

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 15TH DAY OF DECEMBER 2020 / 24TH AGRAHAYANA, 1942

RP.No.938 OF 2020 IN WA. 2332/2018

AGAINST THE JUDGMENT IN WA 2332/2018 DATED 22.8.2019 OF HIGH COURT  
OF KERALA

REVIEW PETITIONER/S:

- 1 HARISH KUMAR.K.A,  
AGED 37 YEARS,  
S/O. APPUKKUTTAN K.K., VALLUVALLY, KOONAMMAVU P.O.,  
NORTH PARAVUR-683 513 (RANK NO.38 SUPPLEMENTARY)
- 2 MANU P.,  
S/O. PUSHKARAN, THACHIRAZHIKATHU, NADUVATHUCHERRY,  
CHAVARA LUIS P.O., KOLLAM-694 584 (RANK NO.151 OEC  
EZHAVA SUPPLEMENTARY).
- 3 RAMESH C.K.  
S/O. KRISHNANKUTTY, CHENNAMKUNNU HOUSE,  
KIZHAKKUMPURAM, MANNUR, PALAKKAD-678 642 (RANK NO.20  
EZHAVA SUPPLEMENTARY).
- 4 JOSE PRAKASH C.P.  
CHALATHARA HOUSE, POLLETHAI P.O., ALAPPUZHA-688 522  
(RANK NO.23 LC SUPPLEMENTARY).
- 5 SUNIL V.R.  
VADAKKEPARMBIL, PARAYAKAD, NORTH PARAVOOR P.O.,  
ERNAKULAM (RANK NO.7 EZHAVA SUPPLEMENTARY).
- 6 KOCHANIYAN C.K.  
CHATHATE HOUSE, KARUVAN KAD P.O., PIN-KUNNUKAD,  
THRISSUR (RANK NO.183 SC SUPPLEMENTARY).
- 7 BIJESH P.  
POTHENCHERI (H), CHETTIPADI P.O., MALAPPURAM-676 319  
(RANK NO.27 EZHAVA SUPPLEMENTARY).
- 8 NASSAR K.  
GULSAM MANZIL, NAGARPADAM, MEENKARA P.O., PALAKKAD-  
678 507 (RANK NO.188 MUSLIM SUPPLEMENTARY).

BY ADV. SRI.S.SUJIN

RESPONDENT/S:

- 1 THE KERALA STATE BEVERAGES CORPORATION LTD,  
THIRUVANANTHAPURAM-695 030,  
REPRESENTED BY ITS MANAGING DIRECTOR.
- 2 THE KERALA PUBLIC SERVICE COMMISSION,  
REPRESENTED BY ITS SECRETARY, PATTOM,  
THIRUVANANTHAPURAM-695 001.
- 3 STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

SENIOR GP SRI.N.K.THANKACHAN,  
SRI.T.NAVEEN, SC, KERALA BEV. CO.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON  
15.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

## ORDER

Dated this the 15th day of December 2020

K.VINOD CHANDRAN, J.

The review petitioners are the appellants who seek review of the judgment. The ground for review is that the decision cited has no application, since in the instant case, the NJD vacancy is not a fresh appointment for reason of the statutory rule having provided such vacancies to be filled up from the existing list.

2. Essentially the review petitioners are seeking a rehearing of the matter. The review petitioners challenge the reliance placed on Indian Bank vs. R.Jayasree, Civil Appeal Nos. 4054-4055/1999 dated 22.11.2001. by the Division Bench. Therein the claim was for appointment for NJD vacancies from the select list published. The Hon'ble Supreme Court held that non joining duty vacancy is also a fresh vacancy, and also considering the fact that there was a ban on fresh recruitment by the Reserve Bank of India, there was

no question of the Bank making any further appointments.

3. In the present case, we see that the NJD vacancies arose from a rank list which came into force on 27.12.2013 and expired on 26.12.2016. We are also aware of the statutory rule prescribing such vacancies to be filled up from the rank list itself. In the present selection, for appointment to vacancies arising in the respondent Beverages Corporation, women were dis-entitled on two counts. The Kerala Abkari Shops Disposal Rules, 2002 prohibited women from being employed in toddy and liquor shops. The notification also contained a restriction in appointing women to the shop vacancies. By Ext.P1 judgment, the restrictive rule and condition was found to violate Articles 14 and 15 of the Constitution of India. The women who had higher ranks than the appointed candidates in the selected list had to be accommodated in accordance with Ext.P1 judgment, for which supernumerary posts were created. The supernumerary vacancies so created

were far in excess of the NJD vacancies. Hence when NJD vacancies arise, the same has to be adjusted as against the supernumerary posts.

We find no reason to review the judgment and reject the review petition *in limine*.

Sd/-

K.VINOD CHANDRAN

JUDGE

Sd/-

ASHOK MENON

JUDGE

uu

16.12.2020

## **APPENDIX**

### **PETITIONER'S/S EXHIBITS:**

- |             |  |
|-------------|--|
| ANNEXURE A1 | TRUE COPY OF REPLY DATED 5.10.2016 ISSUED<br>BY THE KERALA PUBLIC SERVICE COMMISSION TO<br>5TH APPELLANT/5TH REVIEW PETITIONER UNDER<br>RIGHT TO INFORMATION ACT, 2005.  |
| ANNEXURE A2 | TRUE COPY OF REPLY DATED 20.12.2016 ISSUED<br>BY THE KERALA PUBLIC SERVICE COMMISSION TO<br>5TH APPELLANT/5TH REVIEW PETITIONER UNDER<br>RIGHT TO INFORMATION ACT, 2005. |