

CASE NO.:
Appeal (civil) 2258 of 2007

PETITIONER:
K. Thulaseedharan

RESPONDENT:
The Kerala State Public Service Commission, Trivandrum & Ors

DATE OF JUDGMENT: 30/04/2007

BENCH:
C.K. THAKKER & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2258 OF 2007
(Arising out of SLP(C) No. 21495 of 2004)
(with C.A. No. 2259 of 2007
(@ S.L.P. (C) No. 261 of 2005))

P.K. BALASUBRAMANYAN, J.

1. Leave granted.
2. Heard counsel on both sides.
3. The appellants in this appeal were included in a ranked list for appointment to the post of Overseer Grade-II in the Public Works and Irrigation Departments. The ranked list was published on 31.3.2001. Its normal validity was one year. But if no new list was prepared, its validity extended to three years. No new list was prepared. Therefore, the list was operative till 31.3.2004.

4. In the list prepared, diploma holders were not included on the ground that they possessed a qualification higher than the one required. The diploma holders filed writ petitions in the High Court seeking the issue of a writ of mandamus directing the Kerala Public Service Commission to include them in the ranked list. On 18.2.2003, the High Court allowed the writ petitions and directed that the ranked list be recast including the diploma holders also. This caused some delay in the operation of the list prepared on 31.3.2001.

5. Even prior thereto, the Government of Kerala had issued an order banning new appointments in view of the circumstances prevailing in the services in the State. This ban on new appointments was in force from May 2002 to November 2003, for a period of 18 months. The result was that on the reporting of vacancies, only 633 names were advised for appointment.

6. Under Rule 13 of the Kerala Public Service Commission Rules of Procedure, the Public Service Commission, under the 5th Proviso thereto, had the power to keep alive the ranked list, which was normally due to expire during the period when there was a ban on appointments, for a period of 30 days from the date of cessation of the ban. On 4.9.2002, the 5th Proviso to Rule

13 of the Rules was amended. The substituted 5th proviso to Rule 13 of the Rules read as follows:

"Provided further that if the commission is satisfied of the existence of period of general ban declared by the Government on the reporting of vacancies to the Public Service Commission or of any other circumstances or of any extraordinary situation in which the reporting of vacancies by the appointing authorities is prevented or restricted or delayed, the Commission shall have the power to keep alive the Ranked Lists which are normally due to expire during the said period to such periods as may be decided by the Commission subject to a minimum period of three months or for such further periods but not exceeding one year in the aggregate. If the Commission so decides it shall issue a notification keeping alive the Ranked Lists in the above manner and shall advise candidates from such Ranked Lists to the vacancies reported during such extended period of validity of the Ranked Lists."

7. On 19.11.2003, the Government of Kerala recommended to the Public Service Commission to extend the validity of lists upto the end of Year 2004 in view of the ban that was in operation. The Public Service Commission did not exercise its power under the 5th proviso to Rule 13 of the Rules to extend the validity of the list. The Government therefore again wrote on 21.2.2004 asking the Public Service Commission to keep alive the ranked lists until the end of December 2004. Pursuant to this request, the Kerala Public Service Commission met on 2.4.2004 and extended the lists that were current and that were to expire thereafter till 30.12.2004. The ranked list in respect of the 2nd Grade Overseer with which we are concerned, was not kept alive on the basis that the list had expired on 31.3.2004 and on 2.4.2004, the Public Service Commission could not exercise its power to keep alive a list which had already expired. Thus, though the extension benefited some of the other ranked lists, the ranked list in question was treated as having expired by 31.3.2004.

8. In that context, the appellant approached the High Court with a writ petition. The learned single judge following an earlier decision of a Division Bench in W.A. No. 1053 of 2004, took the view that the decision of the Public Service Commission to extend the validity of the ranked lists which were alive as on 3.4.2004 could not be relied on to claim that the concerned ranked list which had expired by 31.3.2004 had revived or had been kept alive. The argument that if the Public Service Commission had taken prompt action, the validity of the concerned ranked list would have also stood extended, was rejected in the light of the legal position. The appellant thereupon filed an appeal before the Division Bench of the High Court. The Division Bench after referring to its prior decision in W.A. No. 1053 of 2004 and taking note of the fact that the concerned list had expired before the

Notification dated 3.4.2004 extending the validity of the various lists was issued, held that the expired list could not be kept alive or revived in exercise of power under the 5th proviso to Rule 13 of the Rules. Affirming the decision of the learned single judge, the appeal was dismissed. The decision of the Division Bench is in challenge before us at the instance of the appellant and certain others similarly situated.

9. Shri C.S. Rajan, learned Senior Counsel appearing for the appellants pointed out that the stand adopted by the Public Service Commission in the case on hand that the Commission had no power to extend the validity of a ranked list that had expired was not correct and was inconsistent with its own stand in other cases. Learned counsel pointed to two other instances where the Commission had extended the validity of lists, the period of which had already expired on the day the notification in exercise of power under the 5th proviso to Rule 13 of the Rules was issued and contended that it was not open to the Public Service Commission to adopt an inconsistent stand just to defeat the claim of the appellant. Learned counsel for the Public Service Commission could not really explain how the Public Service Commission could have revalidated lists which had already expired in the instances pointed out by learned counsel for the appellants. Though, we have some sympathy for the appellants considering the circumstances, we find it not possible to grant any relief to the appellants since on an interpretation of the Rule concerned, we are not in a position to disagree with the view adopted by the High Court in the judgment in W.A. No. 1053 of 2004 and in the judgment under Appeal.

10. The 5th proviso to Rule 13 of the Rules relied upon clearly gives an indication that the power available thereunder could be exercised only in the case of a ranked list which is still subsisting or the life of which is still continuing. The words "the Commission shall have the power to keep alive the Ranked Lists which are normally due to expire during the said period" (emphasis supplied) clearly show that it is a question of keeping alive until a future date, of a live list, the term of which is to expire shortly. The power under the 5th proviso to Rule 13 of the Rules cannot be made use of to revalidate a time expired ranked list. The two instances pointed out by learned Senior Counsel for the appellants where the Public Service Commission had done it, could not be justified legally in the light of the 5th proviso to Rule 13 of the Rules. They must be treated as aberrations. They cannot form the foundation of any right. In this situation, we are satisfied that there is no justification in interfering with the decision of the High Court since by 3.4.2004 when the notification extending the validity of the lists was issued, the validity of the list in question had expired and the same could not be revived in alleged exercise of power under the 5th proviso to Rule 13 of the Rules.

11. Before parting with the case, we think that it is necessary to express our unhappiness at the inconsistent conduct of the Public Service Commission. The Public Service Commission is a constitutional body and it is

expected to act even handedly and strictly in accordance with law. When the 5th proviso to Rule 13 of the Rules gives it only a power to extend the validity of lists for the periods referred to therein in the circumstances indicated therein, it has only the power to keep alive a ranked list which is still current on the day the decision is taken and not revive and keep alive a ranked list which had already expired. The counter affidavit of the Public Service Commission itself indicates that the High Court has taken such a view in about 50 cases. It is not expected of a constitutional body like the Public Service Commission to issue orders or notifications for which it has no authority. On a true construction of the concerned provision this is the position. It is interesting to note that the stand adopted by the Public Service Commission in the present case before the High Court and before us is also that under the 5th proviso to Rule 13 of the Rules it has no power to revive a dead list and all that it can do is to keep alive for a further period a list which is still alive on the day the decision is taken. We trust that the Public Service Commission would ensure that such illegalities like the issuing of orders relied upon by the learned counsel for the appellant, are not committed creating hardship and agony to some, out of many included in lists prepared by the Public Service Commission.

12. Since we are in agreement with the decision of the High Court, we see no reason to interfere. We dismiss the appeal.