

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 6TH DAY OF AUGUST 2019 / 15TH SRAVANA, 1941

OP(KAT).No.295 of 2019

(AGAINST THE ORDER DATED 15.7.2019 IN O.A.(EKM)NO.1176/2019 OF THE
KERALA ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM)

PETITIONERS/APPLICANTS IN O.A.(EKM):

- 1 SUBINA S., AGED 31 YEARS,
D/O. SADANANDAN A.M.,
ANANDA MANDIRAM HOUSE,
KARIYAD SOUTH POST,
KANNUR DISTRICT, PIN-673 316.
- 2 VASUNNI K.S, AGED 36 YEARS,
S/O. SWAMIDAS K.V,
MUKKARAMKAD HOUSE,
KOTTEKKAD P.O.,
PALAKKAD - 678 762.
- 3 ABDUL RASHEED M., AGED 31 YEARS,
S/O. ABDU SALAM,
MATTARA HOUSE,
KAKKAD POST, THIRURANGADI,
MALAPPURAM DISTRICT - 676 306.
- 4 PREMKUMAR M.P., AGED 36 YEARS,
S/O. RADHALAKSHMI,
MUTHEDATHPADI, MUTHUTHALA P.O.,
PATTAMBI, PALAKKAD - 673 032.

BY ADVS.

SRI.ABDUL JAWAD K.

SMT.A.GRANCY JOSE

OP(KAT)NO.295/2019

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RESPONDENTS/RESPONDENTS IN O.A.(EKM):

- 1 THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 THE DIRECTOR OF COLLEGIATE EDUCATION,
DIRECTORATE OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 033.
- 3 THE PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY,
PATTOM, THIRUVANANTHAPURAM - 695 004.

R1 & R2 BY SRI.ANTONY MUKKATH, GOVT. PLEADER

THIS OP(KAT) HAVING COME UP FOR ADMISSION ON 05.08.2019, THE COURT ON 06.08.2019 DELIVERED THE FOLLOWING:

Judgment

Chitambaresh, J.

1.Can the Kerala Public Service Commission ('the PSC' for short) be compelled by the issue of a writ of mandamus to extend the period of validity of a ranked list?

2.The enabling provision can be found in the fifth proviso to Rule 13 of the Kerala Public Service Commission Rules of Procedure ('the Rules' for short) which is extracted below for easy reference:

“Provided further that if the Commission is satisfied of the existence of a period of general ban declared by the Government on the reporting of vacancies to the Public Service Commission or of any other circumstances or of any extra-ordinary situation in which the reporting of vacancies by the appointing authorities is prevented or restricted or delayed, the Commission shall have the power to keep alive the Ranked Lists which are normally due to expire during the said period for such periods as may be decided by the Commission subject to a minimum period of three months or for such further periods but not exceeding one and a half year in the aggregate. If the Commission so decides it shall issue a Notification keeping alive the Ranked Lists in the above manner and shall advise candidates from such Ranked Lists to the vacancies

reported during such extended period of validity of the Ranked List.” (emphasis supplied)

The statutory provision is only a source of power to the PSC to keep alive a ranked list which is due to expire on certain contingencies and is not coupled with any mandatory duty to so exercise it on every occasion.

3.The PSC by its decision dated 8.4.2019 rejected the request of the petitioners for extending the validity of the ranked list for appointment to the post of Lecturer in Economics which was to expire on 30.5.2019. The said decision is challenged by the petitioners (who find a place in the ranked list) pointing out that the power under the fifth proviso to Rule 13 of the Rules has not been exercised. The grounds highlighted by the petitioners are:

i. The validity of the previous ranked list was extended thereby the vacancies which would have otherwise been filled up from this ranked list were exhausted;

ii. The Government did not sanction sufficient number of posts despite the recommendation of the Director of Collegiate

Education due to financial stringency;

iii. The post-flood scenario in the State of Kerala followed by the Model Code of Conduct preceding the general election impeded steps for fresh appointment to the post.

The above conditions even if it been in existence cannot compel the PSC which is an autonomous constitutional body to extend the period of validity of the ranked list merely for the reason that there exists a power.

4. The preparation of ranked lists by the PSC is an ongoing process from which ensuing vacancies can be filled up and mere empanelment of the petitioners in a ranked list does not give an indefeasible right. The PSC cannot be faulted with if it decides that the ensuing vacancies could be filled up from the ranked lists being drawn up in succession to give opportunity for freshers. The PSC is well within its rights in deciding not to extend the validity of a ranked list notwithstanding the recommendation of the Government if there are justifiable reasons. A case for interference with the decision of the PSC may perhaps arise if different yardsticks are adopted in extending the validity of

several ranked lists covering the same period. The judgment in O.P.(KAT) No.323/2017(FB) and **Gopakumar N. and others v. State of Kerala and another** [2017 KHC 544] deal with such a situation and are distinguishable. It is true that the petitioners had moved the Tribunal earlier even before the expiry of the ranked list consequent to which the PSC took the impugned decision. But the validity of the ranked list had already expired on 30.5.2019 even before the present original application was filed on 10.7.2019 to which life cannot be infused later. The discretionary power available to the PSC to keep alive a ranked list under the Rules cannot at any rate be exercised after its expiry {see **Thulaseedharan v. KPSC** [2007(3) KLT 19(SC)]}. The order of the Tribunal rejecting the prayer of the petitioners to direct the PSC to extend the validity of the ranked list calls for no interference in this original petition.

The original petition is dismissed. No costs.

Sd/-

V. CHITAMBARESH, JUDGE

Sd/-

ASHOK MENON, JUDGE

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1	TRUE COPY OF ORIGINAL APPLICATION (EKM) NO. 1176/2019 ALONG WITH ITS ANNEXURES.
EXHIBIT P1 A1	TRUE COPY OF THE GAZETTE NOTIFICATION DATED 30.11.2012
EXHIBIT P1 A2	TRUE COPY OF THE RELEVANT PAGES OF THE RANK LIST IN CATEGORY NO. 585/2012.
EXHIBIT P1 A3	TRUE COPY OF THE ORDER IN O.A. (EKM) 459/19.
EXHIBIT P1 A4	TRUE COPY OF THE COMMUNICATION DATED 6/6/2019 RECEIVED BY THE 2ND APPLICANT AND OTHERS.
EXHIBIT P1 A5	TRUE COPY OF THE APPLICATION DATED 4/2/2019 SUBMITTED BEFORE THE 2ND RESPONDENT, UNDER THE RIGHT TO INFORMATION ACT.
EXHIBIT P1 A6	TRUE COPY OF THE REPLY DATED 2/3/2019 BY THE 2ND RESPONDENT UNDER THE RIGHT TO INFORMATION ACT.
EXHIBIT P1 A7	TRUE COPY OF THE RELEVANT PAGES THE RANK LIST NO. 352/09/SSIV, CATEGORY NO. 467/2007
EXHIBIT P1 A8	TRUE COPY OF THE APPOINTMENT CHART IN CATEGORY NO. 467/2007.
EXHIBIT P1 A9	TRUE COPY OF THE APPOINTMENT CHART IN CAT. NO. 467/2007.
EXHIBIT P1 A10	TRUE COPY OF THE APPOINTMENT CHART IN CATEGORY NO. 585/2012
EXHIBIT P1 A11	TRUE COPY OF THE NEWSPAPER REPORT IN THE ONLINE VERSION.
EXHIBIT P2	TRUE COPY OF ORDER DATED 15/7/2019 IN O.A. (EKM) 1176/2019 PASSED BY THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.