

Rekha Thomas vs Kerala Co-Operative Service Examination Board

Rekha Thomas vs Kerala Co-Operative Service Examination Board

SooperKanoon Citation : sooperkanoon.com/1820520

Court : Kerala

Decided On : Dec-22-2020

Judge : Honourable Mr.Justice C.T.Ravikumar,Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/27658/2018

Appellant : Rekha Thomas

Respondent : Kerala Co-Operative Service Examination Board

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.36842 OF 2015(E) PETITIONER: SUDHA.T.K VETTATHIL HOUSE, KEEZHAMPARA, MELAMPARA P.O., THALAPPALAM THALAPPALAM, KOTTAYAM DISTRICT BY ADV. SRI.S.MANU RESPONDENTS:

1 STATE OF KERALA REP. BY SECRETARY TO GOVERNMENT, DEPT OF CO-OPERATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 1. 2 THE REGISTRAR OF CO-

OPERATIVE SOCIETIES, OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM - 1 3 THE CO-OPERATIVE SOCIETIES EXAMINATION BOARD, 2ND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM - 1 4 MANGANAM SERVICE CO-OPETIVE BANK LTD NO. 1920, MANGANAM P.O., KOTTAYAM, PIN - 686018, REP. BY ITS SECRETARY.

12310, 27570 & 27658 of 2018 2 5 CHOONDACHERRY SERVICE CO-OPERATIVE BANK LTD NO. K167,CHOONDACHERRY P.O., KOTTAYAM - 686579, REP. BY ITS SECRETARY. R1 & R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. R3 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020 ALONG WITH WP(C).15247/2016(E) AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.15247 OF 2016 PETITIONER: BINDUMOL.M.J., AGED 40 YEARS W/O.SREEKUMAR B., KADANADU P.O.,KOTTAYAM DISTRICT. BY ADV. SRI.G.SREEKUMAR (CHELUR) RESPONDENTS:

1 STATE OF KERALA REP.BY SECRETARY TO GOVERNMENT, DEPT. OF CO-OPERATION,GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM -695001. 2 THE REGISTRAR OF CO-OPERATIVE SOCIETIES OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,THIRUVANANTHAPURAM - 695 001. 3 THE CO-OPERATIVE SOCIETIES EXAMINATION BOARD 2ND FLOOR,

KERALA STATE CO-OPERATIVE BANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM-695001. 4 THE KADANADU SERVICE CO-OPERATIVE BANK LTD.K.2 H O KOLLAPILLY, ATHINADU P.O., REPRESENTED BY ITS SECRETARY, KOTTAYAM DISTRICT - 686 651.

12310, 27570 & 27658 of 2018 4 R1 & R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. R3 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.23067 OF 2017 PETITIONER: RIJI A.P., AGED 34 YEARS, W/O.AJITH PRASAD A.S., ASSARIPARAMBIL HOUSE, PANACHIPARA, POONJAR P.O, PIN-686 581. BY ADVS.SRI.J.JULIAN XAVIER SRI.FIROZ K.ROBIN RESPONDENTS:

1 KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD IIND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY/CHAIRMAN, PIN-695 001. 2 JOINT REGISTRAR (GENERAL) CO-OPERATIVE SOCIETIES, KOTTAYAM DISTRICT, PIN-686 001. 3 UZHAVOOR SERVICE CO-OPERATIVE BANK LTD.NO.3810 UZHAVOOR PO, KOTTAYAM DISTRICT-686 634. 4 MOONNILAVU SERVICE CO-OPERATIVE BANK LTD.NO. K-163, MOONNILAVU PO, KOTTAYAM DISTRICT-686 586.

12310, 27570 & 27658 of 2018 6

5 MEENACHIL EAST URBAN CO-OPERATIVE BANK LTD.NO.4266 POONJAR, POONJAR THEKKEKKARA P.O., KOTTAYAM -686 582. 6 RAMAPURAM REGIONAL SERVICE CO-OPERATIVE BANK LTD.NO.4111, RAMAPURAM BAZAR PO, KOTTAYAM -686 576. 7 MELAMPARA SERVICE CO-OPERATIVE BANK LTD.NO.1662 MELAMPARA P.O, KOTTAYAM DISTRICT -686 578. R1 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON

22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 7

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.23289 OF 2017 PETITIONER: SHAIKY P. THOMAS AGED 38 YEARS, W/O SOJAN FRANCIS, NADUVATHETTU HOUSE, KURINJI P.O, MANATHOOR, PALA, KOTTAYAM-686576 BY ADVS.SRI.J.JULIAN XAVIER SRI.FIROZ K.ROBIN RESPONDENTS: 1 KERALA STATE CO-OPERATIVE SERVICE EXAMINATION BOARD 11ND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY/CHAIRMAN, PIN-695001. 2 JOINT REGISTRAR (GENERAL) CO-OPERATIVE SOCIETIES, KOTTAYAM DISTRICT, PIN- 3 RAMAPURAM REGIONAL SERVICE CO-OPERATIVE BANK LTD, NO.4111, RAMAPURAM BAZAR PO, KOTTAYAM- 686576. 12310, 27570 & 27658 of 2018 8 4 MEENACHIL EAST URBAN CO-OPERATIVE BANK LTD NO.4266 POONJAR, POONJAR THEKKEKKARA PO, KOTTAYAM- 686582. 5 MOONNILAVU SERVICE CO-OPERATIVE BANK LTD NO.K-163, MOONNILAVU PO,

KOTTAYAM DISTRICT- R1 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 9

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.24474 OF 2017 PETITIONER: TEENA T.PHILIP, AGED 31 YEARS, W/O.JOBIN JOE CHACKO, PALATHOTTATHIL HOUSE, ERATTUPETTA, ARUVITHARA PO, KOTTAYAM DISTRICT, PIN-686 122. BY ADVS.SRI.J.JULIAN XAVIER SRI.FIROZ K.ROBIN RESPONDENTS:

1 KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD IIND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY/CHAIRMAN, PIN-695 001 2 JOINT REGISTRAR (GENERAL) CO-OPERATIVE SOCIETIES, KOTTAYAM DISTRICT, PIN-686 001. 3 MEENACHIL EAST URBAN CO-OPERATIVE BANK LTD.NO.4266, POONJAR, POONJAR THEKKEKKARA PO, KOTTAYAM-686 582. 4 MELAMPARA SERVICE CO-OPERATIVE BANK LTD.NO.1662 MELAMPARA PO, KOTTAYAM DISTRICT-686 578.

12310, 27570 & 27658 of 2018 10 5 MOONNILAVU SERVICE CO-OPERATIVE BANK LTD.NO.K-163, MOONNILAVU PO, KOTTAYAM DISTRICT-686 586. 6 RAMAPURAM REGIONAL SERVICE CO-OPERATIVE BANK LTD.NO.4111, RAMAPURAM BAZAR PO, KOTTAYAM-686 576 R1 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R2 BY G.P.SRI.MOHAMAD

HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 11

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.25417 OF 2017 PETITIONER: SREEJA VIJAY, W/O. NISHANTH R, POTHAMATTATHIL, NATTASSERY, SH MOUNT P.O,KOTTAYAM DISTRICT, KERALA, 686 006. BY ADVS.SHRI.S.MANU SMT.R.MEENAKSHI (M-1290) RESPONDENTS: 1 STATE OF KERALA REP. BY SECRETARY TO GOVERNMENT, DEPT OF CO-OPERATION,GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 1. 2 THE REGISTRAR OF CO-OPERATIVE SOCIETIES OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,THIRUVANANTHAPURAM - 1. 3 THE CO-OPERATIBE SOCIETIES EXAMINATION BOARD 2ND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING,OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM - 1. 12310, 27570 & 27658 of 2018 12 4 THE MEENACHIL EAST URBAN CO-OPERATIVE BANK LTD. NO. 3647, REPRESENTED BY ITS SECRETARY, POONJAR THEKKEKARA P.O,KOTTAYAM DISTRICT, 686 582. R3 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R1 & R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 13

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.25669 OF 2017 PETITIONER: REKHA THOMAS AGED 37 YEARS, W/O.KISHORE, KATHIRVELIL HOUSE, KURICHILAKODE P.O., NEAR S.D.CONVENT, KODANAD, ERNAKULAM DISTRICT, PIN-683544. BY ADVS.SRI.S.K.BALACHANDRAN SRI.K.M.BIJU SMT.N.D.DEEPA SRI.V.K.NANDAKUMARAN RESPONDENTS: 1 KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD 2ND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING,OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY/CHAIRMAN, PIN-695001. 2 JOINT REGISTRAR (GENERAL) CO-OPERATIVE SOCIETIES, ERNAKULAM-682 030. 3 VENGOLA SERVICE CO-OPERATIVE BANK LTD.NO.4276 VENGOLA P.O., ERNAKULAM-683556. 12310, 27570 & 27658 of 2018 14 4 MUPPATHADAM SERVICE CO-OPERATIVE BANK LTD.NO.E.216 MUPPATHADAM P.O., ERNAKULAM-683110. 5 KEEZHMAD SERVICE CO-OPERATIVE BANK LTD.NO.2681 EDAYAPURAM, KEEZHMAD P.O., ERNAKULAM-683101. R1 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 15

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.25770 OF 2017 PETITIONER: SINDHU T., AGED 36, W/O.SATHEESH KUMAR, KALARICKAL HOUSE, MEENACHIL, KADANAD PO, KOTTAYAM

DISTRIC - 686653 BY ADV. SRI.G.SREEKUMAR (CHELUR)
RESPONDENTS:

1 THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO
THE GOVERNMENT, DEPARTMENT OF CO-OPERATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001 2
THE REGISTRAR OF CO OPERATIVE SOCIETIES OFFICE OF THE
REGISTRAR OF CO OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM 695001 3 THE CO OPERATIVE SOCIETIES
EXAMINATION BOARD 2ND FLOOR, KERALA STATE CO OPERATIVE
BANK BUILDING, OVER BRIDGE JUNCTION,
THIRUVANANTHAPURAM 695001

12310, 27570 & 27658 of 2018 16 4 THE MEENACHIL EAST URBAN
CO OPERATIVE BANK LTD. REGISTERED OFFICE, POONJAR,
POONJAR THEKEKARA PO, KOTTAYAM DISTRICT, REPRESENTED
BY ITS GENERAL MANAGER 686651 R3 BY SMT.S.L.SYLAJA, SC,
CO-OPERATIVE SERVICE EXAMINATION BOARD R1 & R2 BY
G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL)
HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH
WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of
2018 17

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE
HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND
DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.36593 OF
2017 PETITIONER: ANISHA A.J., D/O JAYASREE, AGED 32 YEARS,
RESIDING AT RADHA MANDIRAM, KALLUVETTAMKUZHI,
CHITHARA, MANCODU P.O., KOLLAM DISTRICT, PIN:691 559 FROM
ALPHAS, ALTHARA, VELLALLOOR P.O., KILIMANOOR,
THIRUVANANTHAPURAM DISTRICT- 695601. BY ADVS.SRI.K.SIJU

SRI.S.ABHILASH SMT.RENY ANTO RESPONDENTS: 1 THE KERALA STATE CO-OPERATIVE EXAMINATION BOARD, THIRUVANANTHAPURAM-695001 REPRESENTED BY ITS SECRETARY. 2 THE MITHIRMALA SERVICE CO-OPERATIVE BANK LTD. MITHIRMALA, NEDUMANGAD P.O., THIRUVANANTHAPURAM-695 541 REPRESENTED BY ITS SECRETARY. 12310, 27570 & 27658 of 2018 18

3 THE DIRECTOR BOARD MITHIRMALA SERVICE CO-OPERATIVE BANK LTD., MITHIRMALA, NEDUMANGAD P.O., THIRUVANANTHAPURAM-695 541 REPRESENTED BY ITS PRESIDENT. 4 SREELAL.S.L., MANGALASSERY VEEDU, KANJIRAMPARA,VAMANAPURAM,ANAKUDY.P.O, THIRUVANANTHAPURAM-695606. 5 SREEKALA.P.,NANDANAM,ALAMCODE, AMBALATHINKALA.P.O,KATTAKKADA, THIRUVANANTHAPURAM-695572. 6 HARITHA.B.H, NETHAJIPURAM, POTHENCODE,SANTHIGIRI.P.O, THIRUVANANTHAPURAM-695589. 7 DIVYA.G.S, SURENDRAVILASOM, PARAPPIL, MUTHUVILA.P.O,THIRUVANANTHAPURAM-695610. 8 KAVITHA.G.R.,VRINDAVAN, CHUTTAYIL, KILIMANOOR.P.O,THIRUVANANTHAPURAM-695601. 9 ANILA.S.,SREEBHAVAN,KARIYAVATTOM,PANGAPPARA.P.O, THIRUVANANTHAPURAM,PIN:695581. 10 NAHAS HAMSA, NH HOUSE, THAZHNNAMALA,CHULLIMANOOR.P.O, THIRUVANANTHAPURAM-695541. R1 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD BY ADV. SRI.T.R.HARIKUMAR BY ADV. SRI.C.S.SUMESH THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON

22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.39311 OF 2017 PETITIONER: RAJIMOL RAVI, AGED 30 YEARS, W/O.MANOJ P.S., PALLIPPURATHUPARAMBIL HOUSE, PARAVOOTHARA, NORTH PARAVUR, CHENDAMANGALAM P.O., ERNAKULAM DISTRICT-683512. BY ADVS.SRI.S.K.BALACHANDRAN SRI.K.P.JOSE SRI.V.K.NANDAKUMARAN RESPONDENTS: 1 KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD 2ND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY/CHAIRMAN, PIN-695001. 2 JOINT REGISTRAR (GENERAL) CO-OPERATIVE SOCIETIES, ERNAKULAM. 3 KANAYANNOOR CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK LTD. NO.E.326 PALARIVATTOM P.O., ERNAKULAM-682025. 12310, 27570 & 27658 of 2018 20

4 GANDHI SMARAKA SERVICE CO-OPERATIVE BANK LTD. NO.1349, NANDYATTUKUNNAM, NORTH PARAVUR, ERNAKULAM-683513. 5 THE ALUVA URBAN CO-OPERATIVE BANK LTD. NO.1623 HEAD OFFICE, MARKET ROAD, ALUVA, ERNAKULAM- 683101. 6 VADAKKEKARA SERVICE CO-OPERATIVE BANK LTD. NO.137 ALAMTHURUTHU, VADAKKEKARA P.O., ERNAKULAM-683522. 7 PALLURUTHY MANDALAM CO-OPERATIVE BANK LTD. NO.65 PALLURUTHY, KOCHI, ERNAKULAM-682006. 8 CHATHEDOM SERVICE CO-OPERATIVE BANK LTD. NO.195 THURTHIPPURAM P.O., ERNAKULAM-680667. R1 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R1, R3 BY ADV. SMT.JIJI M. VARKEY R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON

22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 21

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.41584 OF 2017 PETITIONER: BINU K.J., AGED 38 YEARS, W/O. MR.JOSEPH C.R., CHERAMANTHURUTHY HOUSE, VELLOTTUMPURAM, THURUTHIPURAM P.O., PUTHENVELIKKARA VILLAGE, VADAKKEKARA, ERNAKULAM - 680 667. BY ADVS.SRI.S.K.BALACHANDRAN SRI.K.M.BIJU SMT.N.D.DEEPA RESPONDENTS: 1 KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD 2ND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM REPRESENTED BY ITS SECRETARY/CHAIRMAN, PIN - 695 001. 2 JOINT REGISTRAR GENERAL CO-OPERATIVE SOCIETIES, ERNAKULAM. 3 PALLUTHURUTHY MANDALAM CO-OPERATIVE BANK LTD. NO. 65, PALLURUTHY, KOCHI, ERNAKULAM - 682 006. 12310, 27570 & 27658 of 2018 22 R1 BY ADV. SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD1 R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 23

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.4561 OF

2018 PETITIONER: RATHIKA E.K.,AGED 35 YEARS, W/O VINOD KUMAR K.M, RESIDING AT PALLIYATH HOUSE, KOZHUNTHIL, NILESHWARAM PO, KASARAGOD DIST.PIN.671314. BY ADVS.SHRI.JAWAHAR JOSE SMT.CISSY MATHEWS SRI.SARUN RAJAN RESPONDENTS:

1 THE STATE OF KERALA REPRESENTED BY ITS PRINCIPAL SECRETARY,DEPARTMENT OF CO-OPERATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM. PIN.695001. 2 THE KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD 2ND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING,OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM. PIN.695001. 3 THE REGISTRAR OF CO-OPERATIVE SOCIETIES JAWAHAR SAHAKARANA BHAVAN, D.P.I JUNCTION, THYCAUD PO, THIRUVANANTHAPURAM, PIN.695014.

12310, 27570 & 27658 of 2018 24 4 THE NILESHWAR SERVICE CO-OPERATIVE BANK LIMITED NILESHWAR PO, KASARAGOD DISTRICT, PIN.671314,REPRESENTED BY ITS SECRETARY., R2 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R1 & R3 BY G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 25

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.12310 OF 2018 PETITIONER: RIMNA P., W/O. BOBAN, AGED 30 YEARS, THOTTUNGALPURA, MATTUMANATHA, C.N.PURAM, KALLEPULLI, PALAKKAD, PIN - 678 005. BY ADV. SRI.R.SURENDRAN

RESPONDENTS:

1 KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD 2ND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM G.P.O. 695 001, REPRESENTED BY THE SECRETARY, KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD, THIRUVANANTHAPURAM G.P.O. 695 001. 2 PERUVEMBA SERVICE CO-OPERATIVE BANK LTD.NO.F-1648, P.O.PERUVEMBA, PALAKKAD DISTRICT, PIN - 678 531. 3 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT DEPARTMENT OF CO-OPERATION, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

12310, 27570 & 27658 of 2018 26 R1 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R3 BY G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 27

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.27570 OF 2018(U) PETITIONER: SOUMYA K.C., AGED 35 YEARS,W/O.MOJESH M.M. MADPPATTU VEEDU, PALLISSERY, ARATTUPUZHA P O THRISSUR DISTRICT, PIN-680562. BY ADVS.SRI.S.K.BALACHANDRAN SRI.K.M.BIJU SMT.N.D.DEEPA
RESPONDENTS: 1 KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD, 2ND FLOOR, KERALA STATE CO-OPERATIVE BANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM REPRESENTED BY ITS

SECRETARY/CHAIRMAN, PIN-695 001. 2 JOINT REGISTRAR(GENERAL) CO-OPERATIVE SOCIETIES, ERNAKULAM, PIN-682 030. 3 NEDUPUZHA SERVICE CO-OPERATIVE BANK LTD.NO.555 NEDUPUZHA.P.O, THRISSUR-680 077. 12310, 27570 & 27658 of 2018 28 R1 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. R3 BY ADV.SRI.C.E.UNNIKRISHNAN THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: 12310, 27570 & 27658 of 2018 29

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR & THE HONOURABLE MR.JUSTICE N.NAGARESH TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942 WP(C).No.27658 OF 2018(F) PETITIONER: REKHA THOMAS, AGED 37 YEARS W/O KISHORE,KATHIRVELIL HOUSE, KURICHILAKODE P O, NEAR S D CONVENT, KODANAD,ERNAKULAM DISTRICT, PIN-683544 BY ADVS.SRI.S.K.BALACHANDRAN SMT.N.D.DEEPA RESPONDENTS: 1 KERALA CO-OPERATIVE SERVICE EXAMINATION BOARD 2ND FLOOR, KERALA STATE CO-OPERATIVEBANK BUILDING, OVER BRIDGE JUNCTION, THIRUVANANTHAPURAM. REPRESENTED BY ITS SECRETARY/CHAIRMAN, PIN-695001 2 JOINT REGISTRAR (GENERAL), CO-OPERATIVE SOCIETIES, ERNAKULAM, PIN-682 030. 3 ASAMANNOOR SERVICE CO-OP. BANK LTD.NO.317 ASAMANNOOR.P.O., ANGAMALY, ERNAKULAM-683 572 12310, 27570 & 27658 of 2018 30 4 VENGOOR SERVICE CO-OPERATIVE BANK LTD. NO. E.2793 KIDANGOOR P.O., ANGAMALY, ERNAKULAM - 683572 R1 BY SMT.S.L.SYLAJA, SC, CO-OPERATIVE SERVICE EXAMINATION BOARD R2 BY G.P.SRI.MOHAMAD HASHIM.K.S. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2020, ALONG WITH WP(C).36842/2015 AND CONNECTED CASES,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
12310, 27570 & 27658 of 2018 31 C.R.

JUDGMENT

Ravikumar, J.

This bunch of writ petitions came before us for consideration based on an Order of Reference made by a learned Single Judge. The common issue raised is that whether the writ petitioners, who are candidates belonging to different districts, are entitled to get awarded 5 marks as grace marks over and above the marks for interview in their

home districts, as candidates of home districts, in respect of recruitment to Co-operative Societies covered by Section 80B of the Kerala Co-operative Societies Act, 1969 (for brevity KCS Act) in terms of the provisions under clause (iv A) of sub-rule (4) of Rule 182 of the Kerala Co-operative Societies Rules, 1969 (for brevity KCS Rules). Except in W.P.(C)No.12310 of 2018, in all the other writ petitions the writ petitioners seek for award of 5 marks, over and above the marks scored by each of them, out of the total marks of '15', for the interview, in respect of selections in question, in terms of the aforesaid provision

under the KCS Rules. In W.P.(C)No.12310 of 2018 there is challenge against its constitutionality. The petitioner therein mainly seeks the following prayers:- 12310, 27570 & 27658 of 2018 32

a) That provision contained in Rule 182(4)(IV-A) of Kerala Co-operative Societies Rules providing for award of 5 grace marks to candidate of home district is in violation of Articles 14, 15 and 16 of the Constitution of India and strike down the same, b) Quash Clause No.1 in Exhibit P2 providing for award of 5 grace marks to candidate of home district as unconstitutional.

Issuance of writ of mandamus directing the respondents to add 5 more marks to the total marks obtained by the petitioner therein in written test and interview is

also sought for, in W.P.(C)No.12310 of 2018 obviously as an alternative prayer to avoid discrimination among the candidates and in other words, to bring in parity in treatment of candidates in the recruitment process.

2. It is only proper and profitable to refer to the situation that made the learned Single Judge to adjourn the batch of writ petitions for being heard and determined by a Division Bench as per the

Order of Reference. In that regard as also for a proper appreciation of

the moot issue clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules inserted by the Kerala Co-operative Societies (Amendment) Rules, 2003, requires to be extracted. It reads thus:- 182.(4)(iv A) Candidates of home district shall be awarded 5 marks over and above the marks for interview as grace marks. 12310, 27570 & 27658 of 2018 33 Explanation.- For the purpose of this item, candidates of home district means the candidates belonging to the district or districts to which the area of operation of the society extends. (underline supplied)

3. The writ petitioners who seek direction for award of 5

marks as grace marks in terms of clause (iv A) of sub-rule (4) of Rule 182, KCS Rules placed reliance on an unreported decision of a Division Bench of this Court in Sudheesh.K.S. v. Jeeja K.P. and others (judgment dated 11.1.2017 in W.A.Nos.1220 & 1228 of 2016) to fortify their claim. The aforesaid appeals arose respectively from the

judgment in W.P.(C)Nos.18301/2016 and 15192/2016 dated 31.5.2016

whereby the learned Single Judge ordered that the petitioners in the respective writ petitions be granted 5 marks as grace marks, over and above the marks for the interview, in terms of the provisions under clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules. As per the common judgment in W.A.Nos.1220 & 1228, of 2016 the Division Bench repelled the challenge against the common judgment in

the said writ petitions holding that it could not be said that the interpretation given by the learned Single Judge to the afore-noted rule is unavailable on the clear terms of that rule as it exists, after taking note of the absence of challenge against the vires of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules. In other words, the question whether or not the

12310, 27570 & 27658 of 2018 34 interpretation given by the learned Single Judge to the aforesaid rule providing for grant of 5 marks as grace marks for candidates of home

district, as it exists, alone was considered and the Division Bench held

that interpretation of the learned Single Judge was reasonable.

4. As noticed hereinbefore, among the batch of writ

petitions, in W.P.(C)No.12310 of 2018 the petitioner therein seeks to strike down the aforesaid provision which mandates for award of 5 marks as grace marks, over and above the marks for interview, to a candidate of home district on the ground of it being violative of Articles 14, 15 and 16 of the Constitution of India as the discrimination is only based on 'place of birth'. The learned Single Judge, in the Order of Reference, took note of the fact that as relates a pari materia provision in the Kerala State and Subordinate Services Rules, 1958 (KS&SSR) viz., Rule 5A of Part II, KS & SSR providing for giving a weightage of 5 marks in respect of selection to any post of any service class or category where the method of recruitment is by direct recruitment on district wise basis, a challenge was successfully made against its vires in W.P.(C)No.28055/2010 and connected matters as can be seen from the decision *Dhanya.V.S and Others v. Kerala Public Service Commission and Others* (2012 (1) KHC 535) and that in the appeal a Division Bench of this Court affirmed the same as per the common

12310, 27570 & 27658 of 2018 35

judgment in Kerala Public Service Commission and Another v.

Jeeja.C.V. and Others reported in 2016 (2) KHC 270. Dhanya's case (supra), which was affirmed in Jeeja C.V's case (supra), was rendered relying on the decision of the Hon'ble Apex Court in Kailash

Chand Sharma v. State of Rajasthan [(2002) 6 SCC 562]. On verification we find that against the judgment in W.A.No.1811/2013 arising from W.P.(C)No.28055/2010, which was one of the appeals dismissed by the Division Bench as per the common judgment in Jeeja.C.V's case, Special Leave to Appeal was applied for, along with an application to condone the delay in filing the same. The said Special Leave Petition viz., SLP(C)No.22112/2016 was dismissed by the Hon'ble Supreme Court on 28.11.2016, after condoning the delay. According to the learned Single Judge, as revealed from the order of reference, the provision for award of 5 marks as grace marks, over and above the marks for interview, to candidates of home district under clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules is pari materia to Rule 5A of KS & SSR that was struck down as being violative of Articles 14,15 &

16 of the Constitution of India. The learned Single Judge, therefore, deemed it appropriate to adjourn the batch of cases for being heard and determined by a Division Bench, after obtaining orders from the Hon'ble the Chief Justice. 12310, 27570 & 27658 of 2018 36

5. Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the party respondents, the learned Government Pleader as also Adv.Sri.M.Ajay, the learned Amicus Curiae.

6. Initially, a contention was raised to the effect that there

exists conflict in views in the Division Bench decisions in Sudheesh's case (supra) and Jeeja.C.V's case (supra). The short discussion which we made hereinbefore in respect of those two decisions itself is sufficient to dispel the said contention. The order of reference did not disclose any opinion suggesting existence of cleavage in views in the two decisions. We have already referred to the reasons and situations

for referring the matter. Evidently, in Sudheesh's case the vires of clause (iv A) of sub-rule (4) of Rule 182, KCS Rules was not under challenge and hence, the Division Bench had to consider only the question whether the interpretation given by the learned Single Judge to the aforesaid clause is 'reasonable' in terms of the said provision, as it exists. Per contra, in Jeeja.C.V's case the Division Bench was called upon to consider the correctness of the declaration of the writ court

that Rule 5A of the KS&SSR is unconstitutional. True that upon consideration of the rival contentions with reference to the said provision, the equality clauses enshrined under Articles 14 and 16 of the Constitution of India and the decision of the Hon'ble Apex Court in 12310, 27570 & 27658 of 2018 37

Kailash Chand Sharma's case (supra) the Division Bench affirmed the said declaration. The consideration when a specific challenge is made against the vires of a statutory provision and consideration of a claim for benefit flowing from a statutory provision, are different and distinct. In such circumstances, we see absolutely no conflict of views in those decisions. In case there exists any conflict in those two Division Bench decisions, instead of proceeding with the consideration of the appeals we would have referred that question for resolution by a Larger Bench.

7. Before us, the learned counsel appearing for the writ

petitioners who seek for award of grace marks in terms of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules relied on the decision of the Division Bench in Sudheesh's case (supra) in support of the claims and contentions. True that, in Sudheesh's case also the question was whether 5 marks could be awarded as grace marks on the ground of being candidates of home district in terms of clause (iv A) of sub-rule

(4) of Rule 182 of the KCS Rules. However, the judgment of the

Division Bench in Sudheesh's case (supra) would reveal that before the Single Bench as also the Division Bench constitutionality of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules was not under challenge. In short in Sudheesh's case

the Division Bench was called upon to consider the question as to whether the interpretation given by the

12310, 27570 & 27658 of 2018 38 learned Single Judge to clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules was reasonable on the clear terms, as it exists. Evidently, it

was answered in the affirmative. The consideration when a specific challenge is made against the vires of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules is bound to be different from the consideration of a claim for award of grace marks in terms of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules, as observed earlier. In the said circumstances, we have no hesitation to hold that the petitioners who seek for award of grace marks relying upon the clause in question cannot resist the challenge against the vires of the said clause merely by placing reliance on the decision of the Division Bench

in Sudheesh's case (supra). In other words, while considering the challenge against the constitutionality of the aforesaid clause (iv A) the decision in Sudheesh's case (supra) is not available to be cited as a binding precedent.

8. In the aforesaid circumstances, we will firstly consider the challenge against the constitutionality of clause (iv A) of sub-rule

(4) of Rule 182, KCS Rules raised in W.P.(C)No.12310 of 2018, which

was admitted on 9.4.2018. As per order dated 29.6.2018 time was granted again to the respondents, including the State, to file counter affidavits. Subsequently, as per order dated 8.8.2019 time was again 12310, 27570 & 27658 of 2018 39

given to the State, based on the submission of the learned Government Pleader, to file counter affidavit. The fact is that Government did not file counter affidavit in any of the writ petitions including W.P. (C)No.12310 of 2018. We may hasten to state at this juncture that a perusal of the judgment in Sudheesh's case (supra) would reveal the stand taken by the State to support the clause in question, in the KCS Rules. We will consider all such aspects later. In view of the nature of the challenge against the aforesaid clause as also Clause-1 of Ext.P2 notification

No.1/2017 dated 20.4.2017 issued by the Kerala Co-operative Service Examination Board, in pursuance of which the petitioners in all the captioned writ petitions applied to different posts in different Co-operative Societies, it has become necessary to refer the relevant clause described as Clause-1 by the petitioner in W.P.

(C)No.12310/2018. Though it appears to be part of Clause-1 and referred to as Clause-1 of Ext.P2 by the said writ petitioner a close scanning of Ext.P2 would reveal that it is, in fact, Clause-2 of Ext.P2. This is evident from the fact that in Ext.P2, after Clause-1 dealing with qualification of age and its relaxations the next numbered clause is Clause-3 and not Clause-2 and also from the fact that in between Clause Nos.1 and 3, the relevant clause referred to as Clause-1 of Ext.P2 by the said petitioner providing for award of 5 marks and the

12310, 27570 & 27658 of 2018 40 conditions therefor, exists as an independent clause. It is worthy to extract the said relevant clause for considering certain other vital aspects as well, which we will consider later. The said clause reads thus:-

/ 15 . 3 . 5 . , . (underline supplied)

Needless to say that the fate of all the captioned writ petitions depends upon the outcome of the challenge against clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules, in W.P.(C)No.12310 of 2018.

9. In view of the challenge against the constitutionality of

clause (iv A) of sub-rule (4) of Rule 182, KCS Rules and the nature of the order of reference, it is only profitable and proper to refer to the struck down provision viz., Rule 5A of KS & SSR, which, according to the learned Single Judge, is *pari materia* to the impugned clause viz., (iv A) of sub-rule (4) of Rule 182 of the KCS Rules. We have already extracted the impugned clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules. Rule 5A of KS&SSR reads thus:-

12310, 27570 & 27658 of 2018 41

5A. Award of weightage marks in District-wise recruitments.-Where the method of recruitment to any post of any service class or category is by direct recruitment on district-wise basis, such candidate belonging to that district shall be given a weightage of 5 marks for the selection: Provided that candidates who are eligible to get the above weightage marks shall produce a nativity certificate issued by a Competent Authority not below the rank of a Tahsildar of the concerned District as and when called for.

10. While the learned counsel appearing for the petitioner

in W.P.(C)No.12310 of 2018 contends that the provision under the struck down Rule 5A of KS & SSR is *pari materia* to clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules and therefore, the decision in Jeeja.C.V's case (*supra*) is relevant and applicable in the matter of consideration of constitutionality of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules the learned counsel appearing for the petitioners in the other writ petitions who seek for award of 5 grace marks, over and above the marks for the interview, would contend that the said decision is not at all applicable in the matter of its consideration. The learned counsel for the petitioners who are for operation of the clause in question would also contend that Rule 5A of KS&SSR was applicable only in respect of employment or appointment to any office under the State and therefore, while testing its constitutionality Articles 14 and

12310, 27570 & 27658 of 2018 42 16(2) were rightly looked into by this Court and in the case of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules it is applicable only to appointment under Co-operative Societies covered by Section 80B of KCS Act, which could not be taken as an employment or appointment to any office under the State.

11. In the context of the questions involved and the nature

of challenge against clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules it is necessary to deal with the equality clauses under Articles 14 and 16 and the prohibition of discrimination guaranteed by Article 15, of the Constitution. Articles

14, 15(1) and clauses (1), (2) and (3) of Article 16 of the Constitution read as follows:-

14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

16. Equality of opportunity in matters of public employment.-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. 12310, 27570 & 27658 of 2018 43

(2) No citizen shall, on grounds only of religion,

race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament

from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory prior to such employment or appointment.

12. Article 16 is an instance of the application of the general

rule of 'equality before law' laid down in Article 14 and the prohibition of discrimination guaranteed by Article 15(1) with special reference to the opportunity for employment or appointment to any office under the State. In the decision in *Gazula Dasaratha Rama Rao v. State of A.P.* reported in AIR 1961 SC 564, while explaining the relative scope of Articles 14, 15 and 16 the Hon'ble Apex Court held:

Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State. Article 15 does not mention descent as one of the prohibited grounds of discrimination, whereas Article 16 does.

Articles 14, 15 and 16 form part of the same constitutional code of guarantees and supplement each other, as held by the Hon'ble Apex Court in *Prakash.K.V. v. State of Karnataka* (1996) 11 SCC 563). 12310, 27570 & 27658 of 2018 44

Article 16(1) gives effect to Article 14 and both permit reasonable classification and Article 16(1) is affirmative whereas Article 14 is negative, in language. Clauses (1) and (2) of Article 16 give effect to the equality of law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). Article 16(1) is a facet of Article 14 and they are closely interconnected and the former

particularizes the generality of Article 14 and identifies in a constitutional sense, 'equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.' Article 16(2) provides that no citizen can be discriminated against or be ineligible for any employment or office under the State, on the grounds only of religion, race, caste, sex, descent, place of birth, residence or

any of them. Public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India. Public employment is property of the nation and to be shared equally. It is so

held in *State of Maharashtra v. Chandrabhan* (AIR 1983 SC 803).

Furthermore, it was held therein that subject to the qualification necessary for holding the office or post, it should not be monopolised by any particular section of the people in the name of efficiency, though efficiency could not altogether be ignored. Thus, it can be seen that Article 16(2) not only prohibits discrimination but

also assures the

12310, 27570 & 27658 of 2018 45 effective enforcement of equality of opportunity guaranteed under

Article 16(1). In such circumstances, a law or rule or an order, if it authorizes discrimination in the matter of employment under the State on any of the grounds specified therein it would be invalidated under Clause 2 of Article 16 [See the decisions of the Hon'ble Apex Court in *B.Venkataramana v. The State of T.N. & another* (AIR 1951 SC 229) also *A.V.S.Narsimha Rao and others v. State of A.P. and another* (AIR 1970 SC 422)]. The crucial point to be taken note of is that Article 16(1) applies only in respect of employment or appointment to any office under the State and it guarantees equality of opportunity in that matter. Clause (2) of Article 16 spells the specific grounds on the basis of which citizens shall not be made ineligible or discriminated against, also in respect of any employment or office under the State. A bare perusal of the said clauses of Article 16 would reveal that there is no such constitutional prohibition against private persons or bodies in the matter of making appointments. Clause (3) of Article 16 forms an exception to the prohibition contained in clauses (1) and (2), of Article

16. Under clause (3) thereof, Parliament (not any State Legislature) is

empowered to make any law prescribing residence in a particular State to be a requirement for residence within that State. The words 'within that State' used in Article 16(2) refer to the State as a unit and not any 12310, 27570 & 27658 of 2018 46

part of it. In other words, residence in particular district or sub-division or city or village cannot be made the requirement in a State in a law made by Parliament under clause (3). In this context, it is also relevant to note Article 35 of the Constitution. The power to legislate in respect of matters within the purview of Article 16(3) has been conferred exclusively on Parliament. But for Article 35(a)(i) even in respect of matters falling within the purview of Article 16(3) the State legislature would have legislative power. The word 'State' used in Article 16 includes the authorities enumerated in Article 12, as held in the

decision in A.V.S.Narasimha Rao's case (supra). The word

'employment' is to be read ejusdem generis with the word 'appointment' and in relation to the expression 'under the State'. There can be no discrimination between person and person within the State and 'residence' if prescribed, as a requirement in a law enacted by Parliament it should be with reference to State as a whole and not part of it, as relates employment or appointment to a post under the State, going by the decision of the Apex Court in A.V.S.Narsimha Rao's case

(supra). It was also held therein that awarding of bonus marks to residents of certain districts and residents in the rural area of the district is impermissible discrimination. 12310, 27570 & 27658 of 2018 47

13. The bar under clause (2) of Article 16 of the Constitution applies to employment or appointment to an office under the State. Obviously, the words 'employment' and 'appointment' used

in Article 16 connote two different constructions. 'Appointment' obviously refers to appointment to an office and therefore, the said term implies the conception of tenure, duration, emoluments and duties and obligations fixed by law or by some rule having the forces of law. Going by the decision in Ajith Singh and Others(II) v. The State of Punjab and others (AIR 1999 SC 3471), the word 'employment' would take within its fold, the aspect of promotions to posts above the

stage of initial level of recruitment. Such an element is absent in the case of 'appointment'. Though Clause (3) of Article 16 is an exception to clause (2) a law prescribing residence in a particular State as a requirement as permitted under Article 16(3) could be enacted only by the Parliament and not by any State Legislature going by the provision

under Article 35(a). In short, though Article 16(3) brings in some flexibility as relates operation of clause (2) thereon an inbuilt safe guard is there in Article 16(3) itself to ensure that it is not abused, while giving the power to make law relaxing the principle of non- discrimination on the ground of residence only to the Parliament and not to the State Legislatures, in regard to a class or classes of

12310, 27570 & 27658 of 2018 48 employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory and this is more specifically safeguarded by Article 35(a).

14. In the decision in Kailash Chand Sharma's case

(supra) the question posed for consideration was: Whether the circular dated 10.6.98 providing for bonus marks for residents of the district concerned and the rural areas within that district is constitutionally valid, tested on the touchstone of Article 16 read with Article 14 of the Constitution. The Apex Court held: Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself - be it within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in

Article 16(3). It is not possible to compartmentalize the State into districts with a view to offer employment to the residents of that district

on a preferential basis. Furthermore, it was held therein that in the absence of parliamentary law, even the prescription of requirement as to residence within the State is a taboo. In Kailash Chand Sharma's case the Apex Court referred to its earlier decision in Pradeep Jain v. Union of India reported in AIR 1984 SC 1420. After referring to the decision in Pradeep Jain's case it was held in Kailash Chand

12310, 27570 & 27658 of 2018 49

Sharma's case that as far as public employment is concerned, classification on the basis of residence in a region or locality was broadly held to be constitutionally impermissible. Giving weightage in favour of rural candidates on the ground of nativity/residence for the purposes of public employment as also in the matter of public employment classification on the basis of residence in a region or locality, were held to be constitutionally impermissible.

15. The term appears in Article 15(1) is 'place of birth', but not 'residence'. However, Article 16(2) refers both 'place of birth' and

'residence'. In *P.Rajendran v. State of Madras* (AIR 1968 SC 1012) the Apex Court took note of the meaning of the word 'nativity', and held it, going by the dictionary meaning, as 'birth'. The Apex Court

held:-

But the dictionary meaning of the word nativity is birth and when the Rules provide for a nativity certificate they really mean the place of birth. (emphasis added) Furthermore, it was held therein that wherever production of 'nativity' certificate is insisted in the matter of employment or appointment it could be taken that what is insisted is certificate proving 'place of birth'. We may hasten to note here that the relevant clause in the common Notification No.1/2017 dated 20.04.2017 issued by the 12310, 27570 & 27658 of 2018 50 Kerala Co-operative Service Examination Board (Ext.P2 in WP(C) No.12310 of 2018) insisted for production of 'Nativity Certificate' at the time of interview for getting 5 marks as grace marks. In the light of

the said clause in the notification issued in conformity with the provisions under the KCS Act and the KCS Rules as also the decisions referred (supra), Explanation to Clause (iv A) of sub-rule (4) of Rule 182 of KCS Rules requires a detailed analysis. It would reveal that the meaning of the expression 'Candidates of home district' employed in clause (iv A) is given thereunder as Candidates belonging to the district or districts to which the area of operation of the society extends. The words 'belonging to' has the same meaning as the word 'nativity', going by the decision in *Dhanya's case* as affirmed by

Jeeja.C.V's case (supra). We will deal with it in detail a little later. Obviously, in constitutional sense the expression 'place of birth' is not synonymous with the expression 'domicile' which carries the meaning 'a

permanent home'. In the decision in *Sauravh Choudri v. Union of India* reported in AIR 1981 SC 794 the Apex Court made a distinction to denote that the expression 'place of birth' is not synonymous with the expression 'domicile' and they reflect two different concepts and as such the reservation on the basis of 'domicile' may be permissible under Article 15(1) though not under Article 16(2). Article 15(1) is

more

12310, 27570 & 27658 of 2018 51 general than Article 16(1) because its operation is not limited to public employment but extends to the entire field of State administration.

16. The discussions as above with reference to the constitutional provisions and the decisions thereunder would reveal that preference based only on residence in the matter of employment or

appointment to an office under the State, by providing grace marks/weightage marks is impermissible and unconstitutional in the absence of backing by an enactment by the Parliament under clause (3) of Article 16. In such circumstances, it has to be taken note of the fact that the exception under clause (3) of Article 16 is regarding enacting law making requirement as to 'residence' and the prohibition under clause (2) of Article 16 for making a citizen ineligible or for discriminating a citizen, in respect of any employment or office under the State includes inter alia ground only on 'place of birth', as well. We have referred to such aspects elaborately, with reference to various decisions, to bring to light the unconstitutional element to pose certain questions of relevance; firstly as to whether it will be justifiable for a State Legislature to enact a provision for granting preference by award of 5 marks as grace marks over and above the marks in the interview only on the ground of being a candidate of home district viz., candidate belonging to the district or districts to which the area of operation of the

12310, 27570 & 27658 of 2018 52

Co-operative Society extends, merely because the constitutional inhibition under clause (2) of Article 16 is in the matter of employment or appointment to an office under the State. Even if it is answered in the affirmative, it is still to be considered whether such action and the relevant provision which authorises the same attract the vice of unconstitutionality in view of Articles 14 and 15(1) of the Constitution. As noticed hereinbefore, clauses (1) and (2) of Article 16 cannot be said to be creating an interdiction for private appointment and employment. In the contextual situation, the next question is what exactly is the nature of appointment under Co-

operative Societies registered under the provisions of the KCS Act, covered by Section 80B of the said Act. Certainly, nobody had raised a contention that appointment or employment under such societies is purely private in nature. In fact, there is no scope at all for raising such a contention for the reasons stated infra.

17. The subject matter Co-operative Societies falls under

entry 32 in List-II-State List in the Seventh Schedule of the Constitution of India and therefore, by virtue of Article 246(3) of the Constitution the power to legislate in respect of any or all aspects of Co-operative societies lies with the State and that is why the Legislature of the State of Kerala enacted KCS Act and then, in exercise of the power conferred

12310, 27570 & 27658 of 2018 53

under Section 109 of the KCS Act made KCS Rules. As per the Constitution (Ninety-seventh Amendment) Act, 2011 in Article 19(1)(c) the words or co-operative societies were inserted after the words or unions and thereby, formation of co-operative society became a part of fundamental right. As per the said amendment, Article 43B was inserted in Part IV of the Constitution, after Article 43A, as hereunder:-

43B. Promotion of co-operative Societies:- The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

The rights conferred under Part III and the directives in Part IV are fundamental in the governance of the Country. They are complementary and supplementary to each other in the matter of achieving the mandate of the Constitution to build a welfare State. By virtue of Article 37 of the Constitution it shall be the duty of the State to apply the principles contained in Article 43B in making laws though the directives in Part IV are not enforceable by any Court and do not create any justiciable rights in favour of the individuals. The declaration made by the Gujarat High Court in *Rajendra N. Shah v. Union of India and another* (CDJ 2013 GHC

045) that the Constitution 97th amendment Act, 2011 inserting Part IXB containing Article 243ZH to 243ZT is ultra vires did not affect the afore-mentioned amendments brought in by the

12310, 27570 & 27658 of 2018 54 same Amendment Act. We referred to the said aspects only to show that unlike private establishments or concerns Co-operative Societies are recognized constitutionally and the law relating to any or all aspects of such societies are made within the legislative competence of the State under Article 246(3) of the Constitution. Section 9 with its proviso, is worthy to be noticed in the context of the issue posed for consideration and it reads thus:-

9. Co-operative Societies to be bodies corporate:- The registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. provided that the Government and the Registrar shall have power to regulate the working of a society for the economic and social betterment of its members and the general public. (emphasis added)

18. In the light of the said legislative competence KCS Act

was enacted by the State to consolidate, amend and unify the laws relating to Co-operative Societies in the State of Kerala and the purpose of the enactment could be gathered from its preamble, which also got some relevance in the contextual situation. The preamble to KCS Act reads thus:- 12310, 27570 & 27658 of 2018 55

WHEREAS with a view to provide for the orderly development of the Co-operative sector in the State, it is essential to organise the Co-operative Societies in accordance with Co-operative principles as self governing, democratic institutions, to achieve the objects of equity, social justice and economic development, as envisaged in the Directive Principles of State Policy of the Constitution of India, and to promote scientific and

technological development, health care, market intervention and management excellence in the Co-operative Sector it is expedient to consolidate, amend and unify the law relating to Co-operative Societies in the State.

19. We have taken note of the aforesaid constitutional

provisions as also the preamble of KCS Act enacted by the State in exercise of its legislative competence under Article 243(3) of the Constitution in respect of entry No.32 in State list, to bring home the point that enormous degree of care, attention and application were required to eschew unconstitutional element while making KCS Rules. Whether the required degree of such care, attention and application were made as relates clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules in exercise of the power under Section 109 of the KCS Act? In other words, the question is whether clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules is invalid for having the vice of

unconstitutionality? In that regard, we also have to consider the question whether the fact that such Co-operative Societies cannot be treated as State for the purpose of Article 12 of the Constitution of 12310, 27570 & 27658 of 2018 56

India, which fact remains undisputed, would and could defeat the very challenge against the constitutionality of the clause in question. Certainly, there is distinct difference between the scope of consideration of challenge against an action of a Co-operative Society registered under the KCS Act and the scope of consideration of challenge against the constitutionality of a particular provision enacted by the State in KCS Act in exercise of its legislative competence. We have no hesitation to hold that challenge against the constitutionality of a provision in the KCS Act could not be made unjusticiable simply by contending that the impugned provision governs employment in Co-operative Societies, and Co-operative Societies do not fall within the definition of State for the purpose of Article 12 of the Constitution of India. We have already considered the legislative competence of the State in respect of any or all aspects of Co-operative Societies in view of the constitutional

provisions referred to hereinbefore. Therefore, the constitutional validity of clause (iv A) of sub-rule (4) of Rule 182 of KCS Rules has to be tested on the touchstone of Articles 14, 15 and 16 of the Constitution of India. In that regard, as already noted, the nature of employment in Co-operative Societies has to be looked into. We will proceed to consider that aspect with reference to certain other relevant aspects. 12310, 27570 & 27658 of 2018 57

20. For the aforesaid purpose, it is necessary to refer to the

provisions regulating and related to recruitment in the KCS Act and the KCS Rules. The following sections in Chapter XII of KCS Act that deals with Establishment are worthy for reference in the contextual situation:- 80. Officers, etc. of Co-operative Societies:- (1) The Government shall classify the societies in the State according to their type and financial position.

(2) The Government shall, in consultation with the Registrar, fix or alter the number and designation of the officers and servants of the different classes of societies specified in sub-section (1).

(3) The Government shall, make rules [either

prospectively or retrospectively] regulating the qualification, remuneration, allowances and other conditions of service of the officers and servants of the different classes of societies specified in sub-section (1).

(3A) Notwithstanding anything contained in this Act

or the rules made or orders issued thereunder or in the bye-laws of any society relating to the recruitment and conditions of service of officers and servants of societies, all appointments of officers and servants of the societies mentioned in the Schedule I for which direct recruitment is resorted to shall be made from a select list of candidates furnished by the Kerala PSC and in making such recruitment the reservation principles under Rule 14 to 17 of the Kerala State and Subordinate Service Rules, 1958 shall be followed.

(3AA) Notwithstanding anything contained in this Act

or any other law, or judgement or order of any court, all appointments already made on the advice by the Kerala Public Service Commission following the reservation 12310, 27570 & 27658 of 2018 58 principles under Rule 14 to 17 of the Kerala State and Subordinate Service Rules, 1958 to the societies mentioned in the schedule for which direct recruitment shall be resorted to shall be deemed to have been validly done as if such provisions were in force at that time.

(3B).....

(4) Notwithstanding anything contained in sub-

section (1) or sub-section (2), ten per cent of the posts of employees of every society shall be reserved for appointment from persons belonging to the scheduled castes and scheduled tribes where the method of appointment to such posts is by direct recruitment.

(5) Notwithstanding anything contained in sub-

section (1) or (2) three percent of the total posts of employees of every society shall be reserved for physically handicapped persons having disability of forty percent or above, as certified by the medical board and the procedure of appointment shall be such as may be prescribed. Provided that in societies where there are more than ten and less than thirty three employees including cadre and sanctioned posts, there shall be reserved a minimum of one employee belonging to physically handicapped persons.

(6)

(7) Notwithstanding anything contained in the bye-

laws, a society shall not pay bonus to its employees exceeding the amount and the rate fixed by the Government or the Registrar from time to time. (underline supplied)

21. A scanning of the afore-extracted provisions under Section 80 of the KCS Act would reveal that some of them have imbibed 12310, 27570 & 27658 of 2018 59

and therefore, reflect certain constitutionally recognized rights. The State in terms of Article 16 of the Constitution may make 'vertical and horizontal reservations' respectively under clause (4) and clause (1), thereof. Social reservations in favour of scheduled castes and scheduled tribes and OBC are vertical reservations whereas, special reservation in favour of physically handicapped is 'horizontal reservation'. By incorporating sub-sections (4) and (5) to Section 80, KCS Act the State Legislature has virtually given effect to the constitutional mandate in clauses (4) and (1) of Article 16 of the Constitution in the matter of appointments in Co-operative Societies covered by Section 80. Provision for reservation in the matter of appointment to persons belonging to scheduled castes and scheduled tribes where the appointment to any particular post is by direct recruitment was made under sub-section (4) and provision for reservation of 3% of total posts of employees in every society was made for physically handicapped persons having disability of 40% or above as certified by the Medical Board. While considering the nature of appointments in Co-operative Societies sub-sections (3A) and (3AA), extracted above, also assume relevance. If the status of a Co-operative society is that of a pure private body, then sub-section

(3A) of Section 80 would not have been and could not have been incorporated in KCS Act, making the Kerala Public Service Commission 12310, 27570 & 27658 of 2018 60

as the recruiting agency in the matter of all appointments of officers and servants of societies mentioned in the schedule for which direct recruitment is to be resorted notwithstanding anything contained in the KCS Act or the KCS Rules made or orders issued thereunder or in the

bye-laws of any society relating to the recruitment. Needless to say that adherence to the reservation principles under Rules 14 to 17 of Part II of the KS&SSR was also made mandatory in the matter effecting appointments against the posts, recruitment of which is entrusted with the Public Service Commission. For the purpose of bringing recruitment to certain posts under Co-operative Societies

within the purview of PSC, the Kerala Public Service Commission (Additional Functions as respects Certain Societies) Act, 1996, was enacted. This was done with a view to provide for the exercise of certain additional functions by the Kerala Public Service Commission as respects the services under certain societies.

22. Besides the various provisions under Section 80 of the

KCS Act, the other situations and also the constitutional provisions, referred hereinbefore, certain other provisions in the KCS Act and the Rules require reference while considering the nature of appointment in Co-operative Societies covered by Section 80 of the KCS Act. Going by Section 80A of the KCS Act it shall be the duty of the Government, by

12310, 27570 & 27658 of 2018 61

notification in the gazette, to frame a Self Financing Pension Scheme for the establishment of pension fund for payment of pension to the employees of Co-operative Societies. In respect of Co-operative Societies appointment of Junior Clerk and above, recruitments are to be made through the Kerala Co-operative Service Examination Board. It is the duty of the Co-operative Service Examination Board to conduct competitive or qualitative examinations for the purpose of preparation

of list of candidates for appointment. The provisions, referred to hereinbefore, would reveal that recruitment to the posts of and above Junior Clerks in Co-operative Societies covered by Section 80B of the KCS Act is vested with the Co-operative Service Examination Board and Section 80B(1) would reveal that such a Board is to be constituted by

the Government, by notification. In fact, such a Board has already been constituted and Notification No.1/2017 dated 20.4.2017 (Ext.P2 in W.P.(C)No.12310/2018 is issued by the Board.

23. As can be seen from Chapter XV of KCS Rules dealing

with 'Establishment', classifying the societies for the purpose of sub-section (1) of Section 80 of KCS Act, various procedures for recruitment to various posts under the Co-operative Societies have been made thereunder. Clause (3) of Rule 182 mandates that the committee shall appoint employees from the select list of candidates 12310, 27570 & 27658 of 2018 62

furnished by the Kerala Public Service Commission, in respect of societies covered by sub-section (3A) of Section 80 of the KCS Act. Clauses under sub-rule (4) of Rule 182 are the procedures that are to be followed mandatorily in respect of recruitments to societies covered by Section 80B of KCS Act. The impugned clause (iv A) is one among

such provisions. Going by sub-rule (5) of Rule 182, in respect of societies not covered by Section 80(3A) and Section 80B of the Act the appointment shall be made by the committee after conducting written examination and interview as per the guidelines issued by the Registrar of Co-operative Societies. In the Co-operative sector in Kerala, distribution of shares is an accepted mode of augmentation of working

capital. The members purchase shares. In several societies and in most of the Co-operative Societies in credit sector there occur

Governmental contribution to the share capital. Managerial subsidies are given by the Government to the societies in the form of shares. In Co-operative Societies registered under the KCS Act, staff pattern is indicated in Appendix III to the Rules, according to the type and class to which they belong, and by virtue of Rule 188 of the KCS Rules every society is bound to accept the same or should get permission from the Registrar to deviate from it. Rule 189 of the KCS Rules dealing with remuneration and allowances is applicable to all Co-operative Societies

12310, 27570 & 27658 of 2018 63 irrespective of the classification. By virtue of the same Government shall have the power to fix, or alter the maximum and minimum limit of establishment expenses of apex and each class of central and primary

societies/banks/institutions. The proviso to Rule 189(1) enables the Government to fix various pay scales including the minimum scales applicable to the employees of the apex and each class of central and primary societies/banks/institutions after analysing financial position. Under Rule 189(3) of the KCS Rules all the employees of Co-operative Societies are eligible to Dearness Allowance at the rates allowed by the Government to their employees. Section 32 of the KCS Act empowers the Registrar of Co-operative Societies to supersede a committee, subject, of course, of the satisfaction of the grounds mentioned in sub-sections (a) to (d) and after following the prescribed procedures

therefor. Section 33 provides for appointment of new committee or administrator on failure to constitute committee before the expiry of the term of the committee. Section 69 (4) of the KCS Act enables the Assistant Registrar of Co-operative Societies to deal with all monitory disputes mentioned in Schedule III to the Act. Section 87 of the Act provides for revision to the Registrar against an order passed by an officer subordinate to him, not being an officer exercising the power of

the Registrar, and in other cases to the Government against an order

12310, 27570 & 27658 of 2018 64

passed by the Registrar including any officer exercising the powers of the Registrar to call for and examine the records, to satisfy himself or themselves as to the regularity; correctness; legality or propriety in respect of any proceeding, not being a proceeding in respect of which an appeal to the Tribunal is provided by Section 82. Thus, if the entire scheme of the KCS Act is looked into, Governmental control, to certain

extent, could be seen. Sections 63 to 68 of Chapter VIII deals with audit, enquiry and surcharge. We have referred to all these provisions to come to the conclusion with certitude that the rights and liabilities of Co-operative Societies registered under the KCS Act cannot be said to be of a private character. In the aforesaid circumstances, though appointments to such a society covered by Section 80B of the KCS Act are not employment or office under the State they cannot be said to

be recruitment to a private body.

24. We have already extracted the preamble to the KCS Act.

It would reveal that the purpose behind the enactment of KCS Act also includes the purpose to achieve the objects of equity, social justice and economic development as envisaged in the directive principles of State Policy of the Constitution. Article 38 of the Constitution mandates the State to strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only

12310, 27570 & 27658 of 2018 65 amongst individuals but also amongst groups of people residing in different areas or engaged in different occupations. It is thus evident from Article 38 that while making laws the State shall have to make endeavour to eliminate inequalities in opportunities not only amongst the individuals but amongst groups of people residing in areas. In this context, clauses (1) and (2) of Article 16 assume relevance. True that, going by Articles 16(1) and 16(2), they are applicable only to employment or appointment to any office under the State. While considering the vires of clause (iv A) of sub-rule (4) of Rule 182 of KCS Rules with reference to Article 14 certainly the question whether invidious discrimination was meted out to equals and similarly circumstanced without any rational basis requires to be considered. In view of the challenge against the said clause on the ground of being violative of Article 15 the question to be considered is whether the discrimination is, only on the ground of 'place of birth' ? It is also relevant to note at this juncture that Article 15 prohibits the State to discriminate against citizens grounds only of religion, race, sex, caste, place of birth or any of them.

25. A scanning of the various provisions under the KCS Act

and the Rules regarding and related to recruitment, referred to hereinbefore, would thus reveal that they carry provisions of law 12310, 27570 & 27658 of 2018 66

enacted recognizing the fundamental rights and also the directive principles embodying social and economic rights. The preamble to KCS Act, referred

hereinbefore, would reveal that the very purpose of organising Co-operative Societies is to achieve the objects of equity, social justice and economic development as envisaged in the directive principles of State Policy of the Constitution of India. We see no reason to hold that in order to partake the character of public employment the employment must be an employment or appointment to an office under the State. Referring to the provisions under the Constitution, the various provisions under the KCS Act and also the KCS Rules as also the decisions, referred (supra), it can only be said that employment/

appointment in Co-operative Societies would not amount to employment/appointment to an office under the State as also private employment.

26. Even after all the discussions on the aforesaid lines, in

view of the position that Article 16(2) applies only in the case of discrimination of a citizen in respect of any employment or office under the State and also taking note of the position that a Co-operative Society cannot be said to be 'State' for the purpose of Article 12 of the Constitution of India, we have no hesitation to hold that the challenge against the clause in question on the ground of being violative of Article

12310, 27570 & 27658 of 2018 67 16(2) cannot succeed. Ergo, recruitment in question cannot be said to

be for employment or appointment to an office, under the State. In such circumstances, we hold that clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules providing for grant of grace marks, over and above the marks scored for interview, to candidates of home districts viz., candidates belong to the district or districts to which the area of operation of the society concerned extends, only for that reason cannot be held as unconstitutional on the ground of being violative of Article 16(2) of the Constitution of India.

27. The position that a Co-operative Society is not a State,

or an instrumentality of the State in terms of Article 12 of the Constitution of India as also the failure of the challenge against the clause in question on the ground of

being violative of Article 16(2) is no ground to hold W.P.(C)No.12310/2018 must fail. We have already noticed that in the case on hand we are not called upon to consider the correctness or otherwise of any action of the society and in fact, what is under challenge in W.P.(C)No.12310 of 2018 is the constitutionality of a particular provision enacted by the State in relation to recruitment to Co-operative Societies viz., clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules and in the other writ petitions the petitioners seek for grace marks in terms of the said clause. In such circumstances, we will

12310, 27570 & 27658 of 2018 68

examine the tenability of the challenge against the said clause on the ground of being violative of Articles 14 and 15 of the Constitution. In the decision in Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop.Societies (Urban), reported in AIR 2005 SC 2306, the Hon'ble Apex Court held that Articles 14 and 15 read in the light of the preamble to the Constitution reflect the thinking of our Constitution makers to prevent any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a Co-operative Society. When that be so, the question is

whether discrimination among the applicants to any particular notification for appointment in a Co-operative Society is constitutionally impermissible in favour of some of them on the ground of 'being candidate of home district' viz., candidates belonging to the district or districts to which the area of operation of the society extends ?

28. Equality before law and equal protection of law is the quintessence of 'Right to Equality', a fundamental right guaranteed under the Constitution of India. Equals cannot be treated unequally and right to such equality cannot be arbitrarily denied to the equals in

the absence of a valid classification. The position as above was restated by the Hon'ble Apex Court in Virendra Krishna Mishra v. Union of India reported in (2015) 2 SCC 712. In short, Article 14 12310, 27570 & 27658 of 2018 69

guarantees to every person the right not to be denied 'equality before the law' or 'the equal protection of laws'. The first expression equality before the law which is taken from the English Common Law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. The second expression the equal protection of the laws, is rather a corollary of the first expression as held by the Apex Court in *State of West Bengal v. Anwar Ali Sarkar* (AIR 1952 SC 75). It was held therein that the classification must not be arbitrary, but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the Legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The same position was virtually restated by the Apex Court in the decision in *Timmappa and others v. Chairman, Central Board of Directors, SBI* and another reported in AIR 2001 SC 467. Though Article 14 forbids class

12310, 27570 & 27658 of 2018 70 legislation it does not forbid reasonable classification of persons. Classification, in order to be reasonable, should fulfill the following two tests:

(1) It should not be arbitrary, artificial or evasive. It should

be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.

(2) The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question.

29. The differentia which is the basis of classification and the object of the Article are distinct things and what is necessary is that

there must be a nexus between them. In *Kedar Nath v. State of West Bengal* reported in AIR 1953 SC 835 the Apex Court held that when a law is challenged as offending against the guarantee in Article 14 of the Constitution of India the first duty of the Court is to examine the purpose and policy of the Act and then to discover whether the classification made by the law has a reasonable relation to the object

which the Legislature seeks to obtain. In *Suraj Mall v. IT*

Investigation Commn., (AIR 1954 SC 545) the Apex Court held

that when a law is challenged as offending against equal protection, the question for determination by the Court is not whether it has resulted in inequality, but whether there is some difference which bears a just and 12310, 27570 & 27658 of 2018 71

reasonable relation to the object of the Legislature. In fact, it is based on the last clause of the first section of the 14 th amendment to the American Constitution, directing that equal protection shall be secured to all persons within the territorial jurisdiction of the Union in the enjoyment of their rights and privileges without favouritism and

discrimination. Article 14 has an inbuilt flexibility and as held by the Apex Court in the decision in *M.P. Oil Extraction v. State of M.P.* (AIR 1998 SC 145) it permits different treatment of unequals as it only prohibits discrimination among equals. In fact, the discrimination which is prohibited under Article 14 is a treatment in a manner prejudicial as compared with another person similarly circumstanced by adoption of a law, substantive or procedural different from the one applicable to another person [see the decision in *Jaganath Prasad*

Sharma v. State of U.P. (AIR 1961 SC 1245)]. Equality for the purpose of Article 14 means parity of treatment under parity of conditions. In such circumstances, though a classification within a class is permissible, a classification in order to be constitutional must rest upon distinctions that are substantial and not merely illusory . In other words, there must be intelligible differentia which separate a

group within that class from the rest and that the said differentia have a

nexus with the object of classification. In the decisions in *Aharn 12310, 27570 & 27658 of 2018 72 Prakash v. State of Haryana (AIR 1986 SC 859)* and in *Banaras*

Hindu University v. Rohini Singh (AIR 2000 All 265) it was held

that a classification made consistent with the socialist goal set out in the preamble and the directive principles enumerated in Part IV, of the Constitution will be valid and a classification which is not in tune with the Constitution is per say unreasonable and could not be permitted.

30. In the decision in *Union of India v. International*

Trading Co. reported in AIR 2003 SC 3983 it has been held that Article 14 strikes at arbitrary State action, both administrative and legislative and further that there has been a significant shift towards equating arbitrary or unreasonableness as the yardstick by which

administrative as well as legislative actions are to be judged. In the decision in *Sarbananda Sonowal v. Union of India* reported in AIR 2005 SC 2920 the Hon'ble Apex Court held that geographical difference could be a basis of classification provided, it had nexus with the object to be achieved and mere geographical classification cannot be sustained where the Act instead of achieving the object of legislation defeats the very purpose for which it has been made.

31. Thus, when the constitutionality of the clause in question is examined in the light of the guarantee clause enshrined under Article 14 the question to be looked into is whether the 12310, 27570 & 27658 of 2018 73

classification of candidates who responded to the notification in question dated 20.04.2017 issued by the Kerala Co-operative Service Examination Board on the ground of 'candidates of home districts' viz., 'belonging to the home district and also districts to which the area of

operation of the society concerned extends' and 'candidates not belonging to such district or districts' and then providing 5 marks as grace marks to the former class, over and above the interview marks, is based on any intelligible differentia and whether it got any rational or reasonable nexus with the object sought to be achieved.

32. Before proceeding further with the consideration as to whether the impugned clause is violative of Article 14 of the Constitution we will consider the guarantee clause enshrined under

Article 15(1) of the Constitution, as well. The right guaranteed in Article 15(1) is conferred on a citizen as an individual and it is available against his being subjected to discrimination in the matter of rights, privileges and immunities pertaining to him as a citizen, generally. The expression discriminate against means, according to Oxford Dictionary, to make an adverse distinction with regard to; to distinguish unfavourable from others. The expression discriminate against used in Article 15(1) should be understood as one involving an element of unfavourable bias. When once, such an unfavourable bias is 12310, 27570 & 27658 of 2018 74

disclosed and is shown as one based on all or any of the grounds viz., religion, race, caste, sex, place of birth or any of them, mentioned in Article 15(1), the law concerned is liable to be struck down as being violative of the Constitutional prohibition unless it is saved by Article 15(3) or (4) of the Constitution.

33. In the case on hand whether the classification is based on place of birth has to be looked into by analysing clause (iv A) of sub-rule (4) of Rule 182 of KCS Rules. For that purpose the

Explanation thereunder assumes much relevance. The words candidates of home district used in clause (iv A) has been explained under the Explanation, to take the meaning as the candidates belonging to the district or districts to which the area of operation of the

society extends. In the notification dated 20.4.2017 in response to which the petitioners in all the captioned writ petitions made their applications production of nativity certificate is insisted, evidently, for considering whether the candidate is eligible to get 5 marks as grace marks over and above the marks actually obtained out of the maximum

marks of '15', for the interview. The very impugned clause as also notification dated 20.04.2017 would make it clear that there is no prohibition for candidates belonging to any district to apply for employment in a society in the district to which he belongs or to any 12310, 27570 & 27658 of 2018 75

other district or districts to which the area of operation of the said society extends or even in a society situated outside his home district. As already noticed, as per the notification in question dated 20.4.2017 it would be open to any particular candidate to apply for one or more posts and also in one or more Co-operative Societies lying in different

districts, covered by the notification. Not only that, no restriction was attached in that regard in the notification. It specifically permitted the same. The only condition enjoined under the notification was that the persons who apply in more than one Co-operative Society and also in more than one post should pay Rs.50/- each additionally. A scanning of clause (iv A) of sub-rule (4) of Rule 182 of KCS Rules as also the conditions in the notification would go to show that there is no impediment or restriction for a person to make application in more than one Co-operative Societies, even if it lies in different districts, and also for applying for more than one posts, subject to the condition

prescribed in the notification. It would go to show that being a candidate not belonging to home district with reference to any particular society is not an ineligibility at all. Therefore, before considering the question whether there is any intelligible differentia in the classification and whether the differentia got any nexus to the object sought to be achieved, we will consider the question whether the

12310, 27570 & 27658 of 2018 76 opportunity provided as per the notification dated 20.4.2017 is real or illusory.

34. The notification dated 20.4.2017 would reveal that

candidates included in the eligibility list in respect of any particular society would be interviewed and the total marks awardable in the interview for each of the notified posts was fixed as '15'. In view of the impugned clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules as also as per the notification dated 20.4.2017, '5' marks would be awarded as grace marks to candidates of home district, above the marks they actually obtained provided if they produce the nativity certificate at the time of interview. This condition is certainly incorporated in the notification in terms of the aforesaid impugned

clause in the KCS Rules. It is thus obvious that in respect of a candidate of home district they would be getting one third of the total marks awardable in the interview as grace marks over and above the marks scored by them out of the total marks of '15', additionally solely based on the fact that he/she belongs to the home district in terms of clause (iv A) of sub-rule (4) of Rule 182 of KCS Rules. How can such an opportunity be described as a real opportunity to the others left out of the said class? Only very limited sanctioned posts are available in different categories in Co-operative Societies and hence, after initial

12310, 27570 & 27658 of 2018 77

filling up of vacancies occurrence of vacancies for further recruitment at any given point of time would be very limited in any given point of time, as can be seen from the Notification No.1/2017 dated 20.4.2017 (Ext.P2 in W.P.(C)No.12310/2018). In such circumstances, if in respect of a selection '5' marks are awarded as grace marks to candidates of home districts, solely on that count, it would practically result in nil chances for candidates who are not home district candidates. We have therefore, no hesitation to say that the opportunity is virtually illusory though a remote chance of a candidate who is not a candidate of home district getting selected and appointed cannot be ruled out completely. This, in the absence of any intelligible differentia and the differentia got no nexus with the object sought to be achieved, the statutory provision that authorises such a classification is bound to be held as violative of

Article 14 of the Constitution of India. When one third of the total marks awardable in an interview is grandable to a participant only on the ground of his being a candidate of home district over and above the marks actually scored by him/her out of the total marks of `15' it is certainly a discrimination based on unfavourable bias calculated to encourage and support parochialism.

35. In the light of Article 15(1) of the Constitution of India such a discrimination if based only on the ground of 'place of birth' and 12310, 27570 & 27658 of 2018 78

backed by a statutory enabling provision therefor, the said statutory provision is also liable to be struck down as being violative of Article 15(1) of the Constitution.

36. In the cases on hand, the claim for awarding of '5'

marks as grace marks, over and above the marks actually scored in the interview is solely based on clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules and the Explanation thereunder explain the meaning of the expression 'candidates of home district'. Now, the question is whether awarding of 5 marks as grace marks by virtue of the clause in question, over and above the marks scored by the so called candidates

of home district is based on 'place of birth' ? The next question is whether the classification of candidates applying to any particular post in any particular Co-operative Society based on the clause in question for awarding of grace marks into two viz., as candidates belonging to the home district or districts to which the area of operation of the society concerned extends as one class and candidates not falling under the said category as another class is actually based on 'place of birth' ? It is also to be considered whether there is any rational intelligentsia for such classification and then, whether the differentia got any nexus with the object sought to be achieved. The provision in the impugned clause as also the notification issued in conformity with the said clause would

12310, 27570 & 27658 of 2018 79

reveal that being a candidate not belonging to the home district or districts to which the area of operation of the society concerned extends will not incur any

ineligibility for being a candidate for the recruitment. But at the same time, the question is what is the intelligible differentia for such classification and for showing favourable bias by awarding '5' marks as grace marks ? To find out discrimination, what is decisive is not the phraseology of the impugned provision or statute, but the impact and effect of the same. As noticed hereinbefore, no counter affidavit/statement has been filed by the State in any of the writ

petitions. At the same time, the basis for such classification was revealed before this Court in W.P.(C)No.18301/2016 [Jeeja.K.P.'s case which was confirmed in Sudheesh's case (supra)]. As noticed

hereinbefore, the writ appeals which were disposed of as per the decision in Sudheesh's case (supra) were directed against the judgments of a learned Single Judge of this Court in Jeeja.K.P's and connected cases whereby direction was issued to grant 5 marks to the writ petitioners concerned on the ground that they belong to the respective home district, in terms of the very impugned clause in W.P. (C)No.12310/2018 viz., clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules. The Division Bench held that the provision thereunder got a primary purpose from the institutional point of view. Taking note of the

12310, 27570 & 27658 of 2018 80 contentions raised before the Division Bench and after hearing the counsel for the appellant and the respondents including the Senior Government Pleader for the State, the Division Bench held in Sudheesh's case thus:-

This is that, a particular institution, which is a co-operative society or a cooperative bank, would be better equipped to operate with the staff who are available from its area of operation. While there is no complete exclusion or inclusion, what has been prescribed is an eligibility for an added weightage for people who are within the area of operation. This is how the afore-quoted Rule and Explanation operate. In the realm of co-operative sector, also noticing the aforesaid purpose and because there is no challenge before the learned single Judge or before us on the vires of the Rules, we do not find it un-reasonable for the learned single Judge

to have taken the view that the place of residence is decisive on the peculiar facts and circumstances of each of the writ petitions, from which, these writ appeals arise. We cannot say that the interpretation given by the learned single Judge to the afore-noted Rule is unavailable on the clear terms of that Rule as it exists. In that view of the matter, we do not find our way to uphold the challenge against the impugned judgment to that extent. (underline supplied)

37. From the afore-extracted portion of the judgment in

Sudheesh's case (supra) what is discernible is that the reason/basis for such classification assigned was that a particular institution, which is a Co-operative Society or a Co-operative Bank, would be better equipped to operate with the staff who are available from its area of operation and further that there is no complete exclusion or inclusion and what has been prescribed is an eligibility for an added weightage

12310, 27570 & 27658 of 2018 81 for people who are within the area of operation. In fact, the learned Government Pleader reiterated the said reason before us. From the

judgment in Sudheesh's case (supra) itself it is evident that the

Division Bench took note of the said purpose and endorsed the view of the learned Single Judge in view of the fact that there was no challenge against the vires of the relevant provision before the learned Single Judge as also before the Division Bench. Thus, in view of the specific challenge against the clause in question on the ground of being violative of Articles 14 and 15 of the Constitution of India, as stated earlier, the decision in Sudheesh's case (supra) cannot create any legal impediment in considering this question in the constitutional

perspective and that is why we delved into the question further. We have already noted that being a candidate not from the home district is not an ineligibility of candidature in the recruitment in question as also in any recruitment in a Co-operative Society based on clause (iv A) of

sub-rule (4) of Rule 182 of the KCS Rules. In various Commercial Banks and in various other departments under the State as also in various public undertakings in the State, employees belonging to districts other than the one in which the institution concerned situates, are working. It is an indisputable position. So also, it is evident that even based on the notification dated 20.4.2017 if a candidate not from

12310, 27570 & 27658 of 2018 82

a home district outscores the home district candidates in the ultimate evaluation of marks he would be entitled to get appointment and in such eventuality, he would not be denied appointment in the society concerned covered by the notification, solely on the ground of not being a candidate from home district. No reason whatsoever is forthcoming as to how and why, it is said that the institution would be better equipped to operate with the staff who are available from its area of operation. In such circumstances, it could not be said that the society concerned would be better equipped to operate only if all its staff are

from the area of its operation. In this context, it is to be noted that Section 2(e) of KCS Act would reveal that in each Co-operative Society or Co-operative Bank there would be a committee to act as the governing body of the society and the management of the affairs of the society is entrusted with it. The mere fact that the staff of a society are persons not belonging to the home district cannot, therefore, adversely affect functioning of a Co-operative Society or Co-operative Bank as functions and powers of the different personnel in the hierarchy of its staff pattern are clearly delineable. When a written test is prescribed to find out the eligible candidates and then an interview is prescribed for candidates who scored the prescribed percentage of marks, how can such a selection process involving written test and interview be viewed

12310, 27570 & 27658 of 2018 83 as a process of selection not intended to find out 'meritorious candidates' ? Sub-rule (4) of Rule 182 of the KCS Rules and the various clauses thereunder are worthy to be extracted in the aforesaid context. They read thus:- 182.(4) In respect of recruitment to societies covered by Section 80B of the Act, the following procedure shall be followed:-

(i) The Society shall report the vacancy to the Co-

operative Service Examination Board and the applications for appointment shall be invited by the Co-operative Service Examination Board, by notification in two vernacular dailies, having wide circulation in the area. The notification shall include the details of number of vacancies, qualifications required for the post, age and reservation, if any, the mode of application, method of appointment and other required details. The Co-operative Service Examination Board may collect application fee along with the application at the rate fixed by the Registrar of Co-operative Societies from time to time. The Examination Board shall process the applications and prepare the list of candidates to be called for the written test. One copy of the prepared list shall be published in the notice Board of the Examination Board and one copy shall be sent to the society for publication in its notice board. The society shall publish it in the notice board and copies thereof in the branch offices of the society. The arrangements for the written test shall be made by the Examination Board.

(ii) The Examination Board shall conduct the written

examination of the candidates and furnish a list of eligible candidates to be interviewed to the committee of the society within a period of three months from the date of requisition by the society. The list so furnished shall not contain the mark secured by the candidates; 12310, 27570 & 27658 of 2018 84

(iii) The maximum marks for written examination

shall be 80 and those who secure 40% of the marks shall only be eligible to be included in the list for interview; Provided that in case of candidates belonging to Scheduled Caste or Scheduled Tribe, those who secure 30% of marks and above shall be included in the list. Provided further that the total number of candidates to be called for interview shall be ten times the number of posts advertised to be filled up in each category. If

there are more candidates who secured not less than forty per cent marks in the written examination and if the candidate who secured forty per cent or above marks are less than ten times as above, all of the candidates shall be called for interview.

(iv) The maximum marks for interview shall be 15. Provided that the minimum marks for interview shall be 3. (iv A)

(v) On receipt of the list from the Examination Board,

the committee shall conduct interview of the candidates within two months from the date of such receipt and return the list to the Examination Board noting the marks secured by each candidates, in the interview within a period of two weeks;

(vi) On receipt of the list from the society, the

Examination Board shall note down the marks secured by each of the candidate in written examination and return consolidated list with the total marks obtained by each candidate. This shall be done within a period of one week.

(vii) On the basis of the consolidated list so received from the Examination Board, the committee shall 12310, 27570 & 27658 of 2018 85

prepare the rank list of candidates and publish the same in the notice board of the society. [within a period of twenty days from the date of receipt of such consolidated mark list] The society shall send one copy of the rank list so published to the Examination Board also. The Board shall examine the correctness of such rank list and report to the Registrar, the irregularities, if any. The list shall be valid for a period of two years from the date of publication of the same by the society. (viii) All appointments to the vacancies shall be made by the committee from the select list so published; within one month from the date of such publication and shall be reported to the Examination Board.

In the context of the contentions clause (ii) of sub-rule (4) of Rule 182 and its purpose requires special emphasis. As can be seen from clause (ii), as extracted

above, the Co-operative Service Examination Board, after conducting the written examination of the candidates shall have to furnish a list of eligible candidates to be interviewed to the committee of the society within the period prescribed thereunder. The point to be noted is that the provision under clause (ii) very specifically mandates that 'the list so furnished shall not contain the mark secured by the

candidates.' The purpose of putting such a rider is self explanatory. When aspects are minutely taken care to ensure a fair selection based on written test and interview one can only say the object of the procedures for selection prescribed under sub-rule (4) of Rule 182 of the KCS Rules, is to select and appoint meritorious candidates in the

12310, 27570 & 27658 of 2018 86 service of a Co-operative Society. Clause (iv A) under sub-rule (4) of Rule 182 could not subserve the said object and at the same time, according to us, it will subvert the object of the other provisions under sub-rule (4). Shortly stated the differentia made out under clause (iv A), rather the classification of candidates and awarding of grace marks as provided thereunder, got no nexus with the object sought to

be achieved by sub-rule (4) of Rule 182 of the KCS Rules. In such circumstances, taking the basis for the classification as 'candidates of home district' and giving added weightage by awarding grace marks to candidates of home districts viz., candidates belonging to the district or the districts to which the area of operation of the Society extends,

solely on the reason of being 'candidates of home district' and contending that a Co-operative Society or Co-operative Bank concerned would be better equipped to operate with staff available from its area of operation, cannot be said to be an intelligible differentia and having any nexus with the object sought to be achieved in view of the aforesaid reasons. Selection of candidates of home district cannot be the object of the provisions under sub-rule (4) and the object under clause (iv A)

thereof, would promote parochialism. The only reason for such classification is to ensure (as far as possible) selection of persons belonging to the home district, amounting to parochialism. Such 12310, 27570 & 27658 of 2018 87 contentions based on the principle son of the soil, after showing unfavourable bias by awarding grace marks has to be nipped at the bud. In fact, this position that such practice should be nipped at the bud was made clear by the Apex Court in its decision in Kailash Chand

Sharma's case (supra). In the light of the aforesaid discussions we have no hesitation to hold that as all the candidates who responded to the notification in question belong to the same class geographical classification made among them is without any intelligible differentia and the differentia got no nexus with the object sought to be achieved. Candidates responding to any notification for recruitment in any Co- operative Society covered by Section 80B of the KCS Act will be classified and thereby discriminated in the aforesaid manner solely because of the statutory backing of clause (iv A) of sub-rule (4) of Rule 182 of KCS Rules and hence, the said clause which authorises for the same is violative of the equality clauses under Article 14 of the Constitution of India.

38. Now, the next question is whether the classification for

awarding grace marks in terms of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules, of applicants as 'candidates of home district' which takes the meaning 'candidates belonging to the district or districts to which the area of operation of the society extends' in view 12310, 27570 & 27658 of 2018 88

of the Explanation to the aforesaid clause and 'candidates who are not of home district', can be said to be based on 'place of birth'. To decide the question the meaning of the word 'belonging' has to be considered. In the context of the aforesaid question paragraph 14 of the decision in Dhanya's case (supra) rendered by the learned Single Judge which was affirmed in Jeeja C.V's case (supra) assumes relevance. It reads thus:-

14. I have considered this submission. It is trite that words of a statute will take its colour and meaning from its context and, this principle cannot be lost sight of while statutes are interpreted. It is true that as rightly argued by the counsel for the petitioners, the expression belonging to is more elastic than the word nativity and in a given case a person can belong to a place, which is different from his place of birth. But to decide whether the Rule only require that a candidate should belong to the district concerned to claim the benefit of weightage, it is necessary to have a closer look at the Rule. The rule, read in the light of the Explanatory Note and the object that was sought to be achieved, makes it abundantly clear that what was intended was to extend the benefit of weightage only to the natives of the district concerned. This has been clarified by the Government when it rejected the representations made to it by its letter dated 13.8.09, extracted above. Further, both the PSC and the State have made it clear in the affidavits filed that the benefit is available only to those who are natives of the district concerned. The usage of the expression belonging to in R.5A of the Rule also will not improve the case of the petitioners and in my opinion, this word, in the context in which it is used, has the same meaning as the word nativity and any contrary view will be against the purpose and intend of the Rule. Therefore except for

12310, 27570 & 27658 of 2018 89 the semantics, if appreciated in the context in which it is used, one can certainly see that both expressions, viz., belonging to and nativity convey the same meaning. As held by the learned Single Judge words of a statute would take its

colour and meaning from its context. When the words 'belonging to' are used in a statute its meaning has to be taken by looking into the context in which it was used. We have already taken note of the stand taken by the State before a Division Bench of this Court while considering the appeal against the decision in Jeeja.K.P's case (supra). We have already extracted the relevant paragraph. It would reveal that the stand of the State was that added weightage is available to

'candidates of home districts' on the ground that a Co-operative Society or a Co-operative Bank would be better equipped to operate with the staff who are available from its area of operation. The same stand was reiterated by the learned Government Pleader before us. We have also taken note of the fact that as per clause (2) of Ext.P2 notification dated 20.4.2017 (described as clause (1) in W.P.(C)No.12310/2018) for getting '5' marks as grace marks, as provided under the clause, over and above the actual marks scored by a candidate of home district in the interview out of the total marks of '15', he/she should produce

'Nativity Certificate' from the competent authorities. Taking into 12310, 27570 & 27658 of 2018 90

account the context in which the expression 'candidates of home district' are used and its meaning is given in the Explanation to clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules as 'belonging to the district or districts to which the area of operation of the society extends' to award '5' marks over and above the marks for interview as grace marks and, further that for getting the same one should produce the 'Nativity Certificate' we have no hesitation to hold that the words 'belonging to' used in the Explanation would convey the same meaning which the word 'nativity' conveys. In the said circumstances, the words 'candidates of home district' which carry the meaning given under the Explanation under the clause in question can be taken only as candidates who are natives of the home district. In this context, it is also relevant to note that apart from the Explanation in what manner it should be understood, whether anyone who migrated to the district concerned or shift the residence pursuant to the marriage etc. would fall within the 'expression' was not specifically mentioned anywhere in

the statute. The amendment and the consequential insertion of clause (iv A) to sub-rule (4) of Rule 182 of the KCS Rules, was made as per SRO 1185/2003 published in Kerala Gazette Extraordinary No.48 dated 23.12.2003. Subsequently, Circular No.16/10 dated 27.3.2010 was issued by the Registrar of Co-operative Societies, after referring to 12310, 27570 & 27658 of 2018 91

G.O.(M.S)No.27/2005

dated

28.2.2008

and

G.O.

examinations conducted to different posts in Co-operative Societies by the Kerala Co-operative Service Examination Board would be given 5 marks in the interview. As per G.O.(M.S)No.27/2005 dated 6.5.2008 it was mandated for production of Original Nativity Certificate in the prescribed proforma for getting grace marks in the interview, on the

ground of being 'candidate of home district'. G.O.(M.S)No.27.8.2010 was issued to obviate the difficulties of candidates appearing in more than one interview necessitating them to obtain 'nativity certificates' several times. Based on the said circular such candidates after verifying the copy with the original nativity certificate it can be given back to them. In the contextual situation it is only appropriate to extract the said circular dated 27.3.2010 and it reads thus:- 15. ... (2) 24011/09 , : 27.03.2010 16/10 : + /0 . 12310, 27570 & 27658 of 2018 92 : 1. 28-02-2008 .. (.) 27/2005/

2. 6.5.08 .. (.) 27/05/

/0 + B /0 0 L . B /0 , L P P . /0 + + T /0 L0 /0 + 0V V P.

The recital in the first paragraph of the said circular would undoubtedly go to show that candidates of home district who passed in the written test conducted by the Co-operative Service Examination Board in respect of recruitment of different posts in Co-operative Societies have to produce 'Nativity Certificate' for getting '5' marks in the interview on the ground of being 'candidates of home district' in terms of G.O.

(M.S)No.27/2005 dated 28.2.2008. Thus, it is obvious that the insistence for production of 'Nativity Certificate' for getting '5' marks in the interview by 'candidates of home district' is actually based on clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules. In P.Rajendran's 12310, 27570 & 27658 of 2018 93 case (supra) the Apex Court held, after taking note of the dictionary meaning of the word 'nativity' as 'birth', that when rules provide for

Nativity Certificate they really mean the 'place of birth'. Thus, it is amply clear that the classification of candidates for recruitment to Co- operative Societies covered

by Section 80B of the Act, by virtue of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules, is based on 'place of birth' and those candidates whose 'place of birth' is in the area of operation of the society concerned alone would be given '5' marks as grace marks over and above the marks obtained by them in the

interview, going by the same. In the light of G.O.(M.S)No.27/2005 dated 28.2.2008 and G.O.(M.S)No.27/2005 dated 6.5.2008, the Government cannot be heard to contend that classification under clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules is not based on 'place of birth'.

39. Since the classification for the purpose of grace marks in the aforesaid manner is based only on the ground of 'place of birth' the impugned clause is liable to be held as violative of Article 15(1) of

the Constitution of India in view of the unfavourable bias. For the foregoing reasons clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules is unconstitutional for being violative of Articles 14 and 15(1) of the Constitution of India and void and it is so declared. Clause No.2 12310, 27570 & 27658 of 2018 94 (wrongly described as clause-1) in the Notification No.1/2017 dated 20.4.2017 (produced as Ext.P2) is also declared as unconstitutional and as such it, in so far as mandates for granting of '5' marks as grace marks to candidates of home district, in case of production of 'Nativity Certificate' stands struck down.

40. In the result, W.P.(C)No.12310 of 2018 stands allowed in part by declaring clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules as also clause No.2 (wrongly described as clause-1) of Ext.P2 for

award of '5' grace marks as unconstitutional. In view of such declaration the petitioner therein is not entitled to seek addition of 5 marks as prayed for in prayer No.3. As regards the other writ petitions, as noticed hereinbefore, they were filed by the candidates who apprehend that they would not be granted 5 marks as grace marks on the ground of being candidates of home district, they cannot succeed in the writ petitions in view of the aforesaid declaration of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules as also clause 2 of Notification No.1/2017 dated 20.4.2017 as unconstitutional. In short, since in all writ petitions

other than W.P.(C)No.12310/2018 the prayer is for grant of grace marks/direction to the authorities concerned to grant '5' marks as grace marks in terms of clause (iv A) of sub-rule (4) of Rule 182 of the KCS Rules in regard to the selection initiated as per

12310, 27570 & 27658 of 2018 95 Notification dated 20.4.2017 they are liable to be dismissed. It is made clear that such petitioners who were awarded 5 marks based on interim

orders of this Court will not be entitled to retain the said marks. In other words, the select list has to be recast by excluding 5 marks if granted as grace marks to candidates of home district and based on the marks actually obtained in the test and interview and in accordance with the prescribed manner. Such exercise and follow up steps shall be taken expeditiously, at any rate, within a period of one month from the date of receipt of a copy of this judgment. W.P.(C)Nos.36842 of 2015, 15247 of 2016, 23067, 24474, 25417, 25669, 25770, 36593, 41584, 39311 of 2017, 4561, 11887, 12310, 27570 & 27658 of 2018 are accordingly, dismissed.

Before parting with the judgment we think it only appropriate to record our deep appreciation to the assistance provided by Adv.M.Ajay, as Amicus Curiae.

Sd/- C.T.RAVIKUMAR Judge Sd/- N.NAGARESH Judge TKS 12310, 27570 & 27658 of 2018 96 APPENDIX OF WP(C) 36842/2015 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE CALL LETTER ISSUED BY THE 4TH RESPONDENT EXHIBIT P1(A) TRUE TRANSLATION OF EXT.P1. EXHIBIT P2 TRUE COPY OF THE 1ST PAGE OF SSLC BOOK OF THE PETITIONER. EXHIBIT P3 TRUE COPY OF THE CERTIFICATE OF MARRIAGE. EXHIBIT P4 TRUE COPY OF THE ELECTORAL IDENTITY CARD OF THE PETITIONER. EXHIBIT P5 TRUE COPY OF THE ADHAR CARD OF THE PETITIONER. EXHIBIT P6 TRUE COPY OF THE RELEVANT PAGES OF THE CATION CARD OF THE PETITIONER'S FAMILY. EXHIBIT P(A) TRUE TRANSLATION OF EXT.P6. EXHIBIT P7 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C) NO.37760/10. EXHIBIT P8 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C) NO.15062/2012 AND CONNECTED CASES. EXHIBIT P9 TRUE COPY OF THE INTERIM ORDER IN

W.P. (C)35489/2014. 12310, 27570 & 27658 of 2018 97 APPENDIX OF WP(C) 15247/2016 PETITIONER'S EXHIBITS: EXT.P1 A TRUE COPY OF THE CALL LETTER ISSUED BY THE 4TH RESPONDENT DATED 30.3.2016 EXT.P2 A TRUE COPY OF THE SSLC BOOK RELEVANT PAGE OF THE PETITIONER DATED NIL. EXT.P3 A TRUE COPY OF THE CERTIFICATE OF MARRIAGE DATED 8.4.2016 EXT.P4 A TRUE COPY OF THE CERTIFICATE ISSUED BY THE KADANADU PANCHAYATH DATED 7.4.2016 EXT.P5 A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.37760/10 IS DATED 20.3.2014 EXT.P6 A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP NO.15062/2012 AND CONNECTED CASES DATED 2.6.2014 EXT.P7 TRUE COPY OF THE INTERIM ORDER IN WP(C) 36842/2015 DATED 4.12.2015 12310, 27570 & 27658 of 2018 98 APPENDIX OF WP(C) 23067/2017 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THE

NOTIFICATION THAT APPEARED IN MATHRUBHOOMI THOZHIL VARTHA DATED 16.01.2016 PUBLISHED BY THE 1ST RESPONDENT

EXHIBIT P2 TRUE COPY OF THE MARRIAGE CERTIFICATE NO.90/2009 DATED 25.2.2009 EXHIBIT P3 TRUE COPY OF THE RESIDENCE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, POONJAR VILLAGE, NADUBHAGAM DATED 18.2.2014 EXHIBIT P4 COPY OF THE AADHAR CARD ISSUED IN THE NAME OF THE PETITIONER EXHIBIT P5 TRUE COPY OF THE RELEVANT PAGES OF SSLC BOOK OF THE PETITIONER EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 31.5.2016 IN WPC NO.18301/2016 12310, 27570 & 27658 of 2018 99 APPENDIX OF WP(C) 23289/2017 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THE

NOTIFICATION THAT APPEARED IN MATHRUBHOOMI THOZHIL VARTHA DATED 16/01/2016 PUBLISHED BY THE 1ST RESPONDENT.

EXHIBIT P2 TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED FROM ST. MARY'S CHURCH, MANATHOOR. EXHIBIT P3 TRUE COPY OF THE RESIDENCE CERTIFICATE ISSUED BY THE SECRETARY, KADANADU GRAMA PANCHAYAT DATED EXHIBIT P4 COPY OF THE ELECTION IDENTITY

CARD ISSUED IN THE NAME OF THE PETITIONER. EXHIBIT P5 TRUE COPY OF THE 1ST PAGE OF SSLC BOOK OF THE PETITIONER EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 31/5/2016 IN WPC NO.18301/2016 12310, 27570 & 27658 of 2018 100 APPENDIX OF WP(C) 24474/2017 PETITIONER'S EXHIBITS: EXHIBIT P1 : TRUE COPY OF THE RELEVANT EXTRACT OF THE

NOTIFICATION THAT APPEARED IN MATHRUBHOOMI THOZHIL VARTHA DATED 16-1-2016 PUBLISHED BY THE 1ST RESPONDENT.

EXHIBIT P2 : TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 22-2-2014. EXHIBIT P3 : TRUE COPY OF THE RESIDENCE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, ERATTUPETTA VILLAGE DATED 21-7-2017. EXHIBIT P4 : COPY OF THE ELECTION IDENTITY CARD ISSUED IN THE NAME OF THE PETITIONER. EXHIBIT P5 : TRUE COPY OF THE RELEVANT PAGES OF SSLC BOOK OF THE PETITIONER. EXHIBIT P6 : TRUE COPY OF THE JUDGMENT DATED 31-5-2016 IN WPC.NO.18301/2016. 12310, 27570 & 27658 of 2018 101 APPENDIX OF WP(C) 25417/2017 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE CALL LETTER ISSUED BY THE 4TH RESPONDENT. EXHIBIT P2 TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE EXAMINATION OF THE PETITIONER. EXHIBIT P3 TRUE COPY OF THE CERTIFICATE OF MARRIAGE OF PETITIONER. EXHIBIT P4 TRUE COPY OF THE ELECTORAL IDENTITY CARD OF PETITIONER. EXHIBIT P5 TRUE COPY OF THE AADHAAR CARD OF THE PETITIONER. EXHIBIT P6 TRUE COPY OF THE CERTIFICATE ISSUED BY ASSISTANT SECERTARY, VIJAYAPURAM GRAMA PANCHAYAT. EXHIBIT P7 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P(C) NO.37760/10. EXHIBIT P8 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P NO 15062/2012 AND CONNECTED CASES. EXHIBIT P9 TRUE COPY OF THE INTERIM ORDER IN WP (C) 12310, 27570 & 27658 of 2018 102 APPENDIX OF WP(C) 25669/2017 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THE NOTIFICATION APPEARED IN MATHRUBOOMI DATED 16-1-2016 PUBLISHED BY THE 1ST RESPONDENT. EXHIBIT P2 TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 26-8-2010. EXHIBIT P3 TRUE COPY OF THE RESIDENCE CERTIFICATE ISSUED

BY THE VILLAGE OFFICER, KODANAD VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT DATED 31-7-2017. EXHIBIT P4 TRUE COPY OF THE 1ST PAGE OF THE S.S.L.C. BOOK OF THE PETITIONER. EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 31-5-2016 IN WP(C)NO.18301/2016. 12310, 27570 & 27658 of 2018 103 APPENDIX OF WP(C) 25770/2017 PETITIONER'S EXHIBITS: EXHIBIT P1 A TRUE COPY OF THE CALL LETTER ISSUED BY THE FOURTH RESPONDENT DATED 15.07.2017 EXHIBIT P2 TRUE COPY OF THE CERTIFICATE OF MARRIAGE DATED 28.09.2006 EXHIBIT P3 A TRUE COPY OF THE RATION CARD ISSUED DATED 26.02.2014 EXHIBIT P4 TRUE COPY OF THE ADHAAR CARD DATED NIL EXHIBIT P5 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC.NO. 37760/2010 DATED 20.03.2014 EXHIBIT P6 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC.NO. 150628/2012 AND CONNECTED CASES DATED 02.06.2014 EXHIBIT P7 TRUE COPY OF THE INTERIM ORDER IN WPC.NO. 12310, 27570 & 27658 of 2018 104 APPENDIX OF WP(C) 36593/2017 PETITIONER'S EXHIBITS: EXHIBIT P1: TRUE COPY OF NOTIFICATION ISSUED BY THE 1ST RESPONDENT FOR VARIOUS POSTS INCLUDING 4 VACANCIES OF JUNIOR CLERK IN THE 2ND RESPONDENT BANK. EXHIBIT P2: THE COPY OF INTERVIEW LETTER ISSUED FROM THE 2ND RESPONDENT DATED 2.8.2017 EXHIBIT P3: TRUE COPY OF RESIDENTIAL CERTIFICATE DATED 9.8.2017 ISSUED BY THE SECRETARY, NAGAROOR GRAMA PANCHAYATH. EXHIBIT P4: THE COPY OF S.S.L.C CERTIFICATE ISSUED FROM THE BOARD OF PUBLIC EXAMINATION. EXHIBIT P5: THE COPY OF RATION CARD OF THE PETITIONER. EXHIBIT P6: THE COPY OF THE DRIVING LICENSE OF THE PETITIONER. EXHIBIT P7: THE COPY OF SELECT LIST PUBLISHED BY THE 2ND RESPONDENT FOR THE POST OF JUNIOR CLERK. 12310, 27570 & 27658 of 2018 105 APPENDIX OF WP(C) 39311/2017 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THE NOTIFICATION NO.1/2017 DATED 20.4.2017. EXHIBIT P1(A) TRUE COPY OF THE ADMISSION TICKET ISSUED TO THE PETITIONER FOR APPEARING THE WRITTEN TEST ON 24.9.2017. EXHIBIT P2 TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 13.8.2012. EXHIBIT P3 TRUE COPY OF THE NATIVITY CERTIFICATE ISSUED BY THE VILLAGE

OFFICER, N-PARUR VILLAGE, ERNAKULAM DISTRICT DATED 3.10.2017. EXHIBIT P4 TRUE COPY OF THE 1ST PAGE OF THE S.S.L.C. BOOK OF THE PETITIONER. EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 31.5.2016 IN W.P.(C) NO.18301/2016. 12310, 27570 & 27658 of 2018 106 APPENDIX OF WP(C) 41584/2017 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THE NOTIFICATION NO. 1/2017 DATED 20.04.2017. EXHIBIT P1(A) TRUE COPY OF THE ADMISSION TICKET ISSUED TO THE PETITIONER FOR APPEARING THE WRITTEN TEST ON 24.09.2017. EXHIBIT P2 TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 30.12.2010. EXHIBIT P3 TRUE COPY OF THE NATIVITY CERTIFICATE ISSUED BY THE VILLAGE OFFICER, PUTHENVELIKKARA VILLAGE, ERNAKULAM DISTRICT DATED 13.12.2017. EXHIBIT P3(A) TRUE COPY OF THE AADHAR CARD ISSUED TO THE PETITIONER. EXHIBIT P3(B) TRUE COPY OF THE RATION CARD. EXHIBIT P4 TRUE COPY OF THE 1ST PAGE OF THE S.S.L.C BOOK OF THE PETITIONER. EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 31.05.2016 IN W.P.(C)NO. 18301/2016. 12310, 27570 & 27658 of 2018 107 APPENDIX OF WP(C) 4561/2018 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE NOTIFICATION ISSUED BY THE 2ND RESPONDENT. EXHIBIT P1(A) TRUE COPY OF THE APPLICATION DETAILS UPLOADED BY THE PETITIONER. EXHIBIT P2 TRUE COPY OF THE ADMIT CARD ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT. EXHIBIT P3 TRUE COPY OF THE PETITIONER'S MARRIAGE CERTIFICATE ISSUED BY THE REGISTRAR OF MARRIAGE. EXHIBIT P4 TRUE COPY OF RATION CARD ISSUED TO THE PETITIONER BY THE CIVIL SUPPLIES DEPARTMENT. EXHIBIT P5 TRUE COPY OF THE ELECTION ID CARD ISSUED TO THE PETITIONER BY THE ELECTION COMMISSION OF INDIA. EXHIBIT P6 TRUE COPY OF THE AADHAR CARD ISSUED TO THE PETITIONER BY THE UNIQUE IDENTIFICATION AUTHORITY OF INDIA. EXHIBIT P7 TRUE COPY OF THE NATIVITY CERTIFICATE ISSUED TO THE PETITIONER BY THE VILLAGE OFFICER, NEELESHWARAM. EXHIBIT P8 TRUE COPY OF THE RANK LIST PUBLISHED BY THE 2ND RESPONDENT. EXHIBIT P9 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT. 12310, 27570 & 27658 of 2018 108 APPENDIX OF WP(C)

12310/2018 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF MARRIAGE CERTIFICATE DATED 07.01.2008, IN RESPECT OF THE PETITIONER. EXHIBIT P2 TRUE COPY OF NOTIFICATION NO. 1/2017 DATED 20.04.2017 ISSUED BY FIRST RESPONDENT. EXHIBIT P3 TRUE COPY OF LETTER DATED 14.03.2018 ISSUED BY SECOND RESPONDENT. EXHIBIT P4 TRUE COPY OF INTERIM ORDER DATED 15.01.2018 IN W.P.(C)NO.1455 OF 2018 OF HIGH COURT OF KERALA. 12310, 27570 & 27658 of 2018 109 APPENDIX OF WP(C) 27570/2018 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THE

NOTIFICATION APPEARED IN MATHRUBHOOMI THOZHIL VARTHA DATED 18/11/2017 PUBLISHED BY THE 1ST RESPONDENT EXHIBIT P2 TRUE COPY OF THE ADMISSION TICKET FOR THE EXAMINATION CONDUCTED ON 6.5.2016

EXHIBIT P3 TRUE COPY OF THE MARRIAGE CER

NO.555606. EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 31/5/2016 IN W.P.(C)18301/2016. 12310, 27570 & 27658 of 2018 110 APPENDIX OF WP(C) 27658/2018 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THE NOTIFICATION APPEARED IN MATHRUBHOOMI DATED EXHIBIT P2 TRUE COPY OF THE MARRIAGE CERTIFICATE DATED EXHIBIT P3 TRUE COPY OF THE RESIDENCE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, KODANAD VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT DATED EXHIBIT P4 TRUE COPY OF THE S.S.L.C. BOOK OF THE PETITIONER. EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 31/05/2016 IN W.P.(C) NO. 18301/2016. TKS

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