(1998) 04 KL CK 0021

In the High Court Of Kerala

Case No : O.P. No''s. 11764 of 1996 and 6540, 12539 and 13871 of 1997 and W.A. No''s. 1842 and 1938 of 1996 and 84 and 351 of 1997

Mayakrishnan R. and Others APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 16-04-1998

Acts Referred:
Kerala State and Subordinate Services Rules, 1958 — Rule 3, 5

Citation : (1998) 3 ILR (Ker) 48 : (1998) 2 LLJ 304

Hon'ble Judges : K.V. Sankaranarayanan, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : P.V. Baby, R. Mayakrishnan, M.R. Rajendran Nair, M.R. Sudheendran and T.P. Kelu Nambiar, for the Appellant; A.G. by Alex Mathew, G.P. and O.V. Radhakrishnan SC, for the Respondent

Final Decision : Allowed

Judgement

A.C. Lakshmanan, J.—Two common questions arise for determination in these cases, viz. (1) whether the amendment brought to the General Rules (Kerala State and Subordinate Services Rules) as per notification G.O.(P) N0.57/1992/ P&ARD dated December 5, 1992 issued by the Personnel and Administrative Reforms (Rules) Department of the Government of Kerala would take away the rights of the petitioners in the Original Petitions for appointment against 20% of the successive substantive vacancies arising in the cadre of Sales Tax Officers? (2) when the Special Rules clearly speak of the method of recruitment, whether any amendment to the General Rules, which go in conflict with the Special Rules, will hamper the rights of persons arising out of the special rules.

O.P. No. 13871 of 1997.

2. The petitioners in this Original petition applied for selection to the post of Sales Tax Officers in the Agricultural Income tax and Sales Tax Department pursuant to the notification published in the gazette dated August 11, 1987 by the Kerala Public Service Commission (hereinafter to be referred to as ''the

Commission''). They got selected and included in the ranked list published by the Commission on May 13, 1995, their rank numbers being 77, 89 and 104. The ranked list is produced and marked as Ext.P-1. Ext.P-1 has come into force with effect from May 13, 1995 and would expire on May 12, 1998. Since the authorities are not taking any steps to appoint any of the selected candidates against the vacancies that arose in the quota earmarked for direct recruits and since only a limited number of candidates have been so far appointed, the petitioners approached this Court for a mandamus commanding the respondents to fill up the quota earmarked for direct recruitees to the post of Sales Tax Officers in the Department of Agricultural Income Tax and Sales Tax on the basis of the successive substantive vacancies arising in the cadre and not on the basis of the cadre strength of the permanent cadre; and also to declare that the amendment to Rule 5 of the Kerala State and Subordinate Services Rules Part II brought out as per Ext.P-2 notification dated December 5, 1992 does not adversely affect the right of the direct recruitees to get appointment against 20% of the successive substantive vacancies in the cadre of Sales Tax Officers in the Department of Agricultural Income Tax and Sales Tax as provided by Rule 2 of the Special Rules in respect of the said department.

3. Kerala Agricultural Income Tax and Sales Tax Service consists of five categories of officers. Category No. 3 consists of the following posts:

"Category 3: Agricultural Income Tax Officers, Intelligence Officers, Sales Tax Officers, Additional Law Officer, Manager, Agricultural Income Tax & Sales Tax Appellate Tribunals, Superintendents in the Office of the Board of Revenue (Taxes) and Managers in the Offices of the Deputy Commissioners of Agricultural Income Tax and Sales Tax."

Sub-rule (1-A) to Rule 2 provides that the provision in Sub-rule (1) relating to direct recruitment for category 3 shall be deemed to have come into force only on April 1, 1974. It is contended that 20% of the successive substantive vacancies should go to direct recruiters. But, according to the petitioners, the benefit of this provision is denied to direct recruits on a totally misconceived interpretation which is being given by the Board of Revenue. According to the Board of Revenue, a note has been added to Rule 5 of Part II of the Kerala State and Subordinate Services Rules by an amendment made in the year 1992 as per G.O.(P) No.57/1992P & Rule 2deals with appointment to various categories which shall be made as follows:

" Category Method of Appointment

1. xxxxx xxxxx

1.A. xxxxx xxxxx

2. xxxxx xxxxx

3. Agricultural Income Tax Officers, Intelligence Offices, Sales Tax Officers, Additional Law Officer, Manager, Agricultural Income Tax and Sales Tax Appellate

Tribunals, Superintendents in the Office of the Board of Revenue (Taxes) and Managers in the Offices of the Deputy Commissioners of Agricultural Income Tax and Sales Tax. 20% of the successive substantive vacancies shall be filled or reserved to be filled by direct recruitment and the remaining shall be filled or reserved to be filled by transfer of Assistant Sales Tax Officers, Sales Tax Inspectors, Agricultural Income Tax Inspectors, Agricultural Income Tax and Sales Tax Inspectors, Intelligence Inspectors, Checkpost Inspectors and Junior Superintendents of the Kerala Agricultural Income Tax and Subordinate service.

Notwithstanding anything contained in Rule 2(12) of Part I of the Kerala State and Subordinate Services Rules, 1958 persons employed in the Agricultural Income Tax and Sales Tax Subordinate Service shall be allowed relaxation of age limit upto five years to compete for direct recruitment.

This amendment shall be deemed to have come into force with effect from the April 1, 1981."

ARD and that as per the newly inserted note only 20% o f the cadre strength of the post alone need be filled up by appointing direct recruits. Note 3 to Rule 5 of the Kerala State and Sobordinate Services Rules reads as follows:

"(3) Whenever a ratio or percentage is fixed for different methods of recruitment/ appointment to a post the number of vacancies to be filed up by candidates from each method shall be decided by applying the fixed ratio or percentage to the cadre strength of the post to which the recruitment/transfer is made and not to the vacancies existing at that time."

This view, according to the petitioners, is totally unreasonable and opposed to the provisions of the Kerala State and Subordinate Services Rules itself.

4. It is useful to reproduce the notification G.O.(P) No.57/1992/P & ARD dated December 5, 1992 issued by the Government of Kerala, Personnel and Administrative Reforms (Rules) Department.

"GOVERNMENT OF KERALA

PERSONNEL AND ADMINISTRATIVE REFORMS (RULES) DEPARTMENT

NOTIFICATION

G.O.(P) No.57/1992/P & ARD Thiruvananthapuram,

December 5, 1992.

S.R.O. No. 194/1993: In Exercise of the powers conferred by Sub- section (1) of Section 2 of the Kerala Public Services Act, 1968 (19 of 1968), read with Section 3 thereof, the Government of Kerala hereby make the following rules further to amend the Kerala State and Subordinate Services Rules, 1958, namely:

RULES

1. Short title and commencement: (a) These rules may be called the Kerala State and Subordinate Services (Amendment) Rules, 1992.

(b) They shall come into force at once.

2. Amendment of the Rules: In Part II of the Kerala State and Subordinate Services Rules, 1958 in the rule 5, after Note "(2)" the following Note shall be added, namely:

"(3)" Whenever a ratio or percentage is fixed for different methods of recruitment/appointment to a post the number of vacancies to be filled up by candidates from each method shall be decided by applying the fixed ratio or percentage to the cadre strength of the post to which the recruitment/transfer is made and not to the vacancies existing at that time."

By order of the Governor. P. SHANMUGHASUNDARAM Commissioner & Secretary to Govt."

The petitioners contend that these provisions are not in consonance with the provisions of the Special Rules, which is to the effect that 20% of the successive substantive vacancies shall be filled up by appointing direct recruits.

O.P. No. 12539 of 1997.

5. The petitioner in this Original Petition, aggrieved by the inaction on the part of the respondents to make appointments to the category of Sales Tax Officers by direct recruitment to the extent required by the statutory Rules, filed the above Original Petition to call for the records leading to Ext.P-3 G.O.(P) No.57/1992/P & ARD dated December 5, 1992 and to quash the same after examining its constitutionality; and to issue a writ of mandamus directing the Board of Revenue to calculate the backlog of the vacancies from 1962 as per Special Rules, (Ext.P-2) as on date for Direct Recruitment of Agricultural Income Tax and Sales Tax Officers and to report those vacancies to the 3rd respondent for making advice from Ext.P-1 list. There is a further prayer for a mandamus directing the 3rd respondent Public Service Commission to review the advice made to the 2nd respondent from Ext.P-1 and advice the names afresh in accordance with Rules 14 to 16 of the Kerala State and Subordinate Services Rules.

6. The petitioner holds rank No.79 in the ranked list published by the Commission on May 13, 1995 after written examination and interview for the post of Sales Tax Officers in the Kerala Agricultural Income Tax and Sales Tax Department under the direct recruitment quota. The ranked list is marked as Ext.P-1. Though there had been vacancies of Sales Tax Officers in the direct recruitment quota from 1962 onwards including backlog of unfilled vacancies, according to the petitioner, the second respondent gave scant regard to the special rules when the matter of appointment of direct recruit Sales Tax Officers came for consideration. The petitioner has also referred to the Original Petitions filed by some of the rank holders in the ranked list dated May 13, 1995, viz. O.P.

Nos. 9004/1995, 5690/1996 and 11689/1996 which were disposed of by this Court by judgment dated October 11, 1996 holding that the notification dated December 5, 1992 has only prospective effect from February 2, 1993. However, it is stated that no consequential order directing the 2nd respondent Board of Revenue to report the vacancies which arose upto February 2, 1993 was issued in the above judgment and, therefore, the matter is pending in appeal before this Court. The petitioner in this petition has furnished all the details with regard to the vacancies available for direct recruitment and submitted that all the persons included in Ext.P-1 ranked list shall get appointment as Sales Tax Officers who are better-qualified than the promotees and the arrears of assessment pending finalisation shall also be cleared in the interest of the general public, the Government and the exchequer. It is contended that the vacancies reserved for direct recruitment are available from 1962 onwards which should be carried forward and such carried forward vacancies numbering more than 115 are still left unfilled by the Board of Revenue. It is also contended that the Special Rules have not so far been amended by the Board of Revenue and it is also submitted that the amendment to the General Rules introduced by Ext.P-3 notification dated December 5, 1992 has no legal pedestal to stand now and Respondents 1 and 2 are bound to carry forward the vacancies reserved for direct recruitment from 1962 and appoint the rank holders in Ext.P-1 list. The petitioner has also raised the same legal contentions as in O.P. No. 13871 of 1997. The petitioner has filed C.M.P.No.24933 of 1997 to amend the Original Petition by adding two paragraphs, para. 15-A & 15-B, in order to show that mere are vacancies in the cadre of Sales Tax Officers to be filled up by direct recruitment. There cannot be any tenable objection on the part of the respondents in allowing the above petition since the respondents are not prejudiced in any manner by allowing the amendment Hence, C.M.P. No. 24933 of 1997 is allowed.

O.P. No. 6540 of 1997

7. The petitioner is rank No. 118 in the ranked list prepared by the Commission and published on May 13, 1995. He has expressed the very same grievances as in the other writ petitions. It is submitted that the ranked list, Ext.P-2, was prepared by the Commission after going through all the formalities and when vacancies are available for filling up the quota for direct recruitment, denial of appointment to the petitioner and others in the ranked list by the 2nd respondent Board of Revenue is violative of the fundamental rights under Articles 14, 16 and 309 of the Constitution of India. It is submitted that Ext.P-3 is the Special Rules whereas Ext.P-7 introducing the restriction is only a Government Order and is subordinate to Ext.P-3 and therefore, it cannot abridge or take away the rights given under Ext.P-3. It is submitted that an amendment to the Special Rules alone can take away the rights given under Ext.P-3 and a mere government order cannot disparage the special rules. It is further submitted that when special rules and general rules contradict each other, special rules only will prevail over the general rules under Rule 2 part II of the Kerala State and Subordinate Services Rules, and therefore, Ext.P-7 notification dated December 5, 1992 has

become a non est and it cannot act to the detriment of the rank holders in Ext.P-2. The petitioner has filed the Original Petition to examine the constitutionality of Ext.P-7 and to quash the same. He has also prayed for a mandamus directing the 1st and 2nd respondents to report 117 vacancies of Sales Tax Officers for Direct Recruitment to the 3rd respondent and appoint them forthwith as Sales Tax Officers on the basis of the advice of the 3rd respondent Commission. In the alternative, the petitioner has also prayed for a mandamus directing respondents 1 and 2 to report 67 vacancies of Sales Tax Officers for direct recruitment from Ext.P-2 list to the 3rd respondent Commission, which are available as on February 2, 1993 on the basis of Special Rules (Ext.P-3) in accordance with the concluded finding of this Court in O.P. Nos. 5690/1994 and 9013 of 1995.

W.A. No. 1842 of 1996-E

8. This writ appeal is directed against the order of a learned single judge of this Court dated October 11, 1996 in O.P.No.9004of 1995. That Original Petition was filed for a mandamus directing the respondents to report all vacancies ear-marked for direct recruitment to the post of Sales Tax Officers as per Special Rules for the Kerala Agricultural Income Tax and Sales Tax Service for appointment from Ext.P-2 ranked list and to declare that Ext.P-3 notification, G.O.(P) No. 57/1992/P & ARD dated Decembers, 1992 is in conflict with the special rules for the Kerala Agricultural Income Tax and Sales Tax Service and is, hence, illegal, unconstitutional and inoperative, and to quash Ext.P-3. There is also a further prayer for a mandamus directing the respondents to report all existing vacancies in accordance with the Special Rules. Other consequential reliefs are also prayed for. Exactly the same contentions as in O.P. No. 13871 of 1997 had been raised for consideration by this Court. A counter affidavit was filed on behalf of the State of Kerala submitting that the quota for direct recruitment is fixed only on the basis of the substantive vacancies in the permanent cadre and that promotions are made not only against. substantive vacancies, but often against temporary vacancies of leave, suspension, etc. Therefore the Government have clarified by G.O.(P) No. 56/1992/P & ARD dated December 5, 1992 that direct recruitment/recruitment by transfer and appointment by transfer are the methods of appointment and the proportionate vacancies to be filled up by the various methods should be calculated on the basis of the cadre strength and not on the basis of total number of vacancies. In paragraph 6 of the counter affidavit it is averred as follows:

"6. As per the Special Rules for the Kerala Agricultural Income Tax and Sales Tax Subordinate Service the quota for direct recruitment is to be fixed to substantive vacancies and not to total cadre strength. Note 3 under Rule 5 of the General Rules only says that whenever a ratio on percentage is fixed between different methods of recruitment to a post the number of vacancies to be filled up by the candidate from each method shall be decided by applying the ratio/percentage to the cadre strength and not to the vacancies. But in the case in the Special Rules it is specifically stated that the percentage is to be fixed to substantive vacancies. In view of the specific provision in the Special Rules and also in view of Rule 2 of the General Rules, the amendment made to General Rules as per G.O.(P)57/1992/P&ARD dated December 5, 1992 viz. Note 3 under rule 5 of the General Rules cannot be applied in this case."

It is also submitted that the notification is not an amendment to the Special Rules for the Agricultural Income Tax and Sales Tax Department, but to the Kerala State and Subordinate Services Rules, 1958 which is applicable to all the employees under the State Government. Therefore, it is contended that the proportionate vacancies to be filled up by different methods of recruitment should be calculated on the basis of the cadre strength and not on the number of vacancies as averred by the petitioners.

9. This Original Petition was heard along with other connected cases and by judgment dated October 11, 1996 Abdul Gafoor, J. was pleased to dismiss the Original Petition subject to certain directions. In paragraphs 5, 8, 10 and 12 of the judgment the learned Judge observed thus:

"5. Rule 5 is with the caption ''Method of recruitment''. From this it can be seen that the General Rules envisage how the method of recruitment shall be worked out. At the same time the General Rules do not provide for the specific mode of recruitment. That is provided for in the Special Rules which form Part III of K.S. & S.S.R. Rule 5 is in the General Rules in Part II. Even then General Rules envisage certain provisions regarding method of recruitment which is dealt with in detail in the Special Rules in Part III. So, the cumulative effect of the specific ''Method of appointment'' provided in the Special Rules in Part III of the K.S. & S.S.R. and the provisions regarding the ''Method of recruitment'' in Rule 5 of the general rules in Part II of the same Rules, is that both have to be considered together while determining the method of appointment. The General Rules in Part II and the Special Rules in Part III of K.S. & S.S.R. form part of the same code. The Special Rules in detail and in specific manner provide for the method of appointments to various service, category, grade or post, whereas Rule 5 in General Rules covers the entire service dealt with in Part III of the Rules with regard to the working out of the ratio provided in the Special Rules. This ratio can be worked out only in terms of Rule 5. Till Ext. P3 amendment whatever be the ratio provided in the Special Rules in Part III of the K.S. & S.S.R. it shall be applied only against the substantive vacancies arising in the permanent cadre. That is now limited to the cadre strength by amendment to Rule 5. Therefore, from the date of Ext. P3, viz. February 2, 1993 onwards, there is a substantial change in the ''Method of recruitment'' provided for in Rule 5 of the General Rules that the ratio shall be worked out against the cadre strength and not against substantive vacancies. But at the same time a temporary vacancy arising in the cadre strength cannot be, in the light of other Notes in Rule 5 available for direct recruitment. In other words when note 3 is added by Ext. P3 is applied, the number of direct recruits and number of appointees by transfer shall always be fixed, but if there arises a temporary vacancy in permanent cadre say for example leave by a direct recruit for 5 years-that shall only be a vacancy of short duration in terms of Note 2 to Rule 5. The permanent incumbent on leave is holding a lien. Therefore, that vacancy even if arisen in the case of a leave by directly recruited candidate will not be available for direct recruitment. In other words, whenever permanent vacancies arise, the number of directly recruited candidates and number of appointees by transfer in service shall be looked into to determine whether that vacancy is ear-marked for direct recruitment or for appointment by transfer. That is the effect of the 3rd note added by Ext. P3, which came into effect on February 2, 1993

xxxx xxxx xxxx xxxx 8. In the case on hand, the Special Rules itself provide that 20% of the successive substantive vacancies shall be filled or reserved to be filled up by direct recruitment. Thus, both Special Rules as well as General Rules speak about substantive vacancies. There is no repugnancy among the two sets of rules as in the nature found by the Division Bench. When both the rules refer to substantive vacancies, naturally there is no repugnancy among them and the proportion or ratio shall be worked out in terms of Rule 5.

10. In the light of Rule 2 of the General Rules as extracted above, the Special Rules will prevail over the General Rules only when there is repugnancy among the provision of two rules. The Special Rule in question was brought in force as per G.O.(P) No. 641/PD dated October 30, 1960 published in Gazette dated October 11, 1960 whereas the General Rules came into force on December 23, 1952. So, when the Special Rules were enacted, the provisions contained in Rules 2 and 5 of the General Rules were in force. The Special Rules provided for direct recruitment to one out of four successive substantive vacancies at first and later it was modified as 20% of the successive substantive vacancies. This provision in the Special Rules issued later than the General Rules can be read only in the backdrop of Rule 5 of the General Rules. So, with reference to the special Rules relating to Kerala Agricultural Income Tax and Sales Tax Service, there is no repugnancy among that rule and Rule 5 of the General Rules.

xxx xxxxx xxxxxxx 12. Moreover, even though Rule 5 appears in the General Rules in Part II of the K.S. & S.S.R. it relates to the method of recruitment. Details regarding method of recruitment is dealt with in Special Rules. Rule 5 provides that the provision therein will be attracted when a portion or ratio is provided by the Special Rules. So, it cannot be stated that Rule 5 has no relation to the Special Rules. Rule 5 also deals with the subject matter governed by the Special Rules. Both have to be harmoniously read and understood. Therefore, I am of the view that the direct recruitment to 20% of the vacancies provided in the Special Rules as amended shall be worked out on the basis of the provisions contained in the Note added by the amendment in G.O.(P) 57/1992/P & ARD dated December 5, 1992, Ext.P-3 in O.P.9004/1995. Cadre strength of Sales Tax Officer is 520. Twenty per cent of this works out to 105. This quota is now met because 81 vacancies had been reported when there were 20 direct recruit Sales

Tax Officers were already in service. The list Ext.P-2 in O.P. No. 9004/1995 was published by the Public Service Commission on May 13, 1995. It will be in force till May 12, 1998. The Board of Revenue shall work out the vacancies available for direct recruitment in terms of the Special Rules read with Rule 5 including Note 3 thereof as and when there arise vacancies, in accordance with the quota of 20% of the cadre strength of Sales Tax Officers. It shall report such vacancies to the Public Service Commission timely and the Public Service Commission shall advise candidates from the said list. Even on the expiry of the list, the Board of Revenue shall, as and when direct recruitment vacancies arise, report to the Public Service Commission and Public Service Commission shall take effective steps to make available candidates to be advised without delay. Thus, the petitioners in O.P. Nos. 9004/1995, 56907 1996 and 1168971996 are not entitled to get any relief except as mentioned above. The petitioner in O.P. No. 1682571994 seeks a direction to withdraw the excess number of vacancies reported to the Public Service Commission. As there is a valid list, the Public Service Commission should have necessarily advised candidates against the vacancies reported by the Board of Revenue, except against those reported upon direction by this Court with specific condition that the Public Service Commission need not advise candidates. In such case, the prayer in this original petition will affect others. They have not been impleaded. Moreover, in the light of the position of law explained above, the petitioner cannot be said to be aggrieved. So, the petitioner in this original petition is also not entitled to any relief."

Aggrieved by the above judgment, the petitioners in O.P. No. 9004 of 1995 preferred the above writ appeal.

W.A. No. 1938 of 1996

10. The 7th respondent in O.P.No.9004 of 1995 who was impleaded as per order dated March 18, 1996 in C.M.P. No. 8285 of 1996 is the appellant in W.A. No. 193871996. The appellant''s name is also included in the ranked list as Rank No.122. He is similarly situated like the petitioners in the Original Petition, and hence, he got himself impleaded in the Original Petition and also filed the writ appeal raising identical grounds as in the other writ appeals.

W.A. No. 84 of 1997

11. This appeal is directed against the judgment dated October 11, 1996, in O.P. No. 5690 of 1996. That Original Petition was disposed of along with O.P.No.9004 of 1995 by a common judgment. The appellants have been assigned rank Nos.73, 74, 81 and 90 respectively, in the ranked list for appointment as Sales Tax Officers. It is their grievance that despite the specific ratio of 80:20 between the departmental candidates and direct recruits provided by the Special Rules for filling up the successive substantive vacancies of Sales Tax Officers, the respondents are not adhering to the same and are encouraging the claim of the departmental candidates to the detriment of direct recruits. It is submitted that the judgment of the learned single Judge is unconstitutional and is against the

dictum laid down by the Division Bench of this Court in the decision in Divakaran Pillai v. State of Kerala ILR 1976 Ker 552 to the effect that in case of repugnancy between the Special Rules and the General Rules pertaining to recruitment, the former would prevail over the latter as provided in Rule 2 of Part II of the Kerala State and Subordinate Services Rules. The appellants have also raised the same legal contentions as in the other writ appeals.

W.A. No. 351 of 1997

12. The above appeal was filed by the petitioners in O.P. No. 11689 of 1996. The appellants have also applied for appointment to the post of Sales Tax Officers and were included in the ranked list published by the Commission. The appellant has raised identical grounds as in the other writ appeals and in the Original Petitions.

O.P. No. 11764 of 1996

13. This petition was filed by the petitioners praying to call for the records and quash Ext.P-5 notification dated December 5, 1992 and for a mandamus commanding the respondent to report 113 vacancies of Sales Tax Officers to the 3rd respondent Commission for appointment of the petitioners in the direct recruitment quota and commanding the 3rd respondent to advise the names of the petitioners and other HO candidates from Ext.P-2 ranked list in accordance with Rules 14 to 17 of the Kerala State and Subordinate Services Rules and for costs. The petitioners also had applied for appointment to the post of Sales Tax Officers, participated in the written test and were successful in the interview as well. A detailed affidavit furnishing all the particulars has been filed by the petitioners. When the matter came up for hearing K.S. Radhakrishnan, J. by his judgment dated July 23, 1997 disposed of the writ petition in terms of the judgment in O.P. No. 9004 of 1995 and connected cases. The respondents were also directed to follow the same directions as was given by the learned single Judge in O.P. No. 9004 of 1995. To review the said judgment, the first petitioner in the Original Petition preferred a review petition, R.P. No. 402 of 1997 u/s 114 of the Code of Civil Procedure. The learned Judge, on January 15, 1998, passed the following order in the review petition:

"Admitted. It was pointed out against the judgment in O.P. No. 9004/1995. W.A. No. 1938/1996 has been preferred and the same is pending consideration. In the said circumstances, I am inclined to review the judgment dated July 23, 1997. Post the O.P. along with W.A.No.1938/1996."

In view of the above order, O.P. No. 1 1764 of 1996 was restored to file and posted along with W.A. No. 1938 of 1996 and other connected writ appeals and original petitions for hearing.

14. We have heard the arguments of Mr. T.P. Kelu Nambiar for the petitioner in O.P. No. 13871 of 1997, Mr. M.R. Rajendran Nair, R. Mayakrishnan, Mr. K.P. Dandapani, Mr. R.R.B. Kaimal, Mr. P.R. Ramachandra Menon, Mr. M.V. Joseph and

Mr. M.P. Ashok Kumar for the petitioners and appellants respectively, Mr. O.V. Radhakrishnan for the Public Service Commission and also the Government Pleader.

15. The learned senior counsel Sri T.P. Kelu Nambiar invited our attention to the Special Rules for the Kerala Agricultural Income Tax and Sales Tax Service and explained to us as to how, under Rule 3 of the said Rules, 20% of the successive substantive vacancies should be filled up or reserved to be filled up by direct recruitment to the post of Agricultural Income Tax Officers, Sales Tax Officers, etc. Rule 3 has al-ready been extracted above. According to the learned senior counsel, it is clear from the above Rule that 20% of the successive substantive vacancies shall go to direct recruits. But now the benefit of the said provision is denied to direct recruits on a totally misconceived interpretation by the Board of Revenue. The Board, relying on the note to Rule 5 which has been added by the amendment by notification G.O. (P) No. 57/1992/P & ARD dated December 5, 1992, has taken the stand that 20% of the cadre strength alone need be filled up by appointing direct recruits. According to the learned Senior counsel, this view is totally unreasonable and opposed to the provisions of the Kerala State and Subordinate Services Rules itself. Our attention was drawn to the note to Rule 5 of the General Rules which was added by G.O.(P) No. 57/1992/P & ARD dated December 5, 1992 which has been reproduced in the earlier part of this judgment. The learned senior counsel also invited our attention to the common judgment of the learned Single Judge in O.P.9004 of 1995 and connected cases. We have gone through the relevant portions in the judgment. As rightly pointed out by the learned senior counsel, Note 3 to Rule 5 of the Kerala State and Subordinate Services Rules is not in consonance with the provisions of the Special Rules for the Kerala Agricultural Income Tax and Sales Tax Service. It is settled law that whenever there is conflict between the General Rules and the Special Rules, it is the Special Rules that prevail. It is made clear in Rule 2 of the General Rules in the following terms:

"2. Relation to the Special Rules: If any provision in the General Rules contained in the part is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III, the latter shall in respect of that service, prevail over the provision in the General Rules in this part."

Therefore, it can be seen that the insertion of Note 3 to Rule 5 of the General Rules cannot affect the method of recruitment prescribed as per the Special Rules. Our attention was drawn to the fact that by the new interpretation given by the Board of Revenue only a small percentage of posts which are actually due to the direct recruits are being filled up and that the quota for direct recruits stands filled up as per the cadre strength and no further appointments are likely to be made from the ranked list. We are of the view that the stand taken by the Board of Revenue is absolutely unreasonable and arbitrary.

16. The learned Government Pleader submitted that the view taken by the Board of Revenue has got the approval of a learned single Judge of this Court as per

the common judgment in O.P. No. 9004 of 1995 and connected cases which are under challenge before us in writ appeal No.84 of 1997 and connected cases. It has also to be noted that the new provision was inserted only with affect from February 2, 1993 and it has not been given any retrospective operation. Therefore, it has only prospective operation and cannot in any way affect any matter prior to that date. We are, therefore, unable to countenance the argument of the learned Government Pleader that the quota for direct recruitment is fixed only on the basis of substantive vacancies in the permanent cadre, whereas promotions are made not only against substantive vacancies, but often against temporary vacancies of leave, suspension, etc. The learned Government Pleader, while supporting the judgment of the learned single Judge, submitted that as per the Special Rules for the Kerala Agricultural Income Tax and Sales Tax Service, the quota for direct recruitment is to be fixed to substantive vacancies and not to total cadre strength. Inviting our attention to Note 3 to Rule 5 of the General Rules it is submitted that whenever a ratio or percentage is fixed between different methods of recruitment to a post, the number of vacancies to be filled up by candidates from each method shall be decided by applying the ratio/percentage to the cadre strength and not to the vacancies. But in this case, the Special Rules specifically state that the ratio is to be applied to the substantive vacancies. In view of the specific provision in the Special Rules and also in view of Rule 2 of the General Rules, the amendment made to the General Rules as per G.O.(P)No. 57/1992/P & ARD dated December 5, 1992, viz. Note 3 to Rule 5 of the General Rules cannot be applied in this case. Arguing further, the Government Pleader submitted that Ext.P-3 is not an amendment to the Special Rules for the Agricultural Income Tax and Sales Tax Department, but to the Kerala State and Subordinate Services Rules and it is applicable to all the employees under the State Government and that the proportionate vacancies to be filled up by different methods should be calculated on the basis of the cadre strength and not on the basis of the number of vacancies as contended by the petitioners.

17. Learned counsel appearing for the petitioners/appellants drew our attention to the seniority list of Sales Tax Officers prepared for the period from April 1, 1974 to June 30, 1992 in order to assess the vacancy position upto February 2, 1993. We have perused the seniority list and from that list it can be gathered that 558 vacancies occurred during the period April 1, 1974 to November 4, 1985. Similarly, 519 posts fell vacant during November 5, 1985 to February 21, 1992 and 72 vacancies fell vacant during February 22, 1992 to February 2, 1993. The vacancies during the first two periods mentioned above were assessed on the oasis of the appointments made in the department as could be gathered from the seniority list. The vacancies for the remaining period were assessed on the basis of the retirement of personnel mentioned inthe seniority list by taking the dates of their birth mentioned therein. The petitioners in O.P.No. 13871 of 1997 have furnished the vacancy position as follows:

"1. Vacancies arose during 1.4.1974 to 4.11. 1985

558

Vacancies set apart for Special Recruitment

30

528

25% of 528 vacancies to be ear-marked Direct Recruitment

528/4=132

2. Vacancies arose during 5.11.1985 to 21. 12.1992

519

After deducting 2 posts set apart for Special Recruitment and 15 Short duration vacancies

504

20% of 504 vacancies to be ear-marked for Direct Recruits

504/5 = 101

3. Vacancies arose from 22.2.1992 to 2.2.1993

72

20% for Direct Recruits 72/5 = 14

Total number of vacancies to ear-marked for Direct Recruits

= 247

Number of vacancies filled up = 190

Balance to be filled up = 57

Placing reliance on the above position, learned senior counsel submitted that even assuming that the newly inserted note to Rule 5 of the General Rules would affect the provisions under the Special Rules, it can be seen that 57 vacancies are liable to be reported for being filled up by direct recruits and instead of reporting those vacancies, the authorities are trying to fill up all the vacancies by making provisional promotions.

18. Mr. K.R.B. Kaimal appearing for the appellant in Writ Appeal No. 1938 of 1996 submitted that the amendment made to Rule 5 of the General Rules by G.O.(P)No. 57/1992/P&ARD dated December 5, 1992, will not govern the quota prescribed in the Special Rules and that since the amendment, which has no retrospective effect, was published in the Government Gazette dated February 2, 1993, it cannot affect the rights of the appellant and persons similarly situated like him to get appointment under the direct recruitment quota which accrued before February 2, 1993. According to the learned counsel, the amendment

made to Rule 5 by G.O. (P) No. 57/1992/P& ARD dated December 5,1992 does not apply in the case of direct recruitment to the cadre of Sales Tax Officers, because the provisions of the said amendment is in conflict with the methods prescribed in Special Rules. The Special Rules do not refer to cadre strength for applying the quota and what is referred is substantive vacancies. Hence, he submitted that there cannot be any doubt about the position that number of substantive vacancies, and number of posts (Cadre Strength) have no relation at all. He also relied on a Division Bench judgment of this Court in O.P. No. 9169 of 1989 which interpreted similar special rule and held that the respective quota for appointment to the category of Block Development Officers shall be applied to arising vacancies, and not to cadre strength.

19. Mr. K.P. Dandapani appearing for the appellants in W.A. No. 1842 of 1996 submitted that in the light of the decision reported in ILR 1990 (2) Kerala 552 and in W.A. Nos. 1412 and 1415 of 1993 dated April 22, 1995, the amendment to the General Rules which is repugnant to the Special Rules cannot survive. Hence, he submitted, the conclusions made by the learned Single Judge in the common Judgment in O.P. No. 9004 of 1995 and connected cases are unsustainable in law. He would further submit that the appellants have acquired a vested right for being considered for appointment as Sales Tax Officers against quota reserved for direct recruits and therefore, they cannot be deprived of that right by the amendment to the rules during the pendency of the selection process. He also submitted that in view of Rule 2 of the Kerala State and Subordinate Services Rules, the provisions in the Special Rules will prevail over the amendment to the General Rules.

20. Mr. P.R. Ramachandra Menon, counsel for the appellant in Writ Appeal No.84 of 1997 submitted that the amendment to the General Rules could not have any effect on the Special Rules which governed the recruitment to the post in question and that in case of conflict between the Special Rules and the General Rules, the Special Rules will prevail over the General Rules. He also relied on the decision reported in Divakaran Pillai v. State of Kerala (supra) in support of his contention. This being the position, even if it is held that Ext.P-3 is also applicable to the post in question, it will not be sustained in view of the Special Rules, which are not amended till date, wherein it is specifically stated that the quota for different methods of appointment has to be worked out on the basis of substantive vacancies. As it stands so, according to counsel, the first and second respondents are bound to notify 20% of the entire vacancies as contained in Exts.P-4 and P-5 which arose from August 11, 1987, the date of Ext.P-1 selection notification, to the 3rd respondent for appointment from Ext.P-2 ranked list prepared and published by the 3rd respondent Commission. He also submitted that the finding of the learned single Judge that there is no repugnancy between the Special Rules and the General Rules is not correct and hence that finding is unsustainable in law.

21. It is pertinent to note that the selection process started by the Public Service

Commission as per the notification dated August 11, 1987 was interfered with by the Government and was made to keep it in abeyance in furtherance of the demands of the departmental candidates by abolishing direct recruitment. It was under these circumstances that the Commission informed the State of Kerala and the Board of Revenue as per letter dated April 10, 1989 that the proposal to abolish direct recruitment could be brought about only after amending the Special Rules for the post and that the vacancies till then were to be reported to the Commission. It is thereafter that the Government, by letter No. 25236/01/87/TD dated April 24, 1992 informed the Commission that it had taken a policy decision to continue the direct recruitment to the cadre of Sales Tax Officers and requested the Commission to proceed with the selection. Thus, the authorities have wasted eight precious years. Under the said circumstances, after making the candidates wait for eight years, now the State of Kerala and the Board of Revenue are estopped from going back to restrain the scope and extent of direct recruitment as provided in the Special Rules which are yet to be amended. It is therefore, contended that the judgment of the learned single judge is not in conformity with the correct position of law, and the actual facts and figures and therefore, it is liable to be interfered with in the appeal.

21 A. Mr. M.P. Ashok Kumar appearing for the appellants in W.A. No. 351 of 1997 submitted that the proportion of vacancies mentioned in the Special Rules to be recruited directly or by transfer shall be applicable only to the substantive vacancies arising in the permanent cadre. Mr. M.R. Rajendran Nair, counsel for the petitioner in O.P. No. 12539 of 1997, criticising the inaction on the part of the respondents, submitted that the vacancies reserved for direct recruitment are available from 1962 as there has always been under recruitment and such carried forward vacancies numbering more than 115 are still left unfilled by the Board of Revenue. This inaction, according to counsel, is nothing but sheer abuse of power vested in the authority and a colourable exercise of powers vested in them in the matter of public employment. Mr. Mayakrishnan submitted that the Public Service Commission has not strictly followed Rules 14 to 17 of the Kerala State and Subordinate Services Rules which define the quota for reservation in appointments. He submitted that the matter was delayed for eight years by the respondent and there is denial of equality in the matter of public employment by the Board of Revenue since the available vacancies are not reported to the Commission. It is further contended that if the notification, G.O.(P) No. 57/92/P&ARD dated December 5, 1992 is given effect to, it will be the end of direct recruitment to the cadre of Sales Tax Officers and 10% of the vacancies will go for promotion alone as the direct recruits now appointed will continue as such for more than a decade. According to the learned counsel, direct recruitment system is introduced to give employment opportunities according to qualifications and that in Central Government Services 50% of the chances in all the cadre are reserved for direct recruitment. It is submitted that while the Central Government is bringing more scope to direct recruitment, the State Government is eliminating the same by actions like Ext.P-7 notification dated December 5,

1992. Therefore, he submitted that the denial of appointment to the petitioner and other rank holders in the ranked list published by the Commission is violative of Article 14 of the Constitution of India.

22. Mr. P.V. Baby, counsel for the petitioner in O.P. No. 11764 of 1996 submitted that the inaction on the part of the respondent in regard to appointment of Sales Tax Officers in the quota reserved for direct recruits should be looked into seriously and that the respondents are duty bound to carry forward the vacancies earmarked for direct recruitment till the entire back- log of direct recruitment is eliminated in accordance with Rules 14 to 17 of the Kerala State and Subordinate Services Rules. This, according to the learned counsel is well settled in view of the judicial pronouncements of the Apex Court and the inaction in this regard is violative of Articles 14, 16 and 309 of the Constitution of India.

23. We have given our anxious consideration to the submissions made by the learned senior counsel and all other counsel appearing for the petitioners/ appellants and the Public Service Commission as also the Government Pleader. In our opinion, the view taken by the authorities that the amendment brought to the General Rules as per the notification dated December 5, 1992 would take away the rights accrued to the petitioners for appointment against 20% of the successive substantive vacancies arising in the cadre of Sales Tax Officers is absolutely unreasonable and unsustainable. We have already noticed the Special Rules which, in our view, clearly speak of the method of recruitment and any amendment to the General Rules which go in conflict with the Special Rules will not hamper the rights of persons arising out of the Special Rules. As rightly pointed out by the learned senior counsel, Note 3 added to Rule 5 of the General Rules is repugnant to Rule 3 of the Special Rules for the Kerala Agricultural Income Tax and Sales Tax Service. The judgment of the learned single Judge is not in consonance with the various precedents laid down by this Court. This Court has, time and again, held that the provisions of the Special Rules will over-ride the provisions of the General Rules if they are repugnant to each other. The learned Judge hem that there is no conflict between the provisions of the General Rules and the provisions of the Special Rules. In fact the learned Judge has sought the help of harmonious construction for resolving the dispute involved. In our view, the principle of harmonious construction has no place here as Rule 2 of the General Rules specifically states as to how conflict between the Special Rules and the General Rules has to be dealt with.

24. Our attention was drawn to paragraph 6 of the counter affidavit which has been extracted in pages 13 and 14 of this judgment. The Government is definite in its view that the newly inserted note to Rule 5 of the General Rules would not affect the quota of direct recruitment prescribed in the special rules. It is evident from paragraph 6 of the counter affidavit mentioned above. The learned single judge has, however, not made any reference to paragraph 6 of the counter affidavit and delivered the judgment impugned in the above writ appeals. It is also specifically provided in Rule 2, Part II of the Kerala State and Subordinate

Services Rules that in case of any conflict between the Special Rules and the General Rules, it is the former that will prevail. That being the position, even if it is held that the amendment is applicable to the post in question, it will not hamper the rights of persons arising put of the Special Rules, which are not amended till date, wherein it is specifically stated that the 20% quota for direct recruitment is to be worked out on the basis of successive substantive vacancies, As it stands so, the respondents are bound to notify 20% of the entire vacancies which arose on or after August 11, 1987, the date of the selection notification issued by the Commission for appointment from the ranked list prepared and published by the Commission. We are of the view that the finding of the learned single Judge that there is no repugnancy between Note 3 to Rule 5 of the Kerala State and Subordinate Services Rules and Rule 3 of the Special Rules for the Kerala Agricultural Income Tax and Sales Tax Service is unsustainable in law. The petitioners/appellants in these cases have an absolute right to be appointed against 20% of the substantive vacancies that arose in the cadre of Sales Tax Officers. It cannot be confined to 20% of the strength of the permanent cadre of Sales Tax Officers. The denial of appointment to the petitioners by restricting the quota to 20% of the permanent cadre strength is opposed to the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

25. Yet another aspect which has not been considered by the learned single judge is this. The post in question was notified by the 3rd respondent in the Kerala Gazette dated August 11, 1987 and after completing the process of selection, the ranked list was published which came into force on May 13, 1995. Even if the Special Rules are amended, it can have effect only with regard to the future process of selection and all the vacancies which arose during the pendency of the process of selection and during the ranked list published in pursuance to the said selection can be filled up only on the basis of the Rules which were in force on the date of the notification, viz. as on August 11, 1987 in the present case. Our attention was also invited to G.O.(Ms.) No.233/1985/GAD dated June 27, 1985. It is very much obvious from the above Government Order that even according to the respondent the amendment to the General Rules cannot have any effect or application with regard to the present selection initiated by the Commission in 1987 and culminated in the ranked list which is now in force. This aspect of the matter has not been adverted to by the learned single Judge.

26. We shall now consider some of the judgments cited by counsel appearing on either side. In Velappan v. State of Kerala ILR 1997 (2) Kerala 441 a Division Bench of this Court held thus:

"10. Considering the feet that the amendment is made on December 5, 1992, and as the amendment does not mention when it comes into force, it is presumed that it comes into force only from the date on which it is published in the Gazette, namely, February 2, 1993. It cannot have retrospective operation. As indicated supra, General Rule 5 would be applicable to cases of recruitment by transfer and direct recruitment. It has no application to a Special Rule which also contemplates appointment by promotion to the post of Excise Inspector. As pointed put by learned advocates, General Rule 5 is in conflict with the Special Rules and even the amended Rule 5 does not in any way affect the process of determining the number of vacancies. Special Rules speak of vacancies only. However, in this case as the Government by its second statement calculated the available vacancies for direct recruits as only 14 by November 30, 1993, and as the Court has already passed the interim orders to the effect that only 14 persons should be recruited towards the quota of direct recruits, we feel that these four Original Petitions can be terminated confirming the interim order passed by the Court on October 20, 1993 in C.M.P. Nos. 9194 and 3334 of 1993. The four writ petitions are accordingly terminated. No relief can be granted. Each party to bear its own costs."

Mr. Kelu Nambiar invited our attention to the Kerala Public Service Commission Rules of Procedure. The Public Service Commission can make their Rules and they have plenary powers under Article 320 of the Constitution or India. Our attention was drawn to Rules 2, 12, 13 and 14 of the Rules of Procedure. Rule 12 provides that all the candidates interviewed, who obtained not less than the minimum marks fixed by the Commission shall be included in the ranked list prepared in the order of merit. There are three provisos to the said Rule. Rule 12-A states that where preferential qualification is prescribed for a post, the ranked list relating to it shall be prepared in the manner stated in the said rule. Rule 13 says that the ranked list published by the Commission shall remain in force for a period of one year from the date on which it was brought into force, provided that the said list will continue to be in force till the publication of a new list after the expiry of the minimum period of one year or till the expiry of three years, whichever is earlier. Mr. Nambiar cited the decision reported in Public Service Commission v. Pylo 1986 KLT 46. The petitioners in that case were persons who had been placed on the ranked list, but could not be appointed to the existing vacancies as their ranks were relatively low. That ranked list dated March 5, 1983 was cancelled by the publication of a subsequent ranked list dated June 7, 1985. The learned single Judge directed the Commission to treat the earlier ranked list as valid till the completion of three years from the date of publication, viz. March 5, 1983. A writ appeal was filed against the judgment of the learned single Judge. The petitioners pointed out that until the persons on the existing list were fully absorbed, it would be totally irrational to call for fresh applications by means of subsequent notification. It was also contended that Rule 13 in terms of which the notification and the list were published was arbitrary and unreasonable, and therefore invalid. This contention was considered and rejected by the learned Judge, upholding the validity of the Rules. It was argued on behalf of the Commission that action was taken by the publication of fresh notification and fresh list pursuant to a policy decision adopted by the Commission, namely, to bring out a second list so as to afford the maximum opportunity to the largest number of persons outside the original list. The Division Bench of this Court, while setting aside the judgment of the learned single Judge, observed as follows:

"11. So long as the validity of the Rule is not in question, and so long as it cannot be justifiably said that the action taken by the Commission is contrary to the Rule, or, is so irrational, unreasonable and arbitrary that no reasonable person in the position of the Commission would have so acted, the action of the Commission is not liable to be judicially reviewed on the mere ground that the reasons stated in justification thereof were not "correct".

xxxxxxx xxxxx xxxxxxx 20. The decision of the Commission to publish the second list was one which related to policy or managerial discretion. The fact that decision involved cancellation of the first list, or that the reasons stated by the Commission in justification of the cancellation of that list do not appeal to this Court as correct, cannot be a ground to characterise the decision as vitiated by reason of illegality, irrationality, procedural impropriety or any other like circumstance of abuse of power".

The learned Government Pleader cited the decision reported in Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others, . That was a case of appointment of the persons kept in the waiting list by the respective Recruitment Board to the vacancies that had arisen subsequently, without notifying them for recruitment. The Supreme Court said that it is unconstitutional. However, since the appointments had already been made and none were impleaded, the Supreme Court was not inclined to interfere with the same, adversely affecting the appointments made. The Court, however, direct that thereafter the respective Boards should notify the existing and expected vacancies and the recruitment should strictly be made in accordance with the procedure, to the notified vacancies but not any vacancies that may arise during the process of selection. The Government Pleader also cited the decision in K. Jayamohan Vs. State of Kerala and another, to say that the candidates kept in the waiting list cannot claim right of appointment merely because he is kept in waiting list. In paragraph 5 of the judgment the Supreme Court observed thus:

"..........merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right for appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non-appointment........."

In Surinder Singh v. State of Punjab AIR 1998 SC 18, an advertisement was made to fill up certain posts of teachers. There was deviation by the State in the number of appointments, without limiting the appointments to the number of posts advertised. The Supreme Court held that no exceptional circumstances existed or was there any emergent situation for the State to deviate from the principle of limiting the number of appointments so advertised. In the State of Bihar v. Madan Mohan Singh 1994 (3) SCC 308 it was not mentioned in the advertisement that the panel will remain valid for one year. After the written test, 129 candidates were declared successful and were called for interview. Out of the 129 candidates, 32 were selected and recommended to the Government and they were appointed. The question for consideration in that case was whether future vacancies should be filled up from among the remaining candidates and whether the merit list of 129 candidates was meant only for filling up of 32 vacancies. The advertisement was for filling up of 32 vacancies of Additional District and Sessions Judges and it did not mention that the panel would be valid for one year, nor was there any Rule to that effect. The proceedings of the High Court at a Full Court meeting indicated that merit list was finalised for filling up of 32 vacancies only. It was, therefore, clear that the advertisement and the whole process of selection was meant only for 32 vacancies. Hence, the Supreme Court observed that the process came to an end as soon as those vacancies were filled up and if the same list was kept alive for the purpose of filling up of other vacancies, it would amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and the selection process.

27. We are of the view that the decisions cited by the learned Government Pleader have no application in these cases. In these cases the ranked list published by the Public Service Commission is valid for three years and inspite of the same the petitioner/appellants were not appointed against the vacancies available, which is questioned in the above writ petitions/appeals.

28. In A. Sreekantan Nair v. M.K. Muraleedharan Nair 1991 LabIC 2163 the right of candidates advised by the Public Service Commission came up for consideration. The Public Service Commission advised candidates for appointment as Work Assistants in the Kerala State Road Transport Corporation. A few among the candidates who remained to be appointed inspite of the advice by the Commission approached this Court and this Court issued a direction to appoint them for the purpose of filling up of other vacancies, it would amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and the selection process. In A. Sreekantan Nair v. M.K. Muraleedharan Nair (supra) the right of candidates advised by the Public Service Commission came up for consideration. The Public Service Commission advised candidates for appointment as Work Assistants in the Kerala State Road Transport Corporation. A few among the candidates who remained to be appointed inspite of the advice by the Commission approached this Court and this Court issued a direction to appoint them as per the concession made by the employer. Subsequent petitions filed by others awaiting appointment challenging the direction to appoint the petitioners in the earlier petitions were dismissed as it would lead to conflicting decisions and inconsistent position. The petitioners were dismissed also on the ground of laches. In State of Bihar and others Vs. Md. Kalimuddin and others, the question of continuance of the list beyond one year came up for consideration. The Supreme Court held that when the continuance of the list beyond one year is bad and illegal, even the High Court cannot continue the list beyond one year unless the constitutional validity of the relevant Rule is challenged. In that case the Rule provided that the select list shall be valid for one year from the date of approval of the project by

the Select Committee. Rajasthan Public Service Commission v. Chanan Ram JT 1998 (2) SC 114 was a case of abolition of the post of Assistant Directors in the Rajasthan State Agricultural Marketing Service as per the amendment to the Service Rules by notification dated April 26, 1995. The Supreme Court held that the earlier advertisement of December 5, 1993 became infructuous and could not be relied upon for sustaining any further process of recruitment to fill up a post which no longer existed after April, 1995.

29. Sri O.V. Radhakrishnan, Counsel appearing for the Commission cited the decision reported in Jyothis Kumar v. State of Kerala 1996 (2) KLT 444 wherein a learned single Judge of this Court held that if vacancies arising or expected are notified, it will not offend the fundamental rights under Articles 14 and 16 of the Constitution of India and that the notification as well as the rules provide for the list being kept alive for three years for appointment of candidates to vacancies that arise during the currency of the list.

30. We are of the view that the judgments cited by the Government Pleader do not refer to the Kerala Public Service Commission Rules of Procedure and those judgments are not directly applicable to the facts and circumstances of the case on hand and are distinguishable on facts and law. Mere inclusion in the select list by itself does not confer any right to appointment, but when the list is in force and vacancies existed in the quota for direct recruitment as per the Rules, the Government has a duty to make the appointment in accordance with Rules, in this case as per the Special Rules which prevail inspite of the amendment to the Rules by adding the note to Rule 5 by G.O.(P) No.57/1992/P & ARD dated Decembers, 1992.

31. For the foregoing reasons, we answer question No. 1 in favour of the petitioners/appellants and hold that the amendment brought to the General Rules will not take away the right accrued to the petitioners/appellants for appointment against 20% of the successive substantive vacancies arising in the cadre of Sales Tax Officers. The very taken by the authorities otherwise is unsustainable. On question No. 2 we hold that the amendment to the General Rules go in conflict with the Special Rules and that will not hamper the rights of persons arising out of the Special Rules. This question also is answered in favour of the petitioners/appellants and against the State.

In the result, all the Original Petitions and Writ Appeals are allowed, we direct the Secretary, Board of Revenue (Taxes) to work out 20% of the successive substantive vacancies for direct recruitment as on August 11, 1987 and arising thereafter as per the Special Rules and report the same to the Public Service Commission on or before May 12, 1998 so as to enable the Public Service Commission to advise the eligible candidates for appointment.

