTRIES (TRAVENTCORE) LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
THAIKKATTUKARA.P.O., ALUVA-683 106.
4. AGRO INDUSTRIES CORPORATION LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
KISSAN JYOTHI, FORT,
THIRUVANANTHAPURAM, PIN-695 023.
5. KERALA AGRO MECHINERY CORPORATION LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR, ATHANI,
ERNAKULAM DISTRICT, PIN-683 585.
6. KERALA ARTISANS DEVELOPMENT
CORPORATION LIMITED, REPRESENTED BY
ITS MANAGING DIRECTOR, SWAGATH,
LAW COLLEGE ROAD, VANCHIYOOR.P.O.,
THIRUVANANTHAPURAM, PIN-695 035.
7. KERALA AUTOMOBILES LIMITED, REPRESENTED BY
ITS MANAGING DIRECTOR, ARALUMMOODU,
THIRUVANANTHAPURAM DISTRICT, PIN-695 123.
8. KERALA CERAMICS LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR, PB NO.2,
KUNDARA.P.O., KOLLAM DISTRICT. PIN-691 501.

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9. KERALA ELECTRICAL AND ALLIED
ENGINEERING COMPANY LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
7TH FLOOR, KERALA STATE HOUSING BOARD
OFFICE COMPLEX, PANAMPILLY NAGAR,
KOCHI, PIN-682 036.
10. KERALA FINANCIAL CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
VELLAYAMBALAM, THIRUVANANTHAPURAM, PIN-695 033.
11. KERALA FOREST DEVELOPMENT
CORPORATION LIMITED, REPRESENTED BY
ITS MANAGING DIRECTOR, ARANYAKOM,
KARAPUZHA, KOTTAYAM, PIN-686 003.
12. KERALA HEAD LOAD WORKERS WELFARE BOARD,
REPRESENTED BY ITS CHIEF EXECUTIVE,
PB NO.2017, SRM ROAD, ERNAKULAM,
KOCHI, PIN-682 018.
13. KERALA STATE HOUSING BOARD,
REPRESENTED BY ITS SECRETARY,
HOUSING BOARD JUNCTION,
THIRUVANANTHAPURAM, PIN-695 001.
14. KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
REPRESENTED BY ITS SECRETARY,
GRAMA SOUBHAGYA, VANCHIYOOR,
THIRUVANANTHAPURAM, PIN-695 035.
15. LABOUR WELFARE FUND BOARD,
REPRESENTED BY ITS CHIEF EXECUTIVE,
THIRUVANANTHAPURAM, PIN-695 001.
16. KERALA LAND DEVELOPMENT CORPORATION LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
CHEMBUKAVU, TRISSUR, PIN-680 020.
17. KERALA LIVE STOCK DEVELOPMENT BOARD,
REPRESENTED BY ITS MANAGING DIRECTOR, GOKULAM,
PATTOM.P.O., THIRUVANANTHAPURAM, PIN-695 004.
18. SHIPPING AND INLAND NAVIGATION
CORPORATION LIMITED, REPRESENTED BY
ITS MANAGING DIRECTOR, 38/924A,
GANDHI NAGAR, KOCHI-682 020.

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19. KERALA SMALL INDUSTRIES CORPORATION LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
HOUSING BOARD BUILDING, SANTHINAGAR,
THIRUVANANTHAPURAM, PIN-695 001.
20. KERALA STATE CASHEW DEVELOPMENT
CORPORATION, REPRESENTED BY ITS
MANAGING DIRECTOR, BEACH ROAD,
KOLLAM, PIN-691 001.
21. KERALA CIVIL SUPPLIES CORPORATION LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
VIKAS BHAVAN.P.O., THIRUVANANTHAPURAM, PIN-695 033.
22. KERALA STATE CONSTRUCTION CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
BAY UNDER BRIDGE,
NORTHERN SIDE OF RAILWAY LINE,
PONNURUNNI, VYILA, KOCHI-682 019.
23. KERALA STATE FINANCIAL ENTERPRISES,
REPRESENTED BY ITS MANAGING DIRECTOR,
BHADRATHA, MUSEUM ROAD,
TRISSUR, PIN-680 020.
24. TRAVENCORE TITANIUM PRODUCTS LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
VELI, THIRUVANANTHAPURAM, PIN-695 021.
25. KERALA STATE PLANTATION CORPORATION LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
MUTTAMBALAM.P.O., KOTTAYAM, PIN-686 004.
26. UNITED ELECTRICAL INDUSTRIES LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
PALLIMUKKU, KOLLAM, PIN-691 001.
27. TRAVENCORE COCHIN CHEMICALS LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
UDYOGAMANDAL.P.O.,
ERNAKULAM DISTRICT, PIN-683 501.
28. MALABAR CEMENTS LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
WALAYAR, PALAKKAD DISTRICT, PIN-678 624.
29. KERALA TOURISM DEVELOPMENT CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
CANTONMENT HOUSE ROAD,
THIRUVANANTHAPURAM, PIN-695 033.

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30. KERALA STATE INDUSTRIES DEVELOPMENT
CORPORATION, REPRESENTED BY ITS
MANAGING DIRECTOR, T.C.XI/266,
KESTON ROAD, KOWDIAR,
THIRUVANANTHAPURAM, PIN-695 003.

R1 BY ADV. SRI.P.C.SASIDHARAN, SC
R2, R9 & R30 BY ADV. SRI.SAJI VARGHESE, SC
R3 BY ADV. SRI.M.K.THANKAPPAN
R4, R5, R8, R23, R27 & R28 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS
R6 BY ADV. SRI.P.M.MANESH, SC
R11 BY ADVS. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
R13 BY SRI.GEORGE BOBAN, SC, K.S.H.B.
R16 BY ADV. SRI.A.ABDULKHARIM, SC
R18 BY ADV. SRI.SANTHOSH MATHEW,SC
R19 BY ADV. SRI.R.T.PRADEEP
R21 BY ADV. SMT.MOLLY JACOB,SC
R22 BY SRI.M.V.THAMBAN
R24 BY SRI.K.ANAND (SENIOR ADVOCATE)
ADV. SMT.LATHA KRISHNAN
R25 BY SRI.RAJU SEBASTIAN VADAKKEKARA, SC
R30 BY ADV. SRI.SAJI VARGHESE, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-03-2015 ALONG WITH WPC. 14783/2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

**P1- TRUE COPY OF THE NOTIFICATION DATED 30.11.2009 DOWNLOADED FROM
THE WEBSITE OF THE 1ST RESPONDENT.**

**P2- TRUE COPY OF THE RELEVANT PORTION OF THE SHORT LIST
DATED 05.02.2014 WAS PUBLISHED BY THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.14291 & 14783 of 2014

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Dated this the 17th day of March, 2015

JUDGMENT

The petitioners in these writ petitions are unemployed youth, who responded to a notification issued by the Public Service Commission in the official gazette dated 30.11.2009, inviting applications for appointment to the post of Last Grade Servants in various Government owned companies, corporations and boards. The number of vacancies were not estimated at the time of publication of Ext.P1. After verification of the applications, they were issued with admission tickets to appear for the written test. They appeared for the same. Some of the petitioners belonged to open category and others belonged to various reservation communities. The petitioners allege that about 8.25 lakhs persons submitted their applications for appointment to the said post pursuant to Ext.P1 notification.

2. After the written test, the PSC fixed the minimum cut off mark as 92.0139% for inclusion in the main short list consisting of register number of candidates entitled to be participated in further selection procedures, including certificate verification, cycle test etc. By fixing the said cut off marks, short list dated 5.2.2014 was published by the first respondent, including 4771 candidates in the main list of the said short list. As a matter of fact, vacancies more than 2500 were existing at that time. Therefore, according to them, the PSC ought to have prepared the short list, including 3 to 5 times the total number of vacancies available for appointment.

3. The petitioners further point out that if a lesser cut off mark was fixed by the PSC, the petitioners would have got appointment. Therefore, according to them, the publication of a very short list disproportionate to the number of existing vacancies had caused great prejudice to the applicants. If a lower cut off mark was fixed in the written examination, all the applicants would have been able to be

included in the main list. The petitioners belonged to open category and there is no scope for them to get inclusion in the supplementary list for reservation communities. As far as the petitioners from the reserved community are concerned they would get entry in the supplementary list for their respective communities when those candidates who obtained position at the top of the short list would get placement in the main list. The petitioners point out that most of them are getting over aged and they would not get any further chance to get any other appointment. It is with this background, the petitioners have come up before this Court.

4. Counter affidavits were filed by the first respondent in both the writ petitions raising similar contentions. .

It was stated that a total number of 8,28,868 applications were received for the post. Out of which, 27575 applications were summarily rejected and the remaining 8,01,293 candidates were admitted for the OMR test held in four phases. (Phase I O

14.01.2012, Phase II - 28.01.2012, Phase III - 25.02.2012, Phase IV - 21.04.2012). A probability list containing register number of candidates who were found provisionally eligible to be included in the ranked list, subject to the verification of the original documents and cycling test for selection to the above post on the basis of Objective Type Test (OMR) held in four phases, was published on 5.2.2014 by including 4771 candidates in the main list and 4702 candidates in the supplementary list. The last candidate, who was included in the main list of the ranked list, secured 92.0139 marks.

It was further stated that certificate verification and cycling test were conducted at all the District Offices of the Commission except Thiruvananthapuram as well as the Head Office from 24.3.2014 to 31.3.2014. As per the notification women and PH candidates were exempted from the cycling test. Out of the total number of 9473 candidates included in the probability list, 5547 candidates were present for certificate verification taking together all

the phases of verification. The ranked list for the post was published on 16.6.2014, including 2854 candidates in the main list and 2632 candidates in the supplementary lists. Altogether, 5846 candidates are included in the above ranked list.

It was further contended that the question is no more *res integra* in view of the Full Bench decision of this Court in **Ravidas v. Public Service Commission** [2009 (2) KLT 295(FB)] wherein it was held that candidates have no right to claim that all the vacancies arising over a period of three years from the finalisation of the ranked list should be filled up only from that ranked list and that recruitment by the PSC is a continuing and on going process, and every year thousands and thousands of students pass out from educational institutions and if the contention of the candidates that PSC should prepare ranked list large enough to fill up all vacancies arising during a period of three years from its publication is accepted the students who pass out afresh would have to wait for years after completion of

their studies to even apply for employment. The Full Bench further held that the PSC is only to decide on the number of candidates to be included in a ranked list based on the vacancies actually reported to them at that time.

It was further stated that Rule 11 of the Rules of Procedures of KPSC empowers the commission to take a decision whether any candidate possess the prescribed qualifications for the post, the basis on which marks should be awarded, the minimum of marks for the inclusion in the ranked list, the manner in which the practical examination, physical efficiency test or any other test of examination has to be conducted and to decide upon any other matter incidental to the selection. Rule 4 stipulates that where a written examination or a practical test is conducted for recruitment to a service or post, the commission shall announce the qualification, conditions of admission to the examination, the number of vacancies to be filled up and invite applications. They make arrangements to conduct the examination for

the candidates whose applications are found to be in order and prepare a list in the order of merit of such number of candidates as the commission may determine from time to time.

It was further stated that as per the guidelines issued in Circular No.30/2003, it is open to the commission to decide on the number of vacancies reported to them, the number of candidates advised from the previous list, nature of post and chances of occurrence of vacancies in future. Thus, all the guidelines prescribed were strictly adhered to in the present case as well. In W.P(C) No.14783 of 2014 all the vacancies reported upto the finalization of probability list were considered in deciding the number of candidates to be included in the probability list. The decision was taken by the commission on consideration of all relevant factors and the law.

The previous ranked list for the post was brought into force w.e.f 3.7.2006 by including 2102 candidates in the main list and 653 candidates in the supplementary lists altogether. The list was

cancelled on 2.7.2009. The total number of candidates advised upto the date of cancellation of that ranked list was 1881. More candidates are included in the instant ranked list compared to the previous ranked list.

It was further stated that the minimum period of validity of a list is one year and three years is only the maximum period of validity. The main objective of the commission is to conduct annual selection as far as possible. Hence. If a ranked list gets exhausted, naturally the next selection process would be initiated soon so that fresh qualified candidates can complete for selection giving opportunities to more competent candidates.

5. Arguments have been heard.

6. Even though more than 8 lakhs candidates appeared for the written examination, only 4471 candidates were included in the short list. Among these candidates only 2418 candidates have appeared for certificate verification and cycling test. The petitioners point out that

even as on the date of filing of the writ petitions, they were more than 2500 vacancies in existence, in addition to the anticipated vacancies during the next three years. Therefore, according to the petitioners, it is only just and reasonable to include sufficient number of candidates in the short list and the refusal to do so is arbitrary, illegal and violative of Article 14 of the Constitution of India.

7. The learned senior counsel for the petitioners in W.P(C) No.14783 of 2014 submits that on various occasions PSC has revised the short list after realising that sufficient number of candidates are not available based on the number of vacancies. It was pointed out that this revision would not affect anybody, including the persons already shown in the short list. The additions would be only to the lower ranks based on the marks secured by them. Therefore, the revision of short list is only a method that can be followed by PSC for including sufficient number of candidates depending upon the number of vacancies.

8. The petitioners came out successful in the written test. However, they were not included in the short list. They were not aware of the marks secured by them. However, they honestly believed that if sufficient number of candidates are included in the short list which is thrice the number of vacancies, naturally the petitioners would also come in the short list. Apart from the existing vacancies, there will be anticipated vacancies also that will arise during the next three years. Most of the petitioners are getting over aged and they might not be able to participate in the next selection. However, if sufficient number of candidates are included in the present short list, the petitioners would get a place in the short list, Nobody is going to be affected in by the said enlargement of the short list in view of the large number of vacancies in existence. On the other hand, the enlargement of the short list would give opportunity to the petitioners to get appointment.

9. Here it is useful to see the observation made by the Apex

Court in **A.K.Yadav** v. **State of Haryana** [(1985) 4 SCC 417] that even though there is no statutory rule prescribing the number of vacancies to be included in the short list or in the ranked list, it is advisable to include minimum thrice the number of candidates in the short list and in the ranked based on the number of vacancies.

10. The petitioners obtained details regarding the vacancies available in various corporations, board, Government owned companies and that was produced along with W.P(C) No.14783 of 2014 as Ext.P3. Thereafter the petitioners obtained the number of vacancies as well as the anticipated vacancies from the other Government owned companies, corporations etc. True copy of the chart prepared by the petitioners showing the existing vacancies as well as anticipated vacancies is produced as Ext.P6 in that writ petition. It is clear from Ext.P6 that as on 23rd September, 2014, 1135 vacancies are in existence and 80 vacancies are anticipated.

11. The decision reported in **Ravidas** v. **Public Service**

Commission (cited supra) relied on by the PSC is not applicable to the facts of this case. In W.P(C) No.14783 of 2014, applications were called on 30.11.2009 and the ranked list was published only on 16.6.2014. Thus, more than five years were taken by the PSC for publishing the ranked list. Therefore, the contention that the ranked list were going to be published in very year is incorrect.

12. The respondents themselves have admitted that the previous ranked list was published on 3.7.2006. The present ranked list is coming on 16.6.2014, i.e., after a gap of eight years. Naturally, the candidates included in the ranked list could get appointment in the vacancies upto 15.6.2017. This is possible only by enlarging the ranked list by including sufficient number of candidates. That is what is requested by the petitioners.

13. The contention of the respondents that suitable and eligible unemployed persons would also get opportunity for selection if the selection is conducted annually is correct. However, it has to be

noted that the persons like the petitioners are also qualified and unemployed. That is why, they participated in the process of selection. According to the PSC, they have not prescribed any cut off marks. They would say that they have only shown the marks secured by the person who is the lowest in the rank, just for transparency. Normally, thrice the number of candidates could have been included in the list so as to get sufficient number of candidates. If the said principle is followed, no prejudice would be caused to anybody. It is evidence that the PSC while preparing the ranked list has not followed any principle in arriving at the number of candidates.

14. On a consideration of the entire materials now placed on record, this Court is of the view that the petitioners are entitled to succeed.

In the result, the writ petitions are disposed of directing the first respondent to enlarge the short list for appointment to the post of Last Grade Servants pursuant to Ext.P1 notification by

including sufficient number of candidates in proportionate with the number of vacancies in existence and anticipated. This shall be done within a period of two months from the date of receipt of a copy of this judgment. If the petitioners come within the short list so enlarged, they shall be advised for appointment in any of the Government owned companies, corporations, boards etc.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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