

Ramya. P., vs Kerala Public Service Commission Represented by Its Secretary,

Ramya. P., vs Kerala Public Service Commission Represented by Its Secretary,

SooperKanoon Citation : sooperkanoon.com/1355983

Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr. Justice a.Muhammed Mustaque,Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : OP(KAT)/180/2023

Appellant : Ramya. P.,

Respondent : Kerala Public Service Commission Represented by Its Secretary,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945 OP(KAT) NO.175 OF 2023 AGAINST THE ORDER DATED 20.01.2023 IN OA (EKM) NO.831/2020 OF THE KERALA ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH ERNAKULAM ----- PETITIONERS: 1 DIVYA. C.K, AGED 37 YEARS, W/O SOORAJ, EROTH HOUSE, KOLOLAM, EDAYANOOR P.O,

KANNUR DIST., PIN - 670595. 2 HASANTH T.M, AGED 32 YEARS, D/O. M.K.SEETHI THANGAL, THOTTU MUGATHU HOUSE, MATTOOL SOUTH P.O, MATTOOL, KANNUR DIST. PIN-670302. 3 SHAHANAZ. E.K., AGED 37 YEARS, D/O.HAMEED. K, SUHAS, KOTTAM, MUNDALUR P.O, KANNUR DIST., PIN : 670622. BY ADVS. MURALI PALLATH DR.K.P.SATHEESAN, SC, KHRWS RESPONDENTS: 1 KERALA PUBLIC SERVICE COMMISSION, REPRESENTED BY ITS SECRETARY, PATTOM PALACE P.O, THIRUVANANTHAPURAM DT., PIN - 695004 2 THE DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION OFFICE, CIVIL LINES, 1ST FLOOR, KANNUR, PIN - 670002. OP(KAT) Nos.175 & 180/2023 2 3 DEPUTY DIRECTOR OF EDUCATION, CIVIL STATION, NEAR SUB REGISTRAR OFFICE RD, PUZHATHI HOUSING COLONY P.O, KANNUR DIST., PIN - 670002. 4 DR. DEEPA CHITTAKOOL, AGED 39 YEARS, W/O.PRASAD KUMAR, MANOLY HOUSE, ALACHERY P.O, KANNUR, PIN - 670560. 5 SHEEBA. T., AGED 45 YEARS, W/O.BABU. T.K, THURANGAL KUNIYIL HOUSE, PERINGATHUR P.O, KANNUR DIST., PIN - 670675. 6 VINCY. T.P, AGED 41 YEARS, W/O.GIREESHAN, KRISHNA PADINAREVATTAKANDI, PUTHIYANGADI P.O, KOZHIKODE DIST., PIN - 673021. 7 JAYASREE N., AGED 40 YEARS D/O.KANNAN A, CANHIRAPOYIL HOUSE, MATHODAM, KANNADIPPARAMBA P.O, CHELARI P.O, KANNUR DIST., PIN - 670604. BY ADV SHRI.P.C.SASIDHARAN, SC, KPSC BY SENIOR GOVERNMENT PLEADER, SRI.SAIGY JACOB PALATTY THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 18.10.2023, ALONG WITH OP(KAT).180/2023, THE COURT ON 31.10.2023 DELIVERED THE FOLLOWING: OP(KAT) Nos.175 & 180/2023 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA

ANNAMMA EAPEN TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945 OP(KAT) NO. 180 OF 2023 AGAINST THE ORDER DATED 20.01.2023 IN OA(EKM) NO.924/2020 OF THE KERALA ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM PETITIONER/S: 1 RAMYA. P., AGED 37 YEARS, W/O.GIREESAN. V, VANNAPILAKKAL HOUSE, PARIYARAM CENTRE, PARIYARAM P.O, KANNUR DISTRICT, PIN - 670502. 2 PRADEEPAKUMAR. E.V., AGED 40 YEARS, S/O.LATE. T.V. AMBU, THAZHEVEETIL HOUSE, NR. SOUTH A.L.P. SCHOOL, PAYYANUR, PAYYANUR P.O, KANNUR DIST., PIN - 670307. 3 SAHINA. A.K., AGED 40 YEARS, W/O.PURUSHOTHAMAN, NEELAMBARI HOUSE, PANUNDA, PACHAPOYIKA P.O, KOOOTHUPARAMBA, KANNUR DIST., PIN - 670643. 4 REMESAN. P.V., AGED 52 YEARS, S/O. VELAYUDHAN. P.K, PARAYIL HOUSE, KUTTAPARAMBA P.O, POOVANCHAL, KANNUR DIST., PIN - 670571. 5 SAJINA P., AGED 38 YEARS, W/O.MANU. V.S, VELUTHERI HOUSE, KATTAMPALLI P.O, KANNUR DIST., PIN - 670011. 6 BINDU. M.V., AGED 47 YEARS, D/O M.V. KUMARAN, MADATHILE VALAPPIL HOUSE, OP(KAT) Nos.175 & 180/2023 4 KANNOM P.O, EZHOME, KANNUR DIST., PIN - 670334. 7 SMITHA. P.C.P., AGED 41 YEARS, W/O RAMESHAN. K.K, KADALKANDI HOUSE, KUTTIATTUR P.O, MAYYIL, KANNUR DIST., PIN - 670602. 8 AMBILI. K.U., AGED 46 YEARS, W/O. SUNILKUMAR. M.V, VAISHNAVAM, KUMBAM, KOODALI P.O, KANNUR DIST., PIN - 670592. 9 REENA. C.V., AGED 38 YEARS, W/O.BALACHANDRAN. A.K, KARUNALAYAM, KAMAL PEEDIKA, ECHUR, KANNUR DIST., PIN - 670591. 10 LATHIKA. K.M., AGED 45 YEARS, W/O. V. MANOJKUMAR, KARONNAN HOUSE, KUTTIATTUR P.O, MAYYIL, KANNUR DIST., PIN - 670602. 11 LEKHA. T.V., AGED 40 YEARS, W/O. SHSHANTHKUMAR. K, THAVARAVALAPPIL HOUSE, THIMIRI P.O, CHAPPARAPPADAVA, KANNUR DIST., PIN - 670581. 12 ACQUELA MARY E., AGED 36 YEARS, W/O SHIBU. P.R, AJSHYA BHAVAN, PADAPPARAYKKAL VILA, ERICHALLOOR, PLAMOOTUKADA P.O. THIRUVANANTHAPURAM DIST., PIN - 695122. BY ADVS. MURALI

PALLATH DR.K.P.SATHEESAN, SC, KHRWS(SC-1033)
RESPONDENTS: 1 KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM PALACE P.O,
THIRUVANANTHAPURAM DT., PIN - 695004. 2 THE DISTRICT
OFFICER, KERALA PUBLIC SERVICE COMMISSION OFFICE, CIVIL
LINES, 1ST FLOOR, KANNUR, PIN - 670002. OP(KAT) Nos.175 &
180/2023 5 3 DEPUTY DIRECTOR OF EDUCATION, CIVIL STATION,
NEAR SUB REGISTRAR OFFICE RD, PUZHATHI HOUSING COLONY
P.O, KANNUR DIST., PIN - 670002. 4 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, GOVT. PRESS P.O,
THIRUVANANTHAPURAM, PIN - 695001. 5 SHEEJA
PADEELAVEETIL, AGED 51 YEARS, D/O.SANTHA. P.C,
PADEELAVEETIL, PALAYAD P.O, KANNUR DIST., PIN - 670661 6
SHINIJA. T., AGED 36 YEARS, W/O PRAVEEN. K, KOMATH THAZHE,
THOTTADA P.O, CHALA WEST, KANNUR DIST., PIN - 670007. 7
SHAMNA. C., AGED 36 YEARS, W/O.RAJESH. K, CHETTIARATH
HOUSE, CHATTUKAPPARA P.O, KOODALI, KANNUR DIST., PIN -
670592. 8 RAJESH. K.V., AGED 44 YEARS, S/O. KESAVAN. K. V,
KOOTAMVALAPPIL HOUSE, THALORA, KUTTIYERI P.O,
THALIPARAMBA, KANNUR DIST., PIN - 670142. BY ADV
SHRI.P.C.SASIDHARAN, SC, KPSC BY SENIOR GOVERNMENT
PLEADER, SRI.SAIGY JACOB PALATTY THIS OP KERALA
ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON
18.10.2023, ALONG WITH OP(KAT).175/2023, THE COURT ON
31.10.2023 DELIVERED THE FOLLOWING: OP(KAT) Nos.175 &
180/2023 6

A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ.
----- OP (KAT) Nos.175 & 180 of 2023
----- Dated this the 31st day of October,
2023

J U D G M E N T

A.Muhammed Mustaque, J.

These matters are related to reporting substantive vacancies of High School Assistant (HSA) (Malayalam) in Kannur District to the Public Service Commission (PSC). The petitioners are included in the rank list of HSA (Malayalam). The rank list came into force on 12.07.2017

and expired on 11.07.2020. Based on the interim order

passed by the Administrative Tribunal, altogether 10 vacancies were provisionally reported before the expiry of the rank list. However, in the common order passed by the Tribunal, the Tribunal ordered only two vacancies to be advised by PSC. This is how the petitioners approached this Court with these Original Petitions.

2. In reporting vacancies, unless there is manifest

Arbitrariness, the Tribunal or Court should not interfere. The court cannot act as an adjudicating authority to decide upon the number of vacancies to be reported. The Tribunal or courts role in such matters is to command the appointing authority to report vacancies, if the court on the face of the materials available, are of the view that OP(KAT) Nos.175 & 180/2023 7 such reporting of vacancies have been arbitrarily withheld or failed to be reported due to negligence. In this matter, the Tribunal ordered for reporting two vacancies which were set apart for inter-district transfer that arose between 01.04.2020 and 30.06.2020.

3. According to the petitioners, as evident from

Annexure-A2 to Annexure-A11, there were ten substantive vacancies. It is to be noted that the petitioners placed reliance on the information received under the Right to Information Act. As per the law there are different categories for recruitment in the cadre of HSA (Malayalam) which includes direct recruitment, inter-district transfer, promotion from primary teacher and by transfer of ministerial staff. The percentage for direct recruitment is 50. Therefore, it is not safe to place reliance on the information received under the Right to Information Act to determine the number of vacancies for direct recruitment. In the reply statement

filed by the education department, they calculated the number of vacancies. In paragraph 14 of the reply statement, it is stated that the number of vacancies that arose between 12.7.2017 and 12.07.2020 was 28 and out of these 19 vacancies were reported to PSC. According to the statement, going by 50%, only 14 vacancies are available for direct recruitment but an excess of five vacancies were reported to PSC. OP(KAT) Nos.175 & 180/2023 8

4. The petitioners argument is that the cadre

strength ought to have been reckoned while determining the number of vacancies. According to the learned counsel, no eligible candidates are available from the quota set apart from ministerial staff and no vacancy can be set apart for promotional quota. It is further submitted that the teachers are in excess in the quota earmarked for primary teachers. In a matter like this, the court cannot go beyond the number of vacancies reported and admitted. In this process the court cannot use its authority to enquire about the number of vacancies, how the vacancies will have to be reckoned etc. As already noted, in the light of given facts, we find there was no arbitrariness and negligence on the part of the Department in reporting vacancies. That be the case, the original petitions are liable to be dismissed. Accordingly, the original petitions are dismissed. Sd/- A.MUHAMED MUSTAQUE, JUDGE Sd/- SHOBA ANNAMMA EAPEN, JUDGE In OP(KAT) Nos.175 & 180/2023 9 APPENDIX OF OP(KAT) 180/2023 PETITIONERS' ANNEXURES: ANNEXURE A1 TRUE COPY OF RANKED LIST NO.674/2017/SSV IN CATEGORY NO.663/2012 WHICH BROUGHT INTO FORCE WITH EFFECT FROM 12.07.2017. ANNEXURE A2 TRUE COPY OF THE CHART PREPARED BY THE APPLICANTS. ANNEXURE A3 TRUE COPY OF THE PAPER NEWS THAT APPEARED ON 11.06.2020 IN MATHRUBHOOMY DAILY. ANNEXURE A4 TRUE COPY OF THE CIRCULAR NO.G3-280-2020 GED. DATED 30.06.2020. EXHIBIT1 TRUE COPY OF ORIGINAL APPLICATION NO.924 OF 2020 ALONG WITH ANNEXURES THERE ON. EXHIBIT P2 TRUE COPY OF INTERIM ORDER DATED

07.07.2020 OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM IN OA (EKM) NO.924/2020.

EXHIBIT P3 TRUE COPY OF REPLY STATEMENT DATED 22.09.2020 FILED ON BEHALF OF RESPONDENTS NO.1 AND 2. EXHIBIT P4 TRUE COPY OF REPLY STATEMENT DATED 13.01.2022 FILED BY THE 3RD RESPONDENT. EXHIBIT P5 TRUE COPY OF ORDER OF THE HON'BLE KAT DATED 20.01.2023 IN OA (EKM) NO.924 OF 2020. EXHIBIT P6 TRUE COPY OF QUESTIONNAIRE DATED 13.11.2019 SUBMITTED UNDER RTI ACT. EXHIBIT P7 TRUE COPY OF REPLY LETTER DATED 10.12.2019 RECEIVED UNDER RTI ACT. EXHIBIT P8 TRUE COPY OF AFFIDAVIT DATED 14.02.2023 OP(KAT) Nos.175 & 180/2023 10 SUBMITTED BY SMT. SHAMNA. V.P. EXHIBIT P9 TRUE COPY OF AFFIDAVIT DATED 04.03.2023 SUBMITTED BY SMT. SHEEBA. K.O.V BEFORE THE 1ST RESPONDENT. OP(KAT) Nos.175 & 180/2023 11 APPENDIX OF OP(KAT) 175/2023 PETITIONERS' ANNEXURES: ANNEXURE A1 TRUE COPY OF RANKED LIST NO.674/2017/SSV IN CATEGORY NO.663/2012 WHICH BROUGHT INTO FORCE WITH EFFECT FROM 12.07.2017. ANNEXURE A2 TRUE COPY OF THE INFORMATION RECEIVE ON 15.06.2020 ISSUED BY THE HM, GOVT. HSS, CHITTARIPARAMBA. ANNEXURE A3 TRUE COPY OF THE INFORMATION RECEIVED ON 15.06.2020 FROM HM, GHSS CHATTUKAPPARA DATED 09.06.2020. ANNEXURE4 TRUE COPY OF THE INFORMATION DATED 18.06.2020 ISSUED BY HM, GOVT. HSS PALLIKKUNNU. ANNEXURE5 TRUE COPY OF THE INFORMATION DATED 15.06.2020 ISSUED BY HM, GOVT. HIGHER SECONDARY SCHOOL, THOTTADA. ANNEXURE A6 TRUE COPY OF THE INFORMATION DATED 19.06.2020 ISSUED BY THE HM, GHSS ULIKKAL ANNEXURE A7 TRUE COPY OF THE INFORMATION DATED 19.06.2020 ISSUED BY THE HM, PGMGHSS CHERUVANCHERY. ANNEXURE A8 TRUE COPY OF THE INFORMATION DATED 12.06.2020 ISSUED BY THE HM, GHSS KUNHIMANGALAM. ANNEXURE A9 TRUE COPY OF INFORMATION DATED 16.06.2020 ISSUED BY THE HM, GHSS KOROM. ANNEXURE A10 TRUE COPY OF THE QUESTIONNAIRE SUBMITTED BY THE 1ST APPLICANT DATED 17.06.2020 TO THE PUBLIC INFORMATION OFFICER, GHSS PALLIKKUNNU. ANNEXURE A11 TRUE COPY OF THE REPLY GIVEN BY THE OP(KAT) Nos.175 & 180/2023 12 PUBLIC INFORMATION OFFICER, GHSS PALLIKKUNNU DATED 18.06.2020. ANNEXURE A12 TRUE COPY OF THE GO

(MS) 6/2018/G.ED DATED 23.01.2018.

ANNEXURE13 TRUE COPY OF THE RELEVANT PAGES OF ORDER

NO.D5/4444/2020/DGE DATED 28.05.2020. ANNEXURE A14 TRUE COPY OF RELEVANT PAGES ORDER NO. D5/4444/2020/DGE DATED 14.09.2020. ANNEXURE A15 TRUE COPY OF THE ORDER NO.A4/726/2020 DATED 17.02.2021 ISSUED BY THE 3RD RESPONDENT. ANNEXURE A16 TRUE COPY OF THE RELEVANT PAGES OF THE LIST ANNEXED TO M-A15. ANNEXURE17 TRUE COPY OF THE QUESTIONNAIRE SUBMITTED BY MAYA. P. V DATED 20.03.2021 SUBMITTED TO THE OFFICE OF THE 3RD RESPONDENT. ANNEXURE18 AND THE REPLY FROM THE OFFICE OF THE 3RD RESPONDENT DATED 31.03.2021. ANNEXURE A19 TRUE COPY OF THE ORDER DATED 22.11.2001 IN CIVIL APPEAL NOS.4054-4055 OF 1999 OF THE HONORABLE SUPREME COURT. ANNEXURE A20 TRUE COPY OF THE CHART PREPARED BY THE

APPLICANTS RECEIVED FROM DPI WEBSITE FOR THE YEAR 2019-2020 REGARDING THE STUDENT STRENGTH IN THE GOVERNMENT SCHOOLS. ANNEXURE A20 (A) TRUE COPY OF THE CHART PREPARED BY THE APPLICANTS RECEIVED FROM DPI WEBSITE FOR THE YEAR 2020-2021 REGARDING THE STUDENT STRENGTH IN THE GOVERNMENT SCHOOLS.

ANNEXURE A20(B) TRUE COPY OF THE CHART PREPARED BY THE APPLICANTS RECEIVED FROM DPI WEBSITE FOR THE YEAR 2021-22 REGARDING THE STUDENT OP(KAT) Nos.175 & 180/2023 13 STRENGTH IN THE GOVERNMENT SCHOOLS. ANNEXURE A21 TRUE COPY OF THE APPOINTMENT ORDER DATED 07.01.2021 ISSUED BY THE DIRECTOR OF GENERAL EDUCATION. ANNEXURE A 22 TRUE COPY OF THE QUESTIONNAIRE DATED 17.06.2020 SUBMITTED BY THE 1ST APPLICANT BEFORE THE PUBLIC INFORMATION OFFICE, GHSS PALLIKKUNNU. ANNEXURE A22(A) THE INFORMATION DATED 18.06.2020 ISSUED BY THE PUBLIC INFORMATION OFFICER, GHSS PALLIKKUNNU. ANNEXURE A23 TRUE COPY OF THE INFORMATION RECEIVED FROM HEAD MASTER

GGVHSS CHERUKUNNU DATED 28.09.2020. EXHIBIT P1 TRUE COPY OF ORIGINAL APPLICATION NO.831 OF 2020 ALONG WITH ANNEXURES THERE ON. EXHIBIT P2 TRUE COPY OF INTERIM ORDER DATED

25.06.2020 OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM IN OA (EKM) NO.831/2020.

EXHIBIT P3 TRUE COPY OF REPLY STATEMENT DATED 27.07.2020 FILED BY THE 3RD RESPONDENT. EXHIBIT P4 TRUE COPY OF REPLY STATEMENT DATED 21.09.2020 FILED ON BEHALF OF RESPONDENTS NO.1 AND 2. EXHIBIT P5 TRUE COPY OF REJOINDER FILED BY THE APPLICANTS WITH ANNEXURES. EXHIBIT P6 TRUE COPY OF ADDITIONAL REPLY STATEMENT DATED 27.04.2022 FILED BY THE 3RD RESPONDENT. EXHIBIT P7 TRUE COPY OF ADDITIONAL REPLY STATEMENT DATED 26.10.2022 FILED BY THE 3RD OP(KAT) Nos.175 & 180/2023 14 RESPONDENT. EXHIBIT P8 TRUE COPY OF ADDITIONAL REPLY STATEMENT DATED 30.11.2022 FILED BY THE 3RD RESPONDENT. EXHIBIT P9 TRUE COPY OF REJOINDER DATED 04.12.2022. EXHIBIT P10 TRUE COPY OF ORDER OF THE HON'BLE KAT DATED 20.01.2023 IN OA (EKM) NO.831 OF 2020. EXHIBIT P11 TRUE COPY OF QUESTIONNAIRE DATED 13.11.2019 SUBMITTED UNDER RTI ACT. EXHIBIT P12 TRUE COPY OF REPLY LETTER DATED 10.12.2019 RECEIVED UNDER RTI ACT. EXHIBIT P13 TRUE COPY OF AFFIDAVIT DATED 14.02.2023 SUBMITTED BY SMT. SHAMNA. V.P. EXHIBIT P14 TRUE COPY OF AFFIDAVIT DATED 04.03.2023 SUBMITTED BY SMT. SHEEBA. K.O.V BEFORE THE 1ST RESPONDENT. EXHIBIT P 15 TRUE COPY OF QUESTIONNAIRE DATED 24.03.2023 SUBMITTED BY SAHINA. A.K UNDER RTI ACT. EXHIBIT P16 TRUE COPY OF REPLY LETTER NO. DDEKNR/ UNDER RTI ACT. EXHIBIT P17 TRUE COPY OF QUESTIONNAIRE DATED 17.09.2020 SUBMITTED BY REENA. C.V UNDER RTI ACT. EXHIBIT P18 TRUE COPY OF REPLY LETTER DATED 17.09.2020 RECEIVED UNDER RTI ACT. EXHIBIT P19 TRUE COPY OF QUESTIONNAIRE DATED 26.07.2021 SUBMITTED BY BINDU. M.V UNDER RTI ACT. OP(KAT) Nos.175 & 180/2023 15 EXHIBIT P20 TRUE COPY OF REPLY STATEMENT NO.4/52/2021-22 DATED 26.07.2021.