

List of dates	
25.08.2010	The government of India established the Kerala Administrative Tribunal as invoking the powers conferred on it under Sec. 4(2) of Administrative Tribunals Act 1985 as per notification GSR.705 (E) dated 25.08.2010.
04.01.2020	The Government of Kerala as per GO(Ms).No.1/2010/P&ARD dated 04.01.2020 decided to establish the Kerala Administrative Tribunal at Thiruvananthapuram.
05.08.2010	The first Chairman of the Kerala Administrative Tribunal was appointed on 05.08.2010.
20.09.2010	As per GO.(Ms) No.32/2010/P&ARD dated 20.09.2010 the strength of the Administrative Tribunal was enhanced from 2 to 6 and established two additional benches to facilitate the sitting of two Divisional Benches at Thiruvananthapuram and one bench at Ernakulam.
05.10.2020	The term of 5 years of the last Chairman was completed on 05.09.2020. The term of the Chairman of Administrative Tribunal expired on 05.09.2020 and the post of Chairman is lying vacant.
19.07.2021	Out of the three Administrative Members term of two administrative members expired and there is one administrative member in the Kerala Administrative Tribunal. Apart from the one administrative member two judicial members Shri.Benny Gervasis and Shri. V Rajendran also are in office now. However, the term of the judicial members Shri.Benny Gervasis and Shri. V Rajendran is to expire on 19.07.2021. So far

	no steps are taken by the respondents to pass orders extending the term of judicial members.
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Points urged:	Whether the respondents are justified in not extending the term of judicial members of Kerala Administrative Tribunal, whose term will expire on 19.07.2021.
Acts/Rules referred:	Public Interest Litigation
Authorities cited:	2011 (2) SCC 132, 1986(2)SCC-679, 2012(1) KLT 841

Dated this the 17th day of June 2021.

Counsel for the petitioners.

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT
ERNAKULAM.**

W.P.[c] No. of 2021

[Special Original Jurisdiction]

Petitioners:

1. Kerala Administrative Tribunal Advocates' Association
Register No.TVM/TC/609/2014, KAT Complex, Vanchiyoor,
Thiruvananthapuram-695035, represented by its President,
Mr.Fathahudeen.M, Advocate, East of District Court,
Vanchiyoor, Thiruvananthapuram, PIN – 695 035.
2. Vazhuthacadu Narendran alias R. Narendran Nair,
aged 70 years, Advocate, S/o. N.K.Ramakrishna Pillai,
'Sopananm', Behind Trivandrum Club, Vazhuthacadu,
Thiruvananthapuram-695010.

Vs.

Respondents:

1. Union of India, represented by its
Principal Secretary,
Department of Personnel and Training
Ministry of Personnel, Public Grievances and Pensions
5th Floor, Sardar Patel Bhavan
North Block, New Delhi – 110 001.
2. State of Kerala represented by its
Chief Secretary, Government Secretariat
Thiruvananthapuram – 695 001.
3. Principal Secretary,
P & ARD Department.
Government Secretariat, Thiruvananthapuram – 695 001.
4. Kerala Administrative Tribunal
Represented by its Registrar
KAT Complex, Vanchiyoor, Thiruvananthapuram - 695 305.
5. Benny Gervasis,
Hon'ble Member, Kerala Administrative Tribunal
KAT Complex, Vanchiyoor, Thiruvananthapuram - 695 305.
6. Rajendran.V,
Hon'ble Member, Kerala Administrative Tribunal
KAT Complex, Vanchiyoor, Thiruvananthapuram - 695 305.

**WRIT PETITION [CIVIL] FILED UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA.**

Address for service of notice of the Applicants may be served on their Counsel V.M. Krishnakumar, P.R Reena, P.S.Sidharthan & Maya.M, Advocates, 'Lakshmi', 1A, AC Grace Apartments, T.P Canal Road, Kaloor, Kochi - 17 and address for service of notice of the Respondents may be served on their respective address as shown above.

The Petitioners humbly submit as follows:

STATEMENT OF FACTS

1. The 1st Petitioner is an Association of Lawyers practicing in the Kerala Administrative Tribunal (Shortly referred to as the 'Tribunal' hereunder). The Association is registered under the provisions of Travancore Cochin Literary, Scientific and Charitable Societies Act 1955. The Executive committee of the Association held on 11/06/2021, resolved to authorize its President to file the present Writ Petition in the matter of appointment of Chairman and Judicial Members in the Tribunal. True copy of the resolution of the Kerala Administrative Tribunal Advocates Association dated 11.06.2021 is produced herewith and marked as **Exhibit P-1**. The 2nd petitioner is an Advocate practicing in Kerala Administrative Tribunal, having 43 years of standing at the bar. 2nd Petitioner is the Vice President of Indian Association of Lawyers, (IAL), Kerala Chapter. The 2nd petitioner is also the former Deputy Mayor of Thiruvananthapuram Corporation and apart from being a lawyer he is a social worker.
2. The Petitioners prefer this writ petition seeking to highlight the concern and to redress the grievances regarding the inaction and culpable delay on the part of the Union and state government in not extending the term of the present judicial members as they are

completing their first term of 5 years by 19 July 2021 and not appointing a new chairman in the place of the former chairman, who completed his term on 15/09/2020. As a matter of fact the Tribunal consists of at least one judicial and one administrative member. With a lone administrative member the 4th respondent cannot function. This will jeopardize the interest of the entire litigant public who has to approach the 4th respondent for redressal of their grievances regarding “service matters”.

3. The government of India established the Kerala Administrative Tribunal by invoking the powers conferred on it under Sec. 4(2) of Administrative Tribunals Act 1985 (herein after referred to as ‘the Act’), as per notification GSR.705 (E) dated 25.08.2010. The Government of Kerala as per GO(Ms).No.1/2010/P&ARD dated 04.01.2020 decided to establish the Kerala Administrative Tribunal at Thiruvananthapuram. As per GO.(Ms) No.32/2010/P&ARD dated 20.09.2010 the strength of the Administrative Tribunal was enhanced from 2 to 6 and established two additional benches to facilitate the sitting of two Divisional Benches at Thiruvananthapuram and one bench at Ernakulam. The first Chairman of the Kerala Administrative Tribunal was appointed on 05.08.2010. The principal bench of Kerala Administrative Tribunal has four members. Two Judicial members and two administrative members sitting in two Division Benches and the additional bench Ernakulam is having two members one Judicial Member and one Administrative Member.

4. It is submitted that no rules are framed by the Central Government regarding selection and appointment of Chairman of the Tribunal. The precedents that are adopted by the state for appointment Chairman of the Administrative Tribunal is recommendation of a sitting or retired Judge of the Hon'ble High Court of Kerala by the Hon'ble Chief Justice and the recommendation is forwarded by the government to the Hon'ble President of India for issuing appointment orders in consultation with the Chief Justice of India as provided under the Administrative Tribunal Act. Two former Chairmen of the tribunal namely Hon'ble Justice K.Balakrishnan Nair and Hon'ble Justice T.R.Ramachandran Nair were appointed by the Central Government following the aforesaid procedure. The term of 5 years of the last Chairman Shri.T.R.Ramachandran Nair was completed on 05.09.2020. The Hon'ble Chief Justice had followed the earlier precedents and had forwarded the name of another retired Hon'ble Judge to be appointed as Chairman of Administrative Tribunal, which is forwarded by the Hon'ble Governor to the central government and the matter is pending before the Central Government. It is understood that the Kerala Administrative Tribunal, Ernakulam, Advocates Association had filed WP(c).1076/2021 before this Hon'ble Court, seeking a writ in the nature of mandamus to expedite the process of appointment of Chairman of Kerala Administrative Tribunal on or before 19.07.2021.
5. As stated earlier, three Division Benches were functioning in the Kerala Administrative Tribunal and two judicial members as well

as Chairman and three administrative members were officiating in the Administrative Tribunal. Two Division Benches were functioning in the principal bench at Thiruvananthapuram and one Division Bench was functioning at Ernakulam. As stated earlier, the term of the Chairman of Administrative Tribunal expired on 05.09.2020 and the post of Chairman is lying vacant. Out of the three Administrative Members, term of two administrative members expired and there is only one administrative member in the Kerala Administrative Tribunal. Apart from the one administrative member two judicial members Shri.Benny Gervasis and Shri. V Rajendran also are in office now. However, the term of the judicial members Shri.Benny Gervasis and Shri. V Rajendran is to expire on 19.07.2021. So far no steps are taken by the respondents to pass orders extending the term of judicial members. After 19.07.2021 there will be no judicial members in the Kerala Administrative Tribunal and there will be a lone administrative member and the entire adjudicatory functions of Kerala Administrative Tribunal will come to a standstill after 19.07.2021.

6. It is brought to the notice of this Hon'ble Court that under Sec. 8 of the Administrative Tribunals Act the term of office of the chairman and members of Administrative Tribunal is mentioned. Under Sec. 8(2) it is mentioned that **a member shall hold office for a term of 5 years from the date on which he enters the office extendable by one more term of 5 years.** Sec. 8 of the Administrative Tribunal Act is as follows;

“[8. Term of office .- (1) The Chairman shall hold office as such for a term of five years from the date on which he enters upon his office.

Provided that no Chairman shall hold office as such after he has attained the age of sixty-eight years.

(2) A Member shall hold office as such for a term of five years from the date on which he enters upon his office extendable by one more term of five years:

Provided that no Member shall hold office as such after he has attained the age of sixty-five years.

(3) The conditions of service of Chairman and Members shall be the same as applicable to Judges of the High Court]

7. The Hon'ble Supreme Court in the decision reported in Shankar Raju Vs. Union of India 2011 (2) SCC 132 para 24 has held as follows;

“Sec.8 was amended by Act 1 of 2007. The amended provision also provides the “Term of Office” of the Chairman and Members of the Tribunal. From the language employed in the Section, what we can decipher is that the Chairman of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office. The proviso appended to the sections couched in the negative language. It states that the person appointed as a Chairman cannot hold office as such after he has attained the age of sixty five years. Sub section 2 of Sec.8 speaks of the term of office of a Member of the Tribunal. It only says that a person appointed as Member of the Tribunal, if he is eligible for the post

in terms of Sec.6, shall hold office, for a term of five years. **In the normal course, this term of five years is extendable by a term of another five years, giving a person a total term of 10 years. Continuation from 5 years to 10 years, appears to be as a matter of course subject to exceptions as provided in service law jurisprudence.** Further, if such person has attained the age of 65 years, then he will have to retire, irrespective of whether he has completed ten years in office as a Member or not”.

8. Thus the Hon'ble Supreme Court has held that continuation from 5 years to 10 years is a matter of course subject to exceptions provided in the service law jurisprudents. Hence the judicial members whose term is to expire on 19.07.2021 are to be given extension for one more term of 5 years in view of the Hon'ble Supreme Court judgment subject to of course their term will end on attaining the age of 65 years. However, till date no action is being taken by the respondents for extending the term of the judicial members as mentioned above, who were first appointed for the initial 5 year term on 20.07.2016. Therefore extension of the term of members is automatic as a matter of course and the Respondents are bound to issue formal orders extending the term of appointment of the present judicial members by one more term of 5 years or until they attain the age of 65 years whichever is earlier.
9. However, the 4th Respondent Kerala Administrative Tribunal is under the impression that the term of office of the present Judicial members will be over by 19 July 2021 on completion of their first

term of 5 years from the date of appointment. The Petitioner has come to understand that the 4th respondent had already addressed the State Government for issuing notification for inviting application for selection of new judicial members in the place of the present members on the premise that they would complete their term on 19 July 2021. The government, however, has not issued any notification in the matter, presumably on its understanding that the present members can continue to hold their office for one more term of 5 years.

10. It is submitted that the Ministry of Personnel, Public Grievances and Pensions of the Central Government, in exercise of powers conferred by clause (c) of S.36 of the Administrative Tribunals Act, 1985 and in supersession of the Administrative Tribunals (procedure for appointment of Vice-chairman and members) Rules, 2006, except as respects things done or omitted to be done before such supersession, as per notification GSR 923(E) notified Administrative Tribunals (Procedure for Appointment of Members) Rules, 2011 [herein after referred to as 'Rule 2011']. Rule 3(2) of 2011 Rules deals with the composition of the Selection Committee of members in the Administrative Tribunals, which reads as follows:

“Rule 3(2): For Selection of members of the State Administrative Tribunals:- There shall be a selection committee of the concerned State Government for the purpose of selection of members of the concerned State Administrative Tribunal consisting of the following, namely:-

Chief Justice of the High Court of the concerned State-Chairman
Chief Secretary of the concerned State Government-member
Chairman of the State Administrative Tribunal of the concerned
State-member
Chairman of the public service commission of the concerned
state-member”

Rule 5(2) of the 2011 Rules provides the procedure for inviting applications and processing of candidatures for the State Administrative Tribunal, which reads as follows:

“(2) State Administrative Tribunal-

(i) The selection committee referred to in sub rule (2) of Rule 3 of the concerned State Government shall device its own procedure or lay down guidelines for inviting applications and for the selection of the members of the Administrative Tribunal of the State concerned.

(ii) The selection committee shall recommend persons for appointment as members from amongst the persons on the list of the candidates prepared by the Chief Secretary or Secretary, general Administration Department of personnel Department of the State Government after writing to the various cadre controlling authorities of the state.

(iii) The State Government shall, after taking into consideration the recommendations of the selection committee, make a list of persons selected and send the same with its recommendations to the Central Government who shall in consultation with the Chief Justice of India and in accordance with the provisions

contained in sub-section (4) of section 6, appoint members of the Administrative Tribunal of the state concerned.”

Rule 8 of 2011 Rules which is also relevant in this context reads as follows:

“Rule 8:-Consultation with the Governor-(1) For selection of a member of State Administrative Tribunal the Governor of the concerned State shall be consulted by the State Government and for this purpose the recommendations of the selection committee referred to in sub rule (2) of rule 3 shall be placed before him.

(2) After consulting the concerned Governor under sub-rule (1) the recommendations of the selection committee together with the views of the Governor shall be forwarded to the Central Government and that Government shall seek the orders of the competent authorities”.

11. In the Finance Act 2017, government introduced Sec.184 which empowered the Central Government to make rules to provide qualification, appointment, salary, allowances, resignation, removal and other conditions of service of chairman and members of the Tribunal as provided under the 8th schedule of the Act. Sec.184(2) of the Finance Act 2017 provided that the Chairman and members of the Tribunal mentioned in schedule A shall be appointed by the Central Government on recommendation, Search cum Selection Committee constituted under Sec. 184(3) in such manner as a government may by rules provide. The 8th schedule of the Finance Act 2017 mentioned certain tribunals. True copy of

the 8th schedule of Sec. 184 of Finance Act 2017 is produced herewith and marked as **Exhibit.P2**. As can be seen from Ext.P2 the Central Administrative Tribunal is clearly mentioned. However the State Administrative Tribunals all over the country does not find a place in the 8th schedule. This is the case even after the amendment of the 8th schedule by the ordinance No.2 of 2021.

12. The Government of India in exercise of the power conferred by Section 184 of the Finance Act, 2017, framed new Rules for appointment of members of various Tribunals including Central Administrative Tribunal, by virtue of Tribunal, Appellate Tribunal and other Authorities (Qualification, Experience and Other conditions of Service of Members) Rules, 2020. As per Rule 3 and 4 of the said Rules the qualification for appointment of member and method of appointment is mentioned. Entry 5 of the schedule of the said rules provided for the qualification and mentioned appointment of chairman and members of Central Administrative Tribunal under the Administrative Tribunals Act 1985. **The State Administrative Tribunals does not find a place in the said schedule also. Hence it is abundantly clear that Sec. 184 of Finance Act 2017 does not affect the appointment, qualification etc of chairman and members of the State Administrative Tribunals.** However the central government has amended the Administrative Tribunals Act by introducing Sec.10B in the said Act. Sec. 10B is as follows;

²[10B. Qualifications, terms and conditions of service of chairman and Member.- Notwithstanding anything contained

in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman and other members of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), shall continue to be governed by the provisions of this Act, and the rules made there under as if the provisions of section 184 of the Finance Act, 2017 had not come into force.]”

13. As can be seen from Sec. 10B notwithstanding in the Administrative Tribunals Act the qualification, appointment etc of the chairman and members of the tribunals appointed after the commencement of the Finance Act 2017 shall be governed by Sec. 184 of the Finance Act 2017. Proviso to Sec. 10B provides that the Chairman and members appointed before the Commencement of Finance Act 2017 shall continue to be governed the amended Administrative Tribunals Act.

14. However, it is curious to note that 8th schedule of Finance Act 2017, even after amendment of the 8th schedule by ordinance No.2 of 2021 does not mention the State Administrative Tribunals; it only mentions the Central Administrative Tribunals. As can be seen from Sec.2 (t) read with Sec. 4, 5 & 6, of the Administrative Tribunals Act provides for two separate tribunals i.e, Central Administrative Tribunal and State Administrative Tribunals. The procedure for appointment, method of appointment, qualification etc of the chairman and members of the Central Administrative Tribunal and State Administrative Tribunals are entirely different.

15. Hence the fact that State Administrative Tribunals was not included in the 8th schedule of the Finance Act shows that the Central government has not so far provided the method of appointment, qualification etc for the chairman and members of the State Administrative Tribunals as was being done for the Central Administrative Tribunal. However in view of Sec. 10B, which contained a non obstante clause, the appointment, method of appointment, qualification etc of the members of the tribunal as defined under Sec. 2(t) of Administrative Tribunals Act shall be governed by Sec. 184 of the Act. Hence the provisions under the Administrative Tribunals Act including Sec. 6, 7 and 8 is not in existence and is impliedly repealed by Sec. 10 (B) of the Act. **In view of aforesaid situation there is a legal vacuum regarding the qualification, method of appointment and other aspects of the members of the State Administrative Tribunals.** However, in view of proviso to Sec. 10(B), a member appointed before the commencement of Finance Act 2017 shall continue to be governed by the un amended provisions of the Act.
16. Hence as regards the two judicial members of the 4th respondent Sec. 10(B) is not applicable and what is applicable is Sec. 8 of the Administrative Tribunals Act, since they were appointed before the commencement of Finance Act 2017. In view of Sec.8(2) of the Administrative Tribunals Act and as per the judgment of the Hon'ble Supreme Court in Shankar Raju Vs. Union of India 2011 (2) SCC 132, the members appointed for first term is in the normal course to be given extension for other term,

the respondents have no choice but to extend the term of the judicial members of the 4th respondent on expiry of the first term on 19.07.2021.

17. It is submitted that the state government should have addressed the 1st respondent and taken necessary steps to issue necessary orders extending the term of office of the present judicial members. There are no Rules for issuing extension of term of members. No selection committee is needed for extension as extension is not re-appointment or fresh appointment. It is also not appropriate to have extension of present members at the hands of a selection committee, consisting of government representatives, as in the case of first appointment, as the members have the power of contempt jurisdiction over the government representatives in the selection committee. Therefore the inaction of the State Government in the matter is highly arbitrary and illegal. **The Honorable Supreme Court of India in its judgment in Comptroller and Auditor General of India V K.S. Jagannathan & another, reported in 1986(2)SCC-679 held that the High Courts in India exercising their jurisdiction under Art.226 of the Constitution have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion malafide or on irrelevant considerations or by ignoring the**

relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In a such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Art.226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion. It is therefore appropriate to declare that the term of office of the present judicial members is extended by one more term of 5 years or till they attain the age of 65 years whichever is earlier.

18. In the aforesaid context it is submitted that even though the first Chairman was appointed in the Kerala Administrative Tribunal as early on 25.08.2010, the Tribunal could not function for more than one year due to non-appointment of at least one Judicial Member or one Administrative Member. Thereafter one Administrative Member was appointed in December 2011 and accordingly the Tribunal started functioning from December 2011.
19. As submitted above, the KAT is to have a Chairman with two Judicial Members and three Administrative Members to constitute

three Division Benches. The former chairman Hon'ble Mr. Justice T.R. Ramachandran Nair, completed his term on 15.09.2020. One Administrative Member Mr. V. Somasundaran, completed his term on 26.05.2021. Now the Judicial Member Sri. Benny Gervasis is the Acting Chairman of the Tribunal. The two Judicial Members namely Mr. Benny Gervasis and Mr. V. Rajendran will complete their first term of 5 years on 19.07.2021. After their completing the term, a strange situation would arise, as there will be no Chairman and Judicial Members in the Tribunal. The Kerala Administrative Tribunal will not be able to hold sitting without Judicial Members. Ultimately the entire functioning of the Tribunal would come to a halt and it will have to be remained closed till the appointment of new Chairman and formal extension of the Judicial Members.

20. It is submitted that the Hon'ble Chief Justice of Kerala had, as per the earlier convention, nominated a new Chairman and the Government of Kerala already forwarded a proposal for appointment of the new Chairman, to the Government of India with the approval of His Excellency the Governor of Kerala. It is reliably learnt that the proposal, after obtaining response of the Chief Justice of India in terms of Sn.6(3) of the Act, is pending before the Appointment Committee of the Cabinet on 05/02/2021 onwards, for forwarding to the President of India for issuance of warrant of appointment. Approval of the Cabinet Committee is not provided anywhere in the Act and what remains is its forwarding to the President for appointment. However, no action to forward the proposal to the President for issuance of warrant of appointment

is being done by the 1st Respondent despite the expiry of 4 months after obtaining response from the Chief Justice of India and despite the expiry of 9 months after completing the term of former chairman. The Appointment Committee of the Cabinet or the 1st Respondent has no discretionary power in the matter of appointment of chairman of the Tribunal. Once the name is forwarded to the Central Government after completing all due process including consultation with the Chief justice of India, it has no option but to forward it to the President for the issuance of warrant of appointment.

21. It is understood that this Honorable Court as per interim order dated 01/06/2021 in Writ Petition (C)10706/2021 filed by the Kerala Administrative Tribunal Ernakulam Advocates Association, challenging the validity of a notification issued by the state government for filling up of the vacancy of an administrative member without chairman being part of the selection committee, directed the competent authority to take a decision on the recommendation for appointment of chairman to the Tribunal within three weeks. No action, pursuant to the interim order, has been taken by the 1st Respondent till date.

22. **It is inter-alia submitted that the Honorable Supreme Court, during the pendency of the Writ Petition(C)No.804 of 2020 mentioned supra, while reserving the matter for judgment, extended the term of the Chairpersons, Vice-Chairpersons and members of the Tribunal till 31/12/2020. (Para 53 (xv) of the judgment). Therefore it is only appropriate**

to issue an interim order extending the term of present judicial members of the Tribunal, till final orders are passed in the writ petition. There is no reason why similar orders

extending the term of the judicial members, should not be passed during the pendency of the present writ petition.

23. The litigant public is gravely prejudiced by the inaction of the State. The Kerala Administrative Tribunal constituted under Article 323 A of The Constitution Of India as per the Administrative Tribunals Act, 1985 as evident from the orders constituting it was formed by the Government in implementation of its policy decision to constitute an alternate and speedy avenue for disposal of service matters relating to Government employees and the employees of Government Schools and College. Writ Petitions dealing with these matters pending before this Hon'ble Court were transferred to the Tribunal as per the provisions of the Act. It was later found that on transfer of thousands of cases and the enhanced filing at the Tribunal compelled the Government to provide an additional Bench at Thiruvananthapuram and also a Permanent Bench at Ernakulam, the seat of this Hon'ble Court. However, the interest of the litigants would be in peril if new chairman is not appointed and the present judicial members are not permitted to continue for another term of five years or till they attain their age of 65 years whichever is earlier. The Tribunal, as per the decision of the Hon'ble Supreme Court in Sampath Kumar's case [AIR 1987 SC.386] & L. Chandra Kumar case [AIR 1997 SC 1125] which are to be supplementary to the High Court and entrusted with the

obligation of testing the vires of subordinate legislations and rules is now found wanting.

24. It is also submitted that out of 50,926 cases filed in KAT, 41,246 cases were already disposed of as on 02/04/2021. This remarkable disposal is achieved by the Tribunal with only one Judicial member, the Chairman, for the first 5 years. Now 8561 cases are pending before the three benches of the Tribunal. True copy of the statement showing the details of cases filed, disposed and pending before the Tribunal as on 02/04/2021 is produced herewith as **Exhibit-P-3**.

25. The state government employees including contingent workers alone are now amenable for the jurisdiction of Tribunal. The government can apply sub-section (3) of Sn.15 of the Act to be exercised by Tribunal in relation to all service matters of statutory bodies, Co-operative societies etc. The State Government as per GO(P)No.41/2014/P&ARD dated 10.12.2014 in exercise of powers conferred by sub-section (2) of Sn.15 of the Act notified the service matters of teaching and non-teaching staff of Aided Schools in the State to be exercised by Tribunal. However this Honorable Court was pleased to stay the notification.

In the above circumstances the petitioners have no other alternative effective remedy but to approach this Court under Article 226 of the Constitution of India on the following among other;

G R O U N D S

- a. The term of the existing judicial members of the 4th respondent Tribunal which is completing the first term on 19.07.2021 is liable to be extended in the normal course as held by the Hon'ble Supreme Court in Shankar Raju Vs. Union of India 2011 (2) SCC 132. It was clearly held that continuation from 5 to 10 years of judicial members appointed for the first time is a matter of course subject to exceptions as provided in the service of jurisprudence of course also subject to they are attaining the age of 65 years. Hence the term of judicial members of 4th respondent are to be extended for another term subject to they are attaining age of 65 years from 19.07.2021.
- b. The 4th respondent Tribunal cannot function without at least one judicial member and one administrative member. Hence the inaction on the part of respondents in extending the term of judicial members in accordance with Sec. 8(2) of Administrative Tribunal Act especially in view of the judgment of the Hon'ble Supreme Court in 2011 is abdication of statutory responsibility. Because of the inaction of the respondents 1 to 4, the 4th respondent Tribunal will come to a standstill, which will adversely affect a large number of persons including the litigant public. The 4th respondent is a constitutional Tribunal constituted under Art.354-A of the Constitution of India. The respondents cannot take a negligent stand in allowing the 4th respondent tribunal to a standstill. It is a fit case where this Hon'ble Court as a constitutional Court and guardian of constitution should step in

and pass orders so that the functioning of the 4th respondent Tribunal is not put in jeopardy.

- c. In view of Sec.10B of Administrative Tribunal Act, the provisions regarding appointment of members of Tribunal as provided under the Administrative Tribunal Act earlier is not in force. Hence in view of Sec.10B, the provisions of the Administrative Tribunal Act, which was in force, could not be invoked for appointment of the members of the Tribunal.
- d. In view of the fact that Sec. 184 of Finance Act 2017, even after its amendment in 2021 by ordinance has not included state Administrative Tribunal in the schedule, a legal vacuum is created regarding the appointment of members of the 4th respondent Tribunal. Hence no notification can be issued under the old Act for appointment of the members of the Tribunal.
- e. In view of the fact that State Administrative Tribunal is not included in the 8th schedule of the Finance Act 2017, and there is no provision for such committee even in the rule made under the Finance Act 2017 for appointment to the post of members of State Administrative Tribunal no action can be taken under the 2017 Finance Act also. Hence in order to ensure that the functioning of the 4th respondent Tribunal is not jeopardize the respondents have no option but to extend the term of the existing judicial members of the 4th respondent for a term of 5 years or till they attaining the age of 65 years whichever is earlier.
- f. The Tribunal is dealing with the service matters of state Government employees only. Normally the Union Government will

not be a party in the proceedings before the Tribunal. The entire expenditure of the Tribunal is being met by the State Government from its exchequer. In short, the 1st Respondent doesn't have any stake in the matter of appointment of Chairman of the State Tribunal.

- g. The 1st Respondent has no discretionary powers in the matter of issuance of appointment order of the chairman, whereas the 1st Respondent is duty bound to act upon the name forwarded by the Governor of the State, recommended by the Chief Justice of the State and chief Justice of India.
- h. The inaction of the 2nd respondent in not addressing the 1st Respondent to issue formal orders extending the term of the present Judicial members of the Tribunal by one more term of 5 years or till they attain the age of 65 years is arbitrary, illegal and in violation of Article 14 and 16 of the Constitution of India. The state government is duty bound to take immediate action with the 1st Respondent for issuing formal orders extending the term of the present judicial members.
- i. Sn.8(2) of the Act provides the term of members as 10 years subject to age restriction of 65 years. The term 'extendable' used in the Act would mean that continuation from 5 to 10 years appears to be as matter of course and automatic subject to age restriction. This has been observed by the Honorable Apex Court in the decision reported in **2011(2) SCC 132** supra. The Honorable Supreme Court in **paragraph 24 of the above judgment that the subsection only says that a person appointed as a Member of the**

Tribunal , if he is found eligible for the post in terms of Sn.6, shall hold office, for a term of five years. In the normal course, this term of 5 years is extendable by a term of another five years, giving a person a total term of 10 years. Continuation from 5 years to 10 years appears to be a matter of course subject to exceptions as provided in service law of jurisprudence. However since the formal appointment of members is for a term of 5 years, a formal order extending their term as provided in the Act for a further term is necessary and essential.

- j. The inaction of the 1st Respondent in not taking necessary steps on the proposal for appointment of Chairman to the Tribunal, forwarded by the Government of Kerala on recommendation of the Chief Justice of Kerala and Chief Justice of India, is arbitrary and illegal. The 1st Respondent is duty bound to take urgent steps to issue orders appointing the Chairman as his name was cleared by all authorities including the Chief Justice of India as early on 05/02/2021.
- k. The Appointment Committee of the Cabinet or the 1st Respondent has no discretionary power in the matter of appointment of chairman of the Tribunal, going by the Statue and Rules. Once the name is forwarded to the Central Government after completing all due process including consultation with the Chief justice of India, it has no option but to forward it to the President for the issuance of warrant of appointment.

1. The inaction on the part of the 1st and 2nd Respondents would lead to a situation that the functioning of the Tribunal would come to a halt from 19/07/2021. The very object and purpose of the Statute and constitution of the Tribunal to deal with service matters of the civil servants of the state will be defeated if the Chairman and members are not appointed to the Tribunal on time to discharge the judicial functions of the Tribunal.

- m. The Honorable Supreme Court of India in its judgment in Comptroller and Auditor General of India V K.S. Jagannathan & another, reported in 1986(2)SCC-679 held that the High Courts in India exercising their jurisdiction under Art.226 of the Constitution can, in the exercise of its jurisdiction under Art.226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion. It is therefore appropriate to declare that the term of office of the present judicial members is extended by one more term of 5 years or till they attain the age of 65 years whichever is earlier.

- n. The Honorable Supreme Court, during the pendency of the Writ Petition(C)No.804 of 2020 mentioned supra, while reserving the

matter for judgment, extended the term of the Chairpersons, Vice-Chairpersons and members of the Tribunal till 31/12/2020. (Para 53 (xv) of the judgment). **Therefore it is only appropriate to issue an interim order extending the term of the present judicial members of the Tribunal, till final orders are passed in the writ petition.**

- o. The litigant public as well as the lawyer community of the state especially those in the service matters field are gravely prejudiced by the inaction of the state. The Kerala Administrative Tribunal constituted under Article 323A of the Constitution Of India as per the Administrative Tribunals Act, 1985 as evident from the orders constituting it was formed by the Government in implementation of its policy decision to constitute an alternate and speedy avenue for disposal of service matters relating to Government employees and the employees of Government Schools and Colleges. The matters i.e. writ petitions pending before this Hon'ble Court was transferred to the Tribunal as per the provisions of the Act and fresh filings were restricted to the Tribunal alone. It was later found that on transfer of thousands of cases and the enhanced filing at the Tribunal necessitated the Government to decide to provide an additional Bench at Thiruvananthapuram and also a Permanent Bench at Ernakulam, the seat of the Hon'ble High Court. The pendency of large volume of cases has proved to be against the very object for which the Tribunal was constituted.
- p. The inaction on the part of the respondents will affect the disposal of cases before the Tribunal and therefore it directly affect the

functions of the judicial system. The inaction of the respondents is against the basic principle of democracy that the Legislature, Executive and the Judiciary are the spokes of the same wheel and has to function with mutual respect within their fields and in consonance with each other.

Hence it is prayed that this Hon'ble Court may be pleased to;

- (i) Declare that the present judicial members of the Kerala Administrative Tribunal can hold their office by one more term of 5 years after the expiry of the present term on 19.07.2021 or till they attain the age of 65 years.
- (ii) to issue a writ of mandamus or any other appropriate writ order or direction directing the 1st Respondent to issue appropriate orders extending term of the present Judicial members of the Kerala Administrative Tribunal by one more term of 5 years or till they attain the age of 65 years whichever is earlier.
- (iii) to issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent to take necessary steps to issue orders appointing new Chairman of the Kerala Administrative Tribunal on the proposal forwarded by the State government which was duly forwarded by the

Chief Justice of India, and on the failure of the 1st Respondent to act upon such directions, issue appropriate orders appointing the recommended person as the Chairman of the Kerala Administrative Tribunal.

- (iv) to issue a writ of mandamus or any other appropriate writ order or direction directing the 2nd Respondent not to issue any notification inviting application for selection of new judicial members till the present members complete their 2nd term of 5 year or till they attain the age of 65 years whichever is earlier.
- (v) issue such other order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Interim relief prayed for

For the reasons stated in the Writ petition and the accompanying affidavit thereto, it is humbly prayed that this Hon'ble Court may be pleased to permit the present judicial members of the Kerala Administrative Tribunal to continue to hold their office subject to the age restriction of 65 years, pending disposal of the writ petition

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Dated this the 17th day of June 2021.

Petitioners:

Counsel for petitioners

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT
ERNAKULAM.**

W.P.(c) No. of 2021

Kerala Administrative Tribunal
Advocates' Association,
represented by its President & Anor. : Petitioners

Vs.

Union of India & others : Respondents

A F F I D A V I T

I, Fathahudeen.M, Advocate, aged 45 years, S/o. Muhammed Rasheed, residing at Flat 624, Block 7, EMS Nagar, Pattoor, Thiruvananthapuram, PIN 695035, President, Kerala Administrative Tribunal Advocates' Association, Register No.TVM/TC/609/2014, KAT Complex, Vanchiyoor, Thiruvananthapuram, do solemnly affirm and state as follows:-

1. I am the President of the 1st Petitioner Association in the above Writ Petition. I am conversant with the facts of this case. I swear this affidavit for and on behalf of 2nd petitioner also.
2. We prefer this Writ Petition to espouse the public cause as an inaction and delay on the part of State Government in not forwarding the names of Judicial Members selected by the

Selection Committee, will affect the adjudication of various rights of the Government servants. We have no personal or private interest in the matter.

3. There is also no authoritative pronouncement by the Supreme Court or High Court on the question raised in this Writ Petition. The result of this Writ Petition will not lead to any undue game to us or anyone associated with us.
4. The statement of facts made in the Writ Petition is true to the best of my knowledge, information and belief. The averments of law have been made on the advice of our counsel. We have not filed any petition seeking similar and identical reliefs in respect of the same subject matter. Documents produced along with this Writ Petition are true copy of the originals.

All the facts stated above are true and correct to the best of our knowledge, information and belief.

Dated this the 18th day of June 2021.

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 18th day of June 2021 in my office at Ernakulam.

Advocate.

APPENDIX

PETITIONER'S EXHIBITS.

Exhibit.P1: True copy of the resolution of the Kerala Administrative Tribunal Advocates Association dated 11.06.2021

Exhibit.P2: True copy of the 8th schedule of Sec. 184 of Finance Act 2017

Exhibit.P3: True copy of the statement showing the details of cases filed, disposed and pending before the Tribunal as on 02/04/2021