

Pradeep vs State of Kerala

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Court : Kerala

Decided On : Jan-06-2020

Judge : Honourable Smt. Justice P.V.Asha

Appeal No. : WP(C)/25052/2017

Appellant : Pradeep

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY,
THE 06TH DAY OF JANUARY 2020 / 16TH POUSHA, 1941
WP(C).No.23320 OF 2017(L) PETITIONERS: 1 DEEPTHIMOL
VARGHESE AGED 36 YEARS KARAKKAVAYALIL
HOUSE,VELATHUSSERY P.O., KOTTAYAM 686 580. 2 PRAVEENA
M.R PUTHENPURAYIL HOUSE,CHERTHALA P.O., PIN: 688 524 BY
ADVS. SRI.P.RAMAKRISHNAN SRI.C.ANIL KUMAR SMT.ASHA
K.SHENOY SRI.S.K.HARISH SRI.T.C.KRISHNA SMT.PREETHI
RAMAKRISHNAN (P-212) SRI.PRATAP ABRAHAM VARGHESE
RESPONDENTS:

1 KERALA PUBLIC SERVICE COMMISSION P.S.C OFFICE, PATTOM, THIRUVANANTHAPURAM 695 004, REPRESENTED BY ITS SECRETARY 2 THE KERALA STATE FINANCIAL ENTERPRISES LIMITED REGD. OFFICE, BHADRATHA, MUSEUM ROAD, THRISSUR 680 020. 3 KERALA STATE ELECTRICITY BOARD VAIDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM 695 004, REPRESENTED BY ITS CHAIRMAN 4 THRISSUR CORPORATION OFFICE OF THE CORPORATION OF THRISSUR, THRISSUR - 680 001, REPRESENTED BY ITS SECRETARY

5 STATE OF KERALA REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, PERSONNEL & ADMINISTRATIVE REFORMS (AVC-V) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001. *ADDL. THE DIRECTOR OF URBAN AFFAIRS R6 URBAN AFFAIRS DEPARTMENT, SWARAJ BHAVAN, NANDANCODE, KOWDIAR P.O., THIRUVANANTHAPURAM -695 003. IMPEADED AS ADDL. R6 AS PER ORDER DATED 22.08.2017 IN IA 13344/2017. *ADDL. MARY SHINI.K.G, AGED 36 YEARS, R7 W/O PETER SHAJAN, KARAMOOTTIL, AROOR P.O, ALAPUZHA DISTRICT, PIN 688 534 IMPEADED AS ADDITIONAL R7 AS PER ORDER DATED 13.11.2019 IN IA 2/2019 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR ADV. SRI.P.GOPINATH BY GOVERNMENT PLEADER SRI.SUNIL K.K. BY ADV. SRI.K.JOHN MATHAI BY ADV. SRI.JOSON MANAVALAN BY ADV. SRI.KURRYAN THOMAS BY ADV. SRI.PAULOSE C. ABRAHAM BY ADV. SRI.RAJU JOSEPH SR. BY SRI.GEORGEKUTTY MATHEW, SC, KSEB BY SRI. SANTHOSH P.PODUVAL, SC, THRISSUR CORPORATION BY ADV. I.SHEELA DEVI BY ADV. SRI.T.JAYAN BY ADV.P.C.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28.11.2019, ALONG WITH WP(C).38794/2015(Y), WP(C).32887/2016(I), WP(C).25052/2017(F), WP(C).29809/2017(A), THE COURT ON

06.01.2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY, THE 06TH DAY OF JANUARY 2020 / 16TH POUSHA, 1941 WP(C).No.38794 OF 2015 PETITIONER: RATHEESH.S AGED 30 YEARS 'SREEREKHA', CHANDANATHOPE PO, KERALAPURAM, KOLLAM, PIN-691 014 BY ADVS. SRI.S.P.ARAVINDAKSHAN PILLAY SRI.S.A.ANAND SRI.K.A.BALAN SRI.PETER JOSE CHRISTO SMT.N.SANTHA SRI.V.VARGHESE RESPONDENTS: 1 KERALA STATE ELECTRICITY BOARD LTD. VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM, PIN-695 004, REPRESENTED BY ITS SECRETARY 2 THE SECRETARY KERALA STATE ELECTRICITY BOARD LTD.VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM, PIN-695 004 3 KERALA PUBLIC SERVICE COMMISSION REPRESENTED BY ITS SECRETARY, PATTOM, THIRUVANANTHAPURAM, PIN- 695 004 BY ADV. SRI.RAJU JOSEPH SR. BY SRI.P.C.SASIDHARAN, SC, BY SRI.GEORGEKUTTY MATHEW, SC, KSEB THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28.11.2019, ALONG WITH WP(C).32887/2016(I), WP(C).23320/2017(L), WP(C).25052/2017(F), WP(C).29809/2017(A), THE COURT ON 06.01.2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY, THE 06TH DAY OF JANUARY 2020 / 16TH POUSHA, 1941 WP(C).No.32887 OF 2016 PETITIONERS:

1 AKHILA S. PADMAN AGED 29 YEARS NITEESH BHAVAN, CHERAPPALLY, PARANODU, THIRUVANANTHAPURAM, PIN-695 542, NOW RESIDING AT KALABHAM, KAITHAKUZHI, ARYANKOD, OTTASEKHARAMANGALAM P.O., THIRUVANANTHAPURAM-695 125.

2 SHAMINA P SHERAFUDHIN POOVATHIL HOUSE, KOONAMTHAI, EDAPPALLY, ERNAKULAM, KOCHI-24, NOW RESIDING AT SHAMINAS MANZIL, NEAR KANELI KADAVU, KUNNUNIKKARA, ULIYANOOR P.O., ALUVA-683 108. BY ADVS. SRI.S.P.ARAVINDAKSHAN PILLAY SRI.S.A.ANAND SMT.L.ANNAPOORNA SRI.K.A.BALAN SRI.PETER JOSE CHRISTO SMT.N.SANTHA SRI.V.VARGHESE

RESPONDENTS: 1 KERALA STATE ELECTRICITY BOARD LTD. VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM, PIN-695 004, REPRESENTED BY ITS SECRETARY. 2 THE SECRETARY KERALA STATE ELECTRICITY BOARD LTD,VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM-04.

3 MANAGING DIRECTOR KERALA STATE ELECTRICITY BOARD LTD,VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM-04

4 KERALA PUBLIC SERVICE COMMISSION REPRESENTED BY ITS SECRETARY, PATTOM, THIRUVANANTHAPURAM-04 BY ADV. SRI.RAJU JOSEPH SR. BY SRI.GEORGEKUTTY MATHEW, SC, KSEB BY SRI.P.C.SASIDHARAN, SC THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28.11.2019, ALONG WITH WP(C).38794/2015(Y), WP(C).23320/2017(L), WP(C).25052/2017(F), WP(C).29809/2017(A), THE COURT ON 06.01.2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY, THE 06TH DAY OF JANUARY 2020 / 16TH POUSHA, 1941 WP(C).No.25052 OF 2017 PETITIONERS:

1 PRADEEP AGED 30 YEARS, S/O. SASIDHARAN NAIR, THIRUVATHIRA, UNDANCODE, CHERIAKOLLA POST, THIRUVANANTHAPURAM DISTRICT - 695 504. 2 REEBA T.I. AGED

37 YEARS, W/O. SUJITH SIVANANDAN, RAJEEV SADANAM, CHITTATTUMUKKU POST, THIRUVANANTHAPURAM - 695 301. 3 DHANYA P.DAS AGED 32 YEARS, W/O. RIJU M.DAS, NANDANAM, KUNNUMMEL, KILIMANOR POST, THIRUVANANTHAPURAM - 695 601. 4 SIMI S.K. AGED 34 YEARS, W/O. VINIMON. R, CHEKKOTHU VEEDU, KUNNUMMEL, KILIMANOR POST, THIRUVANANTHAPURAM - 695 601. 5 DHANUSH AGED 35 YEARS, S/O. SUKUMARAN NAYAR, ADWAIYTHAM, N.S.S. KRRA, ANAYARA, THIRUVANANTHAPURAM. 6 BINU. S.P. AGED 32 YEARS, S/O. SASINDRAN, BINU NIVAS, RAMACHAM VILLA, ATTINGAL POST, THIRUVANANTHAPURAM - 695 101.

7 SAUMYA A.R. AGED 31 YEARS, W/O. ARUN V.N., REMYA BHAVAN, PERAPPORE, MUKKOLAKKAL POST - 695 043. 8 SANGEETHA A.S. AGED 35 YEARS, W/O. ARAVINDAKSHA KUMAR. S., KOLLAMVILAKATHU VEEDU, KOONAMKULAM LANE, MURUNJAPALAM, MEDICAL COLLEGE POST. THIRUVANANTHAPURAM - 695 011. BY ADVS. SRI.G.P.SHINOD SRI.AJIT G.ANJARLEKAR SRI.GOVIND PADMANAABHAN SRI.RAM MOHAN.G. RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 2 THE PRINCIPAL SECRETARY PERSONAL AND ADMINISTRATIVE REFORMS DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 3 THE KERALA PUBLIC SERVICE COMMISSION REPRESENTED BY ITS SECRETARY, PATTOM (PO), THIRUVANANTHAPURAM - 695 004. 4 THE KERALA STATE ELECTRICITY BOARD LTD. REPRESENTED BY ITS *(MANAGING DIRECTOR), VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM DISTRICT - 695 004. *MANAGING DIRECTOR AMENDED AS SECRETARY AS PER ORDER DATED 14/08/2017 IN I.A.NO.12380/2017. 5 THE

CORPORATION OF THRISSUR REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE, THRISSUR - 680 001. BY SRI. SANTHOSH
P.PODUVAL, SC, THRISSUR CORPORATION

BY ADV. SRI.RAJU JOSEPH (SR.) BY SRI.GEORGEKUTTY MATHEW,
SC, KSEB BY SRI.SUNIL KUMAR KURIAKOSE, GP BY
SRI.P.C.SASIDHARAN,SC THIS WRIT PETITION (CIVIL) HAVING
BEEN FINALLY HEARD ON 28.11.2019, ALONG WITH
WP(C).38794/2015(Y), WP(C).32887/2016(I), WP(C).23320/2017(L)AND
WP(C).29809/2017(A), THE COURT ON 06.01.2020 DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY,
THE 06TH DAY OF JANUARY 2020 / 16TH POUSHA, 1941
WP(C).No.29809 OF 2017 PETITIONERS: 1 SHYNI R. AGED 36
YEARS, W/O DILEEP,CHALUNKAL VELI, S.N.PURAM
P.O.,CHERTHALA, ALAPPUZHA-688582. 2 NISHA.M.K. AGED 35
YEARS, D/O M.V.KUMARAN,MADAPPURAM HOUSE, AIMURY
P.O.,PERUMBAVOOR,ERNAKULAM-683544. BY ADVS. SRI.DIPU.R
SRI.K.S.BAIJU SMT.B.DHANYA SMT.P.A.PRIYA SRI.SANAL P.RAJ
SMT.K.P.SUSMITHA RESPONDENTS: 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,DEPARTMENT OF
PERSONNEL & ADMINISTRATIVE REFORMS,(AVC-V),
GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-695001. 2
KERALA PUBLIC SERVICE COMMISSION KPSC REPRESENTED BY
ITS SECRETARY, PSC HEAD OFFICE,PATTOM PALACE P.O.,
THIRUVANANTHAPURAM 695004.

3 KERALA STATE ELECTRICITY BOARD LIMITED KSEBL
REPRESENTED BY ITS CHAIRMAN,VYDYUTHI BHAVAN,
PATTOM,THIRUVANANTHAPURAM-695004. 4 THE TRAVANCORE
TITANIUM PRODUCTS LIMITED TTPL REPRESENTED BY ITS

MANAGING DIRECTOR, REGISTERED OFFICE, P.B.NO.1, THIRUVANANTHAPURAM 695021. 5 *R5 DELETED KERALA STATE ELECTRONICS DEVELOPMENT CORPORATION LIMITED(KELTRON), REPRESENTED BY ITS MANAGING DIRECTOR, KELTRON HOUSE, VELLAYAMBALAM, THIRUVANANTHAPURAM 695 033. *R5 DELETED AS PER ORDER DATED 16-09-2017 6 MUNICIPAL CORPORATION OF THRISSUR, REPRESENTED BY ITS SECRETARY, THRISSUR CORPORATION OFFICE, THRISSUR-680 001. BY ADV. SRI.RAJU JOSEPH (SR.) BY SRI.GEORGE KUTTY MATHEW, SC, KSEB BY ADV. SRI.K.ANAND (SR.) BY ADV. SMT.LATHA ANAND BY SRI.SUNIL KUMAR KURIAKOSE, GP BY SRI. SANTHOSH P.PODUVAL, SC, THRISSUR CORPORATION BY SRI.P.C.SASIDHARAN,SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28.11.2019, ALONG WITH WP(C).38794/2015(Y), WP(C).32887/2016(I), WP(C).23320/2017(L) AND WP(C).25052/2017(F), THE COURT ON 06.01.2020 DELIVERED THE FOLLOWING: P.V.ASHA J. ----- W.P.(C).Nos.38794 of 2015, 32887 of 2016 & 23320, 25052, 29809 of 2017 ----- Dated this the 6th day of January, 2020

J U D G M E N T

All these writ petitions are filed by candidates included in the rank list for appointment to the post of Junior Assistant/Cashier/Assistant Gr.II etc., in KSFE/KSEB/Thrissur Corporation etc., published by the Kerala Public Service Commission (KPSC). As the issue raised is the same, all these writ petitions are disposed of by the common judgment. Parties and documents referred to in this are as described in W.P.(C).No.23320 of 2017, unless specifically expressed otherwise.

2. Ext.P1 rank list published by the Kerala

respondents against which temporary hands/contract appointees continue to be engaged in such vacancies. In the case of the Cashiers in Kerala State Electricity Board Ltd ('the Board' for short), they stated that the vacancies of Cashiers/Junior Assistants were occupied by employees in other categories and that in the consequential vacancies in those other categories, contract employees were engaged.

3. When the writ petition came up for

consideration on 14.8.2017, it was submitted on behalf of the Thrissur Corporation that they have reported 13 vacancies to Urban Affairs Department to report the vacancies to PSC. Thereupon an interim

order was passed on 14.08.2017 directing the Thrissur

Corporation as well as KSFE and KSEB to report the available vacancies to the PSC.

4. Thereafter Government filed a counter affidavit stating that on the basis of the interim

order passed by this Court on 22.08.2017, 13

vacancies were provisionally reported to the PSC on 20.09.2017. It was stated that if Govt. abolishes the posts there will not be any vacant post. Thereafter the respondents have not produced any orders by which the posts were abolished. That would mean that the vacancies which were reported existed in the Corporation as on the date of reporting as well as on the date of expiry of the list and thereafter.

5. The main contention of the petitioners is that there were more than 497 vacancies of Cashiers in the Board. The Appellate Authority under the Right to Information Act, in the Board, in Ext.P3 letter 23.12.2016, informed the number of vacancies available. Apart from Ext.P3, the petitioners relied on Ext.P8 letter dated

17.12.2016 (produced along with I.A.No.3003 of 2018) of the Secretary

(Administration) of the Board, informing the Principal Secretary to Govt. P& ARD that in addition to 497 vacancies of Cashiers existing in KSEB there were 63 vacancies in the newly formed Electrical Sections. The details of the employees belonging to the other categories who are engaged as Cashiers in the existing vacancies of Cashiers were furnished

there. Stating that those vacancies include 497 vacancies against the sanctioned strength and 63 in the newly formed electrical sections. According to this letter, 21 Meter Readers, 341 Lineman, 69 Mazdoor, 3 Senior Assistant and 13 Overseers and 113 Office Attendants were engaged as Cashiers against the existing vacancies of Cashiers. They have also furnished on a list of Senior Assistants who were working in the post of Cashiers, as stated in Ext.P9, in answer to a question raised before the floor of the Legislative Assembly. This list gives

the details of the persons working in

Producing Exts.P8 and P9 the petitioners submitted that there were more than 600 vacancies of Cashiers under 2nd respondent Board.

6. The Board had filed a statement in W.P. (C).No.32887 of 2016 on 22.06.2017, stating that 580 employees of the Board who did not belong to the category of Cashiers were engaged for cash collection

in different Section Offices mentioned

Readers, 261 Lineman Gr.I, 111 Lineman Gr.II, 27 Senior Office Attendant, 37 Office Attendant Gr.I, 52 Office Attendant Gr.II, 61 Mazdoor were engaged for cash collection in different Section Offices.

7. On the basis of this statement of the Board, an interim order was passed on 25.08.2017, taking note of the fact that the rank list was expiring on 21.09.2017, directing the Board to report 580 vacancies of Junior Assistants/ Cashiers to the KPSC provisionally on or before 15.09.2017, with direction to PSC not to advise candidates against those vacancies.

8. The Board thereafter sought for modification

of the interim order stating that the strength of Cashiers/Junior Assistants was already in excess and further reduction was required in the light of study report submitted by IIMK. However they stated that they have reported 60 vacancies on 14.09.2017. This Court did not allow modification; but directed them to report the remaining 520 vacancies in accordance with the order passed on 25.08.2017.

9. In August 2019 the Board informed this Court their decision to fill up 200 vacancies which existed as on the date of expiry of the list. This Court directed the PSC to advise candidates against 200 vacancies. Therefore the issue to be considered relates to the remaining 320 vacancies which are reporting to PSC based on the interim order.

10. Along with I.A. no. 4 of 2018, petitioners produced Ext.P10 letter by which the Principal

Secretary to Govt. on 18.02.2019, requested the Chairman of the Board, to report the 497 vacancies existing in the post of Cashier, referred to in Board's letter dated 17.12.2016/Ext.P8, to the KPSC. They also produced Ext.P11 answers given before the Legislative Assembly in which the Board had informed that 689 persons were engaged against the vacancies of Cashiers. It was stated that there were 504 vacancies of Cashiers out of which 428 were to be filled up through KPSC and 76 on by transfer appointment. Ext.P13 letter dated 23.12.2016 received on an appeal filed under RTI Act is also relied on to claim that there were 497 vacancies against which 418 Senior Assistants and 10 Senior Superintendents were working. They also produced the report prepared by the IIM Kozhikode, pointing out that there was no recommendation for reduction of post of Cashiers.

11. In the counter affidavit filed on behalf of

the Board on 24.08.2017 it was stated that the Kerala State Electricity Regulatory Commission (KSERC) had given certain strict directions to limit the employee cost and did not allow salary and other allowances of around 6000 employees suggesting redeployment in view of computerization in various wings of KSEB. It

was stated the study report of IIMK including the recommendation on the deployment of employees in the ministerial wing was under consideration of the Board. It was therefore stated that a decision on the reporting of vacancies could be taken only on the basis of study report of IIMK. Further it was stated that the Board is facing a loss of more than 700 Crores. Considering the crucial financial condition and the direction issued by the CERC to reduce the cost, no vacancies of Junior Assistant/Cashier can be reported to the PSC.

12. In the addl counter affidavit filed by the Board on 15.09.2017, it was stated that the Kerala State Electricity Regulatory Commission constituted under Section 87 of the Electricity Act, 2003, checks every expenses and revenue requirements and it will allow or disallow the amounts claimed by the Board

for each item in case any expense which is not allowed by the Regulatory Commission is incurred; the Board will have to avail loan and ultimately it would become an unviable Govt. Company; the Commission is not allowing the cost of employees in excess of the staff strength which existed during the financial year 2008-2009. In para 5 of the addl. counter affidavit they have furnished the details regarding

the increase in strength of staff during each financial year for which commission has not allowed the cost. It is stated that the staff strength for the year 2008-2009 was 27175 which has been increased by year to year by 832, 2689, 3938, 4608 4808 and 5866 in 2015-16 with 33041. It is stated that the Commission has not approved the expenses incurred by the Board to the tune of Rs.341.49 Crores, for the financial years upto 2016-17. It is stated that any claim which is disallowed by the Commission would become an irrecoverable loss and therefore it has become necessary to reduce the employees cost.

13. Further it was pointed out that the Board had been exploring technological developments for automating its various functions since the year 2000; cash collection which was being done manually earlier

is being done through various offices in

work of the Cashiers have reduced in various matters such as making entries in cash book, registers etc, as now these works are automated and replaced by computer. It has also adopted digital technology in cash collection by introducing electronic payment by various modes and therefore the number of Cashiers required has been drastically reduced. It is stated the job of Senior Assistants which is the promotion posts of Cashiers is also reduced on introduction of

computers. Further it is stated that when the employees in the category of field staff often get incapacitated to perform the duties, they are accommodated in the cash collecting wing after providing basic training. On this account also there is reduction in vacancies of Cashiers. It is further stated that as per the Schedule 1(2)(a) of the second transfer scheme for re-vesting the assets and personnel of the company to the transferee there can

be no retrenchment of the employees as their status/services are to be protected as on 31.10.2013; therefore, the Board cannot retrench those employees. It is also stated that there are several persons who are not having the qualification prescribed under the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulation, 2010. But in view of the quota rule prevailing in the Electricity

Board covered by Long Term Settlement, the technical sta

accommodated. It is their further contention that the IIMK is entrusted to conduct the study to improve the management and utilization of its human resources. The KSEBL has constituted a high power committee to evaluate and formulate modalities to implement the report and that the actual requirement of staff strength in all the categories can be determined only after completing the said process. However 60 vacancies of Cashiers were reported to KPSC on 14.09.2017. It was stated that the final figure would be determined before the expiry of the rank list and in case more vacancies are available the same would also be reported.

14. The 3rd respondent filed an addl. Counter

affidavit dated 28.09.2017 stating that none of the vacant places of employees who are deployed in the places of Cashiers/Junior Assistants were filled up by

contract staff or in any other manner.

15. In answer to I.A.4 of 2018, filed by the petitioners producing Ext.P10 letter from the Govt. to the 3rd respondent, the answers given by the Legislative Assembly on 02.11.2016 and Ext.P12 letter

dated 17.12.2016 from the 3rd respondent to Principal Secretary to Govt. as well as the report of the IIMK, the 3rd respondent filed a counter affidavit in April,

2019. In this counter affidavit it was stated that

KPSC had invited application even in the absence of any requisition from the KSEB, inviting applications for appointment to the post of Cashiers. It was stated that retrenchment is not possible and the Board has to accommodate the excess staff who become surplus due to restructuring of the staff pattern. Therefore it was stated that workman and staff posted

from other cadres posted as Cashiers have the minimum qualification for appointment to that post and therefore Exts.P10 to P13 would not have any relevance.

16. Petitioners relied on Ext P15(a) produced along with I.A.1/2019, the answers given to the questions put on the floor of the Legislative Assembly, in which it was stated that there would not

be any reduction of post on introduction of Smart Met

In Ext.P16 letter it was stated that the sanctioned strength of Junior Assistant/Cashier was 14:14 before the IIMK submitted the report. It was also stated that the recommendations in the IIMK report is not yet implemented and that a sub committee is constituted to study the same and to submit recommendations and a final report would be submitted on 13.06.2019. Another affidavit was filed by the respondent No.3 on 09.08.2019 in which it was stated that Full Time Directors in its meeting held on 19.07.2019 resolved to fill up 200 vacancies of Cashiers and accordingly the KPSC can be permitted to advise candidates against those 200 vacancies. They also stated that no contract

appointments are made to any of the posts in the Board except to meet emergency situation.

17. An addl. counter affidavit was filed on

14.10.2019 stating that KSEB is taking steps for optimization and development of manpower consequent to structural changes in various offices in accordance with the provisions of the Electricity Act, 2003, the directions of the Regulatory Commission, CEA Regulations and tripartite agreement. A sub committee was constituted on 03.03.2018 to

prepare detailed proposals on optimization and development of manpower and it is making strenuous efforts to chalk out proposals regarding the manpower requirements. It was stated that it would take considerable time.

18. Learned Senior Counsel for the respondents KSEB relying on the judgment of the Division Bench of this Court in W.A.No.173 of 2018, argued that the petitioners do not have any indefeasible right to

insist for a direction to the KSEB to report vacancies or even to get appointment, just because they are included in the rank list. The Division Bench of this Court in that judgment relying on the

judgment of the Apex Court in S.S.Balu & Another v

State of Kerala [2009 (2) SCC 479] held that it is the discretion of the employer not to fill up the existing vacancies. In that Writ Appeal this Court was considering the case of candidates who had appeared in the test but the KPSC had not published a rank list since only one vacancy was reported to KPSC and therefore no rank list was published. Learned counsel for the petitioners pointed out that it was a case where the Board had abolished 799 posts of Meter Readers/Spot Billers by an order dated 23.02.2018 subsequent to the judgment in the Writ Petition which was on 04.01.2018 and therefore the said judgment would not apply to the facts of this case where there is no abolition of post and a final decision on the basis of the report of the IIMK is yet to be taken.

19. The judgment in State of Haryana and Others

v. Mahabir Prasad Sharma and Others [1994 KHC 621 : 1994 Supp 2 SCC 348], was also relied on in support of the contention that it is for the employer to decide whether the vacancies are to be filled up or not and candidates in the waiting list cannot have any right to appoint.

20. Admittedly there had been 580 persons

working from other categories in the post of Cashiers and the position almost continued the same till the expiry of the list on 21.09.2017. Even though the respondents have stated that subsequently no contract employees are engaged in the consequential vacancies, petitioners have produced materials to show that such contract appointment was being made against those posts. As at present, there are no orders abolishing or reducing the posts of Cashiers. But it is a fact that Electronic Payment System bring about drastic changes and that would result in reduction of posts. After stating all these contentions the respondents themselves had submitted before this Court that 200 vacancies were available for appointment and accordingly advice was made. It is pointed out that several of the candidates have not joined duty even against those 200 vacancies. Main contention of the respondent is that in view of the provisions contained in the Electricity Act, 2003 as well as the tripartite settlement there cannot be any retrenchment.

21. As argued by Sri. Raju Joseph, Learned Senior Counsel for the petitioner, it is settled law that mere inclusion in a rank list does not confer

any indefeasible right on the candidates for appointment. There cannot also be a doubt that it is for the employer to decide its requirements and to fill up or not to fill up vacancies.

22. However so far there has not been any

abolition of posts of Cashiers in the Board. The respondents themselves had stated in August 2019 that 200 appointments can be made; directions were issued to PSC to advise candidates against those 200 out of the 520 vacancies reported

to it based on the interim order. The respondents themselves have stated that a very few candidates have joined duty as against those 200 vacancies against which appointments were made. Thus several vacancies among those 200, remain unfilled for various reasons including efflux of time. Therefore, I am of the view that the position would be more or less similar even

if advice is made to the remaining 320 vacancies already reported. The ban on retrenchment shall not apply to such candidates in the event abolition of post becomes necessary on the basis of any decision by the sub committee. The Board would be free to retrench the candidates thus advised and appointed. Therefore these writ petitions are disposed of with the following directions:

(1) The KPSC shall advise candidates against 13

vacancies of Junior Assistants in the Thrissur Corporation, reported to it by Govt, without any delay, in case advice is not made so far. The Corporation shall thereupon make appointment against those vacancies without any further delay.

(2) The PSC shall advise candidates against the remaining 320 vacancies of Cashiers reported to it by the KSEBL without any delay; on

such advice, the Board shall appoint the candidates without any further delay on condition that they would be retrenched in the event of abolition of posts notwithstanding any provision prohibiting retrenchment. Sd/- P.V.ASHA, JUDGE.
AS

APPENDIX OF WP(C) 23320/2017 PETITIONER'S EXHIBITS: EXHIBIT P1 RELEVANT PORTION OF RANKED LIST PUBLISHED BY THE 1ST RESPONDENT ON EXHIBIT P2 TRUE COPY OF PROCEEDINGS OF THE 14TH KERALA LEGISLATIVE ASSEMBLY DATED EXHIBIT P3 TRUE COPY OF LETTER DATED 23/12/2016 OF THE 3RD RESPONDENT EXHIBIT P4 TRUE COPY OF REPLY DATED 9/5/2007 MADE BY THE HONOURABLE MINISTER FOR LOCAL SELF GOVERNMENT DURING THE LEGISLATIVE ASSEMBLY SESSION OF 9/5/2017 EXHIBIT P5 TRUE COPY OF LETTER DATED 29/6/2016

ISSUED BY THE 5TH RESPONDENT EXHIBIT P6 TRUE COPY OF LETTER DATED 30/12/2016 ISSUED BY THE 1ST RESPONDENT EXHIBIT P7 TRUE COPY OF LETTER DATED 19/09/2017 AND THE ATTACHED PROFORMA ISSUED BY THE 3RD RESPONDENT. EXHIBIT P8 TRUE COPY OF LETTER DATED 17/12/2016 FROM THE 3RD RESPONDENT TO THE PRINCIPAL SECRETARY, PERSONNEL & ADMINISTRATIVE AFFAIRS (AVC-V) DEPARTMENT. EXHIBIT P9 TRUE COPY OF QUERY MADE BEFORE THE LEGISLATIVE ASSEMBLY ON 25/10/2016 AND THE ENCLOSED LIST. EXHIBIT P10 TRUE COPY OF LETTER DATED 18/02/2017 FROM THE GOVERNMENT TO THE 3RD RESPONDENT. EXHIBIT P11 TRUE COPY OF PROCEEDINGS OF LEGISLATIVE ASSEMBLY ON 02/11/2016. EXHIBIT P12 TRUE COPY OF LETTER DATED 17/12/2016

FROM THE 3RD RESPONDENT TO THE PRINCIPAL SECRETARY TO GOVERNMENT. EXHIBIT P13 TRUE COPY OF REPLY DATED 23/12/2016 RECEIVED UNDER THE RIGHT TO INFORMATION ACT. EXHIBIT P14 TRUE COPY OF RELEVANT PAGES OF THE REPORT SUBMITTED BY THE INDIAN INSTITUTE OF MANAGEMENT KOZHIKODE. EXHIBIT P15(A) TRUE COPY OF PROCEEDINGS DATED EXHIBIT P15(B) TRUE COPY OF PROCEEDINGS DATED ASSEMBLY. EXHIBIT P16 TRUE COPY OF PROCEEDINGS DATED ASSEMBLY. RESPONDENT'S EXHIBITS: ANN.R2(A) TRUE COPY OF THE CIRCULAR NO.33/2016 (P&HR) DATED 30.05.2016 ISSUED BY THE 2ND RESPONDENT. EXT.R6(A) TRUE COPY OF THE LETTER DATED 01.07.2006. EXT.R4(A) TRUE COPY OF REPORT DATED 14/06/2017 SUBMITTED BEFORE THE DIRECTOR OF URBAN AFFAIRS. EXT.R3(A) TRUE COPY OF THE ORDER BO(FTD)

APPENDIX OF WP(C) 38794/2015 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE RELEVANT EXTRACT OF THAT NOTIFICATION EXHIBIT P2 TRUE COPY OF THE RELEVANT EXTRACT OF RANKED 11ST RANKED LIST NO 569/14/ROQ EXHIBIT P3 TRUE COPY OF THE REPLY GIVEN BY THE

HON'BLE MINISTER TO UNSTARRED QUESTION NO. 387 EXHIBIT P4 TRUE COPY OF THE REPLY ALONG WITH WITH ITS ENCLOSURES GIVEN BY THE HON'BLE MISNISTER TO UNSTARRED QUESTION NO. 7893 EXHIBIT P5 TRUE COPY OF THE BOARD ORDER (FM) NO. EXHIBIT P6 TRUE COPY OF THE ADVICE DETAILS OF MANZDOORS DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE P.S.C EXHIBIT P7 TRUE COPY OF THE ADVICE DETAILS OF ELECTRICITY WORKER, DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC EXHIBIT P8 TRUE COPY OF THE ADVICE DETAILS OF ELECTRICITY WORKER/MAZDOOR, DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC EXHIBIT P9 TRUE COPY OF THE ADVICE DETAILS OF DIVISIONAL ASSISTANT ENGINEER (ELECTRICAL), DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC EXHIBIT P10 TRUE COPY OF THE ADVICE DETAILS OF DIVISIONAL ACCOUNTANT, DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC EXHIBIT P11 TRUE COPY OF THE STATUS OF POSTS DOWNLOADED FROM THE WEBSITE OF THE PSC EXHIBIT P12 TRUE COPY OF THE ORDER (CM) NO. EXHIBIT P13 TRUE COPY OF THE LETTER NO DB/RIA/14-15/45

DT. 7/2/15 OF THE EXECUTIVE ENGINEER AND PUBLIC INFORMATION OFFICER, ELECTRICAL DIVISION, THIRUVANANTHAPURAM

EXHIBIT P14 TRUE COPY OF THE BOARD ORDER (FB) NO. EXHIBIT P15 TRUE COPY OF THE ORDER NO. EB.4(C)/OA/CASHIER TRAINEE/2014 DT. 1/3/14, THE K.S.E.B EXHIBIT P16 TRUE COPY OF THE ORDER NO. EB3/PRO/CASHIER/10%/2014 DT. 25/10/14 EXHIBIT P17 TRUE COPY OF THE SENIOR SUPERINTENDENT, K.S.E.B, OFFICE OF THE CHIEF ENGINEER (HRM) EXHIBIT P18 TRUE COPY OF THE BOARD ORDER (FTD) DT. 31/5/14 EXHIBIT P19 TRUE COPY OF THE CIRCULAR NO. 8983/ADV.C3/15/P&ARD DT. 17/8/15 RESPONDENT'S EXHIBITS: EXHIBIT R1(A) TRUE COPY OF THE ORDER BO(FTD)580/2019 DATED 24.07.2019. APPENDIX OF WP(C) 32887/2016 PETITIONERS' EXHIBITS: EXHIBIT P1. TRUE COPY OF THE RELEVANT EXTRACT OF THE NOTIFICATION DATED 31/12/2011. EXHIBIT P2. TRUE COPY OF THE RELEVANT EXTRACT OF THE RANKED LIST NO.569/14/ROQ. EXHIBIT P3. TRUE COPY OF THE REPLY GIVEN BY THE

MINISTER TO UNSTARRED QUESTION NO.387. EXHIBIT P4 TRUE COPY OF THE REPLY ALONG WITH ITS ENCLOSURE GIVEN BY THE MINISTER TO UNSTARRED QUESTION NO.7893. EXHIBIT P5 TRUE COPY OF THE BOARD ORDER (FN) NO.1476/2013/(EB4)(E)/GNL/IIMK/2013) DATED EXHIBIT P6 TRUE COPY OF THE ADVICE DETAILS OF MAZDOORS IN THIRUVANANTHAPURAM DISTRICT, DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P6(A) TRUE COPY OF THE ADVICE DETAILS OF MAZDOORS IN KOZHIKODE DISTRICT, DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P6(B) TRUE COPY OF THE ADVICE DETAILS OF MAZDOORS IN PALAKKAD DISTRICT, DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P6(C) TRUE COPY OF THE ADVICE DETAILS OF MAZDOORS IN ALAPPUZHA DISTRICT, DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P6(D) TRUE COPY OF THE ADVICE DETAILS OF MAZDOORS IN MALAPPURM DISTRICT, DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P7 TRUE COPY OF THE ADVICE DETAILS OF MAZDOORS IN ELECTRICITY WORKER, DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P8. TRUE COPY OF THE ADVICE DETAILS IN ELECTRICITY WORKER/MAZDOOR , DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P9. TRUE COPY OF THE ADVICE DETAILS OF ASSISTANT ENGINEER (CIVIL) DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P10. TRUE COPY OF THE STATUS OF POSTS DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P11. TRUE COPY OF THE ORDER (CM) 562/2013/ (IT/CU/LT/EPAYMENT/2012-13 DTED 14/3/2013. EXHIBIT P12. TRUE COPY OF THE LETTER NO.DB/RIA/2014- ENGINEER AND PUBLIC INFORMATION OFFICER, ELECTRICAL DIVISION, THIRUVANANTHAPURAM. EXHIBIT P13. TRUE COPY OF THE BOARD ORDER (FN) NO.2657/2013/(EB4)(C)/OA-CT/33/2013 DATED

EXHIBIT P14. TRUE COPY OF THE ORDER

NO.EB.4(C)/OA/CASHIER TRAINEE/2014 DATED

EXHIBIT P15. TRUE COPY OF THE ORDER

NO.EB3/PRO/CASHIER/10%/2014 DATED EXHIBIT P16. TRUE COPY OF THE ORDER OF THE SENIOR SUPDT., KSEB OF THE CHIEF ENGINEER (HRM). EXHIBIT P17. TRUE COPY OF THE BOARD ORDER (FTD) EXHIBIT P18. TRUE COPY OF THE CIRCULAR NO.8983/ADV.C3/2015/P&ARD DATED 17/8/2015. EXHIBIT 19 TRUE COPY OF THE APPLICATION FILED ONE SRI. SREEJITH S. REGHU UNDER THE RIGHT TO INFORMATION ACT, 2005, FROM THE BOARD. EXHIBIT P19(A) TRUE COPY OF THE REPLY DATED 9.11.2016 TO EXT.P19. EXHIBIT P20 TRUE COPY OF THE REPLY GIVEN BY THE HON'BLE MINISTER ON 18.10.2016 TO UNSTARRED QUESTION NO.3134. EXHIBIT P20(A) TRUE COPY OF THE B.O.NO.ESTT.111/2537/88 DATED 18.3.1988. EXHIBIT P21 TRUE COPY OF THE REPLY GIVEN BY THE HON'BLE MINISTER ON 25.10.2016 TO UNSTARRED QUESTION NO.4462. EXHIBIT P22 TRUE COPY OF THE REPLY GIVEN BY THE HON'BLE MINISTER ON 9.11.2016 TO UNSTARRED QUESTION NO.6676. EXHIBIT P23 TRUE COPY OF THE GOVERNMENT LETTER NO.1208777/AVC-V(1)/2016/P&ARD DATED 18.2.2017. EXHIBIT P24 TRUE COPY OF THE LETTER NO.ESTTII/4797/2016

DATED 17.12.2016 OF THE SECRETARY (ADMINISTRATION), KSEB TO THE PRINCIPAL SECRETARY, PERSONNEL AND ADMINISTRATIVE REFORMS (AVC-V) DEPARTMENT.

EXHIBIT P25 TRUE COPY OF THE ADVICE DETAILS OF SUB ENGINEERS (ELECTRICAL) AS DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE PSC. EXHIBIT P26 TRUE COPY OF THE JUDGMENT DATED 24.1.2005 IN WPC NO.40416/2003-J OF THIS HON'BLE COURT. EXHIBIT P27 TRUE COPY OF THE REPLY GIVEN BY THE HON'BLE MINISTER ON 9.11.2016 TO UNSTARRED QUESTION NO.6682. EXHIBIT P28 TRUE COPY OF THE APPLICATION DATED 10.10.2017 SUBMITTED BY SRI.ANUMOD VARGHESE UNDER THE RIGHT TO INFORMATION ACT, 2005. EXHIBIT P29 TRUE COPY OF THE REPLY DATED 25.10.2017 TO EXT.P28 ALONG WITH ITS ENCLOSURES. RESPONDENT'S EXHIBITS:

EXHIBIT R1(A) TRUE COPY OF THE ORDER

BO(FTD)580/2019(EB3/CASHIER/WPC NO.38794/2015) DATED 24.07.2019. APPENDIX OF WP(C) 25052/2017 PETITIONERS' EXHIBITS: EXHIBIT P1 A TRUE COPY OF THE RELEVANT EXTRACT OF THE NOTIFICATION DATED 31.12.2011. EXHIBIT P2 A TRUE COPY OF THE REPLY GIVEN BY THE HONOURABLE MINISTER TO UNSTARRED QUESTION NO. 387. EXHIBIT P3 A TRUE COPY OF THE REPLY ALONG WITH ENCLOSURES GIVEN BY THE MINISTER TO UNSTARRED QUESTION NO. 7893. EXHIBIT P4 A TRUE COPY OF THE COMMUNICATION NO. ESTT. FOURTH RESPONDENT TO THE SECOND RESPONDENT. EXHIBIT P5 A TRUE COPY OF THE COMMUNICATION NO.

1208777/AVC-V(1)/2016/P&ARD DATED 18.02.2017 ISSUED BY THE SECOND RESPONDENT TO THE FOURTH RESPONDENT.

RESPONDENTS' EXHIBITS EXT.R5 (A) COPY OF REPORT DATED 14.6.2017 SUBMITTED BEFORE THE DIRECTOR OF URBAN AFFAIRS. EXT.R4 (A) COPY OF THE ORDER BO (FTD) 580/2019 DATED 24.07.2019 APPENDIX OF WP(C) 29809/2017 PETITIONERS' EXHIBITS: EXHIBIT P1 TRUE COPY OF THE GAZETTE NOTIFICATION DATED 31.12.11 FOR CATEGORY NO.489/11. EXHIBIT P2 TRUE COPY OF THE RELEVANT PARTS OF THE RANK LIST WITH NO.569/14/ROQ FOR CATEGORY NO.489/2011. EXHIBIT P3 TRUE COPY OF THE RELEVANT EXTRACT OF THE PROCEEDINGS OF THE 2ND MEETING OF 14TH KERALA LEGISLATIVE ASSEMBLY HELD ON 18.10.2016. EXHIBIT P4 TRUE COPY OF THE ORDER WITH NO.BO.NO.ESTT, III/2537/88, DATED 18.3.1988. EXHIBIT P5 TRUE COPY OF THE COMMUNICATION WITH NO.ESTT.II/4797/2016 DATED 17.12.2016. EXHIBIT P6 TRUE COPY OF THE COMMUNICATION WITH NO.1208777/AVC-V(1)/2016/P&ARD DATED 18.2.2017. EXHIBIT P7 TRUE COPY OF THE RELEVANT EXTRACT OF THE PROCEEDINGS OF THE 5TH MEETING OF PRESENT KERALA LEGISLATIVE ASSEMBLY HELD ON 09.05.2017. EXHIBIT P8 TRUE COPY OF THE RELEVANT EXTRACT OF THE PROCEEDINGS OF THE 7TH MEETING OF PRESENT KERALA LEGISLATIVE ASSEMBLY HELD ON 23.08.2017. EXHIBIT

P9 INTERIM ORDER IN W.P.(C) NO.23320/2017 DATED 14.8.2017. EXHIBIT P10 TRUE COPY OF THE GAZETTE NOTIFICATION DATED 13.10.2017 (CATEGORY NO.399/2017) EXHIBIT P11 TRUE COPY OF THE LIST OF SENIOR ASSISTANTS WITH EMPLOYEE CODE WHO ARE WORKING AS CASHIER IN THE 3RD RESPONDENT. EXHIBIT P12 TRUE COPY OF THE EXTRACT OF THE PROCEEDINGS OF THE 2ND MEETING OF THE KERALA LEGISLATIVE ASSEMBLY ON 25.10.2016 EXHIBIT P13 TRUE COPY OF THE LISTS OF CONTRACT

EMPLOYEES FROM THE DISTRICTS OF KOZHIKODE AND KANNUR WITH THE DETAILS OF CONTRACT AMOUNT FOR THE MONTH OF SEPTEMBER 2016. EXHIBIT P14 TRUE COPY OF THE RELEVANT PART OF THE IIMK STUDY REPORT MENTIONING ABOUT CASHIER. RESPONDENTS' EXHIBITS: EXHIBIT R1 A TRUE COPY OF THE ORDER BO(FTD) 580/2019 DATED 24/7/2019. EXT.R6 (A) TRUE COPY OF THE REPORT DATED 14/6/17 SUBMITTED BEFORE THE DIRECTOR OF URBAN AFFAIRS.

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