



O.P. (KAT) No.433 of 2024

-:1:-

2025:KER:49244

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

FRIDAY, THE 4TH DAY OF JULY 2025 / 13TH ASHADHA, 1947

OP (KAT) NO. 433 OF 2024

ORDER DATED 15/07/2024 IN OA(EKM) NO.1550/2023

PETITIONER/S:

SINI K V,
AGED 39 YEARS
WIFE OF ANISH KUMAR E., RESIDING AT KIZHAKKE VEETIL,
VELLUR, KANNUR, PIN - 670307

BY ADVS.
SRI.P.NANDAKUMAR
SHRI.VIVEK VIJAYAKUMAR
SMT.MERIN K JIMMY

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF
GENERAL EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 2 DIRECTOR OF GENERAL EDUCATION,
DIRECTORATE OF GENERAL EDUCATION, JAGATHY,
THIRUVANANTHAPURAM, PIN - 695014



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- 3 KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY SECRETARY,PATTO, THIRUVANANTHAPURAM, PIN -
695004
- 4 DISTRICT OFFICER,
KPSC DISTRICT OFFICE, CIVIL STATION ROAD, NEW BLOCK, UP
HILL, MALAPPURAM, PIN - 676505
- 5 SHEENA ,
CHALIL HOUSE, VADAKARA, THODANNUR POST, KOZHIKODE, PIN -
673108
- 6 RENJU V.B,
VELAYAT KALARIKKAL HOUSE, PALLIKKARA, NANNAMUKKU,
MALAPPURAM, PIN - 679575
- 7 MINUSHA K,
AGED 37 YEARS
D/O. RAVEENDRAN T.V., ESWAR VIHAR, KUNNARU ONAPPARAMBA,
KARANTHAT PO, RAMANTHALI VIA, KANNUR, PIN - 670308

BY ADVS.

SENIOR GOVERNMENT PLEADER SHRI A.J.VARGHESE

SHRI.P.C.SASIDHARAN, SC, KPSC

SHRI.ASWANTH P.T.

SHRI.KALEESWARAM RAJ

KUM.THULASI K. RAJ

SMT.APARNA NARAYAN MENON

SMT.CHINNU MARIA ANTONY

SHRI.MANUEL P.J.

MANSOOR ALI

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD
ON 25.06.2025, THE COURT ON 04.07.2025 DELIVERED THE FOLLOWING:



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A. MUHAMED MUSTAQUE & JOHNSON JOHN, JJ.

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"C.R."

Dated this the 4th day of July, 2025

J U D G M E N T

A.Muhamed Mustaque, J.

The short point in this case is: can a candidate who applied as a general candidate later claim the benefit of reservation, if their community was included in the backward community list after the last date for submitting the application?

2. The Kerala Public Service Commission (PSC) published a notification on 30/08/2016 inviting applications for selection to the post of High School Assistant (Physical Science) in Malayalam



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medium. The last date of application was 05/10/2016. Smt. Minusha K., the 7th respondent in this Original Petition, applied for the above post as a general candidate. She belongs to the Mukhari/Moovari community. On 18/12/2018, the Government ordered that the Mukhari/Moovari community shall be included in the OBC list under Schedule III, Part I of the Kerala State and Subordinate Services Rules, 1958 (hereinafter referred to as KS&SSR). Based on the above government order, Smt. Minusha obtained a non-creamy layer certificate from the Village Officer on 13/06/2019; accordingly, she updated her profile in the PSC portal. The PSC published the ranked list on 18/11/2020. Smt. Minusha was included in the general category. The petitioner herein, Smt. Sini K.V. was included in the OBC category. Smt. Minusha made a request to the PSC claiming the benefit of the OBC community. The PSC rejected her request. In a challenge made before the Tribunal, the Tribunal found that the PSC extended reservation in another



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notification for appointment of Women Police Constable in similar circumstances and, therefore, PSC cannot adopt a different yardstick. Further, the Tribunal was of the view that a reservation has to be applied at the time of appointment and therefore, there is no impediment in considering such a request for the benefit of a reservation at the time of appointment. Accordingly, the Tribunal set aside its decision and declared that Smt. Minusha shall be treated as a candidate belonging to the OBC, entitled to reservation. Considering her rank, it was ordered that she shall be given preference over the petitioner herein, who holds a lower rank in the OBC category.

3. The learned counsel Shri Nandakumar, appearing for the petitioner, placing reliance on the judgment of the Apex Court in **Karn Singh Yadav v. State (NCT of Delhi) [(2024) 2 SCC 716]**, argued that eligibility criteria must be considered as applicable on the last date of receipt of the application, and



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submitted that any relaxation would deny the opportunity to similarly situated candidates. He also relied on a Division Bench judgment of this court in **Kerala Public Service Commission v. Dineesh K.M. [2024 6 KHC 182]**.

4. In **Karn Singh Yadav** (supra), the Apex Court in paragraph 5 held as follows:

"5. In view of the acute problem of unemployment, whenever few vacancies are notified by any public authority, it is common that thousands of applicants apply for such posts. If the applicants are permitted to rectify applications after cut-off dates, the same would render the scrutiny process indefinite. In the course of such recruitment process, many persons, though they belong to the OBC category or SC/ST category, might not have obtained the required caste certificate before the cut-off date. Such persons, being law abiding and being conscious of the bar contained in the notification of the cut-off date, might not have applied seeking employment. In case the authority starts accepting caste certificates subsequent to the prescribed cut-off dates whenever a candidate approaches the authority, the remaining candidates who had not applied would definitely be affected. If the applicants are allowed to submit certificates in proof of their claim of reservation subsequent to the notified cut-off date, it would create administrative chaos."



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5. In **Dineesh** (supra), this Court opined as follows:

" 12. In James Mathew [(2017) 15 SCC 595] the Apex Court held that once the National Commission issued a certificate regarding the status of a minority education institution, it declared the existing status and had 2024:KER:67974 9 O.P.(KAT) No.406 of 2023 retrospective effect. In Praveen Kumar C.P. [(2021) 17 SCC 383], the question was concerning recognition of equivalence of educational qualifications. It was held that once the university issues orders recognising the equivalent status of the degree obtained by the candidate from another University, the same would be the required qualification, irrespective of the fact that the employment notification was issued earlier. The said principle may not be applicable to the facts of this case. The Pattariya community was newly added in the list of OBCs. The benefit of that order cannot have retrospective application for, the same is not a declaration of a right or status, but it is creation of a new right."

6. The learned counsel for the 7th respondent - Minusha, relying upon the following judgments in **N. Babu v. T.M. Poullose [(2003) 2 KLT 428]**, **Dr. Rajesh Komath and Others v. University of Calicut and Others [2020 SCC OnLine Ker 26055]**, and **Varija. K. v. University of Calicut [2015 SCC OnLine Ker 8220]** argued that inclusion of the community in the reservation list is to undo the historical injustice, and such inclusion



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is only a declaration of a historical fact and is in the nature of restoration of the benefit. Therefore, the denial of a reservation would be unjust. Further, placing reliance on **Dr.Rajesh Komath** (supra), the learned counsel argued that the reservation applies at the time of appointment and not at the time of application.

7. The petitioner also placed reliance on **Varija** (supra), and submitted that merely for the reason that the benefit of the reservation was not claimed in an application, it should not result in the denial of the reservation at a later stage.

8. In **Varija** (supra), a Single Judge of this Court considered the issue regarding the reservation claim of a person belonging to the Marathi community. This Court, in the above case, decided the case on a totally different factual situation, where the Marathi community was originally included among Scheduled Tribes. Thereafter, it was excluded, and again it was included. It is



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in that context, this Court held that such a benefit should be given to the candidate who belonged to the Marathi community.

9. Here, in this case, the issue is totally on a different consideration. Article 16 of the Constitution refers to equal opportunity in matters of public employment. There will be several candidates belonging to the Mukhari/Moovari community who will be entitled to the benefit of reservation. They have not exercised the option for the simple reason that at the time of notification, the above community was not included among the OBC category. Equal opportunity in public employment is a core constitutional value. One cannot steal and march over others by chance. The last date of the notification assumes importance to set a level playing field for everyone who is equal. A reservation cannot be claimed based on fortuitous circumstances, and if at the time of notification the reservation cannot be claimed, it cannot be claimed subsequently.



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10. The Apex Court in **J&K Public Service Commission v. Israr Ahmad, (2005) 12 SCC 498** held as follows:

"5. We have considered the rival contentions advanced by both the parties. The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed of the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he cannot avail of reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal.."

(emphasis supplied)

11. It was noted by the Tribunal that the PSC had extended a benefit to a candidate who had never submitted an application under the OBC category, in a similar instance. If the factual



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situations are similar, we cannot approve such an approach by the PSC. One wrong cannot create a right for others. Therefore, the Tribunal could not have relied on such action of the PSC.

In such circumstances, reservation cannot be claimed retrospectively, unless the rules enable it. In the above circumstances, we are of the view that the Tribunal committed a serious error in allowing the claim of Smt. Minusha. The impugned order is set aside. The Original Petition is allowed.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

Sd/-

JOHNSON JOHN, JUDGE

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APPENDIX OF OP(KAT) 433/2024

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF NOTIFICATION VIDE CATEGORY NO.227/2016 DATED 30.08.2016 ISSUED BY THE 3RD RESPONDENT
Annexure A2	TRUE COPY OF THE APPLICANT'S APPLICATION FORM DATED 01.10.2016
Annexure A3	TRUE COPY OF THE PROFILE PAGE OF THE APPLICANT ALONG WITH THE TYPED COPY
Annexure A4	TRUE COPY OF GO (MS) NO.13/2018/BCDD DATED 18.12.2018
Annexure A5	TRUE COPY OF NON-CREAMY LAYER CERTIFICATE DATED 13.06.2019 ISSUED BY THE VILLAGE OFFICER, RAMATHALI VILLAGE
Annexure A6	TRUE COPY OF THE PROFILE PAGE OF THE APPLICANT
Annexure A7	TRUE COPY OF THE RELEVANT PAGES OF THE RANKED LIST NO.394/2020/SS II IN CATEGORY NO.227/2016 DATED 18.11.2020
Annexure A8	TRUE COPY OF LETTER DATED 27.01.2021 SUBMITTED BY THE APPLICANT BEFORE THE DISTRICT PSC OFFICE ALONG WITH THE TYPED COPY
Annexure A8 (a)	TRUE COPY OF LETTER DATED NIL SUBMITTED BY THE APPLICANT BEFORE THE STATE PSC OFFICE
Annexure A9	TRUE COPY OF APPOINTMENT CHART SHOWING CANDIDATE WITH RANK NO.255 NAMELY SHEENA C.
Annexure A9 (a)	TRUE COPY OF APPOINTMENT CHART SHOWING CANDIDATE WITH RANK NO.266 NAMELY RENJU V.V.
Annexure A9 (b)	TRUE COPY OF APPOINTMENT CHART SHOWING CANDIDATE WITH RANK NO.288 NAMELY SINI K.V.
Annexure A10	TRUE COPY OF NOTIFICATION IN CATEGORY NO.653/2017 DATED 31.01.2018



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Annexure A11	TRUE COPY OF THE RELEVANT PAGES OF THE RANKED LIST NO.225/2020/ER III IN CATEGORY NO.653/2017 DATED 04.08.2020
Annexure A12	TRUE COPY OF ERRATUM NOTIFICATION NO.ER III (1) 7170/18/EW DATED 12.10.2020 ISSUED BY THE PSC
Annexure A13	TRUE COPY OF THE LETTER DATED 03.03.2023 ISSUED BY THE 3RD RESPONDENT UNDER REFERENCE NO.AS-3/2/2019-KPSC-PART (7) ALONG WITH THE TYPED COPY
Annexure A14	TRUE COPY OF THE LETTER NO.MRI(2)4062/2016 DATED 17.08.2021 ISSUED BY THE DISTRICT OFFICER, PSC, MALAPPURAM TO THE APPLICANT ALONG WITH THE TYPED COPY
Exhibit P1	TRUE COPY OF THE ORDER DATED 15.07.2024 IN OA (EKM) NO. 1550 OF 2023 ON THE FILE OF THE KERALA ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
Exhibit P2	TRUE COPY OF THE AMENDED OA (EKM) NO. 1550 OF 2023 ALONG WITH ANNEXURES
Exhibit P3	REPLY STATEMENT FILED ON BEHALF OF RESPONDENTS 3 & 4 IN THE OA
Exhibit P4	TRUE COPY OF THE REPLY STATEMENT FILED BY RESPONDENTS 5 TO 7 IN THE OA
Exhibit P5	TRUE COPY OF ERRATUM NOTIFICATION DATED 24.09.2024 ISSUED BY THE 3RD RESPONDENT
Exhibit P6	TRUE COPY OF SHOW CAUSE NOTICE DATED 07.10.2024 ISSUED BY THE 4TH RESPONDENT.