

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

FRIDAY, THE 10<sup>TH</sup> DAY OF MARCH 2023 / 19TH PHALGUNA, 1944

OP(KAT) NO. 92 OF 2023

(AGAINST THE INTERIM ORDER DATED 24.01.2023 IN OA (EKM) NO.168/2023 OF  
THE KERALA ADMINISTRATIVE TRIBUNAL)

**PETITIONER:**

KERALA PUBLIC SERVICE COMMISSION  
REPRESENTED BY ITS SECRETARY, PATTOM  
THIRUVANANTHAPURAM, PIN - 695004  
BY ADV P.C.SASIDHARAN

**RESPONDENTS:**

- 1 ARJUN GEETHA  
AGED 27 YEARS  
S/O RENJAN.M.K, CHERAKKAL HOUSE, VEZHAPARAMBU,  
MULAMTHURUTHY, KANAYANNOR TALUK, MULAMTHURUTHY -  
ERNAKULAM, KERALA., PIN - 682314
- 2 STATE OF KERALA  
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA,  
THIRUVANANTHAPURAM, PIN - 695001
- 3 SECRETARY TO GOVERNMENT  
DEPARTMENT OF SOCIAL JUSTICE, SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001

- 4 SECRETARY TO GOVERNMENT  
DEPARTMENT OF HOME, SECRETARIAT, THIRUVANANTHAPURAM,  
PIN – 695001
  
- 5 DIRECTOR GENERAL OF POLICE  
VELLAYAMBALAM, GAZHUTHACAUD RD., ALTHARA JUNCTION,  
NANDAVANAM, VAZHUTHACAUD, THIRUVANANTHAPURAM, PIN –  
695010

BY ADV KALEESWARAM RAJ

**OTHER PRESENT:**

ADV. THULASI K. RAJ., GP MARY BEENA JOSEPH

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR  
ADMISSION ON 10.03.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

## J U D G M E N T

S.V.Bhatti, J.

Kerala Public Service Commission/5<sup>th</sup> respondent in O.A (EKM) No.168/2023 is the petitioner. The O.P is filed challenging the interim order dated 24.01.2023, which reads thus as follows:

Admit. Learned Government Pleader takes notice for respondents 1 to 4. Learned Standing Counsel takes notice for the 5th respondent.

The applicant is permitted to submit application for the post of Sub Inspector of Police (Trainee) in Armed Police Battalion pursuant to Annexure A4, provisionally. There shall be a direction to the 5th respondent to process the said application purely on provisionally basis, subject to further orders. The respondents shall file statement as to the process for selection in the case of persons like the applicant in respect of physical qualifications prescribed in the notifications.

2. The circumstances and the cause of action preceding the initiation of the O.A (EKM) No. 168/2023 are briefly narrated as under:

2.1. Arjun Geetha/1<sup>st</sup> respondent before us, is a 'transman'.  
The 1<sup>st</sup> respondent placed on record Annexure A1 certificate in

form-3 dated 07.01.2022 issued by the District Magistrate, Idukki. The petitioner herein issued notification dated 31.12.2022 in the post of Armed Police Sub Inspector (Trainee) in the Armed Police Battalion. The 1<sup>st</sup> respondent applied for the post notified in Annexure-A2 notification. The application claims to have been successfully submitted, and the difficulty encountered by the 1<sup>st</sup> respondent is that the Annexure-A2 notification does not mention the physical standards for 'transgender persons'. The 1<sup>st</sup> respondent, having received the transgender certificate as 'man' from the District Magistrate, Idukki, is precluded from appearing in any of the posts to which women are made eligible. Under these circumstances, the 1<sup>st</sup> respondent moved the Tribunal, challenging Annexure- A5, which reads as follows:

“There are 1 reason(s) which make you ineligible to apply for this Post. All the reasons are due to the mismatch between Profile Data and requirement for the Post as per Special Rule.

Let us examine and rectify (if possible) one reason at a time. Read the Notification document and check the details in your Profile before proceeding”.

3. Briefly stated, the 1<sup>st</sup> respondent complained about denying employment opportunities for not providing opportunities to transgender persons. Taking note of the circumstances, it is evident from the record that the last date of the application for the said post was 01.02.2023, the Tribunal made the interim order impugned before us.

4. Adv. P.C.Sasidharan appearing for the petitioner, contends that the Tribunal has not either exercised its jurisdiction within the four corners of law or exceeded the jurisdiction by directing the consideration of the 1<sup>st</sup> respondent's application which does not specify the person coming under the category of the transgender. The note appended to Armed Police Sub Inspector in the Armed Police Battalion limits the consideration of the male candidates alone. Therefore, the order impugned is completely illegal and liable to be set aside.

4.1 It is argued with considerable force that the petitioner herein, which is governed and bound by the General and Special

Rules applicable to recruitment and calling upon the 1<sup>st</sup> respondent to deviate from the binding Rules, is an illegal direction which the Tribunal ought not to have issued.

5. Adv. Thulasi K. Raj, appearing for the 1<sup>st</sup> respondent, argues that the Special Rules were made in 1984 and the amendment in 1992. The employment opportunity of the 1<sup>st</sup> respondent is protected by the 'Transgender Persons (Protection of Rights) Act, 2019 (for short, 'the Act'). The counsel invited our attention to Sections 2(k); 3(h); and Section 9 of the Act, which read thus:

Section 2(k)

(k)"transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

Section 3(h)

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

Section 9

9. No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

5.1 The Tribunal has passed an equitable order that did not disturb the petitioner's ongoing schedule in terms of the Annexure-A2 notification. The insistence upon holding Special rules relied on by the counsel appearing for the petitioner, it is argued, ignores the protection granted to transgender persons by an act of Parliament. The Tribunal directed the State Government to place other requirements on record. The transgender/1<sup>st</sup> respondent has the right under the Act; the directions are given only to submit the application provisionally. No ground is made out for warranting interference with the order under challenge.

6. This Court, in exercise of its supervisory jurisdiction, prefers to be very circumspect in entertaining the petitions against the interlocutory or ad interim orders unless a very grave breach of either law or constitutional mandate is made out by a party. The petitioner herein looked at the ineligibility of the 1<sup>st</sup> respondent, ie.,

‘a transgender’, through the prism of either General rules or Special rules. The Supreme Court in *L. Chandrakumar v. Union of India and others*<sup>1</sup> has taken a decision on the jurisdiction of the Tribunal in matters of the appointment to service, retirement etc. The 1<sup>st</sup> respondent, by referring to the certificate under the Act, wants to apply for the posts meant for men. The denial of such an opportunity would be contrary to the protection given to transgender persons by the Act of Parliament. None of the grounds urged, except by the mechanical application, is attracted.

6.2 Summarised briefly, the several grounds now urged against the interim orders by the Kerala Public Service Commission are through the prism of the Special Rules. One need not search for reasons for insisting upon adherence only to Special Rules. But the role of the Tribunal is at a higher pedestal, and in reviewing the decision or inaction of the Government and the Kerala Public Service Commission, the Tribunal, through the kaleidoscopic view,

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<sup>1</sup> (1994) 5 SCC 539



appreciated the guarantees under the Constitution of India, the protection given to the transgender by the 'Transgender Persons (Protection of Rights) Act, 2019. The order under review before us is the interim order of the Tribunal under challenge. We do not want to restrict the case of the transgender through the prism of Special Rules on which several grounds are raised and argued before us. The view of the Tribunal is within the framework of the Constitution of India and the act of Parliament. The 2<sup>nd</sup> respondent /State of Kerala would seize the opportunity to bring its Special Rules in line with the mandate of the Act.

7. Hence, we are convinced that the case on hand does not fall as an exception for the circumspection with which we entertain the original petition against the interim order. Hence petition fails, dismissed accordingly.

8. While dismissing the petition, we are compelled to observe that the State Government/2<sup>nd</sup> respondent examine the

protection granted to the transgender persons by the Act, and the needful is done without subjecting them to avoidable litigation.

With the above observation, Original Petition is dismissed.

**S.V.BHATTI**

**JUDGE**

**BASANT BALAJI**

**JUDGE**

JS

**APPENDIX OF OP(KAT) 92/2023**

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE TRANSGENDER IDENTITY CARD OF THE APPLICANT
Annexure A2	TRUE COPY OF THE NOTIFICATION DATED 31.12.2022 ISSUED BY THE PSC CATEGORY NO. 669/2022-671/22
Annexure A3	TRUE COPY OF THE NOTIFICATION DATED 31.12.2022 ISSUED BY THE PSC FOR THE POST WOMEN POLICE CONSTABLE CAT NO. 595/2022
Annexure A4	- TRUE COPY OF THE NOTIFICATION DATED 31.12.2022 ISSUED BY THE PSC TO THE POST OF ARMED POLICE SUB INSPECTOR (TRAINEE)
Annexure A5	TRUE COPY OF THE SCREENSHOT OF THE APPLICANT SHOWING THAT SHE IS INELIGIBLE TO APPLY.
Annexure A6	TRUE COPY OF JUDGMENT DATED 03.11.2015 IN K. PRATHIKA YASHINI V. THE CHAIRMAN, TAMIL NADU UNIFORMED SERVICES RECRUITMENT BOARD
Annexure A7	TRUE COPY OF THE JUDGMENT DATED 05.06.2006 IN SHEEBA KUTTIVATAN AND ORS V. STATE OF KERALA AND ORS
Annexure A8	TRUE COPY OF THE JUDGMENT DATED 13.12.2016 IN SANUIA AND ORS V. STATE OF KERALA
Exhibit P1	THE TRUE COPY OF THE APPLICATION IN O.A(EKM) 168/2023 FILED BEFORE THE TRIBUNAL
Exhibit P2	THE TRUE COPY OF THE INTERIM ORDER IN OA(EKM) 168 OF 2023 DATED 24/1/2023 OF THE TRIBUNAL

Exhibit P3

THE TRUE COPY OF THE AMENDMENT TO RULE 3(A) OF  
THE RULES ALONG WITH ITS RETYPED COPY