

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 22060 of 2014 (F)

PETITIONER:

**NAVEEN C.L.
S/O.C.C.LEON, CHULLICKAL HOUSE, N.P.ROAD
NEAR N.G.O. QUARTERS, VELLIMADUKUNNU P.O.
KOZHIKODE-673 012.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

- 1. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY THE SECRETARY
KERALA PUBLIC SERVICE COMMISSION, PATTOM
THIRUVANANTHAPURAM-695 004.**
- 2. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY THE MANAGING DIRECTOR
KERALA STATE ELECTRICITY BOARD, VAIDYUTHI BHAVAN
THIRUVANANTHAPURAM-695 001.**
- 3. THE MANAGING DIRECTOR
KERALA STATE ELECTRICITY BOARD, VAIDYUTHI BHAVAN
THIRUVANANTHAPURAM-695 001.**

**BY SRI.P.C.SASIDHARAN, SC, KPSC
BY SRI.K.S.ANIL, SC, KSEB**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT-P1 - COPY OF THE NOTIFICATION DATED 30.06.2009 PUBLISHED BY
THE 1ST RESPONDENT.
- EXHIBIT-P2 - COPY OF THE SHORT LIST DATED 12.08.2013.
- EXHIBIT-P3 - COPY OF THE RANKED LIST DATED 16.07.2014.
- EXHIBIT-P4 - COPY OF THE REPRESENTATION DATED 02.08.2014
SUBMITTED BY THE PETITIONER BEFORE THE 1ST
RESPONDENT.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.22060 of 2014

Dated this the 9th day of November, 2015.

JUDGMENT

The petitioner is concerned with Ext.P3 list, and the non-inclusion of more candidates in the list. The allegation is that the minimal number of candidates included thereunder, would prejudice the large number of persons who appeared in the selection process pursuant to Ext.P1 notification. Ext.P1 was the notification for selection and appointment to the post of Assistant Engineer (Civil) in the respondent Board. The reliance placed by the petitioner is on the recital in Ext.P1, which, according to him, indicates that 100 candidates would be included in the main list with necessary number of candidates in the supplementary list of the short-list/ probability list. The contention seems to be that the above said recital in Ext.P1 would apply to both Exts.P2 and

P3 lists. Ext.P3 contains only 44 candidates in the main list and on exhaustion of the same the selection would come to an end; while there would be vacancies remaining unfilled; which arose during the currency of the list.

2. The learned Standing Counsel for the Public Service Commission however would contend that, even as on the date of filing of the Counter Affidavit, there were only 22 vacancies available to be filled up in the KSEB from the rank-list published at Ext.P3. It is also contended that the recital in Ext.P1 relied on by the petitioner is with respect to Ext.P2 list, which was drawn up following the judgment of the Full Bench of this Court in ***Ravidas v. Public Service Commission [2009 (2) KLT 295]***.

3. The learned counsel for the petitioner would however rely on the judgment of another Single Judge of this Court in WP(C) No.14291 of 2014 dated 17.03.2015; wherein a distinction was drawn from the Full Bench decision and in a similar case, the main list and the rank-list was directed to be expanded.

4. A reading of Ext.P1 would indicate that though only 22 candidates were notified as per Ext.P1, the PSC, anticipating

further vacancies that would arise, had indicated that about 100 candidates will be included in the main list. The main list referred to, is in Ext.P2. The said specification was in fact following the dictum laid down by the Full Bench of this Court in the aforecited decision, following the decisions of the Hon'ble Supreme Court.

5. It is an established proposition that the Commission has to decide on the number of candidates to be included in the main list based on the vacancies actually reported to them and based on vacancies anticipated. The number of candidates to be called for the interview in the order of the marks obtained in the written examination also should not exceed twice or at the highest thrice the number of vacancies to be filled. Such list drawn up on the basis of the written examination is called the short-list. The short-list published by the PSC indicated at Ext.P2, contained 98 persons in the main list according to their rank, which is in consonance with the recital that there would at least 100 persons figuring in the main list. In this context, it is to be noticed that Ext.P2 list was published on 12.08.2013 and it is the specific submission of the learned Standing Counsel for the Board that

even at the time of filing of the Counter Affidavit, ie. on 18.09.2014, there were only 22 vacancies reported to the PSC. Hence, in Ext.P2, the PSC included far more than 3 times of the vacancies, but however probably on the anticipation that some vacancies would arise later to the publication of list also. In fact, Ext.P2 list contains 98 persons in the main list and about 271 persons in the supplementary list.

6. Interview was conducted and a rank-list was prepared at Ext.P3. Even then, it is to be noticed that the available vacancy was only 22. The PSC included 44 persons in the main list and also quite a number of persons in the supplementary list. This is again double the number of vacancies reported. The present challenge to Exts.P2 and P3 is based on the fact that the issuance of advice for appointment would cease at the time when all the 44 candidates have been advised from the main list. At the present point, there are about additional 20 vacancies and the petitioner seeks expansion of the list, so as to keep it alive and permit advice to more candidates, during the validity period of the list, which can be up to 2017, ie. up to 3 years from Ext.P3.

7. In this context, the time during which the selection was pending, which was specifically noticed by the Full Bench assumes significance. A Full Bench of this Court, in the aforecited decision, specifically found that the PSC cannot be asked to bring out a new list every year based on one single selection, since there would be more persons qualified in the meanwhile and they would be declined an opportunity, if no fresh notification is brought out. In the present case, it has to be noticed that the notification itself was as on 30.06.2009 and the list was published after 5 years, in 2014, with a minimum validity period of one year and maximum period of 3 years. Even at the time when Ext.P3 list came out, there were only 22 vacancies and the inclusion of 44 persons in the main list was also in accordance with the decision of the Full Bench.

8. The decision in WP(C) No.14291 of 2014 does not apply in the present case, primarily for the reason that the said recruitment was to a last grade post in the various Departments, while the present recruitment is to a Technical post in the KSEB, where higher qualification is the prescription. Further, it has to be

noticed that, therein the vacancies existing were 2500 and only 4771 candidates were included in the main list before the rank-list was published. The petitioner had established before Court that there were in fact 2500 vacancies existing as on the date of publication of the list. It was in that context that the learned Single Judge found that there could be included at least three times the probable number of vacancies in the main list, published by the PSC, as laid down by the Hon'ble Supreme Court.

9. Herein, it has been specifically contended that even at the time of filing of the Counter Affidavit, there were only 22 vacancies existing. Hence, the vacancies, that are now existing, arose after 2014, 5 years since the notification was published. Definitely there would be fresh qualified hands who would also be entitled to be considered if a fresh selection is made. Going by the dictum of the Full Bench, this Court is unable to find any infirmity in the list prepared as per Exts.P2 and P3.

The alternate contention with respect to fixation of cut off marks is also not tenable to cause interference of the list. The

specific contention in the Counter Affidavit is that no cut-off marks was prescribed and at the time of short-listing, the required number of persons were selected from the rank-list, considering the vacancies available and the last person had obtained 36 marks and all candidates who secured identical marks were also included. This was the specific procedure adopted by the PSC, in the selections, which were the subject-matter before the Full Bench. The contention of the PSC was upheld by the Full Bench. Hence that ground also cannot be sustained and the list at Ext.P2 & P3 are upheld.

The writ petition hence would stand dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

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P.A. to Judge.

sp/09/11/15