

(2015) 11 KL CK 0036
In the High Court Of Kerala
Case No : WP(C) No. 9954 of 2009 (L)

Gireeshkumar R.G. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Citation : (2015) 11 KL CK 0036

Hon'ble Judges : C.T. Ravi Kumar, J.

Bench : Single Bench

Advocate : N. Sugathan and Varsha Bhaskar, Advocates, for the Appellant; Reji Joseph, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.T. Ravi Kumar, J.—The question posed for consideration is whether a writ petition filed against an action on the part of the Kerala Public Service Commission in advising candidates from a particular category in a ranked list that contained lists of three categories, made in compliance with the decision of a Division Bench rendered in a batch of writ appeals, could be entertained by a Single Bench especially after another Division Bench dismissed an application for leave to review the earlier Division Bench judgment, moved in one among those appeals, on the ground that candidates from another category included in the same ranked list ought to have been advised in terms of the relevant recruitment rules. The petitioners who are presently working as Police Constables filed this writ petition mainly seeking the following reliefs:--

"(i) to issue a writ of mandamus, order or direction commanding and compelling the respondents to strictly adhere to the recruitment rules and the Government order while advising candidates to the post of Sub Inspectors (Trainee) from Category III of Ext. P1 rank list.

(ii) to declare that the petitioners being the members of the Police Constabulary so also possess the graduate qualification are entitled to be advised to the 20%

vacancies reserved for members of Police Constabulary and Ministerial Staff;"

2. The Kerala Public Service Commission (for short "the Commission") issued a notification inviting applications from qualified candidates for selection and appointment to the post of "Sub Inspector of Police (Trainee)" in the General Executive Branch to be recruited directly from open market. According to the petitioners, in terms of G.O. (MS)No. 207/70/Home dated 5.10.1970 a ratio of 1:1 has been prescribed between direct recruitment from open market and by promotion. Out of the 50% vacancies thus reserved for direct recruitment 10% vacancies are earmarked to be filled up from among the graduate Ministerial Staff and 10% from among the persons belonging to Police Constabulary. It is the further contention of the petitioners that going by the apportionment of vacancies as per the aforesaid Government order and the subsequent orders eight vacancies were earmarked for direct recruitment to be filled up by open competition and the turn 9th, 19th, 29th vacancies and so on have to be filled up by candidates from Ministerial Staff and vacancies fall in turn 10th, 20th, 30th etc. have to be filled up by candidates from the Police Constabulary. It is further stated that in case of non-availability of qualified candidates from Ministerial staff, going by the provisions, those vacancies are also to be filled up by graduate policemen from the Constabulary. The petitioners who are graduates and also members of the Police Constabulary applied for the post of Sub Inspector (Trainee) in the General Executive Branch and after the due selection process they were included in a rank list published by the Commission, the extract of which is produced as Ext. P1, under category No. 3 with rank Nos. 53 and 45 respectively. There arose a dispute regarding the vacancy position and it is the further contention of the petitioners that, the said issue was resolved by this Court as per Ext. P2 common judgment in W.A. Nos. 282, 302 & 403 of 2008 and W.P.(C)No. 29153 of 2007. It is also stated that from the list in question rank numbers up to 40 were already advised and rank Nos. 42, 47, 48, 50 and 52 had relinquished their claim by submitting proper relinquishment before the Commission. The relinquishment letters submitted by them have been produced as Exts. P3 and P3(a). In view of the relinquishment and by virtue of their ranking in Ext. P1 the petitioners were entitled to be advised and appointed, it is contended. It is the further contention of the petitioners that Ext. P2 judgment would not and could not take away their rights as they were not parties to the writ petition which ultimately culminated in the said judgment. In short, according to them, when three sources of recruitment are prescribed candidates are entitled to be advised strictly in accordance with the ratio prescribed. On coming to know that they were not advised and appointed in the light of Ext. P2 judgment they submitted Ext. P4 representation dated 16.3.2009 before the Commission. It is the inaction on the said representation that constrained the petitioners to file the captioned writ petition with the aforementioned prayers.

3. The fact that the ranked list pursuant to the notification in question was published on 19.8.2006 and its validity expired on 1.2.2008 could not be disputed. Subsequently, certain rank holders in the ranked list that was brought

into force on 19.8.2006 approached this Court by filing W.P.(C)Nos. 3040 of 2008 and 18624 of 2007. Those writ petitions were dismissed by the learned Single Judge by a common judgment. W.A. Nos. 282, 302 and 403 of 2008 were filed against the said judgment. Those writ appeals along with W.P.(C)No. 29153 of 2007 were heard jointly by a Division Bench of this Court and thereupon Ext. P2 judgment was rendered. After taking into consideration the rival contentions raised therein it was found that actual promotions of 59 Sub Inspectors of Police were effected before the expiry of the list in question by the Government as per Government notification dated 28.12.2007. Ultimately, the Division Bench found that 39 vacancies were available for direct recruitment from open quota. Since those vacancies were already reported before the expiry of the list and the vacancies actually occurred before the expiry of the list and considering the fact that they have to be given further training for six months the Division Bench directed the Commission to advise 39 candidates more on the open quota from the ranked list subject to the rules of reservation etc. as per law within one month from 15.10.2008. Pursuant to Ext. P2 judgment, in compliance with the directions thereunder the Commission advised 39 candidates from the ranked list of category No. I which is direct recruitment from open quota and consequently, after medical evaluation they were sent for training. The additional 5th respondent in this writ petition is one among such persons who obtained advice and appointment and sent for training. Against Ext. P2 judgment of the Division Bench a Special Leave Petition was unsuccessfully attempted. Later, a review petition was filed in W.A. No. 403 of 2008 seeking review of the judgment in the said writ appeal which arose from the judgment in W.P.(C)No. 18624 of 2007. I.A. No. 334 of 2009 in the said unnumbered review petition was taken up for consideration by the Division Bench and it was dismissed as per order dated 31.7.2009. In the context of the contentions it is relevant to refer to the said order dated 31.7.2009. The said order reads thus:--

"The petitioners seek leave of this Court to file a Review Petition against the judgment of this Court in W.A. No. 403 of 2008. The appeal arises from the judgment in W.P.(C)No. 18624 of 2007. The Writ Petition was filed claiming that all the vacancies available in the post of Sub Inspector of Police (General Executive Branch) (Trainee) have not been reported by the appointing authority to the Kerala Public Service Commission. It was filed in June, 2007. The validity of the rank list concerned expired on 1.2.2008. The learned Single Judge dismissed the Writ Petition. But, the Division Bench found that 39 vacancies were available for direct recruitment from the open quota. The Public Service Commission was, therefore, directed to advise 39 candidates to the reported vacancies during the currency of the rank list, from the open quota. The review petitioners are persons included in the rank list in the quota reserved from category III, that is, graduate police constables. They have suffered the non-reporting of vacancies and non advising of candidates.

2. The petitioners have never chosen to approach this Court before the expiry of the rank list. Persons who were vigilant approached this Court and obtained

orders for appointment of 39 candidates from the open quota. The petitioners herein have no locus standi to canvass the correctness of the above direction. They cannot claim appointment on the basis of their inclusion in the rank list, as they, without demur, suffered the commissions and omissions of the appointing authority and the Public Service Commission at the relevant time. They are guilty of delay and laches. So, we are of the view that they have no right to maintain the Review Petition. Therefore, the relief sought for cannot be granted.

So, the application for leave to file a Review Petition is dismissed."

As noticed hereinbefore, W.A. Nos. 282, 302 and 403 of 2008 and W.P.(C) No. 29153 of 2007 were disposed of by a Division Bench of this Court as per Ext. P2 judgment and the aforementioned unnumbered review petition was filed against the judgment in W.A. No. 403 of 2008 which was disposed of as per Ext. P2 and that ultimately was dismissed as per order dated 31.7.2009. Later, R.P. No. 413 of 2009 was filed in W.A. No. 282 of 2008 by appellants 2 and 3 in the said writ appeal and R.P. No. 523 of 2009 was filed by appellants 5 and 6 in W.A. No. 302 of 2008. Those two review petitions in the said writ appeals were heard and disposed of by a common order dated 25.9.2009 by a Division Bench. As per the said order, taking note of the fact that the review petitioners limited their claim only to the four available vacancies which occurred on account of non-joining duty of four candidates out of the 39 vacancies already advised and making it clear that the Division Bench was not dealing with the other contentions taken up by the parties and such contentions are left open owing to the pendency of certain other writ petitions and also considering the admitted factual position that none belonging to graduates in the ministerial wing or graduates of the Police Constabulary were advised for appointment, a direction to advise the four vacancies from among the graduates of the Police Constabulary was issued to the Commission to be effected in accordance with the Rules of relinquishment. It is after the conclusion of such proceedings that the petitioners have now come up by filing the aforementioned writ petitions seeking the aforementioned prayers.

4. As noticed hereinbefore, the contention of the petitioners is that they being the members of Police Constabulary and possess the graduate qualification they ought to have been advised and therefore, they are entitled to be advised against the 20% of the vacancies reserved for the Police Constabulary and Ministerial staff. Going by the rules referred to hereinbefore, out of the vacancies earmarked for direct recruitment only 10% of the vacancies were actually earmarked to be filled up from among the graduate Ministerial staff and 10% are to be filled up from persons belonging to Police Constabulary. Evidently, the petitioners claim 20% of the vacancies on account of the non-availability of graduates in the Ministerial wing. According to the petitioners, in the case of Ministerial staff and members of Police Constabulary Rules 14 to 17 of the General Rules in the Kerala State & Subordinate Services Rules are not made applicable. It is their contention that the vacancies which were found available

for effecting advice and appointment from the list that was brought into force on 19.8.2006 was operated only among category No. I or in other words, the entire vacancies were filled up by advising and appointing persons under the direct quota from open market. True that, four non-joining vacancies occurred on account of the non-joining duty of the four out of the 39 advised candidates from the open quota through open market. Pursuant to the order in R.P. Nos. 413 of 2009 and 523 of 2009 in W.A. Nos. 282 of 2008 and 302 of 2008 respectively, four vacancies were directed to be filled by advising and appointing rank holders from the Police Constabulary. The stand of the petitioners is that Ext. P2 judgment cannot take away their right to get advised and appointed in tune with the rules governing the filling up of the post of Sub Inspector (Trainee) in General Executive Branch. While the petitioners canvass the position that they are entitled to get advised and appointed against their deemed share in the quota reserved for direct recruitment, the Commission, the 5th respondent as also the first respondent opposed the claims and contentions stating that when as per Ext. P2 judgment the Division Bench of this Court issued directions to fill up those 39 vacancies by advising and appointing 39 candidates from open quota from the ranked list subject to the rules of reservation a Single Bench cannot reconsider the issues and issue further direction in a manner likely to adversely affect the persons advised and appointed on the strength of Ext. P2 especially in the light of the order of another Division Bench in I.A. No. 334 of 2009 in the unnumbered review petition filed in W.A. No. 403 of 2008. True that, subsequently, pursuant to the order in R.P. Nos. 413 and 523 of 2009 against the four vacancies occurred on account of non-joining of four among the 39 candidates were filled up by advice and appointment from a rank list of Police Constabulary. In the light of the rival contentions, I am of the view that the first point to be considered is whether there is any scope for interference with the action on the part of the Commission in advising 39 candidates from the open market from the rank list viz., category No. I in compliance with the directions of the Division Bench of this Court in Ext. P2 especially, in the light of the order dated 31.7.2009 in I.A. No. 334 of 2009 in the unnumbered review petition in W.A. No. 403 of 2008. True that, another Division Bench entertained the two review petitions viz., R.P. No. 413 of 2009 filed in W.A. No. 282 of 2008 and R.P. No. 523 of 2009 in W.A. No. 302 of 2008 and issued a direction, taking note of the fact that four vacancies occurred on account of non-joining duty of four advised candidates from the open quota viz., from category No. I pursuant to Ext. P2, to fill up those four vacancies by advising and appointing candidates from the list prepared for effecting appointment from 10% of the graduates of the Police Constabulary since admittedly, none from the graduates of the Ministerial wing is available. Though yet another contention was taken up that 39 is only 80% of the total vacancies available to the 50% in the general quota that contention was not deeply gone into in view of the fact that the review petitioners limited their claim only to four available non-joining duty vacancies out of the 39 vacancies advised from the open quota. While considering the question whether the petitioners are entitled to the reliefs and in fact, whether

this Court can go into the contentions in view of Ext. P2 judgment and the order of another Division Bench in I.A. No. 334 of 2008 in unnumbered review petition I am of the view that the specific directions in Ext. P2 judgment, the order in I.A. No. 334 of 2009 and the legal position which is to be applied in the factual circumstances have to be taken into account. The fact that the list in question was brought into force on 19.8.2006 and that it expired on 1.2.2008 cannot be disputed. Though the writ petitions from which W.A. Nos. 282, 302 and 403 of 2008 arose, were dismissed as per Ext. P2 judgment the Division Bench found that 39 vacancies were available for direct recruitment from the open quota. A perusal of Ext. P2 would reveal taking note of the fact that the list that was brought into force contained candidates under three categories viz., candidates from open quota who were entitled to get 80% out of the 50% set apart for direct recruitment in the category of Sub Inspector (General Executive Branch) (Trainee), category No. II consisted of Ministerial staff of Police, Vigilance Department and Finger Print Experts of the Finger Print Bureau and balance 50% of the total cadre strength is available to category No. III which consisted of graduates Police Constables the Division Bench issued a direction to advise 39 candidates more on the open quota from the ranked list that is, from category No. I upon finding that 39 more vacancies were then available to be advised for direct recruitment. Thus, indisputably, as per Ext. P2, the Division Bench arrived at the conclusion that 39 more vacancies were available for direct recruitment from the list that was brought into force on 19.8.2006 and consequently issued directions only to fill up those vacancies by advising and appointing candidates from open quota from the ranked list that is, from category No. I. In other words, no direction was issued to fill up any of those vacancies from category No. II or category No. III. It cannot be disputed that pursuant to Ext. P2 judgment dated 15.10.2008 the Commission advised 39 candidates from the open quota from the ranked list that is, from category No. I and the candidates who joined pursuant to the advice and appointment were sent for training. The 5th respondent is one among them. It is thereafter that I.A. No. 334 of 2009 was filed in unnumbered review petition of 2009 in W.A. No. 403 of 2008 which is one of the writ appeals which were disposed of by Ext. P2 common judgment. The review petitioners in that unnumbered review petition of 2009 were persons included in the ranked list in the quota from category No. III viz., graduate Police Constables like the petitioners herein. Their contention was that they have suffered the non-reporting of vacancies and non-advising of candidates. After considering their contentions the Division Bench as per order dated 31.7.2009 held that the petitioners had never chosen to approach this Court before the expiry of the rank list in question. It was further held by the Division Bench that the persons who were vigilant approached this court and obtained orders for appointment of 39 candidates from the open quota and the review petitioners therein got no locus standi to canvass the correctness of the aforesaid direction issued by a Division Bench in Ext. P2 judgment and they could not claim any appointment based on their inclusion in the rank list, as they, without demur, suffered the commissions and omissions of the appointing

authority and the Public Service Commission at the relevant point of time. It was found that they are guilty of delay and laches and therefore, they got no right to maintain review petition. The relief sought for by them was declined in the said circumstances and I.A. No. 334 of 2009 which is the application for leave to file the review petition was dismissed. True that, without looking into the sustainability of various contentions raised by the review petitioners in R.P. No. 413 of 2009 filed in W.A. No. 282 of 2008 and R.P. No. 523 of 2009 filed in W.A. No. 302 of 2008, the Division Bench entertained the review petitions solely based on the submission made by the review petitioners to the effect that they limited their claim only against the four vacancies which occurred only on account of the non-joining duty of the four advised candidates and issued a direction to advise four candidates from among the graduates of Police Constabulary since none from the Ministerial wing was available. True that, there was an observation in the said order that all the other contentions were left open particularly in view of the pendency of other writ petitions touching the issue of number of vacancies. Thus, even the Division Bench which considered R.P. Nos. 413 and 523 of 2009 had only left open the other contentions solely taking into account the submission that other writ petitions touching the issue of number of vacancies are pending. Therefore, merely because of the said observation none can be heard to contend that all issues were left open and available for consideration despite the earlier binding decisions on the issues involved in the matter. In other words, it can only be taken that by virtue of the said observation only what is permissible, if at all possible, alone could be considered in this proceeding. True that, as per that order, a direction was issued to effect advice and appointment of four graduates of Police Constabulary against the non-joining duty vacancies occurred on account of the non-joining of four among the 39 advised candidates from the open quota. Conspicuously, no finding was made by that Division Bench as to whether the advice and appointments effected against the 35 vacancies pursuant to Ext. P2 judgment against which candidates included in the list in category No. I joined duty were available for further examination and whether any one included in the other two categories could stake for claim for advice and appointment in place of them. I am of the considered view that such a question cannot be gone into by a Single Bench in the light of the specific finding and directions issued by the Division Bench in Ext. P2 judgment and taking note of the fact that in compliance with the said direction the Commission had already effected advice and consequential appointments were also made by respondents 1 and 2. In view of the position thus obtained the issue to be considered is whether a Single Bench could consider the issue as to whether any one among the 35 vacancies against which advice and appointments were effected pursuant to Ext. P2 judgment is to be made available to any person included either in category No. II or category No. III on the ground of failure on the part of the Commission to effect advice and appointment in tune with the rules relating recruitment to the post of Sub Inspector of Police (Trainee) (General Executive Branch). In the decision in *Ramachandran v. Food Corporation of India* (1989 (2) KLT 112) a Division Bench of this Court held that a direction issued by this Court

in a writ petition if complied with by the authority concerned a fresh writ petition against the action taken by the said authority in compliance with the directions is not maintainable on the ground that they were not parties to the proceedings which culminated in the directions issued to that authority. That was a case where in the matter of issue of seniority in the Food Corporation of India certain directions were issued by the learned Single Judge. Subsequently, in appeal the Division Bench confirmed the judgment of the learned Single Judge. Thereafter, the Corporation complied with the directions. A fresh writ petition was brought in challenging the said action on the part of the Food Corporation of India effected in compliance with the directions in the said judgment. It was in that context that the Division Bench held that such a writ petition is not maintainable solely on the ground that they were not parties to the entire proceedings. It was held that the appropriate action available to such persons is only to get the earlier judgment re-opened on the ground that they were necessary parties and that an adverse decision was rendered affecting their chances. In this case, evidently, in the first round of litigation by certain persons who are also rank holders in the list in question like the petitioners the learned Single Judge dismissed the writ petitions filed by the candidates included in category No. I that is, persons who were included in the open quota from the rank list. They took up the matter in appeal. W.A. Nos. 282, 302 and 403 of 2008 and W.P.(C)No. 29153 of 2007 were then considered jointly and disposed of as per Ext. P2 judgment. The Division Bench found that 39 vacancies were available for direct recruitment from open quota and issued consequential direction to advise 39 candidates against the vacancies reported during the currency of the rank list from open quota that is, from category No. I. In fact, it was that direction which was implemented by the third respondent Commission by advising the said 39 candidates included in category No. I. Consequently, they were given appointment as Sub Inspector of Police (Trainee) (General Executive Branch). However, the common order in the review petitions viz., R.P. Nos. 413 & 523 of 2009 was issued only to fill up the four non-joining duty vacancies occurred on account of the failure on the part of the four among the 39 candidates advised from category No. I to join duty pursuant to the advice and appointment based on Ext. P2. When the Division Bench as per Ext. P2 judgment held that only 39 vacancies were available for direct recruitment from the open quota and issued a direction to fill up all such vacancies from open quota from the rank list that is, from category No. I taking note of the fact such number of vacancies were reported during the currency of rank list, in the light of the decision in Ramachandran's case (supra) I am of the view that this Court cannot go into the question as to whether against any of the vacancies which were directed to be filled up by advising candidates from open quota from the list (category No. I) ought to have been filled up by effecting advice and appointment of candidates included in category No. III viz., Graduate Police Constables, to which category the petitioners belong. If this Court has engaged in such an endeavour it would definitely tantamount to reconsideration of the issues which were concluded by Ext. P2 judgment. Certainly, a Single Bench cannot undertake such an examination of a matter which was concluded

by a judgment of the Division Bench. The petitioners cannot take shelter under the observation made by another Division Bench in order dated 25.9.2009 in R.P. No. 413 of 2009 in W.A. No. 282 of 2008 and R.P. No. 523 of 2009 in W.A. No. 302 of 2008. The Division Bench as per the order dated 25.09.2009 in the said review petitions did not make any observation regarding the tenability of the other contentions though there was a direction to effect advice and appointment against four non-joining duty vacancies occurred on account of the non-joining duty by four of the candidates among the 39 advised candidates pursuant to Ext. P2. That order cannot be construed as an order enabling the petitioners to raise a contention that from among the 39 vacancies certain vacancies ought to have been filled up by effecting advice and appointment from category No. III that is, Police Constabulary especially when the specific direction in the judgment was to advise 39 candidates from the category No. I viz., open quota from rank list. Though in the light of the decision in Ramachandran's case (supra) the right to move an appropriate petition to re-open the earlier judgment viz., Ext. P2 judgment on the ground that the petitioners are necessary parties and that an adverse decision was rendered affecting them was available with the petitioners to seek a review of Ext. P2 judgment, in the light of the order of another Division Bench in I.A. No. 334 of 2009 in unnumbered review petition which is an application for leave to file a review petition in W.A. No. 403 of 2008 which was one of the writ appeals which were disposed of as per Ext. P2 common judgment, I am of the view that the petitioners cannot now claim that they were entitled to raise such contention that Ext. P2 cannot take away any of their rights which is available to them on the ground that they were not parties to any of the writ petitions from which writ appeals which culminated in Ext. P2 judgment arose or that they were not parties to the writ petition which was disposed of along with the said writ appeals as per Ext. P2 judgment. There cannot be any dispute with respect to the fact that the petitioners who moved I.A. No. 334 of 2009 in unnumbered review petition in W.A. No. 403 of 2008 were similarly situated to the petitioners herein as they were also included in the rank list in question in the quota reserved for category No. III that is, Police Constabulary. It is on their own application seeking review of the judgment in W.A. No. 403 of 2008 which was disposed of as per Ext. P2 common judgment that the Division Bench arrived at the finding that they got no locus standi to canvass the correctness of the directions in Ext. P2 judgment. Obviously, it was also held therein that those review petitioners could not claim appointment based on their inclusion in the rank list in the quota reserved for category No. III Police Constabulary, as they, without any demur suffered the commissions and omissions of the appointing authority as also the Public Service Commission at the relevant point of time. The Division Bench as per the said order found that those persons are guilty of delay and laches and therefore, they got no right to maintain the review petition. When such an order was passed by a Division Bench on 31.7.2009 in an I.A. filed seeking leave to file review petition against W.A. No. 403 of 2008 and taking into account the fact that, that application was dismissed, there is no scope for conducting probe into the question whether any

vacancies directed to be advised by candidates from category No. I as per Ext. P2 judgment is available for filling up by persons included in the rank list of Police Constabulary. For all these reasons, I am of the view that the petitioners are not entitled to any of the reliefs sought for in this writ petition and resultantly, this writ petition is dismissed.