

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 23RD DAY OF MARCH 2021 / 2ND CHAITHRA, 1943

WP(C). No.13062 OF 2020(S)

PETITIONERS:

- 1 CIVIC RESPONSIBILITIES AND EMPOWERMENT ASSOCIATION (CREA), HAVING REGISTERED OFFICE PRESENTLY AT VAZHOOR, KOTTAYAM DISTRICT, PIN-685 504, REPRESENTED BY ITS SECRETARY MR.SHIBU JACOB, AGED 49 YEARS, S/O.JACOB, THAKADIYEL, VAZHOOR P.O., KOTTAYAM DISTRICT.
- 2 PAULOSE.V.J., AGED 41 YEARS, S/O. JOSEPH, VADAKKEATTATHU HOUSE, MULAKULAM VILLAGE, PERUVA P.O., VAIKOM TALUK, KOTTAYAM, PIN-686 610.

BY ADVS. SHRI P.M.JOSHI
SMT. SIJI K.PAUL
SRI. PAULOSE.V.J. (PARTY)

RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 PRINCIPAL SECRETARY TO GOVERNMENT, DEPARTMENT OF INDUSTRY, GOVERNMENT OF KERALA SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 3 JOINT SECRETARY FOR MINING AND GEOLOGY (MATTER), DEPARTMENT OF INDUSTRY, GOVERNMENT OF KERALA SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 4 DIRECTOR VIGILANCE AND ANTI CORRUPTION BUREAU, THIRUVANANTHAPURAM-695 001.
- 5 THE CHAIRMAN, (DELETED) PUBLIC SERVICE COMMISSION, PATTOM, THIRUVANANTHAPURAM-695 004.

RESPONDENT NO.5 IS DELETED FROM THE ARRAY OF PARTIES AS PER ORDER DATED 12/08/2020 IN WPC.

6 MR.C.K.BAIJU,
DIRECTOR-IN-CHARGE, MINING AND GEOLOGY DEPARTMENT,
THIRUVANANTHAPURAM.

R1 TO R4 BY SRI. SURIN GEORGE IPE,
SR. GOVERNMENT PLEADER

R6 BY ADVS. SRI.P.RAVINDRAN (SR.)
SRI.ELVIN PETER P.J.
SRI.K.R.GANESH
SMT.N.R.REESHA
SMT.T.S.LIKHITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2021,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R”**JUDGMENT****Shaji P. Chaly, J**

Instant Public Interest Litigation is filed by an association, registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 and a member of the said association, seeking to quash Exhibit-P9 order, G.O.(Rt.) No.258/2020/ID, dated 20.03.2020, issued by the Government of Kerala, Department of Industry (A), Mining and Geology, by which 6th respondent, viz. Mr. C.K.Baiju, a Senior Deputy Director, Department of Mining and Geology, has been temporarily given the full charge and responsibilities as the Director, Mining and Geology.

2. Petitioners have sought for a writ of mandamus commanding respondents 1 to 4, to take disciplinary action against the 6th respondent Mr. C.K. Baiju, in the cases where disciplinary action is recommended, but pending consideration of the respondents.

3. Petitioners have also sought for a mandamus commanding respondents 1 to 3, to issue necessary orders to the 6th respondent, removing him from the charge of Director, Mining and Geology Department forthwith.

4. Petitioners have further sought for a mandamus directing the 2nd respondent, viz., the Principal Secretary to the Government, Department of Industry, Thiruvananthapuram, to publish the details of the assets of Mr.

C.K. Baiju, respondent No.6, in the website of the Department of Industries or in the website of the Department of Mining and Geology.

5. The basic contentions advanced are that Mr.C.K.Baiju, respondent No.6, is a corrupt officer, facing departmental disciplinary action, in a number of cases. According to the petitioners, 6th respondent was a Senior Geologist in the District Geology and Mining Department, Kottayam for quite some time. During that period, he used to indulge in corrupt practices by illegally granting quarrying permits, not monitoring licence conditions etc. Several instances were pointed out by the petitioners and according to them, the President of Kuravilangad Grama Panchayat has submitted a petition to the Hon'ble Minister for Home and Vigilance, which was forwarded to the Director of Vigilance and Anti Corruption Bureau (VACB), Thiruvananthapuram. There, the allegation was that the Senior Geologist of Kottayam District allowed the permit holders to extract more sand by not monitoring them properly and not intimating the Panchayat authorities about the permit, and thereby caused annoyance to the public, within the Kuravilangad Grama Panchayat area.

6. As a result, the Director of VACB vide letter No. (QV 4/13/KTM) 19827/13 directed the Deputy Superintendent of Police, VACB, Kottayam Unit, to conduct a quick verification. Accordingly, the VACB conducted a quick verification and in the report, it was *prima facie* revealed that the

allegations are true, and thereupon, recommended departmental action against the 6th respondent. Similarly, alleging irregularities committed by the 6th respondent, the authorities of Vijayapuram Grama Panchayat, Kottayam, in connection with the removal of huge quantity of soil by private persons, VACB conducted a surprise check, detected irregularities, and found that 6th respondent was responsible for the same.

7. Likewise, in Mulakulam and Velloor Grama Panchayats, in Kottayam districts, on the allegation that brick kilns are functioning, violating the rules and regulations issued by the licensing authority, VACB conducted a surprise check. However, Mr. C.K.Baiju neither inspected or caused to inspect the functioning of those brick kilns for enforcing the licence conditions. Accordingly, the Director of VACB has recommended departmental action against Mr. C.K. Baiju.

8. Similarly, in the matter of illegal quarrying and excavation of stones in Kizhuthiri, Ramapuram Panchayat, VACB, Eastern Region, Kottayam conducted an enquiry, and as per its report dated 27.02.2017, it is evident that using the permit issued by the Geology Department, for 8.9 Ares of land, quarrying was conducted in 2 Acres of land and excavated 90,000 cubic feet stone. The report further revealed that using the pass for carrying 500 loads of stone, 18,000 loads of stone were transported, and thereby, the Government have lost royalty in that regard.

9. Petitioners have further stated that the report submitted by the Director, VACB, to the Additional Chief Secretary, Vigilance (B), Department of Vigilance, on 24.01.2015 contains the details regarding the vigilance cases of Mr. C.K.Baiju and he was referred to in the report as 'Suspicious Officer'. Mr. C.K. Baiju was promoted as the Deputy Director in the year 2015 and, after assuming duty as the Deputy Director in the Directorate of Mining and Geology, on 21.07.2016, the Vigilance Department conducted a raid in his house and seized unaccounted money. Pursuant to the same, a case has been registered before the Enquiry Commissioner and Special Judge, Thiruvananthapuram. Narrating all these aspects, 2nd petitioner has submitted Exhibit-P2 complaint dated 04.11.2019 along with documents forming material proof to the Hon'ble Minister of Kerala for Industries with copies to various authorities like the Hon'ble Chief Minister, Chairman of the Public Service Commission, Secretary to the Industries Department etc.

10. Petitioners have further stated that two circulars have been issued by the Department of Personnel Administration Reform (Advisory C) dated 23rd June, 2003 and 8th January, 2007, evident from Exhibits-P4 and P5, by which, as per the Kerala Public Service Commission (Consultation) Regulations, 1957, consultation must be done with the Commission in mandatory cases before giving promotion or appointment

to a person. However, in many cases, the information required by the Commission was not provided by the concerned departments, as a result of which, the Commission could not advise properly and hence, many culprits escaped from punishment.

11. Petitioners have pointed out that as per the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, employees of the Geology Department are listed in Schedule-I.

12. Petitioners have further stated that a complaint is pending before the Kerala Lok Ayukta, in regard to the corrupt practices exercised by Mr. C.K.Baiju. While matters stood thus, Mr. C.K. Baiju was given additional charge of the Director of Mining and Geology Department on 28.11.2015, but on 18.04.2018, he was removed from the said post and reverted back to the post of Deputy Director, as the matter was taken up in the Kerala Legislative Assembly.

13. Petitioners have further stated that on the basis of Exhibit-P2 complaint dated 04.11.2019, 2nd petitioner was served with Exhibit-P6 reply dated 29.01.2020 from the office of the Principal Secretary to the Government, Department of Industry, respondent No.2, informing that the Government will take a decision, after obtaining the views of the Public Service Commission.

14. Petitioners have also submitted that consequent to the Vigilance

Case S.C. 47/14/KTM, which recommended disciplinary action against Mr. C.K.Baiju, in the meeting held on 30.05.2016, by the Departmental Promotion Committee (DPC), name of one Mr. T. K. Ramakrishnan was recommended to the post of Additional Director, Department of Mining and Geology, and thereafter, by order dated 4.1.2018, two increments of Mr.C.K.Baiju were withheld with cumulative effect. Further, it was informed that in Case No. E&C/5498/16/ERK of VACB, Mr. CK.Baiju was found to have committed gross violation, in the matter of facilitating unauthorised excavation of rock in Ramapuram Panchayat, Kottayam district, and the Superintendent VACB, Eastern Region, by letter dated 29.02.2017, has recommended the Director, Mining and Geology, to take appropriation disciplinary action against the 6th respondent, evident from Exhibit-P7.

15. Similarly, the Principal Secretary to the Government, by Exhibit-P8 letter dated 22.05.2019, on the recommendation of the Vigilance, issued an indictment memo to Mr. C.K.Baiju, through the Director of Mining and Geology Department, and the said file is pending decision. That apart, it was informed that a case in connection with disproportionate amassment of wealth by Mr. C.K.Baiju is also pending consideration. However, since the amassment of wealth is only 6.79%, the criminal case could not be registered and decided to continue with the disciplinary proceedings against him.

16. Petitioners have further stated that though the Departmental Promotion Committee, in the meeting convened on 23.10.2019, considered the name of Mr. C.K.Baiju to the post of Additional Director, Department of Mining and Geology, the promotion was rejected, due to the disciplinary action against him.

17. The paramount contention advanced by the petitioners is that to the utter surprise and dismay, as per Exhibit-P9 impugned order dated 20.03.2020, Government have appointed the 6th respondent as the Director, Mining and Geology Department, in the guise that he had to be appointed due to dearth of IAS level officer and accordingly he is temporarily given the full authority and responsibility of the Director of Mining and Geology Department. The foundation of the case putforth by the petitioners is revolved around the above said factual aspects.

18. The point raised by the petitioners is that the State Government have no authority to appoint Mr. C.K.Baiju to the post of the Director, Mining and Geology Department, and confer with the full charge of the same, being a corrupt officer and having appointed to a key administrative post of the Mining and Geology Department, it would be sending a wrong message to the society; moreover it would give a new precedent that a officer against whom disciplinary action pending has even been inducted to a key post of the Government, which would encourage others also to

indulge in corrupt practices; apart from that, by occupying the key post, Mr. C.K.Baiju would promote corruption and escape from all such cases against him, particularly when, his tenure of service would expire on 31.05.2021; the appointment of Mr. C.K.Baiju, to the key post, is against public interest and, therefore, any member of the public is entitled to bring it to the notice of the Court, so as to avoid further damage to the public property, as well as to maintain a corruption free department of Mining and Geology.

19. The State and its officials have filed a detailed counter affidavit justifying the stand adopted in Exhibit-P9 impugned order dated 20.03.2020. Among other contentions, respondents 1 to 3 have contended that Government have given Exhibit-P6 reply to the petition dated 29.01.2020 on the complaint dated 04.11.2019, wherein it was stated that the Government would take a decision in consultation with the Vigilance and in cases recommending departmental action, only after consultation with Kerala Public Service Commission. In a Vigilance case, SC 47/14/KTM, Vigilance have recommended departmental action against the officer and the Government, after considering the defense statement, and the report of the Director, Mining and Geology Department, have decided to finalise the disciplinary action, by barring two annual increment with cumulative effect as per G.O.(Rt.) No.6/2018/ID dated 4.1.2018 under the

provisions of KCS(CC&A) Rules, 1960. The review petition submitted by Mr. C.K.Baiju to review the decision of the Government in G.O(Rt.) No.6/2018/ID dated 04.01.2018 also has been rejected by the Government vide G.O.(Rt.) No.439/2018/ID dated 12.04.2018.

20. Being aggrieved by the orders of the Government, 6th respondent had filed O.A. No.598/2018 before the Kerala Administrative Tribunal to set aside the above said orders and to grant promotion to the higher post as the orders were issued, without observing the procedure under Rule 15 (11) of the KCS(CC&A) Rules, 1960, wherein it is provided that any deviation from the recommendation/findings of the formal enquiry officer should be specified and communicated to the delinquent officer for his explanation, before taking a final decision discarding the enquiry report. In the order dated 9.4.2019, Kerala Administrative Tribunal (KAT) had directed the Government to issue a show cause notice, as provided under Rule 15(11) of the Kerala Civil Service (Classification, Control and Appeal) Rules, 1960, providing a copy of the enquiry report to the applicant and also the provisional findings of the disciplinary authority on each charges with reasons as to why, it intends to differ with the findings of the enquiry officer and also directed the 1st respondent to issue copy of the order.

21.It was further directed that the 1st respondent shall thereupon

conclude the disciplinary proceedings, within a further period of two months. After scrutinizing all the documents submitted by the 6th respondent, the Government have decided to take a tentative decision to finalise the disciplinary action initiated against the 6th respondent, by giving a minor penalty as per Rule 11(1)(i) of the KCS(CC&A) Rules, 1960 and forwarded the file to Vigilance Department for advice and as the Vigilance had concurred with the decision of the Government, physical file of the same has been forwarded to the KPSC for their concurrence. However till date, the decision of the Kerala Public Service Commission has been received by the Government. Since Vigilance Case bearing No. SC 47/14/KTM was pending against the 6th respondent, his name was not considered for the post of Additional Director in the DPC meeting convened on 30.05.2016.

22. It is further contended that the issue is now pending before the Government in File No.A1/249/2017/ID. As a part of taking departmental action against the officer, a memo of charges was served on him and he has submitted the statement of defence. It is further submitted that in the DPC(Hr) meeting convened on 23.10.2019, the 6th respondent was not considered for the post of Additional Director. When the Additional Director of Mining and Geology Department applied for leave prior to retirement (LPR), on 22.02.2020, the Government temporarily appointed the senior-

most Deputy Director, the 6th respondent, to the post of Director, vide Exhibit-P9 order dated 20.03.2020. According to the said respondents, the posting of the 6th respondent is only temporary in nature and he has given only the charge of the said post. In that view of the matter, Exhibit-P9 impugned order would never be deemed as permanent in nature.

23. It was also submitted that the Additional Director of Mining and Geology Department had applied for LPR vide application dated 22.02.2020. Since, there was dearth of IAS Officers to be appointed as Director of Mining & Geology, the senior-most Deputy Director, Mining and Geology Department, 6th respondent, was given full additional charge of the Director of the said department temporarily as per order dated 20.03.2020. Hence, the Government being the appointing authority to the post in question, it is well within the domain of the Government to make such a temporary arrangement.

24. That apart, it was contended that the complaints filed against Mr. C.K.Baiju and the proceedings before the Kerala Lok Ayukta are not terminated and, therefore, the contentions putforth by the petitioners at this stage, cannot stand against the Government making due appointments, in accordance with law.

25. Respondent No.6 has filed a counter affidavit and an additional counter affidavit, refuting the allegations made by the petitioners and

explaining that on receipt of report dated 08.11.2011 submitted by an L.D.Clerk in the office of the Senior Geologist, Kottayam, stating that the official seal of the Assistant geologist is reported to be missing, the 6th respondent immediately served a memo dated 21.11.2011 to the two assistant Geologists in the District Office, Kottayam directing them to find out the official seal and also sought for explanation. Pursuant to the same, explanation was submitted by one of them stating that she is not aware of the fact that the seal is missing. Thereafter a joint inspection of the quarries operating in Changanassery, Kottayam and Kanjirappally taluks on 29.09.2011, 30.09.2011 and 01.10.2011 etc. was conducted along with the Panchayat authorities. Pursuant to the inspection, a report is stated to have been submitted by all the concerned officers, who participated, with their signature and official seal.

26. It was further contended that for the above said purpose, one among the Assistant Geologists carried the official seal to the inspection site and was placed inside the official vehicle, which was later found missing. Hence, he submitted a report to the Director of Mining and Geology on 26.02.2013 narrating the circumstances which lead to the missing of the seal. In this context, it was stated that after the 6th respondent received the report of the L.D.Clerk on 8.11.2011, an application dated 7.5.2012 was received under the Right to Information

Act, 2005, submitted by the 2nd petitioner, *inter alia*, seeking for information as to whether any official seal from the District Office of the Geologist was found missing during the period between 01.11.2011 and 01.05.2012. On receipt of the said application, the 6th respondent, without any delay, served a reply dated 5.6.2012 to the 2nd petitioner. The reply given was within the period of 30 days, stipulated under the RTI Act. In order to ensure that the missing seal does not reach the hands of any miscreants, he filed a complaint dated 25.02.2013 before the District Police Chief, Kottayam. The District Police Chief conducted investigation and during the course of the complaint, it is understood that the 2nd petitioner was also summoned.

27. It was further contended that after summoning the 2nd petitioner by the District Police Chief, he filed a complaint before the State Commission under the Right to Information Act, who thereafter issued a notice dated 7.5.2013, to the 2nd petitioner calling for his explanation. Pursuant to the same, the 6th respondent submitted another report dated 21.05.2013 before the State Information Commission. Thereafter, notice dated 7.10.2013 was issued to the 6th respondent from the office of the State Information Commission, directing him to appear before the Commission with all the required documents. On 23.10.2014, the commission issued order directing the Government to initiate disciplinary

action against the 6th respondent for the reason that he ought to have initiated action for retrieving the missing official seal of the Assistant Geologist effectively and that the action of the 6th respondent in stating the name of the 2nd petitioner in the complaint filed before the police was intended to deprive the 2nd petitioner of the information he sought for.

28. It was further contended that there was no case that the 6th respondent did not serve the information sought for by the 2nd petitioner in his application. Hence, it is clear that the order passed by the State Information Commission directing to initiate disciplinary action against the 6th respondent is clearly an abuse of power and colourable exercise which was beyond the scope of the power conferred upon the State Commission. In such circumstances, the 6th respondent has filed W.P.(C) No.29280 of 2014, in which an interim order staying all further proceedings pursuant to the order issued by the State Commission under the Right to Information Act, 2005 directing to initiate disciplinary proceedings against the 6th respondent was passed by this court and on 12.06.2015, the interim order was extended until further orders.

29. It was further contended by the 6th respondent that the penalty of barring two increments with cumulative effect was imposed by the Government as per Government Order (Rt.) No.6/2018/ID dated 4.1.2018, in a disciplinary proceedings initiated against him in which, the enquiry

officer in his report, exonerated the 6th respondent completely from all the charges. In spite of that, the Government, without issuing notice to the 6th respondent, dissented from the findings of the enquiry officer and imposed the penalty as per the above said Government order and it was also affirmed in a review filed by him. Challenging G.O.(Rt.) No.6/2018/ID dated 04.01.2018 and G.O.(Rt.) No.439/2018/ID dated 12.04.2018 issued by the Government, dismissing the review petition filed by the 6th respondent, he approached the Kerala Administrative Tribunal by filing O.A. No.598/2018. By Exhibit-R6(b) order dated 9.4.2019, the said original application was allowed, setting aside the two Government orders and further Government was directed to issue a show cause notice to the 6th respondent assigning the reasons for dissenting from the findings recorded by the enquiry officer in his report, and after receiving a reply from the 6th respondent, Government was further directed to finalise the proceedings, within a period of two months.

30. It was further contended that the time fixed by the Kerala Administrative Tribunal for issuing the show cause notice expired on 21.05.2019 and no action was initiated. Hence, the 6th respondent approached the Tribunal with Cont. Petition (Civil) No.85/2019, in which notice was issued. The contempt petition is still pending.

31. From the above, it is clear that the Government order dated

4.1.2019 imposing a penalty of barring two increments with cumulative effect has been set aside by the Tribunal and there is no penalty imposed on the 6th respondent. In the order dated 28.07.2020, this Court has stated that the 6th respondent was superseded by the Departmental Promotion Committee on 30.05.2016. It was also stated that the supersession of the 6th respondent by the DPC was not on the ground of imposition of any penalty, but it was due to the pendency of disciplinary action initiated against him as per memo of charges No.10266/A1/2015/ID dated 19.08.2015. The said disciplinary action culminated in the exoneration of the 6th respondent by the enquiry officer in his report.

32. Apart from the above, the 6th respondent has contended that minor penalty imposed on him does not dis-entitle him from being considered for regular promotion to the post of Director, Mining and Geology Department, even in the year 2015, during which period, Exhibit-R6(d) order dated 19.03.2015 was passed against him.

33. Referring to Rule 28(b)(i)(7), Note (ii) of the Kerala State and Subordinate Service Rules, 1958, it was contended that even in the case of an officer against whom minor penalty is imposed in a disciplinary proceedings, the Departmental Promotion Committee has to consider the claim of the officer for regularising promotion on its merits, which specifies that if the officers against whom departmental proceedings are taken for

imposition of minor penalty and who had been provisionally included in the select list, are fully exonerated of the charges, their cases for promotion on the basis of such inclusion in the select list shall be considered. If the officers are not fully exonerated of the charges, the DPC may decide each case on its own merits.

34. Therefore, the sum and substance of the contentions putforth by Mr.C.K.Baiju is that, taking into account the above said provision, the Departmental Promotion Committee considered the claim of the 6th respondent for promotion to the category of Deputy Director of Mining and Geology Department, in its meeting held on 20.04.2015, and included in the select list, evident from Exhibit-R6(e).

35. In the additional counter affidavit filed by the 6th respondent, apart from reiterating the submissions in the earlier counter affidavit, it is contended that the 2nd petitioner has an axe to grind against him.

36. A reply affidavit is filed by the petitioners to the counter affidavit of the 6th respondent, wherein it is stated that the acquittal of the accused in C.C. No.27/2012 on the file of the Chief Judicial Magistrate Court, Kottayam, was never known to the petitioners. However, it is seen from the judgment that 6th respondent was PW1 in the said case and the accused were acquitted consequent to the nature of evidence let in by Mr. C.K.Baiju in favour of the accused, and due to a fault occurred on the

part of PW9. The other allegations that the 2nd petitioner has personal animosity against Mr. C.K.Baiju are all denied.

37. Heard the learned counsel Mr. P.M.Joshi, appeared for the petitioners, Mr. K.V.Sohan, learned State Attorney, Mr. Surin George Ipe, learned Senior Government Pleader, and Mr. P.Ravindran, learned Senior Counsel appearing for the 6th respondent - Mr. C.K.Baiju, assisted by Adv. Mr. K.R.Ganesh, and perused the pleadings and material on record.

38. Exhibit-P9 impugned order dated 20.03.2020 issued by the Joint Secretary, Department of Industry (A), is extracted hereunder:

“Government of Kerala

Conclusion

Department of Industry, Mining & Geology, matter of employment, Mr. C.K.Baiju, Senior Deputy Director, Department of Mining & Geology, has been temporarily given the full responsibility of Director of Mining & Geology

Department of Industry (A)

G.O.(Rt.) No.258/2020/ID

Dated, Thiruvananthapuram, 20/03/2020

Reference:- G.O(Rt.) No.1134/2020/G.Admn. Dated
12.03.2020

ORDER

As per reference order, all authority of the Mining & Geology Department was given to Sri. Premkumar, IAS, but due to the dearth of IAS level officers, it is not convenient to appoint such an officer as the Director of Mining & Geology Department alone. Therefore, it is

ordered that Mr. C.K.Baiju, the Senior Deputy Director of the Department of Mining & Geology has been temporarily given the full authority and responsibility of the Director or Mining & Geology.

By the order of the Governor

MOHANRAJ M,
JOINT SECRETARY.”

39. Before considering the submissions advanced, let us consider Rule 28(b)(i)(7) and the note thereof of the Kerala State and Subordinate Service Rules, 1958.

40. It was in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers thereto enabling, and in supersession of the rules on the subject, the Governor of Kerala have framed the Kerala State and Subordinate Service Rules, 1958, in respect of the members of the State and Subordinate Services. Rule 28(b)(i)(7), Note II of the said Rules, 1958 reads thus:

“28(b)(i) Promotion and appointment by transfer according to merit and ability.- Appointments to posts in a selection category or grade in a service or class, other than Heads of Departments, which shall be made under Rule 28A, shall be made from a select list prepared from among the members eligible for appointment to such category or grade in accordance with these rules and the Special Rules, on the basis of merit and ability, seniority being considered only when merit and ability are approximately equal. The select list shall be prepared in the manner indicated herein.

XX XXX XXXX

(7) The "Select List" shall be prepared from among the eligible officers on the basis of merit and ability, seniority being a consideration only when all the qualifications are equal. The number of names to be included in the "Select List" shall be the same as the estimated number of vacancies likely to arise during the next year. Supplemental lists may be prepared in case the lists already prepared get exhausted before the close of the year to which they relate, so as to obviate the necessity for convening meetings of Departmental Promotion Committees at short notice or keeping of posts unfilled and thereby causing administrative inconvenience. Persons selected for inclusion in the Select List according to their seniority in the feeder category. When the Special Rules provide for a definite ratio or order of preference from the feeder categories, persons from each feeder category shall be included in separate lists and appointment shall be made in accordance with the ratio or order or preference prescribed by such Special Rules for each feeder category.

Note.- (i) Officers under suspension and officers against whom criminal proceedings are pending in a Sessions Court or in any other higher Court for grave offences like murder, dacoity, etc; and Officers against whom departmental proceedings are taken for the imposition of a major penalty under the disciplinary rules applicable to them should not be included in the select list. But the suitability of such an Officer for promotion should be assessed at the relevant time by the Departmental Promotion Committee and a finding reached whether, if the Officer had not been suspended or the

criminal proceedings/departmental proceedings had not been pending against him, he would have been recommended/selected for promotion. Where a select list is prepared the Departmental Promotion Committee shall also make a finding as to what the position of the Officer in that list would have been but for the suspension or the criminal proceedings/departmental proceedings against him. "The findings as to the suitability and the place in the select list of the officer should be recorded separately and attached to the proceedings. The proceedings of the Departmental Promotion Committee need only contain a note. "The findings are recorded in the attached sheet of paper". The authority competent to fill the vacancy should be separately advised to fill the vacancy only on a temporary basis. Officers against whom vigilance or departmental proceedings are taken after the charges have prima facie been established in a preliminary enquiry should not be included in the select list. But, the cases of such Officers should also be assessed. The question of including them in the select list shall be considered when the result of the enquiry is known. However Officers against whom departmental proceedings are taken for the imposition of a minor penalty may be included in the select list provisionally if they are found suitable but for the pendency of disciplinary proceedings initiated against them.

(ii) The vacancy that would have gone to the Officer but for his suspension or the criminal proceedings/departmental proceedings against him for the imposition of a major penalty should be filled only on a temporary basis by the next person in the approved list. If the Officer concerned is completely

exonerated, he will be promoted thereafter to the post filled on a temporary basis, the arrangements made previously being reversed. If the exoneration is not complete, the Departmental Promotion Committee may decide each case on its merits. Where, however, the post which would have gone to the Officer but for his suspension or the criminal proceedings/ departmental proceedings against him, ceases to exist before the conclusion of the disciplinary proceedings, he will be promoted to the first vacancy that may be available in future if he is found fit for promotion at that time. If the officers against whom departmental proceedings are taken for imposition of a minor penalty and who have been provisionally included in the select list are fully exonerated of the charges, their cases for promotion on the basis of such inclusion in the select list shall be considered. If the Officers are not fully exonerated of the charges, the Departmental Promotion Committee may decide each case on its own merit.”

41. Contentions were advanced by the respective counsel in accordance with the pleadings put forth and as deliberated above.

42. Altogether, there were eight cases initiated against the 6th respondent - Mr.C.K.Baiju. The first among them, relate to an allegation pertaining to excessive excavation of sand in Kuravilangad Grama Panchayat and in that, consequent to the enquiry report QV 4/13/KTM dated 23.10.2013, disciplinary proceedings were initiated, which even according to Mr. C.K.Baiju culminated in inflicting minor penalty.

43. Though the second allegation of unauthorised functioning of brick kilns at Mulakulam and Velloor Grama Panchayats was raised and departmental action was initiated, it culminated in an order of exoneration of Mr. C.K.Baiju, evident from Exhibits-R1(b) and R1(f).

44. The third allegation of illegal quarrying in Kizhuthiri, Ramapuram Grama Panchayat, memo of charges was issued against Mr. C.K.Baiju and he has submitted a statement of defense, which is pending finalisation, and the memo of charges is marked as Exhibit-P11 produced along with the reply affidavit filed to the counter affidavit of the 6th respondent. In the memo of charges, the basic allegation is that Mr. C.K.Baiju granted quarrying permit in respect of a land included in Survey Nos.200/6 and 209/6 (village not mentioned), which is not certified in the survey map by the revenue authorities and, therefore, violative of the rules. In the site inspection, it was revealed that quarrying was done upto a distance of 35 metres from the public road overlooking the provisions of the Kerala Minor Mineral Concession Rules, and thereby committed serious violations of the rules and regulations, and therefore alleged dereliction of duty and, accordingly, to face disciplinary action as per the Kerala Civil Service (Classification, Control and Appeal) Rules, 1960.

45. The 4th allegation was regarding vigilance raid conducted in the residence of Mr. C.K.Baiju on 29.07.2019, in which, the Government

dropped prosecution in respect of amassment of wealth, disproportionate to the asset, since the differential income was only 6.79%, which is less than 10%, the requisite percentage necessary for launching prosecution, evident from Exhibit-R6(g) produced along with the counter affidavit of the 6th respondent, but the departmental action is pending.

46. The 5th allegation was with respect to a departmental proceedings initiated on the basis of a vigilance enquiry in SC 47/14/KTM, in which, after the enquiry proceedings, punishment of bar of two increments were imposed with cumulative interest. Later, as per the order in O.A. No.598/2018, the said order was quashed by the Kerala Administrative Tribunal, evident from Exhibit-R6(b) produced along with the counter affidavit of Mr. C.K.Baiju. However, the Tribunal had given liberty to the State Government to take appropriate action in accordance with law.

47. Reading of Exhibit-R6(b) order dated 9.4.2019 in O.A. No.598/2018 of the Kerala Administrative Tribunal, Thiruvananthapuram, makes it clear that the proceedings are found vitiated from the point of disagreement by the disciplinary authority with Annexure-A8 enquiry report, and it was thereupon that, the impugned orders were set aside and consequentially, the State Government was given the liberty to call for an explanation from Mr.C.K.Baiju, as to why the tentative decision to differ

from the findings of the enquiry officer should not be confirmed. Accordingly, the State Government was directed to issue a show cause notice as provided under Rule 15(11) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, provide a copy of the enquiry report to Mr. C.K.Baiju and also the provisional findings of the disciplinary authority on each charges with reasoning and show as to why it intends to differ with the findings of the enquiry officer. The State Government was also directed to issue a show cause notice, within a period of one month from the date of receipt of a copy of the order of the Tribunal and the applicant was directed to submit his explanation within the period prescribed in the show cause notice and the State Government was directed to finalise the entire disciplinary proceedings, within a further period of two months.

48. It is surprising to note that the order of the Tribunal is dated 9.4.2019, and almost two years have elapsed. Even according to Mr.C.K.Baiju, it is still pending with the Kerala Public Service Commission, for concurrence and finalisation.

49. Yet another allegation against Mr. C.K.Baiju is with respect to Exhibit-P2 order of the State Information Commission dated 27.09.2014, directing action against him, based on the complaint of the 2nd petitioner, since information sought for by the 2nd petitioner under the Right to

Information Act, 2005 was not given in terms of law and consequential action on the part of Mr. C.K.Baiju, to trap the 2nd petitioner in a theft case. According to the learned Senior Counsel for the 6th respondent, the State Information Commission does not have power to issue any such direction. However, on a reading of the said order, what we could gather is that there was rampant allegations made by the 2nd petitioner against Mr. C.K.Baiju and on enquiry, it was found that there was deep seated role played by Mr. C.K.Baiju, in the matter of loss of official seal from the office of the Geologist, Kottayam and the role played in implicating the 2nd petitioner in a theft case. It was accordingly, in exercise of the power conferred on the State Information Commission under Section 20(2) of the Right to Information Act, 2005, the Commission decided to order a detailed enquiry against Mr.C.K.Baiju, the Senior Geologist, Mining and Geology Department, and recommended disciplinary action against him under applicable service rules.

50. In our view, the facts and circumstances unearthed in that context, persuaded the State Information Commission, to forward a copy of the order to the Principal Secretary to the Government, Department of Industry, and to the Director, Mining and Geology Department. Anyhow, the subject matter of the said proceedings is stayed by this Court as per order in W.P.(C) No.29280 of 2014 dated 19.03.2015 and therefore we are

not expressing any opinion on the merits of the said aspect .

51. On analyzing the facts and situations as above, it is clear that various proceedings were initiated against Mr. C.K.Baiju, respondent No.6, and one of them ended in exoneration of the charges. One disciplinary action was quashed by the Kerala Administrative Tribunal and apparently, in two of them, even according to Mr. C.K.Baiju, penalties were imposed, and two proceedings are pending.

52. The appointment to the posts in the Department of Mining and Geology was originally guided by the Kerala Geology Service Special Rules published as per S.R.O.No.114/82, by which, the service is constituted and categorised from Category (1) to (4). Category (1) - Director of Mining and Geology, Category (2) - Deputy Director of Mining and Geology, Category (3) - Senior Chemist, and Category (4) - Geologist. To the post of Director, Mining and Geology Department, the method of appointment is by promotion from the category of Deputy Director of Mining and Geology and in the absence of suitable candidates for promotion, by direct recruitment. The Deputy Director of Mining and Geology is a promotion post from the category of Geologist and in the absence of suitable candidates by promotion, by direct recruitment. Likewise, the manner in which promotions are done to the other posts are also specified in the Special Rules.

53. Rule 3(b) of the Special Rules for State Service deals with the manner in which the promotion has to be effected. It clearly specifies that promotion and appointment by transfer shall be made from the select list prepared from among eligible officers on the basis of merit and ability, seniority being considered only where merit and ability are approximately equal, and persons included in the select list shall be ranked in the order of their seniority, subject to the provisions of Rule 28(b)(i), Part II of the Kerala State and Subordinate Service Rules, 1958. Anyhow, the Special Rules, 1982 were superseded by the Special Rules, 2009, published as per SRO No.647/2009 dated 28th July, 2019, whereby, Rule 2 deals with constitution. The said rule provides eight categories of posts starting from Additional Director of Mining and Geology and ending with Audit Officer. Therefore, it is clear that as per the Kerala Geology Service Special Rules, 2009, there is no post of Director. However, the Additional Director of Mining and Geology is a promotion post from the category of Deputy Director of Mining and Geology and, in the absence of suitable candidates, for promotion, by direct recruitment. Likewise, the manner in which the promotion to be undertaken to the other posts are also specified in the Kerala Geology Service Special Rules, 2009.

54. It is pertinent to note that instead of Rule 3(b) of the Special Rules for the Kerala Geology Service, 1982, a note is provided to Rule 3

dealing with the method of appointment from each category, which specifies that promotion and appointment by transfer shall be made from the select list prepared from among eligible officers on the basis of merit and ability, seniority being considered only where merit and ability are approximately equal.

55. As is pointed out by the learned Senior Counsel appearing for the 6th respondent, the select list shall be prepared and a consequential rank list shall be made in the order of seniority, subject to the provisions of Rule 28(b)(i) in Part II of the Kerala State and Subordinate Service Rules, 1958. At the risk of repetition, Rule 28(b)(i)(7) dealing with preparation of selection list, reads thus:

“(7) The “Select List” shall be prepared from among the eligible officers on the basis of merit and ability, seniority being a consideration only when all the qualifications are equal. The number of names to be included in the “Select List” shall be the same as the estimated number of vacancies likely to arise during the next year. Supplemental lists may be prepared in case the lists already prepared get exhausted before the close of the year to which they relate, so as to obviate the necessity for convening meetings of Departmental Promotion Committees at short notice or keeping of posts unfilled and thereby causing administrative inconvenience. Persons selected for inclusion in the Select List according to their seniority in the feeder category. When the Special Rules provide for a definite ratio or order of preference from the feeder categories, persons from each feeder category shall be included in separate lists and appointment shall be made in accordance with the ratio or order or preference prescribed by such Special Rules for each feeder category.”

56. Thus, reading of the abovesaid provision makes it clear that the officers under suspension and the officers against whom, disciplinary and criminal proceedings are pending in Sessions Court or in any other higher courts for grave offenses like murder, dacoity, etc., and officers against who departmental proceedings are taken for imposition of a major penalty under the disciplinary rules, applicable to them, should not be included in the select list, but the suitability of such an officer for promotion should be assessed at the relevant time by the DPC and a finding reached whether if the officer had not been suspended or the criminal/departmental proceedings had not been pending against him, he would have been recommended or selected for promotion.

57. A conjoint reading of the provisions of Special Rules, 2009 and the Kerala State and Subordinate Service Rules, 1958, would make it clear that there should be a select list prepared for the purpose of effecting promotion. But, in the case on hand, no such exercise was undertaken by the State Government, evident from Exhibit-P9 impugned order. Moreover, the sole reason assigned therein to appoint Mr. C.K.Baiju is that there is dearth of IAS level officers and since it is not convenient to appoint an IAS Officer, Mr. C.K.Baiju is temporarily given the full authority and responsibility of the Director, Mining and Geology Department, which order is dated 20.03.2020, and still Mr. C.K.Baiju continues to hold the full

authority and responsibility of the Director of Mining and Geology, which according to us can never be termed as a temporary arrangement .

58. It is significant to note that as per the Special Rules, 2009, there is no post of Director, Mining and Geology Department, and we are unable to understand as to how, the State Government have appointed Mr. C.K.Baiju to a post which is not existing, in accordance with the Rules, 2009. That apart, the State Government have completely overlooked the Note to Rule 3 of the Special Rules, 2009, and the provisions of the Kerala State and Subordinate Service Rules, 1958, discussed above, while appointing Mr. C.K.Baiju to the post of Director, Mining and Geology, even though the said appointment is seen to have been made temporarily. Now, more than one year has elapsed and the 6th respondent continues to be in the said post. Nowhere from the impugned order, it is discernible as to why the provisions of the rules discussed above was given a go-bye by the State Government to appoint an officer tainted with serious allegations of corrupt practices, to a non existing post of Director, which would significantly and apparently demonstrates the influence wield by the said person with the upper echelons of the State Government, and therefore, we find force in the contentions advanced in that regard by the petitioners.

59. Since Exhibit-P9 did not contain any of the requirements contemplated under law, we called for the original files from the State

Government, in regard to the enquiry proceedings, and accordingly, the files were produced before us. Files pertaining to the appointment of Mr. C.K.Baiju, giving additional charge of the Director, Mining and Geology Department, were also called for.

60. We have gone through the files extensively and elaborately, and found that even in the enquiry reports, there is *prima facie* finding, to suggest that ways and means were found out to inflict minor penalties like barring of increments etc. In one of the enquiry reports, it is seen that the enquiry officer has found fault with the provisions of the Kerala Minor Mineral Concession Rules, 2015 and the loopholes contained thereunder to culminate in the matter of grant of permits and excessive mining operations done by the permit holders. It is also seen from the records that no select list is prepared before passing the impugned order Exhibit-P9, by the State Government, which absolutely violates the Special Rules, 2009, as well as the provisions of the Kerala State and Subordinate Service Rules, 1958.

61. Even though an attempt is made by the learned Senior Counsel appearing for the 6th respondent, to canvas the proposition that there is no appointment made to the post of Director, and Exhibit-P9 order is only a temporary charge given to Mr. C.K.Baiju, we are unable to agree with the said submission, especially due to the fact that a tainted officer is

continuing in service, in the post of Director, for the past nearly one year and secondly, the Government have not stated, as to why there is dearth of IAS officers to be appointed in a top level post of the Director/Additional Director, in the Department of Mining and Geology, which is a key post, also concerning environmental issues, and always to be dealt with allegations of corrupt practices of the officers in the department.

62. Perusal of the files relating to Exhibit-P9 order dated 20.03.2020, by which the 6th respondent, Mr. C.K.Baiju, has been given additional charge as the Director, Mining and Geology Department, does not disclose any discussion on the adequacy of the IAS officers, at the time of appointment, in the State of Kerala. Reasons assigned in the counter affidavit filed by the Government of Kerala, are not supported in the files. At this juncture, it is relevant to consider, as to whether an order impugned in a writ petition, can be justified by the reasons in the counter affidavit. On the said aspect, let us consider a few decisions.

(i) In **Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others** reported in (1978) 1 SCC 405, the Hon'ble Supreme Court held thus:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in

the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in **Commissioner of Police, Bombay v. Gordhandas Bhanji** (AIR 1952 SC 16):

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in Ms mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

9. We must, *in limine*, state that-anticipating our decision on the blanket ban on litigative interference during the process of the election, clamped down by Article 329(b) of the Constitution-we do not propose to enquire into or pronounce upon the factual complex or the lesser legal tangles, but only narrate the necessary circumstances of the case to get a hang of the major issues which we intend adjudicating. Moreover, the scope of any actual investigation in the event of controversion in any petition under Article 226 is ordinarily limited and we have before us an appeal from the High Court dismissing a petition under Article 226 on the score that such a proceeding is constitutionally out of bounds for any court, having regard to the mandatory embargo in Article 329(b). We should not, except in exceptional circumstances, breach the recognised, though not inflexible, boundaries of Article 226 sitting in appeal, even assuming the maintainability of such a

petition. Indeed, we should have expected the High Court to have considered the basic jurisdictional issue first, and not last as it did, and avoided sallying forth into a discussion and decision on the merits, self-contradicting its own holding that it had no jurisdiction even to entertain the petition. The learned Judges observed:

"It is true that the submission at serial No. 3 above in fact relates to the preliminary objection urged on behalf of respondents 1 and 3 and should normally have been dealt with & St but since the contentions of the parties on submission No.1 are inter-mixed with the interpretation of Article 329(b) of the Constitution, we thought it proper to deal with them in the order in which they have been made."

This is hardly a convincing alibi for the extensive *per incuriam* examination of facts and law gratuitously made by the Division Bench of the High Court, thereby generating apprehensions in the appellant's mind that not only is his petition not maintainable but he has been damned by damaging findings on the merits. We make it unmistakably plain that the election court hearing the dispute on the same subject under section 98 of the R.P. Act, 1951 (for short, the Act) shall not be moved by expressions of opinion on the merits made by the Delhi High Court while dismissing the writ petition. An obiter binds none, not even the author, and obliteration of findings rendered in supererogation must alley the appellant's apprehensions. This Court is in a better position than the High Court, being competent, under certain circumstances, to declare the law by virtue of its position under Article 141. But, absent such authority or duty, the High Court should have abstained from its generosity. Lest there

should be any confusion about possible slants inferred from our synoptic statements, we clarify that nothing projected in this judgment is intended to be an expression of our opinion even indirectly. The facts have been set out only to serve as a peg to hang three primary constitutional issues which we will formulate a little later.”

(ii) In **State Govt. Houseless Harijan Employees Association v. State of Karnataka and Ors.**, [(2001) 1 SCC 610], after considering the decision in **Mohinder Singh Gill's** case (cited supra), the Hon'ble Supreme Court held thus:

“48. The basis on which the learned Single Judge dismissed the appellant's writ petition was that there was no approval of the appropriate Government to the acquisition, namely, the absence of the third factor noted above. This was not the ground on which withdrawal from the acquisition had been made and it was not open to the State Government to justify its decision on any other ground.

49. Besides, what had been stated in the affidavit of the State-respondents is "the petitioner society has not submitted any housing scheme and as such there could not have been prior approval from the Government" In other words, the fact of prior approval has not been denied. What is said is because no housing scheme had been submitted by the appellant" there could not have been prior approval.”

(iii) In **Pavanendra Narayan Verma v. Sanjay Gandhi P.G.I. of Medical Sciences and Ors.**, (AIR 2002 SC 23), the Hon'ble Apex Court held thus:

“6. The respondents have submitted that the inquiry was held merely to assess the appellant's fitness for being continued on probation. The respondents claimed to have received various complaints regarding the discharge of the appellant's duties an in order to

give the appellant an opportunity of placing the true facts before the respondent the summary inquiry was held so that the suitability of the appellant for being confirmed in the post of Joint Director (Material Management) could be fairly assessed. It was also submitted that the order was not stigmatic nor punitive and that no statement in the counter affidavit would change that position.

34. That an affidavit cannot be relied on to improve or supplement an order has been held by a Constitution Bench in ***Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi*** (cited supra).

"...when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise..."

35. Equally an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order. This is also what was held in ***State of Uttar Pradesh v. Kaushal Kumar Shukla*** (supra):

"The allegations made against the respondent contained in the counter-affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination."

(iv) In ***Union of India (UOI) and Ors. v. G.T.C. Industries Limited, Bombay*** [(2003) 5 SCC 106], the Hon'ble Supreme Court held thus:

"14. Counsel for the appellants failed to displace the finding recorded by the High Court on this point. Contention of the counsel for the Union of India that the order of the Collector should be sustained by ignoring the submissions/statements of Shri Sailo as there was other sufficient material on record to sustain and justify the said order cannot be accepted. It may not be possible for us to separate or disentangle the

submissions of Shri Sailo from other material evidence on record. it is well settled that a quasi-judicial order has to be judged on the basis of reasoning contained therein and not on the basis of pleas put forward by the person seeking to sustain the order in its counter affidavit or oral arguments before the Court."

(v) In **State of Punjab and Ors. v. Bandeep Singh & Ors.** reported in (2016) 1 SCC 724, at paragraph (4), the Hon'ble Supreme Court held thus:

"4. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action....."

(vi) In **United Air Travel Services v. Union of India (UOI)** reported in (2018) 8 SCC 141, the respondent therein made an attempt to justify the order of disqualification, which was not stated in the latter. After considering the decision in **Mohinder Singh Gill's case** (cited supra), the Hon'ble Supreme Court repelled the said contention. At paragraphs 9, 10, 11 and 12, the Hon'ble Apex Court observed thus:

"9. A bare perusal of the aforesaid letter would show that the reason cited for disqualification was non-compliance with the very clauses of which exemption had been granted to the petitioners.

10. The learned Additional Solicitor General appearing for the respondents could not dispute the aforesaid position but sought to canvas that the reasons were wrongly communicated in the rejection letter, and there was actually, some other reason for the rejection. The aforesaid plea can hardly be countenanced in view of the reasons referred to and communicated.

11. The learned counsel for the petitioner has, thus, rightly drawn our attention to the Constitution Bench judgment of this Court in ***Mohinder Singh Gill v. Anr. v. The Chief Election Commissioner, New Delhi and Ors.*** (1978) 1 SCC 405 to submit that such a plea cannot be accepted. We may note that this is a well settled legal position in many judicial pronouncements of this Court, but it is not necessary to revert to the same.....

Orders are not like old wine becoming better as they grow older.”

12. The aforesaid legal position, thus, makes the stand of the respondent unsustainable, resulting in quashing of the impugned letters of rejection.”

63. To substantiate his contention that a writ of certiorari would lie against an appointment made, learned counsel for the petitioners invited our attention to the decision in ***Kumar Padma Prasad v. Union of India (UOI) and Ors.*** [(1992) 2 SCC 428], wherein the Hon'ble Supreme Court had considered an issue with respect to the appointment of a Judge of High Court, allegedly in violation of Articles 217(1) and 217(2) of the Constitution of India, and ultimately quashed the appointment and the Union of India was directed not to administer Oath or affirmation under Article 219 of the Constitution of India to the Judge designate.

64. That apart, the learned counsel for the petitioners has also relied on the decision in ***Centre for PIL and Others v. Union of India (UOI) and Others*** reported in (2011) 4 SCC 1, wherein the Hon'ble apex Court held that though the Government is not accountable to the courts in

respect of policy decisions, they are accountable for the legality of such decisions. Paragraphs 34 to 37 of the said judgment read thus:

“Is Writ of Quo Warranto invocable ?

34. Shri K.K. Venugopal, learned senior counsel appearing on behalf of respondent No. 2, submitted that the present case is neither a case of infringement of the statutory provisions of the 2003 Act nor of the appointment being contrary to any procedure or rules. According to the learned counsel, it is well settled that a writ of quo warranto applies in a case when a person usurps an office and the allegation is that he has no title to it or a legal authority to hold it. According to the learned counsel for a writ of quo warranto to be issued there must be a clear infringement of the law. That, in the instant case there has been no infringement of any law in the matter of appointment of respondent No. 2.

35. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the Court inter - alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority.

36. One more aspect needs to be mentioned. In the present petition, as rightly pointed by Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner, a declaratory relief is also sought besides seeking a writ of quo warranto.

37. At the outset it may be stated that in the main writ petition the petitioner has prayed for issuance of any other writ, direction or order which this Court may deem fit and proper in the facts and circumstances of this Case. Thus, nothing prevents this Court, if so satisfied, from issuing a writ of declaration. Further, as held hereinabove, recommendation of the HPC and, consequently, the appointment of Shri P.J. Thomas was in contravention of the provisions of the 2003 Act, hence, we find no merit in the submissions advanced on behalf of respondent No. 2 on

non - maintainability of the writ petition. If public duties are to be enforced and rights and interests are to be protected, then the Court may, in furtherance of public interest, consider it necessary to inquire into the state of affairs of the subject matter of litigation in the interest of justice [See -- Ashok Lanka v. Rishi Dixit, 2005 KHC 1154 : 2005 (5) SCC 598 : AIR 2005 SC 2821].”

65. Learned counsel for the petitioners has also relied on the decision in **State of Punjab v. Salil Sabhlok and Others** [(2013) 5 SCC 1], to contend that merely because, an element of service matter is involved in a writ petition, it cannot be said that the party initiating action is not aggrieved and has no *locus standi* to initiate legal action in the court of law. Evaluating the facts and circumstances, the Hon'ble Supreme Court found that the writ petition was filed in a matter affecting the interests of general public and, therefore, any member of public could espouse the cause of general public, so long as his *bona fides* are not doubted. It was accordingly held that the subject matter of the writ petition could not be said as a service matter and the High Court was right in entertaining a writ petition as a Public Interest Litigation.

66. On the other hand, learned Senior Counsel for the 6th respondent has invited our attention to the decisions of the Hon'ble Supreme Court in **State of Uttaranchal v. Balwant Singh Chauhal and Others** [(2010) 3 SCC 402], **Hari Bansh Lal v. Sahodar Prasad Mahto and Others** [(2010) 9 SCC 655], and **Girjesh Shrivastava and Others v.**

State of Madhya Pradesh and Others [(2010) 10 SCC 707], to canvas the proposition that no Public Interest Litigation is maintainable in service matters and only the affected persons are entitled to seek remedy in service matters.

67. On consideration of the facts and circumstances, we are of the opinion that sufficient public interest is involved in the matter at hand, and that Mr. C.K.Baiju, respondent No.6, was appointed to the post of Director, Mining and Geology Department, even though styled as temporary and giving charge, is overlooking all canons of law and beyond comprehension of the normal procedure followed in the matter of promotion, especially due to the fact that he is a tainted officer facing charges and imposed with penalty, and thus, violated fair play and equal opportunity. Moreover, the Government functions as a trustee of the citizens and, therefore, duty bound to protect the general interests of the public. Whenever the Government overlooks its duty and obligations, the constitutional courts shall not be hesitant to step in and correct such patent illegality, in larger public interest. We are also of the opinion that the key post of a Director or Additional Director in the Department of Mining shall always be held by a person not only with ability and merit but with the highest order of integrity too. Instant case is one, where the State Government was unmindful of such a moral principle. Apart from that, the basic requirement of law, as

discussed above, is merit and ability, which according to us, shall give way to seniority, however, it is totally lacking in the case at hand. Therefore, we find force in the contentions advanced by learned counsel for the petitioners, and the decisions relied upon, to arrive at a safe conclusion that Exhibit-P9 order dated 20.03.2020 cannot be sustained under law, and liable to be interfered with.

In the light of the above discussion and decisions, we quash Exhibit-P9 order, G.O.(Rt.) No.258/2020/ID dated 20.03.2020 issued by the Joint Secretary, Department of Industry (A), and direct the State Government, to take immediate steps to terminate the services of the 6th respondent viz., Mr. C.K.Baiju, from the post of Director, Mining and Geology Department, granted as per Exhibit-P9, forthwith. Accordingly, this writ petition is allowed to that extent. The issues raised relating to other aspects in the writ petition are left open being subject matter of enquiry and adjudication appropriately. Registry is directed to return the original files produced, to the office of the Advocate General after securing proper acknowledgment.

Sd/-
S. Manikumar
Chief Justice

Sd/-
Shaji P. Chaly,
Judge

krj

APPENDIX**PETITIONER'S/S EXHIBITS:**

- P1 COPY OF THE REGISTRATION CERTIFICATE DATED 16.03.2016 ISSUED TO 1ST RESPONDENT FOR THE REGISTRAR OF SOCIETIES ERNAKULAM AND TRANSLATION.
- P1 A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P1.
- P2 COPY OF COMPLAINT DATED 04.11.2019 WITH MATERIALS AND TRANSLATION.
- P3 COPY POSTAL RECEIPT EVIDENCING THE SENDING OF EXHIBIT P2 COMPLAINT.
- P4 COPY OF CIRCULAR DATED 23.06.2003.
- P4 A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P4.
- P5 COPY OF CIRCULAR 8TH JANUARY 2007 NO.6649/UPC 2003.
- P5 A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P5.
- P6 COPY OF THE REPLY DATED 29.01.2020 ISSUED BY 2ND RESPONDENT FROM THE OFFICE OF THE 2ND RESPONDENT.
- P6 A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P6.
- P7 COPY OF THE LETTER DATED 27.02.2017 ISSUED BY THE SUPERINTENDENT, VIGILANCE AND ANTI CORRUPTION BUREAU.
- P7 A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P7.
- P8 COPY OF THE LETTER DATED 22.05.2019 OF PRINCIPAL SECRETARY TO THE GOVERNMENT.
- P9 COPY OF THE ORDER GO(RT)NO.258/2020/ID DATED 20.03.2020.
- P9 A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P9.
- P10 COPY OF THE MEMO OF CHARGES DATED 04-05-2012 AND ITS ENGLISH TRANSLATION.
- P11 COPY OF THE MEMO OF CHARGES DATED 18-5-2019 ISSUED TO THE 6TH RESPONDENT.
- P11A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P1.

- P12 COPY OF THE STATEMENT OF CHARGES DATED 18-5-2019 ISSUED TO THE 6TH RESPONDENT.
- P12A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P1.
- P13 COPY OF THE APPLICAITON DATED 15-6-2020 SUBMITTED TO THE INDUSTRIES (A) DEPARTMENT.
- P13A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P13.
- P14 COPY OF THE REPLY DATED 2-7-2020 ISSUED FROM THE INDUSTRIES (A) DEPARTMENT
- P14A THE TRUE ENGLISH TRANSLATION OF EXHIBIT P14.
- P15 COPY OF THE REPLY DATED 23-7-2020 ISSUED FROM KERALA PUBLIC SERVICE COMMISSION.
- P15A THE TRUE ENGLISH TANSLATION OF EXHIBIT P15.
- P16: COPY OF THE APPLICATION DATED 29.6.2020 SUBMITTED TO THE VIGILANCE DIRECTOR WITH ENGLISH TRANSLATION.
- P17: COPY OF THE REPLY DATED 7.8.2020 FROM THE VIGILANCE DIRECTOR WITH ENGLISH TRANSLATION.
- P18:- COPY OF THE STATUS REPORT RECEIVED FROM THE WEBSITE OF LOK AYUKTA.

RESPONDENTS' EXHIBITS:

- R6 (A) COPY OF THE INTERIM ORDER DATED 12.6.2015 IN WPC NO-29280/2014 OF THIS HON'BLE COURT
- R6 (B) COPY OF THE ORDER DATED 9.4.2019 IN O.A. 598/2018 OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM, (ADDITIONAL BENCH AT ERNAKULAM)
- R6 (C) COPY OF THE MINUTES OF THE MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE DATED 30.5.2016 PHOTOCOPY OF THE COMMUNICATION NO.
- R6 (D) COPY OF THE ORDER G.O.(RT) NO-248/2015/ID DATED 19.3.2015 ISSUED BY THE GOVERNMENT
- R6 (E) COPY OF THE MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE DATED 20.4.2015
- R6 (F) COPY OF THE ORDER G.O.(RT) NO.1012/2014/ID DATED 17.9.2014

- R6 (G) COPY OF THE ORDER NO VIG-B1/764/2018 VIG.DATED 29.7.2019
- R6 (H) COPY OF THE LETTER NO-NOC-36893/2019/DVACB DATED 10.12.2019 OF THE DIRECTOR OF VIGILANCE & ANTI CORRUPTION BUREAU.
- R6 (I) COPY OF THE COMMUNICATION DATED 11/9/2020 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER.
- R6 (J) COPY OF THE DETAILS OF THE VIGILANCE CASES AND DEPARTMENTAL PROCEEDINGS GIVEN BY THE STATE PUBLIC INFORMATION OFFICER ALONG WITH EXT.P6(I).
- R6 (K) COPY OF THE JUDGMENT IN CC NO.27/2012 DATED 31/10/2020 OF CHIEF JUDICIAL MAGISTRATE COURT, KOTTARAKKARA.
- R6 (L) COPY OF THE INVESTIGATION REPORT FILED BY THE INVESTIGATING AGENCY BEFORE THE LOK AYUKTA IN COMPLAINT NO.447/2015 A.
- R1(A) COPY OF THE GOVERNMENT ORDER G.O.(Rt) NO.248/2015/ID DATED 19/5/2015.
- R1(B) COPY OF THE GOVERNMENT ORDER G.O.(Rt)NO.1012/2014/ID DATED 17/9/2014.

//TRUE COPY//

P.A. TO C.J.