

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

and

THE HONOURABLE MR. JUSTICE N. ANIL KUMAR

THURSDAY, THE 21ST DAY OF FEBRUARY 2019 / 2ND PHALGUNA, 1940

OP (KAT) .No. 256 of 2017

OA 1958/2016 of KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

.....

PETITIONERS/APPLICANTS:

- 1 UNNIKRISHNAN NAIR G.S., AGED 37 YEARS
S/O.SIVARAMAN NAIR, GIRIJA BHAVAN,
SOUTH PAMPADY P.O., KOTTAYAM, KERALA- 686501.
- 2 SAJEEV P.A., AGED 35 YEARS, S/O. ABDUL SALAM,
FATHIMA MANZIL, PERUMPAIKADU P.O., KOTTAYAM, KERALA-
686 016.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.K.R.GANESH
SRI.T.G.SUNIL (PRANAVAM)

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY SECRETARY
TO GOVERNMENT, HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, KERALA- 695001.
- 2 THE STATE POLICE CHIEF, POLICE HEAD QUARTERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM- 695 014, KERALA.
- 3 THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM-695004, KERALA.
- 4 THE STATE PUBLIC INFORMATION OFFICER
CITY POLICE OFFICE, KOCHI-682035, KERALA
- 5 THE STATE PUBLIC INFORMATION OFFICER,
DISTRICT POLICE OFFICE, KOZHIKODE RURAL,
KOZHIKODE- 673 105, KERALA.

- 6 THE STATE PUBLIC INFORMATION OFFICER
DISTRICT POLICE CHIEF, KASARGOD-671123, KERALA.
- 7 THE STATE PUBLIC INFORMATION OFFICER,
DISTRICT POLICE OFFICE, ERNAKULAM RURAL,
ERNAKULAM- 683 101, KERALA.
- 8 THE STATE PUBLIC INFORMATION OFFICER,
DISTRICT POLICE OFFICE, ALAPPUZHA-688012, KERALA.
- 9 THE STATE PUBLIC INFORMATION OFFICER,
DISTRICT POLICE OFFICE, KOTTAYAM- 686002, KERALA.
- 10 THE STATE PUBLIC INFORMATION OFFICER
DISTRICT POLICE OFFICE, KANNUR- 670 002, KERALA
- ADDL 11 ABY P. MATHEW, AGED 36 YEARS, S/O. P.E. MATHEW,
SENIOR CLERK, CBCID, HHW II, TRIPUNITHURA,
ERNAKULAM, RESIDING AT PATATTIL HOUSE,
KANAKAPURAM P.O., ERUMELI, KOTTAYAM - 686509.

IMPLEADED AS PER ORDER DATED 08/08/17 IN IA 1396/17

- ADDL 12 MANOJ KUMAR S., AGED 39 YEARS,
S/O. P.K. SIVARAMAN PILLAI (LATE),
CIVIL POLICE OFFICER, DISTRICT HEAD QUARTERS,
AR CAMP, KOCHI -682011, RESIDING AT PISHARATH
HOUSE, KANNANKULANGARA, NORTH PARAVUR,
ERNAKULAM -683513.

IMPLEADED AS PER ORDER DATED 16/08/17 IN IA 1408/2017

- ADDL 13 DILJITH.S.S, S/O SASEENDRAN NAIR,
AGED 33 YEARS, 'SREELATHA', THATHIYOOR,
MANCHALIVATTOM PO, THIRUVANANTHAPURAM-695 503

IMPLEADED AS PER ORDER DATED 16/11/18 IN IA 3/18

R11 BY ADVS.SRI.K.JAJU BABU (SR.)

SMT.M.U.VIJAYALAKSHMI

SRI.BRIJESH MOHAN

R3 BY ADV.SRI.P.C.SASIDHARAN

R13 BY ADV.SRI.S.SUJIN

R1, R2, R4-R10 BY GOVT. PLEADER SRI.ARAVINDAKUMAR BABU

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD
ON 31.01.2019 ALONG WITH OP(KAT).94/2018, OP(KAT).180/2018,
OP(KAT).330/2017, OP(KAT).331/2017, OP(KAT).408/2017, THE COURT
ON 21.02.2019 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

and

THE HONOURABLE MR. JUSTICE N. ANIL KUMAR

THURSDAY, THE 21ST DAY OF FEBRUARY 2019 / 11TH MAGHA, 1940

OP(KAT).No. 94 of 2018

ORDER IN OA 765/2016 of KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

.....

PETITIONERS/APPLICANTS:

- 1 ANEESH.K.P., S/O. PUSHPANANDAN, AGED 32 YEARS,
KIZHAKKECHOZGADYMA, MANNANCHERY P.O., ALAPPUZHA
DISTRICT - 688 538.
- 2 RAJEESH R., S/O. RADHAKRISHNA PILLAI, AGED 30
YEARS, RAJESH BHAVAN, P.O. VAYALA, KOLLAM-691 306.
- 3 SIRAJUDEEN A.S., S/O. ABDUL SALAM, AGED 33 YEARS,
A.K. HOUSE, P.O. CHANNANKARA, KANIYAPURAM,
THIRUVANANTHAPURAM-696315.
- 4 PRADEEP T.T., S/O. THUPRAN, AGED 38 YEARS,
THACHUNMPURATH HOUSE, VEMBALLUR P.O., KODUNGALLUR,
THRISSUR - 680 671.
- 5 PREMJITH PRASAD, S/O. RAJENDRA PRASAD, AGED 31
YEARS, KANNOTH KADAVIL HOUSE, KUTTAPUZHA P.O.,
THIRUVALLA, PATHANAMTHITTA DISTRICT - 689 103.
- 6 PRASOBHKUMAR, S/O. PRAKASAN, AGED 37 YEARS,
THAITHARA HOUSE, p.o. Ponnad, ALAPPUZHA-688 538.
- 7 RENJITH KRISHNAN S.K., S/O. KRISHNAN, AGED 30
YEARS, AJITH BHAVAN, VENNIYOOR, NELLIVILA P.O.,
THIRUVANANTHAPURAM- 695 523.

8 BIJU P.A., S/O. ANTONY P.K., AGED 42 YEARS,
PALLIPADAN HOUSE, P.O. KURUVILASSERY, THRISSUR
DISTRICT - 680 735.

BY ADVS.SMT.V.P.SEEMANDINI (SR.)
SMT.K.P.GEETHA MANI
SRI.M.R.ANISON

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY THE ADDITIONAL
CHIEF SECRETARY TO GOVERNMENT, HOME (A)DEPARTMENT,
GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM- 695 001.
- 2 THE STATE POLICE CHIEF, POLICE HEADQUARTERS,
VAZHUTHACAUD,THIRUVANANTHAPURAM- 695 014.
- 3 THE KERALA PUBLIC SERVICE COMMISSION
PATTOM P.O., THIRUVANANTHAPURAM - 695 004,
REPRESENTED BY ITS SECRETARY.
- ADDL 4 ABY P. MATHEW, AGED 37 YEARS, S/O. P.E. MATHEW,
SENIOR CLERK, CBCID HHW II, TRIPUNITHURA,
ERNAKULAM, RESIDING AT PATTALIL HOUSE,
KANAKAPURAM P.O., ERUMELI, KOTTAYAM - 686509.

IMPLEADED AS PER ORDER DATED 31/1/19 IN IA 511/18

SRI.RENJITH B.MARAR
SMT.LAKSHMI.N.KAIMAL
SMT.SINDHU K.S.
SRI.ABY P MATHEW
SRI.VIMAL VIJAY
SRI.V.KRISHNADAS (K-541)
SRI.ARAVINDAKUMAR BABU - GP
SRI.P.C.SASIDHARAN - SC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD
ON 31.01.2019 ALONG WITH OP(KAT).256/2017, OP(KAT).180/2018,
OP(KAT).330/2017, OP(KAT).331/2017, OP(KAT).408/2017, THE COURT
ON 21.02.2019 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

and

THE HONOURABLE MR. JUSTICE N. ANIL KUMAR

THURSDAY, THE 21ST DAY OF FEBRUARY 2019 / 11TH MAGHA, 1940

OP(KAT).No. 180 of 2018

ORDER IN OA 827/2017 of KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

.....

PETITIONER/APPLICANT:

LIGIKUMAR V., AGED 37 YEARS, S/O.N.VASUDEVAN,
LEENA NIVAS, CANTONMENT NORTH, UPASANA NAGAR 38,
KOLLAM EAST VILLAGE, KOLLAM DISTRICT, PIN 691001.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA REP. BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM - 695001.
- 2 THE DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-695014.
- 3 KERALA PUBLIC SERVICE COMMISSION REP. BY ITS
SECRETARY, PATTOM, THIRUVANANTHAPURAM-695004.
- 4 BIJU.S., KAVINUMPURAKKAL VEEDU, IRINCHAYAM P.O.,
THIRUVANANTHAPURAM - 695 561.
- 5 ANEESH.S., MELECHOORKKUNNU HOUSE, KANNAMBRA P.O.,
PALAKKAD-678686.

6 PRAMODU.V, PALAPARAMBU, NENMARA, PALAKKAD-678508.

BY SRI.P.C.SASIDHARAN, SC, KPSC
BY GOVT. PLEADER SRI.ARAVINDAKUMAR BABU

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 31.01.2019 ALONG WITH OP(KAT).256/2017, OP(KAT).94/2018, OP(KAT).330/2017, OP(KAT).331/2017, OP(KAT).408/2017, THE COURT ON 21.02.2019 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.R.RAMACHANDRA MENON

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

and

THE HONOURABLE MR. JUSTICE N.ANIL KUMAR

THURSDAY, THE 21ST DAY OF FEBRUARY 2019 / 11TH MAGHA, 1940

OP(KAT).No. 330 of 2017

OA 539/2016 of KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

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PETITIONERS/APPLICANTS:

- 1 SUNESH T., S/O.SASI.T, AGED 33 YEARS, RESIDING AT SUKRITHAM, PURATHE VAYALIL, MADAPPALLY COLLEGE.P.O, VADAKARA,PIN-673102, KOZHIKODE, KERALA, MOB-9447752886.
- 2 SUBIN BABU.K., S/O.BABU.K, AGED 34 YEARS, RESIDING AT PALASSERY HOUSE, FEROKE PETTAH, KOZHIKODE, KERALA-673631.

BY ADVS. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.B.ANANJANA
SMT.K.N.REMYA
SMT.L.ANNAPOORNA
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SRI.V.VARGHESE

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY ITS SECRETARY, DEPARTMENT OF HOME, SECRETARIAT, THIRUVANANTHAPURAM, KERALA-695001.

- 2 THE STATE POLICE CHIEF, POLICE HEAD-QUARTERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM, KERALA-695014.
- 3 KERALA PUBLIC SERVICE COMMISSION REPRESENTED BY
THE SECRETARY, PATTOM, THIRUVANANTHAPURAM,
KERALA-695004.
- 4 ASWIN KUMAR.K., S/O.MADHAVAN.K, AGED 26 YEARS,
ALLOOR HOUSE, THOTTIPPAL.P.O, THRISSUR DISTRICT,
KERALA.
- 5 JEFFY GEORGE, S/O.A.G.GEORGE, AGED 29 YEARS,
ALOTHY HOUSE, PAMPADY.P.O, KOTTAYAM DISTRICT-686502
(R4 AND R5 IMPEADED VIDE ORDER DATED 27.7.16 IN
MA1845/16), KERALA.
- 6 VISHNU.B., S/O.K.BABU, AGED 33 YEARS, VISHNU
SADANAM, ALUMMOODU, KARINGANNOOR.P.O, KOLLAM-
691516, KERALA.
- 7 RAHUL.R.R., S/O.V.RAJAN, AGED 26 YEARS, RAGAM,
ADAYARA, KARINGANNOOR.P.O, KOLLAM-691516
(R6 AND R7 IMPEADED VIDE ORDER DT.30.08.17 IN
MA.NO.2737/16), KERALA.
- 8 NOWFAL.N., S/O.NOUSHAD.H, AGED 28 YEARS, CIVIL
POLICE OFFICER, 5959, CHITTOOR POLICE STATION,
PALAKKAD, RESIDING AT MULLAMPARAMBIL HOUSE,
KURISSAMKULAM, KALLEKKAD.P.O, PALAKKAD-678006,
KERALA.
- 9 SUNEKH.N.J., S/O.N.J.JAMES, AGED 32 YEARS,
NADUVILAPARAMBIL HOUSE, CHERANALLOOR.P.O,
KOCHI-682034 (R8 AND R9 IMPEADED VIDE ORDER DATED
2.9.16 IN MA NO.2795/16), KERALA.
- 10 V.S.UNNIKRISHNAN, CIVIL POLICE OFFICER,
INVESTIGATION WING, KERALA STATE HUMAN RIGHTS
COMMISSION, TURBO PLUS TOWER, VIKAS BHAVAN.P.O,
THIRUVANANTHAPURAM-695033, KERALA.
- 11 ABY P.MATHEW, SENIOR CLERK, DISTRICT POLICE OFFICE,
KOTTAYAM-686002, (ADDL.R10 AND R11 IMPEADED VIDE
ORDER DATED 4.10.2016 IN MA NO.3069/2016), KERALA.
- 12 JAYESH.T.J., AGED 33 YEARS, S/O.G.JANARDHANAN
PILLAI, SHREYAS, IRUMPANANGAD, EZHUKONE,
KOLLAM-691505, KERALA.

13 NITIN NALAN, AGED 34 YEARS, S/O.NO.NALARAJAN (LATE)
MELEKKARITHIL, MYLODE, POOYAPPALY, KOLLAM-691531,
(ADDL.R12 AND R13 ARE IMPEADED VIDE ORDER DATED
4.10.16 IN MA NO.3090/2016),KERALA.

R11 BY SRI.ASOK M.CHERIAN
R10 BY ADV. SRI.IVANS C. CHAMAKKAL
R3 BY ADV. SRI.P.C.SASIDHARAN
R12 & R13 BY ADV. SRI.S.SUJIN
SMT.M.U.VIJAYALAKSHMI
SRI.K.JAJU BABU (SR.)
SRI.BRIJESH MOHAN
SRI.K.JANARDHANA SHENOY
SRI.NAVANEETH D.PAI
SRI.N.SATHEESH
R1 & R2 BY SRI.ARAVINDAKUMAR BABU - GP

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD
ON 31.01.2019 ALONG WITH OP(KAT).94/2018, OP(KAT).180/2018,
OP(KAT).256/2017, OP(KAT).331/2017, OP(KAT).408/2017, THE COURT
ON 21.02.2019 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.R.RAMACHANDRA MENON

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

and

THE HONOURABLE MR. JUSTICE N.ANIL KUMAR

THURSDAY, THE 21ST DAY OF FEBRUARY 2019 / 11TH MAGHA, 1940

OP(KAT).No. 331 of 2017

OA 2209/2015 of KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

.....

PETITIONERS/PETITIONERS:

- 1 RAJESH C PANICKER, S/O.CHANDRASEKHARA PANICKER,
AMBADY HOUSE, VADACHERRY POST, KERALASSERI,
PALAKKAD-678641.
- 2 SAJEEV P.A., S/O.ABDUL SALAM, FATHIMA MANZIL,
PERUMBAIKADU P.O., SANKRANTI, KOTTAYAM-686061.

BY ADVS. SRI.P.RAVINDRAN (SR.)
SMT.APARNA RAJAN
SRI.SREEDHAR RAVINDRAN

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY ITS SECRETARY, HOME
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE STATE POLICE CHIEF, POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM-695001.
- 3 KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM-695004.

- 4 ARAVIND G.P.NAIR, S/O.K.PRASANNA KUMAR,
RESIDING AT ARAVIND BHAVAN, ARUMALLOOR,
KANDALA P.O., THIRUVANANTHAPURAM-695512.
- 5 ASWIN KUMAR K., S/O.SRI.MADHAVAN K., ALLOOR HOUSE,
THOTTIPPAL P.O., THRISSUR DISTRICT-680310, KERALA.
- 6 JEFFY GEORGE, S/O.SRI.A.G.GEORGE, ALOTHY HOUSE,
PAMPADY P.O., KOTTAYAM DISTRICT-686502.
- ADDL 7 ABY P. MATHEW, AGED 37 YEARS, S/O. P.E. MATHEW,
SENIOR CLERK, CBCID HHW II, TRIPUNITHURA,
ERNAKULAM, RESIDING AT PATTALIL HOUSE,
KANAKAPURAM P.O., ERUMELI, KOTTAYAM - 686509.

IMPLEADED AS PER ORDER DATED 31/1/19 IN IA 644/18

SMT.G.BINDU
SRI.S.K.ADHITHYAN
DR.K.P.SATHEESAN (SR.)
SMT.M.K.LEELA
SRI.K.RAJAGOPAL
SRI.K.SUDHINKUMAR
SRI.M.R.HARIRAJ
SRI.MUHAMMED IBRAHIM ABDUL SAMAD
SRI.P.A.KUMARAN
SRI.P.C.SASIDHARAN SC KPSC
SRI.P.MOHANDAS (ERNAKULAM)
SRI.S.VIBHEESHANAN
BY SRI.ARAVINDAKUMAR BABU - GP

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD
ON 31.01.2019 ALONG WITH OP(KAT).256/2017, OP(KAT).94/2018,
OP(KAT).330/2017, OP(KAT).180/2018, OP(KAT).408/2017, THE COURT
ON 21.02.2019 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

and

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

THURSDAY, THE 21ST DAY OF FEBRUARY 2019 / 11TH MAGHA, 1940

OP(KAT).No. 408 of 2017

OA 306/2016 of KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

.....

PETITIONERS/APPLICANTS:

- 1 ANEESHKUMAR V.S., AGED 37 YEARS, S/O.P.VASAVAN,
ANAKKARAN PARAMBIL, PADA-SOUTH,
KARUNAGAPPALLY.P.O., KOLLAM, PIN.690 518.
- 2 AMJATH A., AGED 35 YEARS, S/O.ABDULLAKUTTY,
VARAMBEL THEKKETHIL, MARU SOUTH, ALUMKADAVU P.O.,
KARUNAGAPPALLY.P.O., KOLLAM, PIN.690 518.
- 3 NAZEER V.A., AGED 39 YEARS, S/O.MOIDEEN,
VALIYAKATH HOUSE, P.O.CHUVANNAMANNU,
THIRUVANANTHAPURAM, PIN.695 652.

BY ADVS. SRI.S.RAMESH BABU (SR.)
SRI.N.KRISHNA PRASAD

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY SECRETARY TO
GOVERNMENT, HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN.695 001.

- 2 THE STATE POLICE CHIEF, POLICE HEAD QUARTERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM, PIN.695 014.
- 3 THE KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY,
PATTOM, THIRUVANANTHAPURAM, PIN.695 004.
- ADDL 4 ABY P. MATHEW, AGED 37 YEARS, S/O. P.E. MATHEW,
SENIOR CLERK, CBCID HHW II, TRIPUNITHURA,
ERNAKULAM, RESIDING AT PATTALIL HOUSE,
KANAKAPURAM P.O., ERUMELI, KOTTAYAM - 686509.

IMPLEADED AS PER ORDER DATED 31/1/19 IN IA 178/17

SRI.RENJITH B.MARAR
SRI.P.C.SASIDHARAN, SC, KPSC
ABY P MATHEWPARTY-IN-PERSON
SMT.K.S.SINDHU
SMT.LAKSHMI.N.KAIMAL
SRI.P.C.SASIDHARAN SC KPSC
SRI.VIMAL VIJAY
SRI.V.KRISHNADAS (K-541)
SRI.ARAVINDAKUMAR BABU

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD
ON 31.01.2019 ALONG WITH OP(KAT).256/2017, OP(KAT).94/2018,
OP(KAT).330/2017, OP(KAT).180/2018, OP(KAT).331/2017, THE COURT
ON 21.02.2019 DELIVERED THE FOLLOWING:

O.P.(KAT)Nos.256, 330, 331, 362, 408 of 2017, 94 & 180 of 2018

JUDGMENT

Devan Ramachandran, J.

Our opinion in this judgment is consequent to and in response to a reference made by a Division Bench of this Court which, *inter alia*, is seen doubting the ratio in an earlier judgment of another Division Bench in **Kerala Public Service Commission v. Dr. Kesavankutty Nair** (1977 KLT 818).

2. Before we tread forward, we must record that though the Reference Order appears to have been impelled on account of an apparent suspicion that **Dr.Kesavankutty Nair** (supra) does not lay down the law correctly, the real issue in these cases is whether the expiry date of a Rank List, prepared by the Kerala Public Service Commission ('the PSC' for brevity), would obtain postponement on account of litigation, pending against its validity, for a period beyond the termination of such litigations; particularly when interdictory orders are issued by courts against the operation of such list. From the Reference Order, the learned Division Bench appears to feel so, but has stopped short of declaring it, noticing **Dr.Kesavankutty Nair** (supra), which avouches that no candidate can claim a legally enforceable right to be appointed to a particular post merely on the strength of his/her inclusion in the rank list published by the Public

Service Commission. The learned Bench, from a reading of the Reference Order, appears to have felt that if a person in a rank list does not obtain any vested right for appointment, going by the ratio in **Dr.Kesavankutty Nair** (supra), then they would also obtain no locus to seek deferment of the date of expiry of the rank list, thus making their prayers for such purpose virtually redundant; and hence have posed the question to us if the view in **Dr.Kesavankutty Nair (supra)** would obtain forensic imprimatur; or if, on the contrary, it would now need to be overruled.

3. On a reading of the Reference Order, we certainly see the veiled opinion of the referring Division Bench that **Dr.Kesavankutty Nair** (supra) is no longer good law on account of the coming into force of the Kerala Public Service Commission Rules of Procedure ('the PSC Procedure Rules' for brevity) and in particular, Rules 13 and 14 thereof, which give the candidates, included in a rank list, the statutory right to be considered for appointment.

4. With the afore exordium in place, we now proceed to pen our carefully contemplated views on the specific issues placed before us in the Reference Order, but before doing so, we will narrate the most essential facts required for formulating our opinion herein.

5. On 28.09.2007, the PSC issued a notification, calling for candidates for being appointed to the post of 'Sub Inspector of Police

(Trainee)' in the Police (General Executive Branch – Open). It appears that in response to this notification, about 42,000 persons, including the petitioners in all the afore cases, except petitioners in O.P. (KAT)No. 362/2017, made their applications and since it was felt by the PSC that the number of candidates are too large to be subjected to the statutory written test and interview, a decision was taken to prune this list by shortlisting a lesser number, who could, thereafter, be allowed to appear for the statutory examinations, as are stipulated under Rule 3 of the PSC Procedure Rules. The PSC, therefore, conducted a Preliminary Examination, consequent to which 2,000 candidates were short listed, but then the PSC encountered another problem that this Short List may not yield enough candidates to fill up the vacancies to the various reserved categories like Scheduled Caste, Scheduled Tribe, Other Backward Classes, etc. The PSC, consequently, decided to include more number of candidates belonging to the various reserved categories in the Short List, for which purpose, the earlier bench mark of forty nine marks that had been adopted to short list 2,000 candidates, was lowered upto thirty two marks for persons in the categories of 'Ezhava', 'Scheduled Caste', 'Scheduled Tribe', 'Muslim', 'Other Backward Classes' etc., pursuant to which, another 657 candidates became eligible to appear for the statutory examinations under Rule 3 of the PSC Procedure Rules.

6. The PSC thus published a Rank List, which was brought into force with effect from 11.09.2013 (this Rank List for the sake of convenience will be referred to as 'the First Rank List' hereinafter), wherein, the petitioners in these cases, except those in O.P. (KAT)No.362/2017, were also included.

7. However, on the publication of this Rank List there arose another controversy, because this list was a unified one, which included all the candidates allowed to take part in the statutory written test and interview, but without segregating them into the Main List and Reserved List. A question therefore, arose as to if those 657 candidates, who had secured less than forty nine marks in the Preliminary Examination, but given the benefit of relaxation solely because they belonged to reserved categories, could also be appointed against Open Competition vacancies or whether they should be confined only to the posts reserved for such categories, even though many of them may have secured higher marks in the Statutory written test and interview.

8. It transpires that several persons included in the First Rank List therefore, approached the Kerala Administrative Tribunal ('the KAT' for short) by filing O.A.No. 2395/2013, in which an interim order as prayed for was issued on 05.12.2013. The interim relief sought for by the applicants therein reads as under:

“This Hon'ble Tribunal may be pleased to direct the 3rd respondent not to advise any candidates who secured less than 49 marks in the preliminary examination, from Annexure A6 rank list against the vacancies available for open competition candidates, pending disposal of the Original Application.”

9. The KAT, while issuing the order as prayed for afore, also clarified that if any candidate, who secured less than forty nine marks in the Preliminary Examination, had been advised against Open Competition turn, such advise would be subject to further orders in the said Original Application and that such candidates shall be alerted about this order of the KAT by the PSC. The records show that this interim order continued to hold force until the Original Application was finally disposed of.

10. Subsequently, by order dated 20.02.2014, the KAT allowed the Original Application, thus directing the PSC to recast the First Rank List by bifurcating it into a Main List and a Supplementary List and to include only those candidates, who had secured forty nine marks and above in the Preliminary Examination, in the Main List and to place all candidates, who had obtained the benefit of relaxation of the bench mark in the Preliminary Examination on the ground that they belong to reserved categories, only in the Supplementary List for the respective communities. It was further clarified that even if the candidates to be included in the Supplementary List have obtained more marks than the candidates to be included in the Main List, they

would not be entitled for being included in the Main List; consequentially declaring that the advise for appointment, if any, of candidates who had secured less than forty nine marks in the Preliminary Examination into the Open Competition vacancies '*will naturally collapse and fall into ground*' (sic).

11. Several candidates thereupon filed five different Original Petitions before this Court, numbered as O.P.(KAT) Nos.108/2014, 110/2014, 112/2014, 113/2014 & 239/2014 and this Court, while admitting these Original Petitions, issued an order on 12.03.2014, which reads as under:

“PSC is directed not to advise any further candidate who had secured less than 49 marks in preliminary examination for being appointed from Annexure A6 rank list against open competition turns and the appointing Authority shall not make any such appointments until further orders.” (sic)

12. We understand that these Original Petitions were thereafter, heard by this Court and disposed of through a judgment dated 08.08.2014, confirming the order of the KAT, thus effectively reaffirming that those candidates who secured less than forty nine marks in the Preliminary Examination will not be entitled to appointment against the Open Competition vacancies.

13. The aforementioned judgment of this Court was, thereupon, assailed by the petitioners in O.P.(KAT)Nos. 239/2014 and 112/2014 before the Hon'ble Supreme Court in Civil Appeal No.

8536/2015 and by an order dated 03.11.2014, the Hon'ble Court issued the following interim order:

“Issue notice. Dasti, in addition, is permitted. Status quo, as on today, shall be maintained in the meanwhile”.

14. The Hon'ble Supreme Court, subsequently, after an exhaustive examination of all the relevant statutory prescriptions, as also the precedents in the area, finally allowed the appeal by judgment dated 13.10.2015, holding as under in paragraphs 25, 26 and 27 therein:

“25. In our opinion, the conclusion reached by the High Court is erroneous. The preliminary examination for shortlisting candidates who would be eligible to take the Rule 3 examinations has no statutory basis. Neither the Kerala S&S Rules nor the Rules of Procedure contemplate such preliminary examination. However, this Court recognized existence of a legal authority to conduct a preliminary examination wherever an unmanageably large number of applications are received for filling up a limited number of posts. Rule 14(e) of the Kerala S&S Rules and Rule 4 of the Rules of Procedure relied upon by the High Court refer to 'ranked list' - defined expression under Rule 2(g) of the Rule of Procedure. Such “ranked-list” is prepared only pursuant to the Rule 3 examinations. A preliminary screening test is outside the purview of the Rule 3 examinations. Therefore, irrespective of the content of Rule 14(e) of the Kerala S&S Rules or the 3rd proviso to Rule 4 of the Rules of Procedure relied upon by the High Court, these Rules can have no application in the context of preparation of a 'shortlist' pursuant to a preliminary examination.

26. Therefore, the basic premise on which the High Court sought to distinguish the three judgments relied upon by the appellants (referred to supra) is legally untenable. The impugned judgment rightly understood the 3 judgments relied upon by the appellants herein as laying down a principle that a relaxation or concession given at the preliminary stage cannot have any relevance in determining the merit of the candidate.

27. In the circumstances, we are of the opinion that the impugned judgment is unsustainable and is accordingly set-aside. The appeals are allowed with no order as to costs.”

15. When matters were so poised, the PSC came out with a fresh rank list, including new candidates, for selection to the post of Sub Inspector of Police (Trainee), Kerala Civil Police and gave it effect from 26.05.2015 and then attempted to fill up 93 Non Joining Duty vacancies ('the NJD vacancies' for brevity) from the said list.

16. The petitioners in these cases, except those in O.P. (KAT)No.362/2017, then launched a challenge against the New Rank List dated 26.05.2015 ('the New Rank List' for brevity), as also the attempt of the PSC to fill up the NJD vacancies from that list, by filing the Original Applications involved in these cases, before the KAT.

17. The singular common contention of the petitioners in these cases is that the First Rank List, which was brought into effect on 11.09.2013, must be construed to be alive till 19.07.2016, because, according to them, the said list was operational only for a period of 85 days from 11.09.2013, being the date on which it came into force until 05.12.2013, when the interim order of the KAT in O.A.No.2395/2013 was issued. They, therefore, contended that the First Rank List should have a further life of 280 days, thus giving it 365 days total life and that the said 280 days must be added from the date of the final judgment of the Hon'ble Supreme Court, which had validated the said list.

18. On such reasoning, the petitioners, who are included in the First Rank List, contended that the First Rank List must be deemed to be in effect till 19.07.2016 and on this asseveration, they claimed that the 93 NJD vacancies, which were admittedly reported on 12.07.2016, ought to be filled up only by the candidates, including themselves, in the First Rank List. They further predicated, as a corollary contention, that the action of the PSC in bringing into force the New Rank List with effect from 26.05.2015, after declaring the First Rank List to have ceased from that date, even when the First Rank List, according to them, was alive until 19.07.2016, is contrary to the specific provisions of the PSC Procedure Rules.

19. The KAT considered these contentions quite in detail, but dismissed the Original Applications filed by the petitioners herein holding that such contentions are untenable in law and that the life of a Rank List is guided by statutory provisions and not by the period of litigation.

20. Against this judgment of the KAT, the petitioners have preferred these Original Petitions, which were heard by a Division Bench, thus leading to the Reference Order.

21. The learned Division Bench, which has indited the Reference Order, is seen to have felt that since the operation of the First Rank List from 05.12.2013 till 13.10.2015, being the period

between the interim order of the KAT and the final judgment of the Hon'ble Supreme Court, was interdicted by court orders, it should get a further life of 280 days, being the balance of the 365 days that it should have statutorily been in existence, after reducing the 85 days between 11.09.2013 (the date on which it came into force) and 05.12.2013 (the date on which the interim order of the KAT) and resultantly that the First Rank List should be construed to expire only on 19.07.2016.

22. However, after entering a *prima facie* view as above, the Bench encountered a contention on behalf of the contesting respondents that even if this is so, the petitioners would not obtain any locus to file these Original Petitions because, going by **Dr.Kesavankutty Nair** (supra) they cannot claim any vested right for being appointed to the 93 NJD vacancies, merely on account of their inclusion in the First Rank List. The Bench noticed that **Dr.Kesavankutty Nair** (supra) was a judgment relying on Rule 3(b) of the Kerala State and Subordinate Service Rules, which unreservedly postulates that '*the inclusion of a candidate's name in any list of approved candidates for any service (State or Subordinate) or any class or category in a service, shall not confer on him any claim to appointment to the service, class or category*'. The learned Division Bench thus made the Reference Order for the reasons that

are luculent from paragraphs 9 and 10 therein, which are extracted below for ease of reference:

“9. This Court has consistently held that the PSC has a duty to advise candidates even after the lapse of the ranked list provided the vacancies concerned are reported to it during the period when the ranked list has life. The decision to that effect in *Annie v. Commissioner, Chalakudy Municipality and others* [1984 KLT 170] has been approved in *Vimalakumari v. State* [1994 (2) KLT 47 (FB)]. The ranked list published on 11.9.2013 lost its life only on 19.7.2016 within which time the 93 NJD vacancies had already been reported on 12.7.2016 itself. We are persuaded to direct the PSC to advise the candidates from the ranked list published on 11.9.2013 for the 93 NJD vacancies reported on 12.7.2016 in the circumstances afore-stated.

10. But we are confronted with the decision in *Kerala Public Service Commission v. Dr. Kesavankutty Nair* [1977 KLT 818 (DB)] cited by the contesting respondents which may have a bearing on this batch of cases. It has been held therein that the maxim - *actus curiae neminem gravabit* - cannot be made applicable to decide the life of a ranked list published by the PSC. The reason stated is that inclusion of the name of a candidate in a ranked list does not confer him any right to claim appointment relying on Rule 3(b) of the Kerala State & Subordinate Services Rules. Firstly, we fail to understand the relevancy of Rule 3(b) of the KS & SSR in the applicability of the maxim afore-quoted which can be called in aid by any one prejudiced by an act of Court. Secondly, the decision in *Dr. Kesavankutty Nair's* case (*supra*) concerned a ranked list published on 27.2.1973 much before the Rules came into force on 16.8.1976. The Division Bench obviously did not have the opportunity to consider the purport and import of the words 'shall remain in force for a period of one year' in Rule 13 of the Rules. We doubt the correctness of the decision in *Dr. Kesavankutty Nair's* case (*supra*) and judicial propriety compels us to refer this batch of cases to a Full Bench therefore.”

23. It is in the afore factual background that we are now considering the questions posed before us.

24. We have heard Sri.P.Ravindran, learned Senior Counsel, assisted by Sri.Sreedhar Ravindran; Smt.V.P.Seemandini, learned Senior Counsel, assisted by Smt.K.P.Geethamani, Sri.S.Ramesh Babu, learned Senior Counsel, assisted by N.Krishna Prasad; Sri.Elvin Peter.P.J;

Sri.S.P.Aravindakshan Pillay and Sri.M.R.Hariraj, learned counsel appearing for various petitioners in the these cases as also Sri.N.N.Sugunapalan, learned Senior Counsel, assisted by Sri.S.Sujin, Sri.JajuBabu, learned Senior Counsel, assisted by Sri.Brijesh Mohan; Sri.Renjith Marar and Sri.T.B.Hood, on the side of various party respondents, Sri.P.C.Sasidharan, learned Standing Counsel appearing for the Kerala Public Service Commission and Sri.Aravindakumar Babu, learned Senior Government Pleader appearing on behalf of the State of Kerala.

25. Sri.Ravindran, learned Senior Counsel, commenced arguments on behalf of the petitioners in support of the proposition that the First Rank List should be construed into force until 19.07.2016. According to him, the First Rank List was brought into effect on 11.09.2013 but that it was allowed to operate 'freely' only for a period of 85 days until 05.12.2013, on which date the KAT issued its interim order in O.A.No.2395/2013. The learned Senior Counsel asserts that this interim order of the KAT has the effect of interfering with the 'free implementation' of the First Rank List, since, as per it, the PSC could not advise any candidate, included therein, who had secured less than forty nine marks in the Preliminary Examination to an Open Competition vacancy. He further says that the KAT had, thereafter, through its final judgment dated 20.02.2014, effectively

set aside the First Rank List and thus that it ceased to have force until the final judgment of the Hon'ble Supreme Court, because this Court had also confirmed the order of the KAT in the meanwhile. Sri.Ravindran then reminded us that the Hon'ble Supreme Court had, pending the Civil Appeal, issued an interim order of status quo on 03.11.2014 (which order has been extracted afore) and asserted that the First Rank List thus went into a state of suspended animation therefrom, incapacitating the PSC from operating it, till it was brought back into life through the final judgment of the Hon'ble Supreme Court delivered in the Civil Appeal on 13.10.2015. The learned Senior Counsel then ingeminated that the First Rank List dated 11.09.2013 was effectively in force only for a period of 85 days, prior to the commencement of the various litigations; consequently, being entitled to another 280 days of life, after the judgment of the Hon'ble Supreme Court, so as to expire only on 19.07.2016.

26. After predicating as above, Sri.Ravindran further argued that since the First Rank List must thus be construed to have been in force till 19.07.2016, the action of the PSC in bringing into force the New Rank List on 26.05.2015 is illegal and impermissible. He relies on the third proviso to Rule 13 of the PSC Procedure Rules in fortification of this submission. and says that, as is clear from this proviso, the PSC could have taken steps for preparation of a new rank

list, if it was so necessary, but that such a new rank list could have been brought into force only after the expiry of the First Rank List. He cites the Full Bench judgment of this Court in **Sarija v. Kerala Public Service Commission** (2017 (2) KLT 550) and the earlier Division Bench judgment in **Public Service Commission v. Pylo** (1986 KLT 46) to drive home this contention.

27. Sri.Ravindran concluded by submitting that since the First Rank List is to be construed as being in force till 19.07.2016, the NJD vacancies reported on 12.07.2016 became entitled to the petitioners and other persons in the said List for being appointed and he relies on three judgments of this Court, namely **Annie v. Commissioner, Chalakudy Municipality and others** (1984 KLT 170), **Balakrishnan v. Public Service Commission** (1994 (1) KLT 490) and **Vimala Kumari v. State** (1994 (2) KLT 47 (FB)) in support of this.

28. Sri.Ramesh Babu, learned Senior Counsel appearing for certain other petitioners, affirms all the submissions made by Sri.Ravindran and supplemented it by saying that since the PSC themselves have, in their pleadings, accepted that they were incapacitated from operating the List until 13.10.2015, when the Hon'ble Supreme Court delivered its final judgment, all vacancies that arose until the extended date of expiry of the list, namely till

19.07.2016, are solely entitled to the candidates in the First Rank List. He points out to paragraph 6 of the counter affidavit filed by the PSC in OP (KAT)No.256/2017 wherein in, they have averred that '*the advice against vacancies reported from February, 2014 onwards had to be kept pending due to the interim order of 'status quo' issued by the Apex Court and a fresh rank list for the post came into being on 26.05.2015*'. The learned Senior Counsel says that it is, therefore, indubitable that the PSC had not operated the First Rank List nor was it capable of doing so, as is admitted by it, until the Hon'ble Supreme Court disposed of the pending litigation on 13.10.2015.

29. As an adjuvant contention, Sri.Ramesh Babu further submits that, in fact, the 93 NJD vacancies arose on account of the candidates advised from the First Rank List not joining the posts and that there arose such large number of NJD vacancies singularly because the PSC had delayed making the advice and resultantly, that these vacancies also should go to the credit of the candidates, including the petitioners, in the First Rank List.

30. Smt.Seemandini, the learned Senior Counsel, also appearing for certain petitioners included in the First Rank List makes her submissions, in virtual reiteration of the afore recorded contentions, that the action of the PSC in having brought out the New Rank List on 26.05.2015, even though they conceded to be unable to

operate the First Rank List on account of interdiction through judicial orders, is illegal and unlawful and thus vehemently supported Sri.Ravindran and Sri.Ramesh Babu that the 93 NJD vacancies must go to the candidates in the First Rank List.

31. Sri.Elvin Peter, the learned counsel appearing for some of the petitioners, completely adopted the submissions made by the learned Senior Counsel as afore; additionally submitting that the maxim *actus curiae neminem gravabit* applies in his case in all its force, since the incapacitation of the operation of the First Rank List by the PSC after 05.12.2013 and until 13.10.2015 was solely on account of the various interim orders issued by the KAT, by this Court, and by the Hon'ble Supreme Court. He, therefore, also impels the principles of restitution and relies on the judgments in **Delhi Development Authority v. Skipper Construction Company Pvt. Ltd.** ((1996) 4 SCC 622), **V.V.Prakasini v. K.P.S.C. and others** (1993 (1) KLJ 632) and **Kerala State Electricity Board and another v. M.R.F. Limited** ((1996) 1 SCC 597) to buttress his contention that it is the imperative duty of the courts to ensure that the parties to a *lis* do not suffer any unmerited hardship on account of the orders passed by it and that it shall be its endeavour to make certain that a party who has suffered on account of its decision should be put back to the position, as far as possible, in which he would have

been if such a decision had not been issued.

32. Sri.Elvin Peter further contends, relying on the judgment of the Hon'ble Supreme Court in **Beg Raj Singh v. State of U.P.** ((2003) 1 SCC 726), that the rights of the parties stand crystallized on the date of commencement of litigation and therefore, that the time lost in prosecuting the proceedings in judicial or quasi-judicial forums cannot be made a ground for denying relief. He makes this submission on the factual assertion that the petitioners were not parties to O.A.No.2395/2013, in which the KAT had issued the first interim order on 05.12.2013 and that their right to seek appointment should be decided with reference to the date on which the said order was issued, namely on 05.12.2013 and therefore, that the period therefrom till 13.10.2015, being the date on which the final judgment of the Hon'ble Supreme Court was delivered, must be excluded while determining the expiry date of the First Rank List. Finally, Sri.Elvin Peter cites **State of Punjab v. Jasbir Singh** ((1996) 1 SCC 288) to contend that when a matter is pending before a Court, parties to the proceedings should keep their hands off, thus to mean that the PSC should have, on their own, excluded this period, while computing the life of the First Rank List, rather than bringing into force the New Rank List on 26.05.2015.

33. Sri.Aravindakshan Pillay, the learned counsel for certain other petitioners submitted that he concurs with all the submissions made by the earlier counsel but invited our attention to the semantic meaning of the phrase, 'in force' by referring to certain dictionaries and argued that this phrase means, *inter alia*, 'having legal validity or binding effect'. His submission is that going by the various judgments afore cited by the other counsel, the First Rank List dated 11.09.2013 would continue to be 'in force' until 19.07.2016, since the period of the interim orders interdicting the operation of the said list should be excluded.

34. Sri.Hood, representing certain persons who seek impleadment in O.P.(KAT)No.256/2017, while endorsing all the submissions afore, states his position that the judgment in **Dr.Kesavankutty Nair** (supra) would have no application to the facts of these cases, because, as per him, his clients and other similarly placed persons being already included in the First Rank List, would be certainly entitled, notwithstanding the ratio in **Dr.Kesavankutty Nair** (supra), to be considered for appointment against the vacancies reported during its life time and that the issue whether the PSC could have brought out the New Rank List to deny such rights is not one that is covered by **Dr.Kesavankutty Nair** (supra).

35. *Au contraire*, Sri.Jaju Babu, the learned senior counsel appearing for the contesting party respondents in some of the above original petitions began by saying that the cause projected by the petitioners in these cases are based on account of their misapplication and misdirection in law and says that the mere pendency of litigation can never postpone the date of expiry of a rank list. According to him, the life of a rank list can be computed only as per the relevant statutory prescriptions and in particular Rule 13 of the PSC Procedure Rules and therefore, that contrary to the contention of the petitioners, merely because litigation was pending, in which certain orders were issued, the life of a rank list can never get extended. He says that once the rank list expires as per the provisions of the applicable Rules, then even the PSC does not have the right or power to revive or keep alive such an expired rank list and cites for support **Thulaseedharan v. K.P.S.C.** (2007 (3) KLT 19 (SC)).

36. After contending as above, Sri.Jaju Babu then submits that even if it is answered otherwise, it makes no difference to the cases at hand because the interdiction, as ordered by the KAT through its interim order dated 05.12.2013, was only to the effect that the PSC could not advise candidates, who had secured less than forty nine marks in the Preliminary Examination, to the Open Competition

vacancies and therefore, that there was no prohibition at all in operating the list by the PSC, as asserted by the petitioners. Sri.Jaju Babu adds that, therefore, the principle of *actus curiae neminem gravabit* or restitution cannot come to the aid of the petitioners, since none of them even has a case that they have suffered any prejudice on account of the pendency of the litigation or on account of the interim orders; particularly when all the vacancies, during the period when the First Rank List was in force, as per Rule 13 of the PSC Procedure Rules, had been reported to the PSC. He says even if there were no litigation, the petitioners would have been entitled only to those vacancies that were reported during the life time of the First Rank List as computed under Rule 13 and that since these vacancies had been filled only from the persons in that List, the petitioners, who are the candidates placed much below in the said list, cannot claim that even the vacancies reported after its expiry must be made available to them.

37. The learned Senior Counsel asserts that the afore position of law has been emphatically declared in **Annie** (supra) and **Balakrishnan** (supra), earlier cited by Sri.Ravindran and shows us that, even going by the pleadings on record, the specific case of the petitioners, except in O.P.(KAT)No.362/17, is that the First Rank List expired after one month of the commencement of the training of the

last batch advised from the said list. He submits that it is the conceded position that the last advice from this list was made on 11.11.2015 and that the said batch commenced training on 01.05.2016. He, therefore, says that, going by the first proviso to Rule 13, which is the provision that has been relied upon by the petitioners themselves, the said list would admittedly expire on 01.06.2016. He concludes by saying that, therefore, the petitioners included in the First Rank List are now attempting to take undue advantage under the facade of certain litigations, to claim appointment to the 93 NJD vacancies reported after the expiry of the said list and prays that no relief be, therefore, offered to them.

38. Sri.Sasidharan, in his capacity as the Standing Counsel for the PSC, then virtually took over charge of the defence of the respondents and rightfully so, since it is their actions that are being challenged in these original petitions, except in O.P.(KAT)No. 362/2017. He started by saying that the submissions of the petitioners that the First Rank List should be construed to be in force till 19.07.2016 is fallacious since the various orders or judgments of the KAT or of this Court did not inhibit either reporting of vacancies to the PSC or advising of candidates from the list but had only directed that the candidates who secured less than forty nine marks in the Preliminary Examination be not accommodated in Open Competition

turns. He says that, therefore, two sets of advices were made by the PSC; the first on 04.11.2013, which was before the interim order of the learned Tribunal and the second on 20.01.2014, after the said interim order. He explains that PSC was able to make the second advice, even subsequent to the interim order, implicitly as per the First Rank List because no candidate, who obtained less than forty nine marks in the Preliminary Examination, had become eligible, as per their position in the List, to be included in the advice list to the Open Competition turn. He says, therefore, that the argument that the First Rank List was not in operation after the interim order of the KAT dated 05.12.2013 is not tenable.

39. After saying as above, Sri.Sasidharan admits that, however, when the Hon'ble Supreme Court ordered maintenance of 'status quo' on 03.11.2014, the PSC decided to make no further advice from the list and that they waited till 13.10.2015, on which date the final judgment was delivered by the Hon'ble Supreme Court in Civil Appeal No.8536/2015 and that they, thereafter, issued the third and final set of advice from the First Rank List on 11.11.2015. According to him, the training of this batch commenced on 01.05.2016 and hence, that on expiry of one month thereafter, the said Rank List ceased to be in operation under the prescriptions of the first proviso to Rule 13 of the PSC Procedure Rules. He thus

justifies bringing into force of the New Rank List on 26.05.2015 and reiterates that the petitioners would obtain no right to be appointed to any vacancy that occurred after that date or, at the best, after 01.06.2016 and therefore, that the 93 NJD vacancies, admittedly reported only on 12.07.2016, cannot be legally claimed by them. In substantiation of this, he relies on the judgments of the Hon'ble Supreme Court in **Secretary, Kerala Public Service Commission v. Sheeja P.R. and Another** (2013) 2 SCC 56), **Nair Service Society v. Distt. Officer, Kerala Public Service Commission and Others** ((2013) 12 SCC 10) and two Bench judgments of this Court in **Lalsudheer v. Kerala State Road Transport Corporation** (2003 (1) KLT 329) and **Babu v. Public Service Commission** (1996 (1) KLT 349), which, according to him, declares the law that NJD vacancies cannot be filled up after the main list has expired and that even in cases supplementary lists are available, such vacancies cannot be filled up once the main list has expired.

40. Sri.Sasisdharan, thereafter, argued that the maxim *actus curiae neminem gravabit* would not apply to these cases for more than one reason; firstly because, even though the litigations were pending and interim orders issued, the PSC had advised candidates from the First Rank List fully as per the entitlement of the candidates included therein; secondly because, even if there had been no such

litigation and no interim orders, the candidates in the First Rank List could have got no more vacancies than what has been now advised and finally because, none of the petitioners have even pleaded or demonstrated any prejudice as having been caused to them on account of the pendency of the litigation or the interim orders. In support of these submissions, he cites the judgments of the Hon'ble Supreme Court in **Cantonment Board, Meerut and Another v. K.P.Singh and Others** ((2010) 2 SCC 518) and **State of Gujarat and Others v. Essar Oil Limited and Another** ((2012) 3 SCC 522).

41. Sri.Sasidharan wound up his submissions by finally citing the judgment of a Full Bench of this Court in **Ravidas v. Public Service Commission** ((2009 (2) KLT 295), drawing our attention to paragraph 42 thereof, to assert that even when a rank list is in force, steps for preparation of the next rank list can be taken by the PSC, with the condition that the fresh rank list be brought into force only after the expiry of the existing rank list. He asserts that since the First Rank List in these cases had expired on completion of one month from the date on which the training of the candidates advised on 11.11.2015 commenced, the PSC was completely justified in preparing and giving force to the second rank list on 26.05.2015.

42. After Sri.Sasidharan completed his submissions, we heard Sri.N.N.Sugunapalan, learned Senior Counsel, assisted by Sri.Sujin,

who is representing certain persons impleaded in O.A.No.2395/2013. While fully affirming the submissions made on behalf of the PSC, Sri.Sugunapalan concerned himself with the principle of actual and constructive *res judicata*, relying on the judgments of the Hon'ble Supreme Court in **K.H.Siraj v. High Court of Kerala and Others** ((2006) 6 SCC 395), **Premier Tyres Limited v. Kerala State Road Transport Corporation** (AIR 1993 SC 1202) and **Amalgamated Coalfields Ltd. and Another v. Janapada Sabha Chhindwara and Others** (AIR 1964 SC 1013). The learned Senior Counsel informed us that his clients were, in fact, parties to certain other similar matters before the KAT, in which also the impugned order had been delivered and that since those orders have not been challenged before this Court, the benefits to his clients under it should be deemed to be final. He says that this is the inviolable concept of *res judicata* and therefore, that no directions can be issued in these cases against the interests of his clients.

43. Sri.Sugunapalan, learned Senior Counsel, continued his submissions, relying on **K.H.Siraj** (supra), saying that none of the candidates in the New Rank List dated 26.05.2015 have been arrayed in any of these cases and therefore, that these original petitions must be declared to be incompetent and not maintainable for want of necessary and essential parties on array.

44. Sri.Hariraj, learned counsel appearing for the petitioners in O.P.(KAT)No.362/2017, who are the candidates included in the New Rank List dated 26.05.2015, argued next, approvingly endorsing the submissions of the learned Standing Counsel for the PSC; but took it forward by contending that the words 'selected from the list' in the first proviso to Rule 13 of the PSC Procedure Rules can only mean 'advised from the list' and therefore, that even stretching the contentions of the petitioners to its extreme, the First Rank List can be construed to be in force only till the expiry of one month after the commencement of the training for the candidates so advised. He, thus, affirms that the First Rank List cannot be in force even a day after 01.06.2016, since, concededly, the training commenced for the last batch on 01.05.2016. Sri.Hariraj further contended that no candidate included in any rank list can claim vested right for being appointed to a post and relies on the judgments in **Shankarsan Dash v. Union of India** ((1991) 3 SCC 47) and **Dinesh Kumar Kashyap v. South East Central Railway** (2018 SCC OnLine SC 2569) in support of these submissions. Obviously, therefore, he supports the *vires* of **Dr.Kesavankutty Nair** (supra) and states that it is not necessary, in any manner, to overrule the same. Closing his submissions, he asserts that even if any vested right can be conceded to any candidate, such a right cannot be extended in the case of NJD vacancies because such

vacancies are a mere chance, they having arisen consequent to the persons earlier advised not joining within time.

45. Sri.Renjith Marar, learned counsel appearing for some of the party respondents, did not project any new contentions but only submitted that the rights of the candidates in the First Rank List, if any, cannot be expanded to such an extent that the legitimate expectations and rights of the candidates in the New Rank List should be frustrated. He says that once the First Rank List expired, all vacancies, including NJD vacancies, could be filled up only from the subsequent rank list and that this position is clear from the PSC Procedure Rules itself.

46. Sri.Aravindakumar Babu, learned Senior Government Pleader appearing on behalf of State of Kerala, made his submissions as the last counsel to argue, collating all the contentions as afore recorded and strenuously asserting that by allowing the candidates from one rank list to be appointed even to the vacancies that arose after its expiry, the candidates in the succeeding list, as also the next generation of persons, would be irreparably prejudiced. He also supports the ratio in **Dr.Kesavankutty Nair** (supra) as being irreproachable and states that even going by the PSC Procedure Rules, no candidate gets a vested right but only a limited right for being considered for such appointment and that too only as against

the vacancies reported to the PSC during its life span and nothing more. He finishes by saying that a re-consideration of the ratio in **Dr.Kesavankutty Nair** (supra) is unnecessary in these cases, since it is only if the First Rank List is construed to be in force on the date on which the 93 NJD vacancies arose, will the petitioners obtain any right, much less a vested right, for being appointed to such vacancies.

47. With the dialectical submissions of the parties recorded as above, we will now proceed to answer the legal contentions within the parameters of the applicable law.

48. The sure way for finding answers to the various issues impelled in the Reference Order is to examine and analyse the specific provisions of the PSC Procedure Rules, especially, as to what is meant by a rank list, as to the stipulations relating to its life, as to the entitlement of the candidates in the rank list to be appointed to the vacancies reported and the manner in which such rank list would normally expire.

49. In order to obtain a complete answer to the afore questions, we must first have a glance at the statutory provisions and prescriptions that govern the field, before the submissions of the parties are analyzed.

50. The statutory mandate regarding the life of a Rank List published by the PSC is governed exclusively by Rule 13 of the PSC

Procedure Rules. Since, the hypostasis of all the contentions involved in these cases is this particular Rule and its first proviso, we deem it appropriate to extract it below, because we will require to refer to this Rule repeatedly in this judgment:

“The ranked lists published by the Commission shall remain in force for a period of one year from the date on which it was brought into force provided that the said list will continue to be in force till the publication of a new list after the expiry of the minimum period of one year or till the expiry of three years whichever is earlier.

Provided that the above rule shall not apply in respect of ranked lists of candidates for admission to Training Course that leads to automatic appointment to Services or posts and that in such cases the ranked list shall cease to be in force after one year from the date of finalisation of the ranked lists or after one month from the date of commencement of the course in respect of the last batch selected from the list within a period of one year from the date of finalisation of the ranked lists whichever is later.”

51. We notice that all the parties in these cases are in unison that it is the afore Rule and its first proviso, which alone are applicable in these cases, the posts in question being ones to which automatic appointment is made after a training course is completed.

52. Going solely by the afore Rule, a Rank List published by the PSC will remain in force:

- a) either for a period of one year from the date on which it is brought into force; or
- b) till the publication of a new list after the expiry of the minimum period of one year; or
- c) till the expiry of three years; whichever is earlier.

53. Pertinently, after the Rule provides thus, its first proviso, which is exclusively confined in its application to a Rank List of candidates for admission to a training course that leads to automatic appointment into service or post, postulates that such a Rank List will cease to be in force either :

a) after one year from the date of finalization of the Rank List;

or

b) after one month from the date of commencement of the training of the last batch, selected from the said list within a period of one year from the date of finalization of the said list; whichever is later. (*emphasis supplied*)

54. The sum total of these provisions, which position is also expressly conceded by the various counsel for the petitioners, is that the First Rank List dated 11.09.2013 would have, normally, in the absence of a challenge to it, remained in force either till 10.09.2014 or till a date after one month from the date of commencement of the training of the last batch of candidates selected from that list within a period of one year from its finalization.

55. Undeniably, therefore, if there had been no litigation or any interdiction, then certainly, as the petitioners also concede, this is how the First Rank List would have lived its life and finally expired.

56. However, in these cases, litigations had been launched and certain interim orders issued, which orders held force until such litigations concluded by the judgment of the Hon'ble Supreme Court. The manifest question is, therefore, whether, on account of these litigations and the interim orders, the date of expiry of the First Rank List would obtain postponement, based on the date of termination or conclusion of the litigation.

57. Once we find an answer to this query, then the corollary issues hinged on the maxim *actus curiae neminem gravabit*, and as to whether the 93 NJD vacancies should go to the candidates in the First Rank List would obtain automatic resolution.

58. Concededly, the primary provision relating to the various rank lists prepared by the PSC is certainly Rule 13 of the PSC Procedure Rules, extracted afore, but one will have to read the provisions of Rule 14 of the PSC Procedure Rules also to comprehend the manner in which a rank list is enlivened, operated and finally attains its expiry. This Rule, therefore, is also reproduced as under:

“The Commission shall advise candidates for all the vacancies reported and pending before them and the vacancies which may be reported to them for the period during which the ranked lists are kept alive in the order of priority, if any, and in the order of merit subject to the rules of reservation and rotation, wherever they are applicable.”

59. The answer to the question whether expiry of a Rank List would get postponed on account of litigations or interdictory orders

from courts will require a combined reading of Rules 13 and 14 of the PSC Procedure Rules afore extracted.

60. To get a grip of this one issue, one has to carefully see the impact of Rule 14, which provides that the PSC shall advise candidates from a rank list in force to all the vacancies reported and pending before them, as also to the vacancies which may be reported to them in the period during which the said rank list is alive.

61. Therefore, it becomes irrefragable that the reason for keeping alive a rank list for a particular period, whatever be the said period, is that the candidates included therein would obtain the guaranteed entitlement for being considered for appointment against all the reported vacancies which were available and are reported during the said period, notwithstanding whether the rank list expires thereafter. This principle is now well settled without any requirement for re-statement; but for the purpose of completeness, we advert to the two judgments of this Court in **Annie** (supra) and **Balakrishnan** (supra). In **Annie** (supra), a learned Judge of this Court made it beyond doubt that all the vacancies reported during the currency of a rank list, even if it expires thereafter, will have to be filled up from the candidates included in that list. The learned Judge declared in paragraph 10 of the said judgment as under:

“It is perhaps possible to contend that this part of R.14 in a way conflicts with the sweep of R.13. But, the conflict, if any, is not

irreconcilable. The two rules can be interpreted harmoniously so as not to render either rule impotent or otiose. R.13 must be read subject to R.14. In other words, excepting in contingencies as contemplated in R.14, a ranked list published by the service Commission shall have life only during the period contemplated in R.13; or in other words, notwithstanding the lapse of the period of the ranked list as per R.13, the ranked list could be utilised for the limited purpose of advising candidates in relation to vacancies reported to the service Commission before the lapse of the ranked list. The same idea could be conveyed by stating that the the expiry of the period of a ranked list as contemplated in R.13, what lapses is the ranked list except to the extent of the persons who are to be advised in accordance with the vacancies which may be reported to Service commission before the lapse of the ranked list. This is the only rational and reasonable way of understanding R.13 and 14 of the Rules. If that be so there was nothing wrong in the Service Commission advising candidates even after the lapse of the ranked list in relation to vacancies reported to them before the lapse of the ranked list. This is the view taken by Khalid, J. (as he then was) in *C Murughan and others v. State of Kerala and others* (1982 (2) ILR. (Kerala) Page 74) and I am in respectful agreement with the same. Petitioners' challenge against the advice by the Service Commission and the contemplated appointments must necessarily fail."

The same view was accepted and reiterated in **Balakrishnan** (supra), wherein a Division Bench emphatically stated that even though the candidates, who are included in the rank list, would not obtain any vested right to claim appointment, they still are entitled to claim a right to be considered for appointment against the vacancies reported during the currency of a list and thereafter further declared that even the High Court cannot direct the appointing authorities to report vacancies after the expiry of the list.

62. Pertinently, **Balakrishnan** (supra) virtually reiterates the ratio in **Dr.Kesavankutty Nair** (supra) and we notice that this view has stood the test of time. That said, we will deal with the ratio in

Dr.Kesavankutty Nair (supra) in greater detail later in this judgment.

63. Coming back to the life span of a rank list, once we thus see that the statutory prescriptions ensuring a minimum life for every rank list is designed to make it certain that all the vacancies reported within such period are reserved to be filled up by the candidates included in that rank list, the crucial question is under what contingencies can the life of such a rank list be expressly or implicitly construed to be extended. The answer to this question becomes easy when we look at this query from the standpoint of the above provisions and precedents.

64. Since all the vacancies reported during the life span of a rank list would certainly fall into the basket of entitlement of the candidates in that list and further since, going by the first proviso to Rule 13 of the PSC Procedure Rules, a rank list could be kept alive only till the expiry of one month from the commencement of training of the last batch advised from that list within a period of one year of its life, it becomes incontestable and incontrovertible that only in two specific contingencies can the expiry of a rank list be postponed; namely, if a court interdicts the appointing authorities from reporting vacancies to the PSC during its life time or if a court prohibits the PSC from making advice from the rank list within the period of one

year after it is brought into force. We are certain in our mind that in no other contingency can the expiry of a rank list be normally postponed.

65. The above so stated, we will now examine, in the background of the specific facts involved in these cases, how the life span of the First Rank List dated 11.09.2013 should be computed and when it will finally expire.

66. As has been said by us more than once before, the First Rank List came into force on 11.09.2013 and continued till 05.12.2013 without any interdiction whatsoever. On this date, the KAT issued an interim order in O.A.No.2395/2013, directing the PSC not to advise persons, who had obtained less than forty nine marks in the Preliminary Examination, to the Open Competition turns. Even though this order certainly had the potential of changing the manner of operation of the First Rank List, it is luculent that there was no total interdiction and that the PSC was fully enabled to advise candidates from it, which, in fact, they did.

67. Thereafter, the KAT issued a final order on 20.02.2014 directing the PSC to recast the First Rank List, which was approved by this Court by judgment dated 08.08.2014. Pertinently, all these dates were within a period of one year from the date of coming into force of the First Rank List, but there was no absolute interdiction in

operating the said rank list.

68. In fact, it is on record that the PSC had made two advices, namely on 04.11.2013 and 20.01.2014 to all the then available vacancies. Ineluctably, the second advice was after the interim order of the KAT, which, as the learned Standing Counsel informs us, was enabled because, there was no candidate, who had obtained below forty nine marks in the Preliminary Examination, required to be eliminated at that state, thus allowing the PSC to go on smoothly with that advice on 20.01.2014, strictly as per the First Rank List. In other words, two sets of advices made by the PSC were not impacted by the interim order of the KAT and hence, going by the first proviso to Rule 13, the First Rank List could have expired one month after the second batch, namely, who were advised on 20.01.2014, commenced their training, if no further vacancies were reported thereafter.

69. That said, however, it is also on record and is conceded by the petitioners that periodic reporting of vacancies were made to the PSC by the appointing authority thereafter, but that on account of the interim order of the Hon'ble Supreme Court dated 03.11.2014, whereby the PSC was asked to maintain status quo, the PSC took the position that it could not advise any further batches against the then available reported vacancies. This is clear from the stand of the PSC in their counter affidavit in O.P.(KAT)No.256/2017 (afore-extracted)

that advice against the vacancies reported from February 2014 onwards had to be kept pending due to this order.

70. Therefore, even as per the PSC, they were fully inhibited by the interim order of the Hon'ble Supreme Court from making any further advice and we are, therefore, of the view that the petitioners are justified in saying that the First Rank List could not expire during the period of that order.

71. The Civil Appeal was, thereafter, disposed of by the Hon'ble Supreme Court on 13.10.2015, approving the First Rank List dated 11.09.2013, thus setting aside the judgment of this Court as also that of the KAT and we see that the PSC had, consequent to this, made a third advice on 11.11.2015. This action of the PSC was apposite because the period between the interim order of the Hon'ble Supreme Court dated 03.11.2014 and the final judgment dated 13.10.2015, certainly would have to be excluded while calculating the life of the First Rank List, since, during this period, there was either a complete interdiction on the PSC to make advice or the PSC interpreted the interim order of the Hon'ble Supreme Court to be to that effect. Therefore, this eleven month and odd period was certainly eligible to be added on to the life span of the First Rank List and the PSC rightly made an advice of about 339 candidates against the vacancies reported from February 2014 until the date of the said

advice. This batch, thus, for all practical purposes, became the last batch to be advised from the said rank list.

72. Viewed from the afore factual perspective, it becomes easy to determine the expiry of the First Rank List because, going by the first proviso to Rule 13, it would certainly expire within a period of one month after the training of this last batch commenced. We are gratified that the date of commencement of training of this batch is not disputed with all parties conceding that it was on 01.05.2016. Measured so, the rank list would, therefore, expire on 01.06.2016.

73. The denouement of the discussions above is that, since there was no complete interdiction on the PSC from making advice from the First Rank List either by the KAT or by this Court, the period until the Hon'ble Supreme Court passed its interim order on 03.11.2014 cannot deserve to be excluded, while computing its life period. However, the period from the date of the interim order of the Hon'ble Supreme Court, namely, from 03.11.2014 to the date of its final judgment on 13.10.2015, would certainly require to be excluded, since, during this period, the PSC did not or could not advise any candidate to the available reported vacancies. Indisputably, hence, the action of the PSC in having made a final advice on 11.11.2015 becomes irreproachable and without fault.

74. Axiomatically, once the last batch was so advised by the PSC, which, in normal circumstances, should have been done within one year of the coming into force of the First Rank List; but which the PSC did not or could not do on account of the interim order of the Hon'ble Supreme Court, the First Rank List would then expire, under the mandate of the first proviso to Rule 13 of the PSC Procedure Rules, only depending on the date on which the training of the said batch commenced. Here, since the training commenced on 01.05.2016, the First Rank List would expire on 01.06.2016 without doubt.

75. Once we conclude so, the sequential question is what happens to the 93 NJD vacancies.

76. Admittedly, these vacancies were reported only on 12.07.2016, even though the last advice made from the First Rank List was on 11.11.2015. No doubt, reporting of the NJD vacancies appears to have taken place after more than eight months. However, the question is whether these vacancies, which arose after the First Rank List expired as per the prescriptions under the first proviso to Rule 13, would still go to the petitioners and other candidates included in the said list. The reply to this question has to be emphatically to the negative, going by the large number of precedents in this area, including **Babu** (supra), **Kerala Public**

Service Commission v. Shanil Kumar (2002 (1) KLT 604), **Lalsudheer** (supra), **Sheeja P.R.** (supra) and **Nair Service Society** (supra). The *leit motiff* of the ratio in all these judgments is that the PSC cannot advise any candidate after the expiry of a rank list, even to an NJD vacancy, if such vacancies are reported after its expiry. In fact, in **Babu** (supra), a Division Bench of this Court has declared without leaving room for any doubt that the NJD vacancies actually reported after the expiry of the list cannot be fictionally treated as vacancies that had been reported to the PSC before such expiry.

77. Therefore, once we are certain that the First Rank List had expired, under the mandate of the first proviso to Rule 13 of the PSC Procedure Rules, on 01.06.2016, which is, in fact, the conceded position of most of the petitioners in these cases, the NJD vacancies reported on 12.07.2016 cannot go to the benefit of the candidates in the First Rank List.

78. Perhaps, the petitioners were unlucky that reporting of the NJD vacancies occurred more than eight months after the last advice was made; but the well defined perimeters of law then make these vacancies beyond their reach or entitlement.

79. After our opinion on the acme issues relating to the life of the First Rank List and the non-entitlement of the petitioners to the 93 NJD vacancies are indited as afore, a detailed consideration of the

principles governing the maxim *actus curiae neminem gravabit* or the concept of restitution would be unnecessary. However, since many of the learned counsel on both sides have argued these in great detail, we will deal with it, *albeit* in a peripheral manner, relying on **K.P.Singh** (supra) and **Essar Oil Limited** (supra). In **K.P.Singh** (supra), the pre-condition necessary for the application of the maxim *actus curiae neminem gravabit* is exhaustively considered and it is declared succinctly that, to attract this maxim it has to be pleaded and demonstrated that a party to a *lis* has been severely prejudiced on account of an order passed by a court. In fact, in the said judgment, the Hon'ble Supreme Court, after analysing the facts involved, saw no prejudice having been caused to the parties therein and therefore, set aside the judgment of a High Court impugned therein, which had granted relief based on this maxim, as being misdirected.

80. It is thus obvious that the *sine qua non* for attracting the maxim *actus curiae neminem gravabit* is that the parties to the litigation must have suffered prejudice or clear detriment solely on account of the orders of a court. This view was reiterated in **Essar Oil Limited** (supra), wherein the principle of restitution was also dealt with in detail. In paragraph 72 of the said judgment, the view of the Hon'ble Court is clear and we, therefore, feel it apposite to extract it

as under:

“The aforesaid principle of “actus curiae” was applied in *A.R.Antulay v. R.S.Nayak* ((1988) 2 SCC 602) wherein Sabyasachi Mukharji, J. (as His Lordship then was) giving the majority judgment for the Constitution Bench of this Court, explained its concept and application in p. 672, para 83 of the Report. His Lordship quoted the observation of Lord Cairns in *Rodger v. Comptoir D' Escompte de Paris* ((187) LR 3 PC 465), LR at p. 475 which is set out below:

“Now, Their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression 'the act of the court' is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case. It is the duty of the aggregate of those tribunals, if I may use the expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court.”

81. In the purlieu of the afore precedents and the views recorded therein, we will now examine if any party to these cases, let alone the petitioners, have suffered any prejudice on account of either the interim order of the KAT dated 05.12.2013 or the subsequent orders and judgments of this Court or that of the Hon'ble Supreme Court.

82. From what we have recorded above, it becomes inescapable that no such prejudice was caused to any of the petitioners in these cases, because every reported vacancy that would have normally gone into the basket of entitlement of the petitioners and other candidates in the First Rank List dated 11.09.2013 was so given to them by the PSC through their three sets of advices made on

04.11.2013, 20.01.2014 and 11.11.2015. Even if there were no litigations and even if we are to hypothetically think that no interim orders had been issued, the petitioners would have got nothing more.

83. When we say as above, we are certainly cognizant of the submissions made by Sri.Ramesh Babu, learned Senior Counsel, that the delay by the PSC in making advice against the available reported vacancies until 11.11.2015 has caused detriment to the petitioners because it is on account of this that the NJD vacancies were reported late. We must say that at first blush, these submissions may look lustrous but it loses its sheen immediately because, even if the reported vacancies were advised earlier, there is no guarantee that the NJD vacancies would have been reported before seven or eight months of such advice. This is relevant because, had there been no litigation, then the third advice may have been done on a date before 10.09.2013 but, if the NJD vacancies were thereafter reported with the same delay, namely seven or eight months later, then again the same problem would have visited the petitioners, because by then the list may have expired consequent to the expiry of one month after the training of that batch commenced. This submission is, therefore, purely conjectural and speculative and the scenario shown by Sri.Ramesh Babu could have presented even if there were no litigation and we, therefore, repel them finding no legal merit in it.

84. That finally brings us to the query whether the ratio in **Dr.Kesavankutty Nair** (supra) lays down the correct law or otherwise. We think, we are obligated to consider this issue specifically, in spite of our afore observations, because the real cause for the learned Division Bench, in having made the Reference Order, is their doubt regarding its ratio. However, before we speak our mind affirmatively on this, we have to say that re-consideration of the views in **Dr.Kesavankutty Nair** (supra) may not be possible or prudent for us because the Hon'ble Supreme Court has been consistently re-stating the same view in several of its judgments. For instance, in **S.S.Balu v. State of Kerala** ((2009) 2 SCC 479), the Hon'ble Court stated in paragraph 12 as under:

“There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. (See *Pitta Naveen Kumar v. Raja Narasaiah Sangiti* (2006) 10 SCC 261. The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus. (See *Batiarani Gramiya Bank v. Pallab Kumar*, (2004) 9 SCC 100.”

In fact, as early as in the year 1991, a Constitution Bench of the Hon'ble Supreme Court in **Shankarsan Dash** (supra) has laid down this very declaration in paragraph 7 therein, which is as under:

“It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification

merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha* (1974) 3 SCC 220, *Neelima Shangla v. State of Haryana* (1986) 4 SCC 268, or *Jatendra Kumar v. State of Punjab* (1985) 1 SCC 122.”

85. In view of the afore emphatic declarations, the views in **Dr.Kesavankutty Nair** (supra) certainly emerges to be irreproachable.

86. While, saying so, we are not oblivious to the fact that what has been found in all the afore precedents, as also in **Dr.Kesavankutty Nair** (supra), is that a candidate does not get an indefeasible right to be appointed merely because he/she is included in a rank list. That being so, what Rules 13 and 14 of the PSC Procedure Rules statutorily provide is that the candidates included in a rank list certainly obtain a right for being considered, subject to their turn and place in the list, to every vacancy that is reported during the life of the said list. This position of law is now ineluctable through various judgments, including **Annie** (supra), **Balakrishnan** (supra) and **Vimala Kumari** (supra).

87. Viewed thus, a candidate in a rank list certainly obtains a statutory right for being considered for appointment to every vacancy reported during its life span, subject to his/her position and turn therein, but does not get a vested right for being appointed to a post. In fact, closely viewed, this is what **Dr.Kesavankutty Nair** (supra) also says, though the facts noticed by their Lordships in the said judgment are certainly at variance to the facts involved in these cases. Therefore, it would not require for us to labour much on the validity of the ratio in **Dr.Kesavankutty Nair** (supra), since, according to us, this has now been cemented through various judgments of the Hon'ble Supreme Court cited above. We are, therefore, clear in our mind that **Dr.Kesavankutty Nair** (supra) lays down the correct law and further that it does not require for us to deviate from the views therein for the purpose of resolution of the disputes in these cases.

88. To sum up:

(a) Normally, it is only in two specific contingencies can the expiry of a rank list obtain postponement; namely, if a court interdicts the appointing authorities from reporting vacancies to the Public Service Commission during its life time; or, if a court prohibits the Public Service Commission from making advice from the rank list within the period of one year or such other periods as may be

statutorily prescribed, after it is brought into force.

(b) Therefore, in the case at hand, going by the first proviso to Rule 13 of the Kerala Public Service Commission Rules of Procedure, the Rank List dated 11.09.2013 will expire on completion of one month after the training of the last batch advised from it commenced.

(c) Since the date of commencement of training of the last batch was concededly on 01.05.2016, axiomatically, the Rank List dated 11.09.2013 would expire on 01.06.2016.

(d) Consequently, the 93 Non Joining Duty vacancies admittedly reported on 12.07.2016 cannot go to the credit of the candidates included in the Rank List dated 11.09.2013.

(e) The principles of *actus curiae neminem gravabit* are not attracted in these cases, since the petitioners and other candidates in the Rank List dated 11.09.2013 have obtained all the vacancies that would have been entitled to them even if there were no litigations or interim orders.

(f) The views and conclusions in **Kerala Public Service Commission v. Dr. Kesavankutty Nair** (1977 KLT 818), that a candidate in a rank list does not get an indefeasible right to be appointed, is certainly good law and such position does not change even after the coming into force of the PSC Procedure Rules because these Rules only offer the candidates, included in a rank list, a

statutory right to be considered against the vacancies available and reported during the life time of such list, but not to be appointed.

That brings us to the question if these original petitions need to be placed before the Division Bench for final resolution or whether we would be justified in issuing judgment.

Since the reliefs prayed for in these original petitions, except O.P.(KAT)No.362/2017, are exclusively for appointment from the Rank List brought into force on 11.09.2013, to the 93 NJD vacancies reported on 12.07.2016 and since our answer to this claim is to the negative, we are of the view that nothing else survives in these original petitions and resultantly, invoking powers under Section 7 of the Kerala High Court Act, we dismiss those Original Petitions.

As regards O.P.(KAT)No.362/2017 is concerned, since we see that several other issues are also involved, we propose to leave its final adjudication to the learned Division Bench. The Registry is, therefore, directed to list this case for disposal as per roster.

Sd/-
P.R.Ramachandra Menon, Judge

Sd/-
Devan Ramachandran, Judge

Sd/-
N.Anil Kumar, Judge

APPENDIX OF OP (KAT) 256/2017

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE OA 1958/2016 FILE BEFORE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM
- EXHIBIT P2 TRUE COPY OF THE AFFIDAVIT FILED ON BEHALF OF THE RESPONDENT IN COC 562/201 BEFORE THE HON'BLE COURT
- EXHIBIT P3 TRUE COPY OF THE STATEMENT FILED ON BEHALF OF THE 3RD RESPONDENT IN OA NO 1958/2016 BEFORE THE HON'BLE TRIBUNAL
- EXHIBIT P4 TRUE COPY OF THE REPLY STATEMENT FILED ON BEHALF OF THE 1ST RESPONDENT IN OA NO 1958/2016 BEFORE THE HON'BLE TRIBUNAL
- EXHIBIT P5 TRUE COPY OF THE AFFIDAVIT FILED ON BEHALF OF THE 2ND RESPONDENT IN OA 1958/2016 BEFORE THE HON'BLE TRIBUNAL
- EXHIBIT P6 TRUE COPY OF THE REJOINDER FILED BY THE APPLICANTS TO THE REPLY STATEMENT FILED ON BEHALF OF THE 3RD RESPONDENT IN OA NO 1958/2016 BEFORE THE HON'BLE TRIBUNAL
- EXHIBIT P7 TRUE COPY OF THE REJOINDER FILED BY THE APPLICANTS TO THE REPLY STATEMENT FILED ON BEHALF OF THE 1ST RESPONDENT AND THE AFFIDAVIT FILED BY THE 2ND RESPONDENT IN OA NO 1958/2016 BEFORE THE HON'BLE TRIBUNAL
- EXHIBIT P8 TRUE COPY OF THE MISC. APPLICATION TO ACCEPT DOCUMENTS
- EXHIBIT P9 TRUE COPY OF THE MISC. APPLICATION TO ACCEPT DOCUMENTS
- EXHIBIT P10 TRUE COPY OF THE PETITION FOR IMPEADING
- EXHIBIT P11 TRUE COPY OF THE ORDER DATED 14.7.17 IN OA NO.1958/2016 OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- EXHIBIT P12 TRUE COPY OF THE JUDGMENT DATED 10/11/2014 IN OP (KAT) NO.227/2014 OF THIS HON'BLE COURT.

EXHIBIT P13 TRUE COPY OF THE ORDER DATED 12/01/2015 IN SLP NO.34481/2014 OF THE HON'BLE SUPREME COURT.

EXHIBIT P14 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PSC IN SLP NO.34481/2014 BEFORE THE HON'BLE SUPREME COURT.

EXHIBIT P15 TRUE COPY OF THE ORDER DATED 15/01/2016 SLP NO.34481/2014 OF THE HON'BLE SUPREME COURT.

EXHIBIT P16 TRUE COPY OF THE ORDER DATED 29/04/2016 IN SLP NO. 34481/2014 OF THE HON'BLE SUPREME COURT.

RESPONDENT'S EXHIBITS:

EXHIBIT R1 NIL

EXHIBIT R2 NIL

EXHIBIT R3 (a) TRUE COPY OF THE NOTIFICATION NO.AV(2) 2376/14/GW DATED 04/04/2016.

EXHIBIT R4 NIL

EXHIBIT R5 NIL

EXHIBIT R6 NIL

EXHIBIT R7 NIL

EXHIBIT R8 NIL

EXHIBIT R9 NIL

EXHIBIT R10 NIL

EXHIBIT R11 (a) TRUE COPY OF THE ADVICE MEMO NO. RIA(3)712715GW DATED 25/07/2018.

EXHIBIT R12 (a) THE TRUE PHOTOSTAT COPY OF THE NOTIFICATION ISSUED BY THE PUBLIC SERVICE COMMISSION DATED 11/06/2015 IN CATEGORY NO. 161/2015 TO 164/2015.

ANNEXURE R3 (a) TRUE COPY OF THE DECISION OF THE COMMISSION

**ANNEXURE R3 (b) TRUE COPY OF THE NOTIFICATION NO.
R1C(1)16113/13/GW DATED 25.11.2015**

/TRUE COPY/

P.S. TO JUDGE

APPENDIX OF OP (KAT) 94/2018

PETITIONER'S EXHIBITS:

EXHIBIT-P1 TRUE COPY OF THE O.A 765/2016 FILED BEFORE
THE HONOURABLE KERALA ADMINISTRATIVE
TRIBUNAL, THIRUVANANTHAPURAM

EXHIBIT-P2 TRUE COPY OF THE ORDER DATED 14/07/2017 IN
O.A 765/2016 ISSUED BY THE HONOURABLE
TRIBUNAL

/TRUE COPY/

P.S. TO JUDGE

APPENDIX OF OP (KAT) 180/2018

PETITIONER'S EXHIBITS:

EXHIBIT-P1: THE TRUE PHOTOCOPY OF THE OA ALONG WITH ANNEXURES IN OA NO.827/2017.

EXHIBIT-P2: TRUE PHOTOCOPY OF THE ORDER IN O.A.827/2017 OF THE KAT, THIRUVANANTHAPURAM BENCH, ERNAKULAM CAMP DATED 26/2/2018.

EXHIBIT-P3: A TRUE PHOTOCOPY OF THE COMMON ORDER IN O.A.2383/2014 AND O.A.660/2014 DATED 13/7/2015 OF THE KAT, THIRUVANANTHAPURAM BENCH.

EXHIBIT-P4: A TRUE PHOTOCOPY OF THE ORDER IN R.A.26/2015 IN O.A.2383/2014 DATED 23/3/2016 OF THE KAT, THIRUVANANTHAPURAM BENCH.

EXHIBIT-P5: A TRUE PHOTOCOPY OF THE ORIGINAL PETITION WITHOUT EXHIBITS.

ANNEXURE R3(a) TRUE COPY OF THE DECISION OF THE COMMISSION

ANNEXURE R3(b) TRUE COPY OF THE NOTIFICATION NO.R1C(1)16113/13/GW DATED 25.11.2015

/TRUE COPY/

P.S. TO JUDGE

APPENDIX OF OP (KAT) 330/2017

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE O.A.539/2016 FILED BY THE PETITIONERS BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM
- EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT FILED ON BEHALF OF THE 2ND RESPONDENT IN O.A.539/2016 OF THE HON'BLE KAT.
- EXHIBIT P3 TRUE COPY OF THE REPLY STATEMENT FILED BY THE 4TH AND 5TH ADDITIONAL RESPONDENTS IN O.A.539/206 OF THE HON'BLE KAT
- EXHIBIT P4 TRUE COPY OF THE REPLY STATEMENT FILED BY ADDITIONAL RESPONDENTS 4 AND 5 IN O.A.539/2016 OF THE HON'BLE KAT
- EXHIBIT P5 TRUE COPY OF REJOINDER FILED BY THE APPLICANTS TO THE REPLY STATEMENT FILED ON BEHALF OF THE 2ND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF ORDER DATED 05.04.2016 IN O.A.539/2016 OF THE HON'BLE KAT.
- EXHIBIT P7 TRUE COPY OF THE REVIEW APPLICATION FILED UNDER SECTION 22(3)(F) OF THE ADMINISTRATIVE TRIBUNA'S ACT 1985
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 22.06.2016 IN RA(EKM)1/2016 IN O.A.539/2016)OFM THE HON'BLE KAT
- EXHIBIT P9 TRUE COPY OF THE MISCELLANEOUS APPLICATION FILED UNDER RULE 7(3)OF THE KERALA ADMINISTRATIVE TRIBUNAL(PROCEDURE) RULES, 2010, APPLICATION FOR DIRECTION.
- EXHIBIT P10 TRUE COPY OF THE ORDER DATED 12.08.2016 IN MA(EKM)510/2016 IN OA 539/2016 OF THE HON'BLE KAT.
- EXHIBIT P11 TRUE COPY OF THE ORDER DATED 14.07.2017 IN O.A.539/2016 OF THE HON'BLE KAT.

RESPONDENT'S EXHIBITS:

**EXT. R12(a) TRUE COPY OF JUDGMENT DATED 20.05.2015 IN
W.A.NO.1755 OF 2010**

ANNEXURE R3(a) TRUE COPY OF THE DECISION OF THE COMMISSION

**ANNEXURE R3(b) TRUE COPY OF THE NOTIFICATION NO.
R1C(1)16113/13/GW DATED 25.11.2015**

/TRUE COPY/

P.S. TO JUDGE

APPENDIX OF OP (KAT) 331/2017

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE ORDER DATED 14.07.2017 IN O.A.NO.2209/15 OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

EXHIBIT P2 TRUE COPY OF THE O.A.2209/2015 FILED BEFORE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

EXHIBIT P3 TRUE COPY OF THE AFFIDAVIT FILED ON BEHALF OF THIRD RESPONDENT PSC IN CCC 562/15

EXHIBIT P4 TRUE COPY OF THE REPLY STATEMENT FILED ON BEHALF OF THE FIRST RESPONDENT IN OA 1958/2016 BEFORE THE HON'BLE TRIBUNAL

EXHIBIT P5 TRUE COPY OF THE AFFIDAVIT FILED ON BEHALF OF THE SECOND RESPONDENT IN O.A.1958/2016 BEFORE THE HON'BLE TRIBUNAL

RESPONDENT'S EXHIBITS:

EXT. R3(a) TRUE COPY OF THE NOTIFICATION NO.AV(2)2376/14/GW DATED 4th APRIL 2016

EXT. R5(a) TRUE COPY OF THE NOTIFICATION ISSUED BY THE THIRD RESPONDENT DATED 12.6.2014

EXT. R5(b) TRUE COPY OF THE ERRATUM NOTIFICATION DATED 10.7.2014

EXT. R5(c) TRUE COPY OF THE RELEVANT PAGES OF THE RANKED LIST WHICH CAME INTO FORCE W.E.F 26.5.2015

EXT. R5(d) TRUE COPY OF THE QUESTION AND ANSWER OBTAINED UNDER RIGHT TO INFORMATION ACT FROM THE THIRD RESPONDENT DATED 3.5.2017

ANNEXURE R3(a) TRUE COPY OF THE DECISION OF THE COMMISSION

ANNEXURE R3(b) TRUE COPY OF THE NOTIFICATION NO.R1C(1)16113/13/GW DATED 25.11.2015

/TRUE COPY/

P.S. TO JUDGE

APPENDIX OF OP (KAT) 408/2017

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE O.A.306/2016 FILED BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

EXHIBIT P2 TRUE COPY OF THE ORDER DATED 14.7.2017 IN O.A. NO.306/2016 OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

RESPONDENT'S EXHIBITS:

EXT. R3(a) TRUE COPY OF THE NOTIFICATION NO.AV(2)2376/14/GW DATED 4th APRIL, 2016

ANNEXURE R3(a) TRUE COPY OF THE DECISION OF THE COMMISSION

ANNEXURE R3(b) TRUE COPY OF THE NOTIFICATION NO.R1C(1)16113/13/GW DATED 25.11.2015

/TRUE COPY/

P.S. TO JUDGE