

W.P.(C) No. 14170/2021 &  
W.A. No. 59/2022

: 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 7<sup>TH</sup> DAY OF JUNE 2022 / 17TH JYAISHTA, 1944

WP(C) NO. 14170 OF 2021

PETITIONER/S:

JAFFER KHAN,  
AGED 52 YEARS,  
S/O. OUKKAR HAJI, KARUVELIL HOUSE, ARAKKAPPADI VILLAGE,  
VENGOLA P.O., -683 547.

BY ADVS.  
PRAVEEN K. JOY  
T.A.JOY  
E.S.SANEEJ  
M.P.UNNIKRISHNAN  
M.K.SAMYUKTHA  
N.ABHILASH  
DEEPU RAJAGOPAL

RESPONDENT/S:

- 1 STATE OF KERALA  
REP. BY SECRETARY, DEPARTMENT OF HOME AFFAIRS, GOVERNMENT  
SECRETARIAT, TRIVANDRUM-695 001.
- 2 THE SECRETARY (DELETED)  
DEPARTMENT OF HOME AFFAIRS, GOVERNMENT SECRETARIAT,  
TRIVANDRUM-695 001.
- 3 THE ADDITIONAL SECRETARY (DELETED)  
DEPARTMENT OF HOME AFFAIRS, GOVERNMENT SECRETARIAT,  
TRIVANDRUM-695 001.  
[RESPONDENTS NO 2 AND 3 ARE DELETED FROM THE ARRAY OF  
PARTIES AS PER ORDER DATED 22-07-2021 IN WPC.]
- 4 THE STATE POLICE COMPLAINTS AUTHORITY

W.P.(C) No. 14170/2021 &  
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: 2 :

REP. BY CHAIRMAN, COTTON HILL, VAZHUTHACAUD, TRIVANDRUM-  
695 014.

- 5 THE SECRETARY,  
THE STATE POLICE COMPLAINTS AUTHORITY, COTTON HILL,  
VAZHUTHACAUD, TRIVANDRUM-695 014.
- 6 THE STATE POLICE CHIEF,  
KERALA STATE, POLICE HEAD QUARTERS, VELLAYAMBALAM,  
TRIVANDRUM-695 010.

BY ADVS.

SRI.V.MANU, SENIOR GOVT. PLEADER

SONU AUGUSTINE

SHIRAS ALIYAR

SHRI.T.B.HOOD, SPL.GOVERNMENT PLEADER

SRI. K.P. HARISH, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07.06.2022,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 14170/2021 &  
W.A. No. 59/2022

: 3 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 7<sup>TH</sup> DAY OF JUNE 2022 / 17TH JYAISHTA, 1944

WA NO. 59 OF 2022

JUDGMENT DATED 25.11.2021 IN WP(C) 23529/2021 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

V. PRAVEEN,  
13 F, ANTA MARVEL APARTMENT,  
KANNADIKKADU, MARADU POST,  
ERNAKULAM-682 304.

BY ADV SONU AUGUSTINE

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY THE SECRETARY,  
HOME DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 2 THE ADDITIONAL CHIEF SECRETARY,  
HOME & VIGILANCE, ROOM NO.357-A, MAIN BLOCK,  
GOVERNMENT OF KERALA, SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 3 KERALA STATE POLICE COMPLAINT AUTHORITY,  
COTTON HILL, VAZHUTHACAUD, THIRUVANANTHAPURAM-695 014.  
REPRESENTED BY ITS CHAIRMAN.

SRI. TEK CHAND, SR. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07.06.2022, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

SHAJI P. CHALY, J.

The captioned Public Interest Writ Petition and the writ appeal are materially connected in respect of the failure of the State Government to appoint an independent Chief Investigation Officer in the State Police Complaints Authority, in spite of the notification issued and the procedure started. Therefore, on consent, we have heard the writ petition and the appeal together and propose to pass this common judgment.

2. In the Public Interest Writ Petition, the petitioner seeks a writ of mandamus directing the State of Kerala to implement strictly and in its full spirit, the provisions of the Government Orders for appointment of Chief Investigation Officer to assist the State Police Complaints Authority; and for a further direction to the State Government to complete the process of appointment of independent Chief Investigation Officer to assist the State Police Complaints Authority in accordance with Ext. P10 notification issued by the Government and the proceedings initiated thereunder.

3. The claim raised by the petitioner is that he is an advisory committee member of the Road Accident Forum for the State of Kerala and is also a human right protection activist. According to the

petitioner, the State Government has issued several notifications for the recruitment of Chief Investigation Officer in the State Police Complaints Authority, Kerala; however, the same has not been pursued in an effective manner since 2016 to finalise the proceedings and make the appointment.

4. That apart, it is pointed out that the very purpose of the State Police Complaints Authority is for examining and inquiring into the complaints on all types of misconduct against the police officers of and above the rank of Superintendent of Police.

5. The case of the petitioner is that in exercise of the powers conferred, the State Government issued Exts.P1 to P10 notifications for appointment of the Chief Investigation Officer. However, the Officer is not appointed. It is further submitted that unless and until directions are issued by this Court, the Government would not appoint the independent Chief Investigation Officer in order to carry out an effective, impartial and fair enquiry enabling the State Police Complaints Authority to act in accordance with law.

6. W.A. No. 59 of 2022 is filed challenging the judgment of the learned single Judge dated 25<sup>th</sup> November, 2021 in W.P.(C) No. 23529 of 2021, whereby the following reliefs sought for by the appellant were declined by the learned single Judge:

1. Issue a writ of mandamus or any other appropriate writ,

order or direction, directing the respondents to conduct an impartial interview to the post of Chief Investigation Officer with proper assessment and marks.

2. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent not to invite similar notification till proper interview is conducted as per Ext.P1 notification.

7. Material facts for the disposal of the appeal are as follows:

As per Ext. P1 notification dated 23.09.2021, the State Government has invited application for the post of Chief Investigation Officer in State Police Complaints Authority and the appellant applied for the said post as per Ext. P2 application.

8. According to the appellant, he retired from the service of the Income Tax Appellate Tribunal, Government of India, as a Deputy Registrar on 30.11.2019. While the selection process was pending, the connected Public Interest writ petition was filed and taking into account the urgency of the matter, this Court, as per the order dated 13<sup>th</sup> August, 2021 in W.P.(C) No. 14170 of 2021, directed the Government to speed up the reconstitution of the selection committee and finalise the selection committee to the post of Chief Investigation Officer within a period of three weeks from the date of the order. The said direction was issued on the basis of the statement filed by the State Government in the Public Interest Writ Petition with respect to the developments that have taken place consequent to the issuance of

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the notification for selection.

9. Anyhow, on 02.09.2021, an interview was conducted by the Additional Chief Secretary, Home & Vigilance, 2<sup>nd</sup> respondent, in the writ appeal. While so, on 30.09.2021, the Public Information Officer, as per Ext. P8 communication dated 30.09.2021, on the basis of Ext. P7 application submitted by the appellant under the Right to Information Act, informed that the shortlisted candidates were rejected due to lack of sufficient experience required for the position of the Chief Investigation Officer. It was also informed that no marks were awarded to the candidates by the interview Board. Ext. P8 is extracted hereunder for convenience:

“GOVERNMENT OF KERALA  
Home (SSA) Department  
No. HOME-SSAS/162/2021-HOME

30/09/2021, Thiruvananthapuram  
From

The State Public Information Officer and Deputy Secretary.

To  
Sri. V. Praveen,  
13 F, Anta Marvel Apartment, Kannadikkadu,  
Maradu P.O., Ernakulam, Pin - 682 304  
Sir,

Sub: Home Department— Request for information under Right to  
Information Act, 2005 - furnishing of reply - Regarding.

Ref: Your application dated 07.09.2021 received in this office on 14.09.2021.

I am to invite your attention to the reference cited and to inform you the following details.

1) 23.09.2019

2) 9

3) The applications received against the notification were scrutinized by the Government based on the notification dated 23.09.2019 and those applications having no basic qualification/ experience prescribed for the post were eliminated in the first instance.

4) 2

6) 1

7, 8) As per the minutes of the meeting held on 02.09.2019 marks are not awarded by the Interview Board members to any of the candidates.

9) The interview scheduled to be conducted on 26.07.2021 was postponed due to the absence of Sri. K. Chenthamarakshan, Rtd. District Judge, the Member nominee of the Chairman, SPCA in constituted as per G.O.(Rt)No. 209/202 1/Home dated 20.01.2021 for the selection of CIO.

10) 62

11) None of the shortlisted candidates were selected for the post of CIO

12) Both shortlisted candidates were rejected due to lack of sufficient experience required for the post of the CIO.

13) No one is responsible for the delay and the same was occurred purely on administrative reasons.

2. In order to give relevant copies of the documents sought for in



items 1, 5 and 8 having 9, 36 and 2 pages (Total 47 pages) respectively you are requested to furnish an original challan amounting Rs.94/- (Rupees Ninety Four only) by remitting the amount in the Head of Account 00-70-60-118-99 in Government Treasury.

3. If you are aggrieved by the above decision, you can prefer an appeal under Section 19 of the Right to Information Act, within 30 days from the receipt of this communication to the following Appellate Authority.

Address of the Appellate Authority

Special Secretary & Appellate Authority, Home (SSA) Department,  
Government Secretariat Thiruvananthapuram 695 001.

Phone - 0471 2518464.

Yours Faithfully

Priya Mol M.P

State Public Information Officer & Deputy Secretary”

10. The learned single Judge, after taking into consideration the contentions advanced by the rival parties, has dismissed the writ petition basically holding that the appellant did not have sufficient experience in contemplation of the notification issued by the State Government and the bio-data of the appellant would clearly show that his investigating capacity was essentially confined to the offences under the Minor Statute as well as Fiscal Statutes; and that he did not have any investigative experience in accordance with the Code of

Criminal Procedure and into the offences committed under the major Penal Law - the Indian Penal Code. Therefore, it was held that there are no reasons for taking a different view from the reasoning given by the Committee that the appellant did not possess the requisite experience as required for the job which he was expected to discharge. It is, thus, challenging the legality and correctness of the findings of the learned single Judge, the appeal is preferred.

11. The paramount contention advanced by the appellant is that despite having all essential and desirable qualifications and experience, including a degree in Law, the application of the appellant was rejected. It is also contended that the rejection of the application of the short listed candidates indicate that the State Government is not interested to appoint the Chief Investigation Officer in the State Police Complaints Authority as directed by this Court in the captioned writ petition as per order dated 30.09.2021.

12. That apart, it is contended that the extremely delayed interview, its postponement initially, its second called for interview, non verification of credentials of candidates prior to the interview, rejection of both candidates stating lack of sufficient experience etc. demonstrate that the whole process was nothing but a farce.

13. It is also contended that the attempt of the State Government is nothing but a pre-determined and pre-conceived design

of the vested interests to scuttle the process of selection as ordered by this Court in the Public Interest Writ Petition. It is further pointed out that the Hon'ble Apex Court had directed all the State Governments to appoint an independent Chief Investigation Officer to maintain the impartiality in investigations so as to render justice to the victims of police atrocities and misconduct.

14. It is further contended that the appellant fulfils the essential as well as desirable qualification of LLB along with the required experience in criminal investigation and therefore, the rejection of the application without appreciating the credentials of the appellant is illegal and arbitrary and the writ court ought to have corrected the same. Therefore, it is contended that the learned single Judge has not adverted to the contentions advanced by the appellant properly and accordingly, interference is required to the judgment of the learned single Judge.

15. We have heard learned counsel for the writ petitioner Sri. Praveen K. Joy, learned counsel for the appellant Sri. Sonu Augustine and learned Senior Government Pleader Sri. V. Manu, and perused the pleadings and materials on record.

16. Insofar as the Public Interest Writ Petition is concerned, the writ petitioner seeks a direction to complete the selection process in accordance with the notification issued by the State Government for

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selecting a candidate to the post of Chief Investigation Officer for the State Police Complaints Authority.

17. As we have pointed out above, on 13<sup>th</sup> August, 2021, this Court passed a detailed order in W.P.(C) No. 14170 of 2021 and directed to complete the selection process after reconstituting the selection committee. Such a direction was issued on the basis of the statement filed by the State Government that delay occurred due to certain technical and other unavoidable reasons. However, it is stated that one of the Selection Committee Members retired from service and the committee was reconstituted as per an order dated 20.01.2021. It was also submitted that there were 9 applicants; however, 7 were found ineligible and two candidates were shortlisted. Other reasons are also stated for the delay in conducting the interview.

18. Anyhow, a period of three weeks was granted for conducting the selection from the date of order i.e., 13.08.2021. However, since the direction could not be complied with, I.A. No. 1 of 2021 dated 11<sup>th</sup> November, 2021 was filed for the extension of time for complying with the order dated 13.08.2021 and accordingly, as per order dated 30.11.2021, three months' time from 11.11.2021 was granted for completing the selection process.

19. Fact remains, selection was not conducted in accordance with the directions. However, when the matter was posted before this

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Court on 16<sup>th</sup> March, 2022, the learned Senior Government Pleader submitted that after revising the qualifications, as per G.O.(Rt.) No. 691/2022/Home dated 15.03.2022, a notification dated 15.03.2022 has been issued by the State Government inviting applications for filling up the post of Chief Investigation Officer and that the selection process would be completed within a reasonable time. Anyhow, from the notification, it is clear that the last date for the submission of the application was 31.03.2022. Admittedly, the selection process is not yet completed and thereupon, I.A No. 2 of 2022 is filed by the State Government seeking a further period of 60 days from 01.04.2022 to complete the selection process. In the affidavit filed in support of the petition, it is stated that the file was approved by the Chief Minister on 12.03.2022 and the notification inviting applications could be issued only on 15.03.2022 and the last date for submission of application was 31.03.2022. Therefore, it is submitted that after 31.03.2022, a further time period of at least 15 days would be required to scrutinize the applications and shortlisting the candidates, and that thereafter a further period of 25 days for fixing the date of interview, providing sufficient time for the candidates to take part in the interview and for the actual conduct of the interview.

20. That apart, it is submitted that a further time of 20 days' will be required for verification of the documents finalising the

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selection process and for actual appointment and that 60 days' time from 01.04.2022 would be a reasonable time required for the finalisation of the selection process.

21. Be that as it may, in view of the developments that have taken place as discussed above, primarily we would have to consider whether any interference is required to the judgment of the learned single Judge leading to the captioned writ appeal. In our considered opinion, the application of the appellant was rejected basically on the ground that the appellant did not have the required qualification in accordance with the desirability of the State Government as per Ext. P1 notification. In order to consider the contentions raised by the appellant, it is better that relevant portions of Ext.P1 notification is extracted:

**“GOVERNMENT OR KERALA  
Home (SS A) Department  
NOTIFICATION**

No. Home-SSA5/234/2017-Home

Date:23.09.2019

Thiruvananthapuram

Sub: Inviting application for the post of Chief Investigation Officer in State Police Complaints Authority.

Applications are invited by the Government for selection

of Chief Investigation Officer for filling up the post of Chief Investigation Officer in the State Police Complaints Authority on contract basis as per the GO (Rt.) No.1036/2017/Home dated 25.04.2017. The term of appointment will be for a period of one year. The person appointed will not be eligible for regularization.

Mode of Recruitment : Direct (on contract basis)

Remuneration : Rs.75,000/-pm (consolidated)

**Job Description:-** Investigate custodial violence including all types of physical and mental torture inflicted upon a person in police custody by a police personnel. Draft investigation plan for early identification of issues by assessing the scope and determining the methodology and techniques required to carry out a thorough and effective investigation. Obtain facts or statements from complainants, witnesses and accused persons, record interviews using recording device. Monitor conditions of victims who are unconscious so that arrangements can be made to take statements if consciousness is regained. Organize scene search, analyse data, Station House GD, technical information, medical, postmortem report, inquest report to determine what additional information and investigative work are needed. Record progress of investigation, maintain data informational files on Suspects safely, submit timely reports to Chairperson, SPCA. Liaison with officers of police department in connection with investigation of all complaints. Maintain surveillance to obtain information on suspects The position requires regular

travel depending on investigational requirements. All other duties related to investigations are as required.

**Qualifications:**

(a) General:- The candidates should be persons of ability, integrity and should have adequate knowledge and have shown capacity in the field of crime investigation. The candidate should be prepared for hard work as the job involves field work in remote areas, hilly terrains etc.

b)Educational :-The candidate should possess a Postgraduate degree in any subject preferably Human Rights or any other related areas, from a reputed university.

(c)Desirable

(i) A Degree in Law from a reputed University.

(ii)Diploma or any other certified course in Criminology/Psychology/Crime Detection/Criminal Justice process which is not less than one year from a reputed university.

(iii) Should be well versed in the decisions of the Hon'ble Supreme Court and High Courts on Custodial torture, illegal detention, illegal arrest etc.

Experience-

(a)essential-

(i) Should have worked in the rank of Superintendent of Police in Central Investigation Agencies like Central Bureau of Investigation (CBI), National Investigation Agency (NIA) etc. and not served in Kerala Police.



(i) Candidate should be well versed in crime data analyzing human rights protection/criminology/psychology/crime detection.

(iii) Should have good knowledge and communication skills in English, Hindi and proficiency in Malayalam language equivalent to the level to SSLC or similar.

iv) Should have excellent hands-on experience with computers including advanced softwares, android applications, advanced mobile phones, internet and MS office systems.

(b) Desirable :-

Senior level experience in the field of criminal law, analyzing information, crime data, information gathering, office management, investigation or intelligence, thorough knowledge in criminal justice process, national security, enforcement etc. ...”

22. The learned single Judge, after considering the writ petition and taking into account the requirements as contained in Ext. P1 notification, has arrived at the conclusion that the petitioner who has worked as an Intelligence Officer and in other posts in the Central Government Department, did not satisfy the experience for which he is expected to have in accordance with Ext. P1 notification issued by the State Government. We also find that the State Government, as per the notification, desired that the incumbent in the office should have

the experience to assist the authority by conducting investigation into the offences committed by the Police Officers above the rank of Superintendent of Police. Therefore, we find force in the findings rendered by the learned Single Judge. We are also of the view that the experience of the appellant in conducting the investigation of minor offences is different from the investigative experience acquired by an officer in crimes under the major penal law following the procedure contained under the Code of Criminal Procedure. Anyhow, much water has flowed after the selection process and the State Government has issued a fresh notification altering the qualifications prescribed and applications were invited from the qualified persons, the last date of which was 31.03.2022. The appellant has also not challenged the subsequent steps taken by the Government for conducting the selection process altering the qualification also.

23. Taking into account the aforesaid aspects, we are of the considered opinion that the appellant has not made out a case of any jurisdictional error or other legal infirmities in the judgment of the learned single Judge requiring our interference in an intra court appeal filed under Section 5 of the Kerala High Court Act, 1958. Therefore, we have no hesitation to hold that the appeal filed by the writ petitioner has no merit and it is accordingly dismissed.

24. However, considering the facts and circumstances

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deliberated above, we direct the State Government to finalise the selection process to the post of Chief Investigation Officer of the State Police Complaints Authority within a period of 60 days from 01.04.2022 as sought for by the State Government in I.A. No. 2 of 2022 in W.P.(C) No. 14170 of 2021. The writ petition is allowed to the above extent.

All pending IAs would stand closed, in view of the disposal of the appeal and the writ petition.

sd/-  
**S. MANIKUMAR,**  
**CHIEF JUSTICE.**

sd/-  
**SHAJI P. CHALY,**  
**JUDGE.**

*Rv*

**APPENDIX OF WP(C) 14170/2021**

PETITIONER'S EXHIBITS:

- |             |   |
|-------------|---|
| Exhibit P1  | THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NUMBER GO(RT) NO.1287/2015/HOME DATED 30.5.2015.  |
| Exhibit P2  | THE TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE CHAIRMAN OF STATE POLICE COMPLAINTS AUTHORITY TO THE HOME SECRETARY, GOVERNMENT OF KERALA DATED 31.12.2015.                            |
| Exhibit P3  | THE TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE CHAIRMAN OF STATE POLICE COMPLAINTS AUTHORITY TO THE ADDL. CHIEF SECRETARY (HOME AND VIGILANCE) DATED 3.2.2016.                        |
| Exhibit P4  | THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NUMBER GO(RT) NO.833/2016/HOME DATED 3.3.2016.  |
| Exhibit P5  | THE TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE CHAIRMAN OF STATE POLICE COMPLAINTS AUTHORITY TO THE ADDL. CHIEF SECRETARY (HOME AND VIGILANCE), GOVERNMENT OF KERALA DATED 10.3.2016. |
| Exhibit P6  | THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NUMBER GO(RT) NO.1624/2016/HOME DATED 18.5.2016.  |
| Exhibit P7  | THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NO.42805/SSA5/2016/HOME DATED 7.6.2016.   |
| Exhibit P8  | THE TRUE PHOTOCOPY OF THE LETTER DATED 3.2.2017 ISSUED BY THE CHAIRMAN, STATE POLICE COMPLAINTS AUTHORITY TO THE ADDL. CHIEF SECRETARY (HOME AND VIGILANCE).                          |
| Exhibit P9  | THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NUMBER GO (RT) NO.1036/2017/HOME DATED 25.4.2017.   |
| Exhibit P10 | THE TRUE PHOTOCOPY OF THE NOTIFICATION INVITING APPLICATION FROM CANDIDATES TO BE APPOINTED AS THE CHIEF INVESTIGATION OFFICER (CIO-SPCA) DATED 17.4.2017.                            |