



[OP(KAT) Nos.538/2023, 539/2023]

-:1:-

2024:KER:77975

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

FRIDAY, THE 21ST DAY OF OCTOBER 2024 / 29TH ASWINA, 1946

OP(KAT) NO. 538 OF 2023

AGAINST THE ORDER DATED 23.06.2023 IN OA (EKM) NO.2229 OF
2019 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/S:

THE KERALA PUBLIC SERVICE COMMISSION, REPRESENTED BY
ITS SECRETARY,
THULASI HILLS, PATTOM, THIRUVANANTHAPURAM, KERALA,
PIN - 695004

BY ADV P.C.SASIDHARAN

RESPONDENT/S:

- 1 LASITHA A.K,
AGED 40 YEARS
W/O. BIJESH B, WORKING AS H.S.A ENGLISH, GVHSS ATHOLI,
KOZHIKODE-673315, RESIDING AT SAGARIGA,
KIZHAKUPUTHUSERRI, MODAKKALLUR P.O., KOZHIKODE,, PIN -
673326
- 2 SUPRIYA PUTHIYOTTIL,
AGED 43 YEARS, W/O. ARAVINDAKSHAN M.P., HSA ENGLISH,
GHSS MEDICAL COLLEGE CAMPUS, KOZHIKODE-673008, RESIDING
AT EZHANGOTTUPURATH HOUSE, KANNIPARAMBA P.O., MAVOOR,
KOZHIKODE, MOB:9846011229, PIN - 673661



[OP(KAT) Nos.538/2023, 539/2023]

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- 3 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF
GENERAL EDUCATION, THIRUVANANTHAPURAM. GOVERNMENT
SECRETARIAT, PIN - 695001
- 4 DIRECTOR,
DIRECTORATE OF VOCATIONAL HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, 4TH FLOOR SANTHI NAGAR,
THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.
MOLTY MAJEED
C.A.MAJEED (K/000330/1985)
K.H.ASIF (K/478/2007)
P.B.UNNIKRISHNAN NAIR (K/445/2012)
RUBEN GEORGE ROCK (K/636/2014)
NISHA BOSE, SR.GP

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY
HEARD ON 15.10.2024, ALONG WITH OP(KAT).539/2023, THE COURT ON
21/10/2024 DELIVERED THE FOLLOWING:



[OP(KAT) Nos.538/2023, 539/2023]

-:3:-

2024:KER:77975

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

FRIDAY, THE 21ST DAY OF OCTOBER 2024 / 29TH ASWINA, 1946

OP(KAT) NO. 539 OF 2023

AGAINST THE ORDER DATED 23.06.2023 IN OA (EKM) NO.2230 OF
2019 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/S:

THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, THULASI HILLS, PATTOM,
THIRUVANANTHAPURAM, KERALA, PIN - 695004

BY ADV P.C.SASIDHARAN

RESPONDENT/S:

- 1 SHOLI V,
AGED 42 YEARS
W/O. RAJEEV, KAVUMPURATHTHAZHAM, WORKING AS UPSA, GVHSS,
ATHOLI, KOZHIKODE, RESIDING AT INDEEVARAM,
KAVUMPURATH, THAZHAM KUNI, ANNESSERY, THALAKKULATHUR,
KOZHIKODE, KERALA, PIN - 673315
- 2 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF
GENERAL EDUCATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, KERALA, PIN - 695001
- 3 DIRECTOR,
DIRECTORATE OF VOCATIONAL HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, 4TH FLOOR SANTHI
NAGAR, THIRUVANANTHAPURAM, KERALA, PIN - 695001



[OP(KAT) Nos.538/2023, 539/2023]

:-4:-

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BY ADVS .
MOLTY MAJEED
C.A.MAJEED (K/000330/1985)
K.H.ASIF (K/478/2007)
P.B.UNNIKRISHNAN NAIR (K/445/2012)
RUBEN GEORGE ROCK (K/636/2014)
NISHA BOSE, SR.GP

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING HAVING BEEN
FINALLY HEARD ON 15.10.2024 ON, ALONG WITH OP(KAT).538/2023, THE
COURT ON 21.10.2024 DELIVERED THE FOLLOWING:



JUDGMENT

[OP(KAT) Nos.538/2023 & 539/2023]

A.Muhamed Mustaque, J.

These original petitions were filed by the Kerala Public Service Commission (KPSC) challenging orders of the Kerala Administrative Tribunal in different applications, raising a common point of law.

2. The applicants before the Tribunal are included in the ranked list published by the KPSC for appointment as Non-Vocational Teacher (English) in Kerala Vocational Higher Secondary Education Department from by transfer category. 15% of the total posts of Non-Vocational Teacher (English) is set apart for appointment by transfer from qualified High School Assistant and 5% is set apart for appointment by transfer from qualified LP/UP Assistant. The applicants before the Tribunal are coming under both categories.



3. Ranked list from direct recruitment expired on 2/2/2020. There were 7 NJD vacancies from the general category. Ranked list for appointment from by transfer category continue to operate. Taking note of the fact that there were 7 NJD vacancies which were reported to KPSC after the expiry of the ranked list from direct recruitment, the Tribunal ordered that the Director of the VHSE shall report to the KPSC such NJD vacancies to be filled up from by transfer category. KPSC questions this order of the Tribunal.

4. The stand of the KPSC is that NJD vacancies will have to be treated separately and they will have to renotify inviting applications from general category. It is pointed out that there may be roster turn in those vacancies and that can be filled only in accordance with the roster turn. It is submitted that if such NJD vacancies are ordered to be filled from a separate list of by transfer category, it will derail rotation. We find force in this argument. NJD vacancies in general category cannot be made available for appointment from by transfer



category after the expiry of the ranked list for appointment from direct recruitment.

5. When this matter was heard on an earlier occasion, the learned counsel for the party respondents who are the applicants before the Tribunal, submitted that there exist 4 vacancies apart from 7 NJD vacancies. Accordingly, this Court passed an order on 26/2/2024 as follows:

As seen from the impugned order, an additional statement has also been filed by the second respondent, wherein 11 vacancies were reported and out of which, 7 vacancies were "NJD" vacancies. There should be clarity in regard to 4 vacancies apart from 7 "NJD" vacancies. The learned Government Pleader is directed to get instructions regarding the same.

Pursuant to the said direction, a counter affidavit has been filed before this Court by the Director of the VHSE. In para.11 of the counter affidavit, the vacancy reporting details have been elaborated. Para.11(4) therein reads as follows:

4. No. of vacancies of Non-vocational Teachers in English - 15
(as on 02.02.2020).



Out of 15 vacancies, 7 vacancies were NJD vacancies, 5 vacancies were fresh vacancies, one was due to leave without allowance and second vacancies were due to deputation. One of the fresh vacancy was reported to KPSC for by-transfer from Ministerial staff. The vacancies arose due to leave without allowance, deputation and 4 fresh vacancies were proceeded with promotion from qualified non-vocational teacher (junior) in English as on 18.07.2019. Hence non-vocational teacher juniors are already now promoted to the above 7 posts."

In the light of the above, no vacancies exist. The impugned orders are, therefore, set aside and the original petitions are allowed.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

P.M.MANOJ

JUDGE



APPENDIX OF OP(KAT) 539/2023

PETITIONER ANNEXURES

- Annexure A1** A PHOTOCOPY OF THE RANK LIST NO.214/2017/SSVI FOR CATEGORY NUMBER 309/2010 BROUGHT INTO EFFECT ON 20/02/2017
- Annexure A2** A PHOTOCOPY OF THE ADDENDUM NOTIFICATION SS VI/NVT ENG (B/T FROM LP-UP ASSTS IN GED/KVHSE/2017 DATED 05/12/2018
- Annexure A3** A PHOTOCOPY OF THE GAZETTE NOTIFICATION DATED 30/10/2010 PUBLISHED BY THE 3RD RESPONDENT
- Annexure A4** A PHOTOCOPY OF THE SPECIAL RULES ISSUED VIDE G.O(P) NO.80/2004/ GL EDN DATED 12/03/2004
- Annexure A5** A PHOTOCOPY OF THE AMENDMENT TO THE SPECIAL RULES ISSUED VIDE G.O(P) NO.185/2009/ GL.EDN DATED 17/09/2009
- Annexure A6** A PHOTOCOPY OF THE APPLICATION DATED 01/05/2019 UNDER RTI ACT
- Annexure A7** A PHOTOCOPY OF THE REPLY DATED 28/05/2019 FOR THE APPLICATION DATED 01/05/2019 UNDER THE RTI ACT
- Annexure A8** A PHOTOCOPY OF THE APPLICATION DATED 01/05/2019 UNDER THE RTI ACT
- Annexure A9** A PHOTOCOPY OF THE REPLY DATED 24/05/2019 FOR THE APPLICATION DATED 01/05/2019 UNDER THE RTI ACT
- Annexure A10** A PHOTOCOPY OF THE REPRESENTATION DATED 13/12/2019 SUBMITTED TO THE 1ST RESPONDENT
- Annexure R2 (a)** TRUE COPY OF THE PROFORMA FOR REPORTING VACANCIES
- Annexure A11** TRUE COPY OF THE INTERIM ORDER DATED 15/03/2019 IN OP (KAT) 187/2018



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Annexure A12	TRUE COPY OF THE FINAL ORDER DATED 02/08/2017 IN OA (EKM) 182/2016
Annexure A13	TRUE COPY OF THE RTI APPLICATION DATED 18/02/2020
Annexure A14	TRUE COPY OF THE REPLY DATED 15/04/2020 UNDER RTI
Annexure A15	TRUE COPY OF THE RTI APPLICATION DATED 18/02/2020
Annexure A16	TRUE COPY OF THE REPLY DATED 16/06/2020 UNDER RTI
Annexure A17	TRUE COPY OF THE REPLY DATED 04/03/2020 UNDER RTI
Annexure A18	TRUE COPY OF THE REPLY DATED 03/03/2020 UNDER RTI
Annexure A19	TRUE COPY OF THE RTI APPEAL DATED 27/05/2020
Annexure A20	TRUE COPY OF THE REPLY DATED 15/06/2020 UNDER RTI APPEAL
Annexure A21	TRUE COPY OF THE REPLY DATED 16/06/2020 UNDER RTI APPEAL
Annexure A22	A TRUE COPY OF THE COMMON JUDGMENT DATED 14/09/2022 IN OP(KAT)118 AND 119 OF 2021
Exhibit P1	THE TRUE COPY OF THE O.A(EKM) . NO.2230/2019
Exhibit P2	THE TRUE COPY OF THE REPLY STATEMENT DATED 15/5/2020
Exhibit P3	THE TRUE COPY OF THE APPLICATION DATED 23/7/2020
Exhibit P4	THE TRUE COPY OF THE REPLY STATEMENT DATED 10/8/2020
Exhibit P5	THE TRUE COPY OF THE ADDL REPLY STATEMENT FILED BY THE 2ND RESPONDENT IN THE O.A



[OP(KAT) Nos.538/2023, 539/2023]
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Exhibit P6

**THE TRUE COPY OF THE MISCELLANEOUS
APPLICATION DATED 11/10/2022**

Exhibit P7

**THE TRUE COPY OF THE ORDER IN O.A(EKM)
NO.2230/2019 DATED 22/3/2021**

Exhibit P8

**THE TRUE COPY OF THE JUDGMENT IN O.P(KAT) NO.
118/2021 DATED 14/09/2022**



APPENDIX OF OP(KAT) 538/2023

PETITIONER ANNEXURES

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- Annexure A2** A PHOTOCOPY OF THE ADVICE DATED /1/08/2019 LAST MADE FROM ANNEXURE A1 RANK LIST
- Annexure A3** A PHOTOCOPY OF THE GAZETTE NOTIFICATION DATED 30/10/2010 PUBLISHED BY THE 3RD RESPONDENT
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- Annexure A11** TRUE COPY OF THE REPLY STATEMENT FILED BY THE 2ND RESPONDENT IN OA (EKM) NO 2230/2019
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[OP(KAT) Nos.538/2023, 539/2023]
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Annexure A20 TRUE COPY OF THE RTI APPEAL DATED 27/05/2020

Annexure A21 TRUE COPY OF THE REPLY DATED 15/06/2020 UNDER
RTI APPEAL

Annexure A22 TRUE COPY OF THE REPLY DATED 16/06/2020 UNDER
RTI APPEAL

Annexure R1 (a) THE TRUE COPY OF THE ORDER NO.B3-53173/2014
DATED 06/05/2015

Annexure A23 A TRUE COPY OF THE COMMON JUDGMENT DATED
14/09/2022 IN OP(KAT)118 & 119 OF 2021

Exhibit P1 THE TRUE COPY OF THE O.A. (EKM) NO.2229/2019

Exhibit P2 THE TRUE COPY OF THE MISCELLANEOUS
APPLICATION DATED 23/7/2020

Exhibit P3 THE TRUE COPY OF THE REPLY STATEMENT DATED
20/3/2020

Exhibit P4 THE TRUE COPY OF THE REPLY STATEMENT DATED
10/8/2020

