

Mini P. vs Jeevan Babu K.

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Court : Kerala

Decided On : Feb-22-2022

Judge : Honourable Mr. Justice Alexander Thomas, Honourable Mr. Justice Viju Abraham

Appeal No. : Con.Case(C)/35/2022

Appellant : MINI P.

Respondent : Jeevan Babu K.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS & THE HONOURABLE MR. JUSTICE VIJU ABRAHAM TUESDAY, THE 22ND DAY OF FEBRUARY 2022 / 3RD PHALGUNA, 1943 CON.CASE(C) NO. 35 OF 2022 AGAINST THE JUDGMENT DATED 22.08.2019 IN OP(KAT) NO.316/2019 OF HIGH COURT OF KERALA PETITIONERS/ PETITIONER NOS.1 & 3: 1 MINI P. AGED 37 YEARS, W/O.SIVADAS P.M., TYPE E5 QUARTERS, CUSAT, KOCHI - 682 022. 2 SINDHU P.S. AGED 34 YEARS, SINDHU BHAVANAM, BOOTHAMKARA, ELAMANNOOR P.O., KOLLAM - 691 524. BY ADVS. KALEESWARAM RAJ VARUN C.VIJAY THULASI K. RAJ RESPONDENTS/RESPONDENT NOS.1 & 3: 1 JEEVAN BABU K. AGE

AND FATHER'S NAME NOT KNOWN TO THE PETITIONER,
DIRECTOR OF GENERAL EDUCATION, DIRECTORATE OF
GENERAL EDUCATION, JAGATHY, THIRUVANANTHAPURAM - 695
014. 2 SAJU GEORGE AGE AND FATHER'S NAME NOT KNOWN TO
THE PETITIONER, THE SECRETARY, KERALA PUBLIC SERVICES
COMMISSION, PATTOM, THIRUVANANTHAPURAM - 695 004. BY
ADVS. ADVOCATE GENERAL OFFICE KERALA
SHRI.P.C.SASIDHARAN, SC, KPSC

OTHER PRESENT: SRI.SAIGI JACOB PALATTY, SR.GOV.T.PLEADER THIS
CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION
ON 22.02.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: Con. of Court Case (C) No.35/2022 2

ALEXANDER THOMAS & VIJU ABRAHAM, JJ.
----- Contempt of Court
Case (Civil) No.35 of 2022 [arising out of judgment dated 22.08.2019 in
O.P.(KAT) No.316/2019]
----- Dated this the 22nd
day of February, 2022

JUDGMENT

Alexander Thomas, J.

The abovesaid contempt of court case has been filed alleging non-compliance of the directions and orders passed by this Court as per Anx.I judgment dated 22.08.2019 in O.P.(KAT) No.316/2019.

2. Heard Sri.Kaleeswaram Raj, learned counsel appearing for

the petitioners, Sri.Saigi Jacob Palatty, learned Senior Government Pleader, appearing for the 1st respondent and Sri.P.C. Sasidharan, learned Standing Counsel for the Kerala Public Service Commission (PSC), appearing for the 2nd respondent.

3. Sri.Kaleeswaram Raj, learned counsel appearing for the

petitioners would point out that as per Anx.I judgment dated 22.08.2019, this Court had disposed of O.P.(KAT) No.316/2019 with the finding and direction that the matter in issue is covered by the decision of this Court in Revathy v. Kerala Public Service Con. of Court Case (C) No.35/2022 3 Commission [2019 (3) KLT 359 (DB)] and also the final order dated 22.08.2019 in R.P. No.744/2019 and that the reasonings therein shall follow and the process of appointment for vacancies that arose before 09.05.2018 shall be completed. It is further pointed out that Anx.III

judgment of this Court in the case in O.P.(KAT) No.168/2019 rendered

on 09/07/2019 in the case Revathy V.S. v. Kerala Public Service Commission & Others [2019 (3) KHC 940] was later confirmed as per Anx.IV final order dated 22.08.2019 in Review Petition, R.P. No.744/2019 in the said O.P.(KAT) No.168/2019, wherein this Court has ultimately held that vacancies, which arose upto 09.05.2018 (the date of issuance of the ban order by the Government), are not affected

by the said ban order, etc. Thus, it is found that the appointing authority was obliged to report all vacancies in the post of Laboratory Technical Assistant-Agriculture (Plant Protection), which arose on or before 09.05.2018, to the PSC for appointment of eligible candidates included in Anx.V rank list dated 06.03.2017, in which the 2 petitioners herein have been included as rank Nos.17 & 12 in the main

list of that rank list. Further that, Anx.VIII proceedings dated 06.05.2017, issued by the State Public Information Officer of the department under the Right to Information Act, 2005, clearly shows that, as on 06.05.2017, there were 16 vacancies in the abovesaid Con. of Court Case (C) No.35/2022 4 post in question. Further that only 8 among the said 16 vacancies alone were duly reported by the appointing authority to the PSC for advice of candidates from Anx.V rank list. Hence, the 1 st respondent, who is the appointing authority, has committed contempt of Court, etc.

4. Per contra, Sri.P.C. Sasidharan, learned Standing Counsel

for the PSC, appearing for the 2nd respondent submits that there is no averment anywhere in the contempt petition that advice memo is pending to be issued by the respondent PSC as against any vacancy reported by the appointing authority to the PSC and that therefore, there is no element of contempt whatsoever against the 2 nd respondent PSC. Further, the learned Standing Counsel for the PSC would point out, on the basis of the averments in their affidavit dated 17.02.2022, that 2 vacancies were reported on 11.05.21015, 5 vacancies were reported on 05.10.2015, 1 vacancy was reported on 01.04.2017 & 2 vacancies were reported on 19.03.2018 by the appointing authority and advise memos also were duly issued by the PSC to the candidates included in the abovesaid rank list as against such vacancies in

question. It is submitted that the rank list dated 06.03.2017 had expired on 05.03.2020.

5. It is also submitted that there is a direction in the order

Con. of Court Case (C) No.35/2022 5 dated 11.01.2019 of the Tribunal in O.A. (Ekm) No.1461/2018 that, in

view of the complication that arose on account of the ban order

imposed by the State Government, the issue as to whether the appointments could be effected in accordance with the qualification and method of appointment as prescribed under the prevailing Special Rules has to be taken by the Government on implementing the first phase of the NSQF and till such time the decision is taken, the current rank list shall be deemed to be extended under the 5 th proviso to Rule 13 of the Kerala Public Service Commission Rules of Procedure, 1976. That the said direction of the Tribunal is illegal and ultravires and that the PSC has already filed O.P.(KAT) No.528/2019 before this Court to challenge the aforesaid direction of the Tribunal, to the extent it relates to the PSC. Further, it is pointed out that the Division Bench of this Court in Anxs.III & IV judgments has finally resolved the controversy relating to the issuance of the ban

order, wherein it was held that all vacancies, which have arisen before 09.05.2018, are not, in any manner, affected by the ban order and hence could be utilised for advice and appointment and since the main issue is resolved, it is only to be held that the direction of the Tribunal for deemed extension of the rank list, on the ground of the pendency of the issue, is no longer in

force and the legal controversy would be covered by Anx.IV judgment

Con. of Court Case (C) No.35/2022 6 of the Division Bench of this Court superseding the verdict of the Tribunal, etc. At any rate, it is submitted that no contempt of Court is disclosed as against the 2nd respondent-PSC official.

6. After hearing both sides, we are of the firm view that no

contempt of Court is disclosed as against the 2nd respondent, even going by the allegations in the contempt case, inasmuch as there is no averment that the PSC has not issued advice memo as against any pending vacancy reported by the appointing authority, etc.

7. From the pleadings and materials on record, we see that no

specific averments with material particulars are averred in the contempt petition as to how contempt is alleged against the 1st respondent. It is only on the basis of an additional document produced as I.A. No.2/2022 in the said contempt case, and the petitioners having placed reliance on Anxs.VII & VIII, which are the application filed under the Right To Information Act and the proceedings under the Right To Information Act, on the basis of which it is claimed that the appointing authority has admitted that there are 16 vacancies as on 06.05.2017 out of which only 8 vacancies alone have been reported, etc. The respondent PSC has taken a firm stand that the rank list in question has already expired on 05.03.2020 and that the verdict of the Division Bench of this Court as per Anx.IV order on the

Con. of Court Case (C) No.35/2022 7

issue in controversy, would supersede the verdicts of the Tribunal on the said issue including the instant issue regarding the deemed extension of the rank list. If, as a matter of fact, the rank list has expired, then even if the vacancies are now reported, there is no question of advising candidates included in such time expired rank list.

8. Faced with this difficulty, the learned counsel appearing for

the petitioners would place reliance on the decision of the Full Bench of this Court in Vimalakumari v. State of Kerala [1994 (2) KLT 47 (FB)] and would contend that, in a case where the appointing authority, despite Court directions, have not reported the vacancies to the Kerala Public Service Commission, then the Kerala Public Service Commission cannot be compelled to make advice of candidates included in the said time expired rank list, but that the court can appropriately modulate relief by directing the appointing authority to make appointments of such candidates, who would have otherwise secured advice memos and appointment orders, if the vacancies have been reported before the expiry of the rank list, as earlier directed by the Court, etc. Hence, it is submitted by the learned counsel appearing for the petitioner that the petitioners would move a separate original application before the Tribunal, as a court of first instance, to ventilate her grievances in that regard. Liberty is accorded to the petitioners to

Con. of Court Case (C) No.35/2022 8 work out their remedies, in accordance with law. In the light of these aspects, we do not find it necessary to keep the contempt of court case pending, any longer.

Hence, with the abovesaid liberty, the above contempt of Court case will stand disposed of. Sd/- ALEXANDER THOMAS, JUDGE Sd/- VIJU ABRAHAM, JUDGE
Skk//03032022 Con. of Court Case (C) No.35/2022 9 APPENDIX OF
CON.CASE(C) 35/2022 PETITIONERS' ANNEXURES:- Annexure I TRUE COPY
OF THE JUDGMENT DATED 22/08/2019 IN OP(KAT) NO.316/2019.
RESPONDENTS' ANNEXURES:- NIL

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