IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

OP(KAT) NO. 449 OF 2018

AGAINST THE ORDER DATED 08.06.2018 IN OA NO.759 OF 2018 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS:

1 KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY THE SECRETARY, PATTOM PALACE P.O.,
THIRUVANANTHAPURAM-695 016, KERALA.

2 THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION, DISTRICT OFFICE, KOLLAM CORPORATION BUILDING,
ANDAMUKKOM, KOLLAM-691 001, KERALA.

BY ADV P.C.SASIDHARAN

RESPONDENTS:

1 DHANUJA KRISHNAN, AGED 31 YEARS, W/O.SUMESH.S.,
RESIDING AT KRISHNALAYAM, ASHTAMUDY P.O.,
KOLLAM, KERALA-691 602.

2 STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001, KERALA.,

3 DIRECTOR OF HEALTH SERVICES,
DIRECTORATE OF HEALTH SERVICES,
THIRUVANANTHAPURAM-695 035, KERALA.

4 DISTRICT MEDICAL OFFICER,
KOLLAM CIVIL STATION, KOLLAM-691 001,
KERALA.

**ADDL.R5 ANEESH A. AGED 27 YEARS
S/O. ASHOKAN, AYIRAMVALALIL, ALUMKADAVU P.O.,
KARUNAGAPPALLY, KOLLAM DISTRICT.**

**ADDL.R6 SHANUJ KHAN, AGED 27 YEARS, S/O. SHAJAHAN,
AALAYIL VADAKKETHIL, MUKKOM, MAYYANAD P.O.,
KOLLAM DISTRICT.**

**ADDL.R7 VIDYA R., AGED 32 YEARS, D/O. RAJENDRAN S.,
SOUPARNIKA, ISLAND NAGAR-81, ULIYAKOVIL P.O.,
KOLLAM DISTRICT-691019.**

**ADDL.R8 SOBHI S. DER.,
AGED 37 YEARS, D/O. SAHADEVAN, PANAVILA VEEDU,
PERUMPUZHA P.O., KOLLAM DISTRICT-691504.**

**ADDL.R9 AMRUTHA R. SATHYAN,
AGED 33 YEARS, D/O. SATHYADEVAN, SARADAMANDIRAM,
NEDUMPANA P.O., KOLLAM DISTRICT.**

**ADDL.R10 SIMI M.P.,
AGED 42 YEARS, D/O. MOHANAN S., VELLAMANALIL
VEEDU, ULIYAKOVIL, KOLLAM DISTRICT.**

**ADDL.R11 SIMI J., AGED 35 YEARS, D/O. JINACHANDRAN,
MANOJ BHAVAN, CHERIKONAM, KANNANALLOOR P.O.,
KOLLAM DISTRICT.**

**ADDL.R12 SALINI L., AGED 36 YEARS, D/O. SASIDHARAN N.,
SREERAJARANGOM, KALLELIBHAGOM, KARUNAGAPPALLY.**

**ADDL.R13 REENA MOL K, AGED 25 YEARS, D/O. KUNJUMOL,
JO BHAVANAM, MARUTHAMONPALLY, POOYAPALLY P.O.,
PIN-691537.**

**ADDL.R14 MARY RANI T.M., AGED 30 YEARS, D/O. THOMAS
KURIAN, MIJO BHAVAN, ALUMMOODU P.O.,
MUKHATHALA, KOLLAM DISTRICT-671577.**

**ADDL.R15 REKHA S. NAIR, AGED 37 YEARS, D/O. R.SASIDHARAN
PILLAI, VENKALATHU KIZHAKKATHIL PUTHEN VEEDU,
PULAMON (P.O.), KOTTARAKKARA, KOLLAM, PIN-691531.**

**ADDL.R16 ANUPAMA S., AGED 27 YEARS, D/O. SOMARAJAN (LATE),
THUNDUVILA VEEDU, PALLIMON P.O.,
KOLLAM DISTRICT-691576.**

(ADDITIONAL RESPONDENTS R5 TO R16 ARE IMPLEADED AS PER ORDER DATED 04/09/2019 IN IA 1/19 IN OP(KAT) 449/18)

ADDL.R17 SHEEJA A, AGED 41 YEARS, W/O.K P ALEX, LOVE SHORE, AMBALAKKARA P.O., VALAKOM, KOTTARAKKARA, KOLLAM -691532

(ADDITIONAL RESPONDENTS R17 AND R18 ARE IMPLEADED AS PER ORDER DATED 04.07.2024 IN IA 1/2024 IN OP(KAT)449/2018)

ADDL.R18 MINI LUKOSE, AGED 42 YEARS, W/O SHIBU THANKACHAN, BIJU BHAVAN, PANGODU, VELIYAM P.O., KOLLAM-691540.

(ADDITIONAL RESPONDENTS R17 AND R18 ARE IMPLEADED AS PER ORDER DATED 04.07.2024 IN IA 1/2024 IN OP(KAT)449/2018)

BY ADVS.
SRI.SAJU JOHN
SRI.M.V.THAMBAN
P.NANDAKUMAR
SRI.R.REJI
SRI.V.VARGHESE
SRI.JELSON J.EDAMPADAM
SMT.THARA THAMBAN
SRI.ARUN BOSE
SRI.B.BIPIN
VIVEK VIJAYAKUMAR
SILPA SREEKUMAR
MERIN K JIMMY
BY SENIOR GOVERNMENT PLEADER, SMT.VINITHA B.

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 22.07.2024, ALONG WITH OP(KAT).354/2019, THE COURT ON 01.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

OP(KAT) NO. 354 OF 2019

AGAINST THE ORDER DATED 08.06.2018 IN OA(EKM) NO.759 OF 2018 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS:

1 VIDYA R., AGED 32 YEARS,
D/O.RAJENDRAN S., SOUPARNIKA, ISLAND NAGAR-81,
ULIYAKOVIL P.O., KOLLAM - 691 019.

2 ANEESH A., AGED 27 YEARS,
S/O.ASHOKAN, AYIRAMVALALIL, ALUMKADAVU P.O.,
KARUNAGAPPALLY, KOLLAM DISTRICT,
PIN - 690 573.

3 SHANUJ KHAN, AGED 27 YEARS,
S/O.SHAJAHAN, AALAYIL VADAKKETHIL, MUKKOM,
MAYYANAD P.O., KOLLAM DISTRICT, PIN - 691 303.

4 AMRUTHA R.SATHYAN, AGED 33 YEARS
D/O.SATHYADEVAN, SARADAMANDIRAM, NEDUMPANA P.O.,
KOLLAM DISTRICT, PIN- 691 576.

BY ADVS.
M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE

RESPONDENTS:

1 DHANUJA KRISHNAN, AGED 31 YEARS,
W/O.SUMESH S., RESIDING AT KRISHNALAYAM,
ASHTAMUDY P.O., KOLLAM - 691 602.

2 STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM - 695 001, KERALA.

3 KERALA PUBLIC SERVICE COMMISSION, REPRESENTED BY THE SECRETARY, PATTOM PALACE P.O., THIRUVANANTHAPURAM - 695 016, KERALA.

4 THE DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION, DISTRICT OFFICE, KOLLAM CORPORATION BUILDING, ANDAMUKKOM, KOLLAM - 691 001, KERALA.

5 DIRECTOR OF HEALTH SERVICES, DIRECTORATE OF HEALTH SERVICES, THIRUVANANTHAPURAM - 695 035, KERALA.

6 DISTRICT MEDICAL OFFICER, KOLLAM CIVIL STATION, KOLLAM - 691 001, KERALA.

BY ADVS.
SRI.SAJU JOHN
BY SENIOR GOVERNMENT PLEADER. SRI.BIJOY CHANDRAN
SRI.P.C.SASIDHARAN, SC, KPSC
SRI.V.VARGHESE

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 22.07.2024, ALONG WITH OP(KAT).449/2018, THE COURT ON 01.08.2024 DELIVERED THE FOLLOWING:

JUDGMENT

[OP(KAT) Nos.449/2018, 354/2019]

Harisankar V. Menon, J.

These two connected original petitions under Articles 226 and 227 of the Constitution of India have been filed challenging the directions contained in the order dated 08.06.2018 in OA(EKM) No.759 of 2018 by the Kerala Administrative Tribunal, Thiruvananthapuram (for short, the 'Tribunal'). OP(KAT) No.449 of 2018 is filed by the respondents in OA(EKM) No.759 of 2018 against the applicant before the Tribunal. OP(KAT) No.354 of 2019 is filed by the petitioners who were not parties to the original application before the Tribunal, pointing out that they have been included in the ranked list for appointment to the post of Staff Nurse Grade-II in Kollam District, that came into effect from 16.07.2018 and on account of the order issued by the Tribunal in the original application filed as above, they are prejudicially effected.

2. The short facts necessary for the disposal of these original petitions, as culled down from OP(KAT) No.449 of 2018 are as under:

The respondent in the original petition-applicant before the

Tribunal had applied to the post of Staff Nurse Grade-II in the Health Services Department of the State Government. Pursuant to the exams conducted for each of the Districts in Kerala separately, the first respondent herein was included in Annexure A1 ranked list at rank No.124. The ranked list came into force with effect from 30.10.2013 and was to expire on 30.10.2016. The validity of the ranked list was, however, extended till 31.12.2016 by the Kerala Public Service Commission (for short, 'KPSC'). On 30.12.2016, KPSC again issued a notification to extend the rank lists which were to expire, for a further period of six months from 31.12.2016. However, there was a condition attached to such extension to the effect that, the extension would not be applicable to those rank lists whose validity period had already been extended by notification dated 29.06.2016 and was to expire on 31.12.2016. On account of the above condition attached to the notification, Annexure A1 ranked list with respect to Kollam District was not extended, whereas, the ranked lists with respect to certain other Districts were granted the extension.

3. The condition as above, was the subject matter of challenge before this Court in W.P(C) No.4178 of 2017. By a judgment dated 19.06.2017 reported as **Gopakumar N. and others v. State of Kerala and another (ILR 2017 (4) Ker**

500), it was found as under:

> "21. In these circumstances of the case, the decision leading to Ext.P18 can only be found to be one arrived at without considering relevant factors. The allegation of the petitioners that the PSC has adopted such a procedure for the first time in its history is not disputed. It is pertinent to note that there is no denial of the allegations raised by the petitioners regarding the extension by Ext.P18. The candidates like the petitioners who got into a rank list with much effort, cannot be subjected to such unfair and discriminatory treatment, which deprives not only their fundamental right for equality before law and equal opportunity for employment under the State, but their right to livelihood also in violation of Art.14. Art.16 and Art.21 of the Constitution of India In the above circumstances, it is declared that condition No.1 in Ext.P18, which excludes the ranked lists covered by Ext.P16, from the benefit of extension is arbitrary and hence the ranked lists Exts.P2 to P15 are entitled to the benefit of extension as per Ext.P18 notification."

Thus, this Court found that condition No.1 referred to above is arbitrary and therefore, the benefit of extension is to be given to other ranked lists also.

4. Though, an appeal is preferred against the above judgment, by KPSC, a Division Bench of this Court has confirmed the judgment of the learned Single Judge, by a judgment dated 01.03.2018 in WA No.2255 of 2017.

5. On account of the above, when the vacancy arose with respect to Kollam District, for the period from 01.01.2017 to 30.06.2017, KPSC did not take any steps to report vacancies and to make appointments from Annexure A1 rank list. In such circumstances, OA(EKM) No.759 of 2018 was filed before the Tribunal by the 1st respondent herein praying for a direction to the District Medical Officer to compute the substantial vacancies which arose during the period from 31.12.2016 to 30.06.2017 and report the same and also for a direction to advise those included in Annexure A1 list on the basis of the report of the District Medical Officer. The Tribunal has disposed of the above original application by the impugned order dated 08.06.2018, with the following directions:

> "On consideration of the facts, it is noted that the benefit as granted in the judgment in WP(C)4178/2017 dated 19.6.2017 has been extended to Annexure A1 ranked list for the post of Staff Nurse in Kollam district as well. It is also noted that the fifth respondent has already reported 34 vacancies which had occurred during 31.12.2016 to 30.6.2017 to the third respondent for advice and appointment from Annexure A1 ranked list. The Public Service Commission is therefore bound to issue advices against the reported vacancies in accordance with the directions of this Tribunal and the judgments of the Hon'ble High Court.

> It is noted that the issue is no longer res integra and in so far as the judgment of the Division Bench of the Hon'ble High Court not being set aside or reversed by the Hon'ble Supreme Court, the above judgment operates as a precedent in the light of the dictum laid down by a Division Bench of the Hon'ble High Court in **Abdu Rahman v. District Collector, Malappuram and others [2009 (4) KLT 485]**. The Public Service Commission is therefore bound by the directions of the Hon'ble High Court and to grant the benefit of extension to Annexure A1 ranked list. The original application is accordingly disposed of.

Thus, the Tribunal relied on the judgment of this Court referred above, and the already reported 34 vacancies which occurred from 31.12.2016 to 30.06.2017 and held that KPSC is bound by the directions issued by this Court and grant the benefit of extension to Annexure A1 rank list also.

6. It is aggrieved by the above order, that respondents 2 and 3 in the original application before the Tribunal have preferred OP(KAT) No.449 of 2018. On 16.07.2018, another rank list came into effect and the petitioners in OP(KAT) No.354 of 2019 claim that they are highly aggrieved by the impugned order of the Tribunal, on account of which, they are also challenging the said order.

7. On 19.12.2018, this Court admitted OP(KAT) No.449 of 2018, staying the operation and implementation of the impugned

order of the Tribunal. It is also held that, no fresh appointments based on any subsequent recruitments as against the post covered by the relevant notification which led to the publication of the list in question, be made without obtaining orders from this Court. The said order has since been modified by this Court on 25.10.2019, holding that no fresh appointments based on any subsequent recruitment shall be made to the vacancies that had arisen during the period from 31.12.2016 to 30.06.2017. An application for impleading filed by additional respondents 17 and 18, who also claim that they are included in the same Annexure A1 ranked list, was allowed by this Court on 04.09.2019, and they were also included in the party array. OP(KAT) No.354 of 2019 is admitted by this Court on 03.09.2019.

8. We have heard the learned Standing Counsel appearing for the petitioners in OP(KAT) No.449 of 2018, the learned counsel for the petitioners in OP(KAT) No.354 of 2019, the learned counsel appearing for the 1st respondent in both these cases, the learned Senior Government Pleader appearing for respondents 2 to 4 in OP(KAT) No.449 of 2018 and respondents 2, 5 and 6 in OP(KAT) No.354 of 2019. We also heard the learned counsel appearing for additional respondents in OP(KAT) No.449 of 2018.

9. The learned Standing Counsel appearing for the petitioners in OP(KAT) No.449 of 2018, contends that the original application before the Tribunal was presented only on 20.03.2018 and therefore, there is no cause of action available for the respondents herein. He pointed out that even if there is any cause of action, the same is hit by delay and laches and there is no separate petition for condoning the delay in approaching the Tribunal. He also pointed out to the new rank list, which came into force with effect from 16.07.2018, and contended that the Tribunal ought not have issued the directions through the impugned order, in favour of the 1st respondent. The learned Standing Counsel also relies on the judgment of the Apex Court in **Thulaseedharan v. K.P.S.C. [2007 (3) KLT 19]**, rendered by the Apex Court, to contend that KPSC cannot revive or keep alive an expired ranked list, and also the judgment of this Court in **Subina v. State of Kerala [2019 (3) KLT 735]** to contend that KPSC cannot be compelled to extend the period of validity of the ranked list.

10. The learned counsel appearing for additional respondents 5 to 16 has also supported the stand of KPSC, insofar as they are included in the new list which came into effect on 16.07.2018.

11. Per contra, the learned counsel appearing for the 1st respondent in both these original petitions pointed out that there is no delay as alleged in approaching the Tribunal, that the application was presented before the Tribunal based on the vacancies which arose after 31.12.2016 till 30.06.2017. He also pointed out that the judgment of the Division Bench, confirming the judgment of the learned Single Judge, both of which have been relied on in the order issued by the Tribunal, has been confirmed by the Apex Court in the order dated 15.02.2022 in SLP(C) Nos.9111-9124 of 2018.

12. We have considered the rival submissions and the connected records.

13. The short issue for consideration in these original petitions is with reference to the directions issued by the Tribunal in the impugned order. It is an admitted case that the 1st respondent was included in the ranked list at Annexure A1 which was once extended till 31.12.2016. The validity of such ranked lists, which were to expire by 31.12.2016 was extended, with a rider that extension would not be applicable to the lists that were already once extended. The above rider has been held to be arbitrary by this Court in **Gopakumar N. [ILR 2017 (4) Ker 500]**. The said judgment is confirmed by a Division Bench of this

Court also. The original petition is filed by KPSC mainly pointing out that the judgment of the Division Bench is challenged before the Apex Court and there is a *status quo* order by the Apex Court. However, it is seen that the Apex Court has since dismissed the above Special Leave Petitions, on account of which, the judgment in **Gopakumar N. [ILR 2017 (4) Ker 500]** holds the field. Therefore, the directions issued by the Tribunal with respect to Annexure A1 ranked list, cannot be said to be illegal. So also, the submission of the learned Standing Counsel for the petitioners herein, that the application before the Tribunal was belated, is also not correct.

14. In the application before the Tribunal, it has been specifically pointed out that there are vacancies which arose between the period from 31.12.2016 to 30.06.2017 and it is on that basis, the original application is presented. The Tribunal has also rightly noticed the above vacancies (34 vacancies) and issued necessary directions in that regard. We find no reason to interfere with the above directions. The judgments relied on by the learned Standing Counsel for KPSC are also not applicable to the facts and circumstances of the case at hand, since those judgements were rendered with reference to the power of KPSC to revalidate the time-expired ranked list and also in a situation where KPSC is

being compelled to extend the period of the ranked list based on the power available to it. Here, KPSC has already extended the validity of certain rank lists with certain conditions and the said condition is found to be arbitrary by a learned Single Judge of this Court. The said finding has since been upheld by the Division Bench and the Special Leave Petition has also been rejected by the Apex Court. Therefore, we find no reason to interfere with the impugned order of the Tribunal, challenged in OP(KAT) No.449 of 2018.

For the same reasons, we find no merit in OP(KAT) No.354 of 2019 filed by the third parties, who claim the benefit of their inclusion in the subsequent list which came into effect on 16.07.2019. Therefore, both the captioned original petitions are dismissed.

Sd/-

ANIL K.NARENDRAN

JUDGE

Sd/-

HARISANKAR V. MENON

JUDGE

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APPENDIX OF OP(KAT) 354/2019

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE RANK LIST OF STAFF NURSE GRADE-II, IN KOLLAM DISTRICT VIDE CATEGORY NO.454/2016.**
EXHIBIT P2	**TRUE COPY OF THE MEMORANDUM OF O.A.(EKM) NO.759/2018 OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM (CAMP SITTING AT ERNAKULAM).**
EXHIBIT P2-ANNEXURE A1	**TRUE COPY OF THE RELEVANT PAGES OF THE RANK LIST OF STAFF NURSE GRADE II IN KOLLAM DISTRICT.**
EXHIBIT P2-ANNEXURE A2	**TRUE COPY OF THE ORDER OF THE HON'BLE TRIBUNAL PASSED IN O.A.(EKM) NO.125 OF 2017 DATED 29/06/2017.**
EXHIBIT P3	**TRUE COPY OF THE ORDER DATED 08/06/2018 IN O.A.(EKM) NO.759/2018 OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM (CAMP SITTING AT ERNAKULAM).**
EXHIBIT P4	**TRUE COPY OF THE ORDER DATED 16/04/2018 IN S.L.P.NO.9111/2018 OF THE HON'BLE SUPREME COURT OF INDIA.**

APPENDIX OF OP(KAT) 449/2018

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE O.A.NO.759 OF 2018 WITH ITS ANNEXURES.**
ANNEXURE A1	**TRUE COPY OF THE RELEVANT PAGES OF THE RANK LIST OF STAFF NURSE GRADE II IN KOLLAM DISTRICT**
ANNEXURE A2	**TRUE COPY OF THE ORDER OF THE HON'BLE TRIBUNAL PASSED IN O.A.(EKM) NO. 125 OF 2017 DATED 29.06.2017**
EXHIBIT P2	**TRUE COPY OF THE ORDER IN O.A.NO.759/2018 DATED 08.06.2018.**
EXHIBIT P3	**TRUE COPY OF THE ORDER OF THE HON'BLE SUPREME COURT IN S.L.P.**