



2024:KER:67974

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 5TH DAY OF SEPTEMBER 2024 / 14TH BHADRA, 1946

O.P. (KAT) NO. 406 OF 2023

AGAINST THE ORDER DATED 17.11.2022 IN OA NO.1719 OF 2020
OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS 1 TO 3:

- 1 KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY THE SECRETARY, KERALA PUBLIC
SERVICE COMMISSION, PATTOM, THIRUVANANTHAPURAM,
KERALA, PIN - 695004.
- 2 THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION, DISTRICT
OFFICE, KOTTAYAM, KERALA - 686004.
- 3 DEPUTY SECRETARY (EXAMINATIONS) I,
KERALA PUBLIC SERVICE COMMISSION, PATTOM,
THIRUVANANTHAPURAM, KERALA, PIN - 695004.

BY ADV P.C.SASIDHARAN, SC FOR KPSC



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RESPONDENTS/APPLICANT & RESPONDENTS 4 TO 6:

- 1 DINEESH K M,
AGED 31 YEARS
S/O MURALEEDHARAN K K, KADAPURATHU (H) ,
KULAYETTIKKARA P O, ARAYANKAVU, ERNAKULAM,
KERALA, PIN - 682317.
- 2 REMYA.T.R,
THENGUMTHOTTATHIL, NADACKAL.P.O., ANIYILAPPU,
KOTTAYAM, PIN - 686124.
- 3 VILLAGE OFFICER,
AMBALLUR VILLAGE OFFICE, AMABLLUR,ERNAKULAM,
KERALA, PIN - 682315.
- 4 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF AYUSH, SECRETARIAT,
THIRUVANANTHAPURAM, KERALA, PIN - 694995.
- 5* KIRTADS
KERALA INSTITUTE FOR RESEARCH TRAINING AND
DEVELOPMENT STUDIES OF SCHEDULED CASTES AND
SCHEDULED TRIBES (KIRTADS) , REPRESENTED BY ITS
DIRECTOR, DIRECTORATE OF KIRTADS, CHEVAYUR,
KOZHIKODE-613017.

*IS SUO MOTO IMPLEADED AS ADDITIONAL R5 AS PER
ORDER DATED 20/6/2024 IN OP(KAT)406/23

R1 BY ADVS. VARUN C.VIJAY
DIVYA CHANDRAN
R2 TO R5 BY SMT. VINEETHA B, SR. GP

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME
UP FOR FINAL HEARING ON 21.08.2024, THE COURT ON
05.09.2024 DELIVERED THE FOLLOWING:



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“C.R.”

ANIL K. NARENDRAN & P.G. AJITHKUMAR, JJ.

O.P.(KAT) No.406 of 2023

Dated this the 5th day of September, 2024

JUDGMENT

P.G.Ajithkumar, J.

The 1st respondent filed O.A.No.1719 of 2020 before the Kerala Administrative Tribunal. He sought to set aside Annexure A5 ranked list to the extent it failed to show him as an other backward community candidate. Consequential reliefs including his advise for appointment were also sought. The Administrative Tribunal allowed the original application. It was, however, directed further that rights of the 2nd respondent, who was already appointed, should not be affected. Kerala Public Service Commission, aggrieved by that order, filed this original petition under Article 227 of the Constitution of India.

2. Heard the learned Standing Counsel for the Kerala Public Service Commission, the learned counsel for the 1st respondent and the learned Senior Government Pleader.



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3. Respondents No.1 and 2 were applicants for selection to the post of Attender Grade II in Homoeopathy Department in Kottayam District. In Annexure A5 ranked list, the 1st respondent was placed at 14 and the 2nd respondent was placed at 18. The 1st respondent claimed reservation available to other backward communities. In his profile, he claimed that he belongs to other backward community and produced Annexure A2 non-creamy layer certificate. His caste was shown in Annexure A2 as Pattariyas. The caste name shown in his SSLC is Padmasaliya. The petitioner was asked to explain the discrepancy, consequent to which he produced Annexure A3 wherein the Village Officer certified that the petitioner belonged to Hindu-Padmasaliya (Pattarya) community.

4. The ranked list was approved on 28.04.2020. However, requiring clarity in relation to the claim of the petitioner for reservation, the 2nd petitioner addressed the 1st petitioner. Annexure A8 is the said letter. Later the ranked list was published, wherein the petitioner was denied benefit of



OBC reservation. The stand of the petitioners as reflected in Annexure A8 and also from the reply-statement is that a Gazette notification correcting the caste name of the petitioner was necessary to extend him the benefit of reservation. Instead of Gazette notification, the 1st respondent produced Annexure A3 certificate alone and therefore he was denied the benefit available to OBC.

5. The petitioners produced Ext.R2(b) Government order dated 28.05.2020 including Padmasali community also in the list of OBCs. A Gazette notification in this regard was issued only on 14.08.2022. The learned Standing Counsel for the petitioners would submit that having the ranked list been approved as early as on 28.04.2020, the 1st respondent could not claim the benefit of Ext.R2(b) Government order dated 28.05.2020 or the subsequent Gazette notification.

6. Certainly, it is within the powers of the Kerala Public Service Commission to determine whether the application submitted by a candidate is valid and it satisfies the requirements of the notification. See: **Kerala Public Service**



Commission v. Varghese [ILR 1977 (1) Ker.523], Kerala Public Service Commission v. Saroja Nambiar [ILR 1978 (2) Ker.241] and Rangaswamy v. Public Service Commission [1982 KLT 574].

7. The question here is concerning a different aspect. The 1st respondent submitted application claiming him to be a member of Pattariya community. The name of his community mentioned in his SSLC is Padmasali. If the 1st respondent has a claim that his caste name was mistakenly stated in his SSLC, what is the procedure enabling him to get the mistake corrected? The contention of the petitioners is that a Gazette notification in that regard should be produced. They place reliance in that regard on the general directions in that regard notified in the official Gazette.

8. Annexure R2(a) contained the instructions issued regarding submission of certificates by candidates claiming to be members of backward classes. Clause (g)(ii) reads as follows:

- “(g) അപേക്ഷകന്റെ ജനനത്തിയതി, ജാതി, മതം എന്നിവ സ്കൂൾ രേഖകളിൽനിന്ന് വ്യത്യസ്തമാണെങ്കിൽ :
- (ii) പേര്, മതം, സമുദായം എന്നിവയിൽ വ്യത്യാസം ഉണ്ടെങ്കിൽ (എഴുതുമ്പോൾ പറ്റുന്ന



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കൈപ്പിഴ ഒഴികെ) ഉദ്യോഗാർത്ഥി സ്കൂൾ വിട്ടതിനു ശേഷം ശരിയായത് സ്ഥാപിച്ചുകിട്ടുന്നതിനു വേണ്ടി സ്ഥലം തഹസീൽദാരിൽ നിന്നോ തഹസീൽദാരേക്കാൾ ഉയർന്ന പദവിയിലുള്ള റവന്യൂ വകുപ്പിലെ ഉദ്യോഗസ്ഥൻമാരിൽ നിന്നോ സർട്ടിഫിക്കറ്റ് വാങ്ങിയതിനുശേഷം ഗസറ്റിൽ വിജ്ഞാപനം ചെയ്യേണ്ടതാണ്. (24-5-1985-ലെ സർക്കാർ ഉത്തരവ് (എം.എസ്.) നമ്പർ 195/85 ജി.എ.ഡി.). പ്രസ്തുത ഗസറ്റ് വിജ്ഞാപനത്തിന്റെ സാക്ഷ്യപ്പെടുത്തിയ പകർപ്പ് എസ്.എസ്.എൽ.സി. യിലോ സ്കൂൾ, അഡ്മിഷൻ രജിസ്റ്ററിന്റെ പകർപ്പിലോ ചേർത്ത് വയ്ക്കേണ്ടതാണ്. അസ്സൽ രേഖകളിൽ മാറ്റം വരുത്തേണ്ടതില്ല.

(ii)(എ) എന്നാൽ, സമുദായത്തിന്റെ കാര്യത്തിൽ മാത്രം അപേക്ഷയിൽ അവകാശപ്പെട്ടിരിക്കുന്നത് എസ്.എസ്.എൽ.സി.യിൽ രേഖപ്പെടുത്തിയിരിക്കുന്നതിൽ നിന്നും വ്യത്യസ്തമാണെങ്കിൽ ബന്ധപ്പെട്ട റവന്യൂ അധികാരിയിൽ നിന്നും ലഭിക്കുന്ന സർട്ടിഫിക്കറ്റ് ഹാജരാക്കിയാൽ മതിയാകും. പ്രസ്തുത വ്യത്യാസം ഗസറ്റിൽ വിജ്ഞാപനം ചെയ്യേണ്ടതാണെന്ന വ്യവസ്ഥ നിർബന്ധമാക്കുന്നില്ല.”

9. What is thereby insisted on is production of a certificate from the revenue authority. It is specified that no Gazette notification is required to support the claim that the applicant belongs to a community other than which is mentioned in the SSLC. Indisputably, Annexure A3 was produced before publication of Annexure A5 ranked list.

10. When the above was the requirement for an applicant to claim that he belongs to a different community than what is mentioned in his SSLC, how could the petitioners insist on production of a Gazette notification in that regard. Therefore, the view taken by the Administrative Tribunal that



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the 1st respondent was entitled to get the benefit of reservation, treating him as a candidate belonging to Pattariya community, cannot be said to be incorrect.

11. Although Annexure A5 ranked list was approved on 28.04.2020, it was published only on 19.10.2020. In the meantime, Ext.P8 order was issued including Padmasali community in the list of OBCs. A Gazette notification concerning that was issued only on 14.08.2022. The learned counsel for the 1st respondent contended that the said order and notification are declarations regarding the status of the community, Padmasali and it has retrospective effect. He places reliance on **Manager, Corporate Educational Agency v. James Mathew [(2017) 15 SCC 595]** and **Praveen Kumar C.P. v. Kerala Public Service Commission [(2021) 17 SCC 383]**.

12. In **James Mathew [(2017) 15 SCC 595]** the Apex Court held that once the National Commission issued a certificate regarding the status of a minority education institution, it declared the existing status and had



retrospective effect. In **Praveen Kumar C.P. [(2021) 17 SCC 383]**, the question was concerning recognition of equivalence of educational qualifications. It was held that once the university issues orders recognising the equivalent status of the degree obtained by the candidate from another University, the same would be the required qualification, irrespective of the fact that the employment notification was issued earlier. The said principle may not be applicable to the facts of this case. The Pattariya community was newly added in the list of OBCs. The benefit of that order cannot have retrospective application for, the same is not a declaration of a right or status, but it is creation of a new right.

13. Be that as it may, in the light of Annexure A3, which is a certification by the appropriate revenue authority having the effect of correction of the mistake in noting the caste of the 1st respondent in his SSLC, the petitioners should not have denied the 1st respondent the benefit of reservation. In view of that matter, the order of the Administrative Tribunal does not require interference. This petition lacks merits and it



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is accordingly dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr



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APPENDIX OF OP (KAT) 406/2023

PETITIONER ANNEXURES

- ANNEXURE A1 TRUE COPY OF THE APPLICATION FORM DATED 14.06.2016 SUBMITTED BY THE APPLICANT FOR SELECTION AND APPOINTMENT TO THE POST OF ATTENDER GRADE 11 IN KOTTAYAM DISTRICT.
- ANNEXURE A2 TRUE COPY OF THE NON-CREAMY LAYER CERTIFICATE DATED 20.01.2020 PERTAINING TO THE APPLICANT
- ANNEXURE A3 TRUE COPY OF THE NON CREAMY LAYER CERTIFICATE DATED 18.06.2020 PERTAINING TO THE APPLICANT
- ANNEXURE A4 TRUE COPY OF THE STATEMENT DOWNLOADED FROM THE OFFICIAL WEBSITE OF THE KPSC, SHOWING THE DATE OF PUBLICATION OF THE RANKED LIST FOR THE POST OF ATTENDER GRADE II (CATEGORYNO092/2016) IN KOTTAYAM DISTRICT.
- ANNEXURE A5 TRUE COPY OF THE RANKED LIST BEARING NO.176/2020 DOK (CATEGORY NO.092/2016) PUBLISHED W.E.F. 28.04.2020 FOR THE POST OF ATTENDER GRADE 11 IN THE HOMEOPATHY DEPARTMENT IN KOTTAYAM DISTRICT.
- ANNEXURE A6 TRUE COPY OF THE OBJECTION DATED 27.10.2020 SUBMITTED BY THE APPLICANT BEFORE THE 3RD RESPONDENT.
- ANNEXURE A7 TRUE COPY OF THE LETTER NO. KVI(1)136096/19(1) G DATED 12.11.2020 ISSUED B THE 2ND RESPONDENT.
- ANNEXURE A8 TRUE COPY OF THE LETTER NO.KV1(1)136096/19 DATED 23.06.2020 ISSUED BY THE 2ND RESPONDENT



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- ANNEXURE A9 TRUE COPY OF THE APPOINTMENT CHART
DOWNLOADED FROM THE OFFICIAL WEBSITE
OF THE KPSC
- ANNEXURE R2 (A) TRUE COPY OF RELEVANT PAGES OF GENERAL
CONDITIONS INSISTING FOR GAZETTE
PUBLICATION
- ANNEXURE R2 (B) TRUE COPY OF THE GO (MS)
NO.08/2020/BDD DATED 28/05/2020
- EXHIBIT P1 THE TRUE COPY OF THE ORIGINAL
APPLICATION DATED 27/10/2020 IN
O.A.NO.1719/2020 ALONG WITH ANNEXURES
- EXHIBIT P2 THE TRUE COPY OF THE REPLY STATEMENT
FILED BY THE COMMISSION
- EXHIBIT P3 THE TRUE COPY OF THE INTERLOCUTORY
APPLICATION M.A.NO. 1747/2020 IN
O.A.NO.1719/2020 DATED 26/11/2020 TO
RECEIVE ADDITIONAL DOCUMENTS
- EXHIBIT P4 THE TRUE COPY OF THE INTERLOCUTORY
APPLICATION DATED 20/07/2022 TO
RECEIVE ADDITIONAL DOCUMENTS
- EXHIBIT P5 THE TRUE COPY OF THE MISCELLANEOUS
APPLICATION M.A.NO.2007/2022 IN
O.A.NO.1719/2020 DATED 7/10/2022 TO
RECEIVE ADDITIONAL DOCUMENTS
- EXHIBIT P6 THE TRUE COPY OF THE INTERLOCUTORY
APPLICATION DATED 28/10/2022 TO
RECEIVE ADDITIONAL DOCUMENTS
- EXHIBIT P7 THE TRUE COPY OF THE ORDER DATED
17/11/2022 IN O.A.NO.1719/2020 PASSED
BY THE LEARNED TRIBUNAL



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EXHIBIT P8 **THE TRUE COPY OF THE GOVERNMENT ORDER
G.O(MS) NO.08/2020/BDD DATED 28/5/2020**

RESPONDENT EXHIBITS

EXHIBIT R1 (A) **A TRUE COPY OF THE STATEMENT FILED ON
BEHALF OF THE 5TH RESPONDENT IN
O.A.NO.1719/2020 DATED 28.06.2022**