

(2022) 08 KL CK 0127

In the High Court Of Kerala

Case No : Original Petition (KAT).No 118 Of 2022

Ratheesh J.B.

APPELLANT

Vs

Kerala Public Service Commission, Represented By Its
Secretary, Thulasi Hills, Pattom, Thiruvananthapuram., Pin
695004

RESPONDENT

Date of Decision : 16-08-2022

Acts Referred:

Constitution of India, 1950 — Article 309, 320
Kerala Public Service Commission Rules, 1976 — Rule 13, 39

Citation : (2022) 08 KL CK 0127

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P, J

Bench : Division Bench

**Advocate : T.H.Aravind, T.Ramprasad Unni, S.M.Prasanth, R.S.Aswini Sankar,
K.Ramakumar**

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P.,J.

1. The above OP (KAT) is filed by the original applicant before the Tribunal challenging the dismissal of the original application filed for a declaration that Annexure-A1 rank list will continue to be in force till the publication of the new ranked list, after 30-6-2020 or till the expiry of three years from the date of publication of the ranked list whichever is earlier and for a consequential direction to the Kerala Public Service Commission ("KPSC" for short) to advise from the said rank list.

2. The applicants were included in Annexure -A1 ranked list for the post of Police Constable (Armed Police Battalion) (KAP-III) of the Pathanamthitta District which was brought into force on 1-7-2019 pursuant to Annexure A2 notification dated 30-10-2017 issued by the KPSC. The applicants contended that since the notification is for appointment to the post of Civil Police Officer and not for any training course, the first proviso to Rule 13 of the KPSC Rules of Procedure, 1976

is applicable and the validity of the ranked list is to be determined with reference to the said Rule, and therefore, Annexure – A1 ranked list will remain valid up to 30-6-2020 and all the vacancies which arose during that time, has to be filled up from the said list. This was resisted by the respondents contending that when the notification itself prescribed the period of validity of the rank list and that by a Government Order dated 16-1-2013, “inservice training” in Annexure-A18 Order has been corrected as “pre-service training”, the applicants argument that the training is an service one is misplaced. It was further contended that since there was no challenge to the notification, the applicants were bound by the clause therein that prescribed a validity period of one year for the ranked list.

3. The Tribunal after considering the rival contentions found that though the applicants raised an arguable question as to whether the training in the instant case is one after entry into service or not, the prayers sought for in the Original Application cannot be granted as Annexure A2 notification specifically stated that the ranked list shall cease to be in force after the expiry of one year from the date of its finalisation and, therefore, the candidates who responded to Annexure A2 notification were well aware of the same even while making the application. The application with such a provision is not challenged and in the absence of challenge to the same, the declaration that was sought for in the Original application cannot be granted. The Tribunal further found that the declaration was sought after the expiry of the rank list and on these grounds the Original Application was dismissed. It is the said order that is challenged before us.

4. The Learned Senior Counsel Sri. K. Ramakumar assisted by Sri. Rama Prasad Unni, challenges the order of the Tribunal on three grounds. Firstly, the learned Senior Counsel argues that going by Article 309 or Article 320, the recruitment contemplated is one to a service not for training. Secondly, he argues that there cannot be a discrimination among the applicants to the post under the State dividing the applicants into one for training and otherwise and the same would be unconstitutional and that the duty of the KPSC is to conduct examinations for appointment to the services of the State and their Rules of Procedure cannot override the statutory rules. He relies on the decision of this Court in Appukuttan Pillay v. KPSC 1984 KLT 884 to fortify his contention that the Rules of Procedure notified as executive orders cannot have statutory force and therefore, it cannot run counter to the statutory provisions. Since the recruitment is for the post and not for training, Rule 13 of the KPSC Rules of Procedure will not apply and, therefore, the ranked list will have a validity of three years. The learned Senior counsel also points out that the Tribunal itself found that they had an arguable case on the above contentions and despite the same, dismissed the Original Application.

5. The learned Standing Counsel for the PSC Sri. P.C. Sasidharan contends that the notification itself specified that the ranked list published pursuant to the notification shall cease to be in force after one year from the date of its finalisation. He also argues that the period of training is excluded for all purposes

and the candidates start their probation only after training. He also brings to our notice that the pleadings in the original application proceeds as if the notification did not mention about the validity of the rank list, which is factually wrong as the notification did mention it. Lastly, he argues that the original application itself was filed after the expiry of the period of the ranked list and therefore, the Tribunal rightly rejected the prayers sought for.

6. Having considered the rival submissions and perusing the records, we find ourselves unable to interfere with the order of the Tribunal for the reasons to follow: -

At the outset, we have to note that the notification in question for the post of Civil Police Officer (Police Constable) dated 30-12-2017, Annexure-A2, itself specified that the ranked list prepared consequent to the selection, operated only for one year from the date of finalisation of the rank list. The candidates, applicants were aware of the same and still chose to participate in the selection process. Even when they approached the Tribunal on the ground that the validity cannot be restricted to one year, there was no challenge at all to the notification which had a specific stipulation on its validity. As a matter of fact, the OA proceeds on the ground that no specific period or date on which the rank list would expire was specified in Annexure A2, as is seen from Paragraph 3 of the Original Application and grounds taken. In the absence of any challenge to the notification, the Tribunal was right in not considering the questions raised.

We find nothing wrong in the said finding of the Tribunal. As rightly found by the Tribunal, the challenge in this case was made after the expiry of the rank list. In the instant case, the decision cited by the learned Senior Counsel in (Kerala Unemployment Solution Committee and Others v. PSC and Others 1988 KHC 343) will not come to the rescue of the petitioners.

7. It is also pertinent to note that the applicant had sought for relaxation under Rule 39 of Part II KS & SSR, which also shows that they were otherwise not entitled to be considered for selection. We do not find that the Tribunal has committed any illegality in dismissing the application filed by the petitioners.

In the result, this OP KAT fails and it is dismissed.