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K. THULASEEDHARAN

v.

THE KERALA STATE PUBLIC SERVICE COMMISSION, TRIVANDRUM
AND ORS.

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APRIL 30, 2007

[C.K. THAKKER AND P.K. BALASUBRAMANYAN, JJ.]

Service Law:

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Kerala Public Service Commission Rules of procedure ; Rule 13 proviso 5—Appointment to the post of Oversear GradeII—Ranked list—Extension of validity of the time expired list by the Public Service Commission in exercise of power under 5th proviso to R.13 could be exercised only in case of a ranked list which is subsisting and it cannot be made use of to revalidate a time expired list.

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The question which arose for determination in these appeals was as to weather the public service commission in exercise of power under the 5th Proviso to Rule 13 of the Kerala Public Service Commission Rules of Procedure could extend the validity of the ranked list after its expiry.

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Appellants contended that the stand adopted by the Public Service Commission in the case on hand that it 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; and that it was not open to the Commission to adopt an inconsistent stand just to defeat the claim of the appellant.

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Dismissing the appeals, the Court

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HELD: 1.1. 5th proviso to Rule 13 of the Kerala Public Service Commission Rules of Procedure 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*” 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 said proviso to Rule 13 of

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the Rules cannot be made use of to revalidate a time expired ranked list.

[Para 10]

1.2. There is no justification in interfering with the decision of the High Court since by the time 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. [Para 10] [1046-E-F]

[The Court observed that 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.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2258 of 2007.

From the Final Judgment and Order dated 02.08.2004 of the High Court of Kerala at Ernakulam in W.A. No. 1341 of 2004.

WITH

C.A. Nos. 2259 of 2260 of 2007.

C.S. Rajan, A. Raghunath and C.K. Sasi for the Appellant.

Vipin Nair, P.B. Suresh, (for Temple Law Firm), G. Prakash, Beena Prakash and M.T. George for the Respondents.

The Judgment of the Court was delivered by

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.

A 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
B 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
C 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
D 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:

E “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
F 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
G 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
H 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

A 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 A
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 B
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 C
see no reason to interfere. We dismiss the appeal.

P.K. BALASUBRAMANYAN, J. 1. Leave granted.

2. Heard counsel on both sides.

3. The appellant was included in a ranked list of Lower Division Clerks D
for appointment in the Kerala State Electricity Board. The list was published
on 24.1.2001 and on expiry of three Years, it was to expire on 24.01.2004. On
19.11.2003, the Kerala Public Service Commission extended the validity of the
list till 4.2.2004. The list thereafter expired. The appellant who held rank E
number 133 was not advised for appointment and only those ranked upto 60,
were advised for appointment from the list while it was alive. It was in that
situation that the appellant approached the High Court praying for the issue
of a writ of mandamus directing the Public Service Commission and the Kerala
State Electricity Board to advise her for appointment and to give her
appointment after extending the validity of the list.

4. The Writ Petition and the appeal from it were dismissed following the F
decision that has given rise to the appeal which we have disposed of by a
judgment delivered separately today, arising out of Petitions for Special Leave
to Appeal (Civil) No. 21495 of 2004 and No. 261 of 2005.

5. In the View we have taken in that judgment, the list having expired G
by 4.2.2004, and its validity not having been extended thereafter, no relief
could be granted to the appellant on the ground put forward in the High
Court. But, learned counsel for the appellant raised a new contention before
us, which is not seen raised before the High Court. He contended that on
19.11.2003, the Public Service Commission took a decision to extend the H

- A validity of the list upto 4.2.2004, the list that was to expire by 24.1.2004. That meant, that the power to keep alive the list was exercised in time, but the same was not properly exercised in that it was not extended in terms of the 5th provision to Rule 13 of the Rules. Learned counsel pointed out that under the 5th proviso to Rule 13 of the Rules, the Commission had the power to keep
- B alive the ranked list which was about to expire for such periods as has been 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 Learned counsel pointed out that on 19.11.2003, what the Commission did was to extend the life of the list only by 11 days and this was not consistent with
- C their power of keeping alive the list for a further period of not less than three months but not exceeding one year. Therefore, it must be taken that on 19.11.2003, the decision was to keep alive the list at least for a period of three months.

6. Learned counsel for the Public Service Commission could not give an explanation for the reason to extend the validity of the list only by a period
- D of 11 days and not by a minimum period of three months. But learned counsel submitted that such a contention had not been raised and therefore he was not in a position to explain the circumstances. Though we see some force in the contention sought to be raised by learned counsel for the appellant since we find that the validity of the list had not been extended from 4.2.2004 and
- E three years have gone by, it would not be proper on the basis of the new plea sought to be raised before us, to interfere to grant any relief to the appellant in the writ petition even if it is otherwise possible. In this situation, we decline to interfere with the decision of the High Court and dismiss the appeal.

S.K.S.

Appeals dismissed.