



2024:KER:96532

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 20TH DAY OF DECEMBER 2024 / 29TH AGRAHAYANA, 1946OP(KAT) NO. 356 OF 2024

AGAINST THE ORDER DATED 09.08.2024 IN OA NO.2287 OF 2023 OF
KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS 10, 19, 22, 23 AND 24:

- 1 SAJEEV N, SENIOR TAX ASSISTANT,
AGED 43 YEARS
OFFICE OF JOINT COMMISSIONER,
STATE GST DEPARTMENT, 3RD FLOOR,
FINANCIAL COMPLEX, MINI CIVIL STATION,
PATHANAMTHITTA, PIN - 689645
- 2 SETHULEKSHMI V.,
AGED 36 YEARS
SENIOR TAX ASSISTANT, FORMERLY WORKING IN OFFICE OF
DEPUTY COMMISSIONER, STATE GST DEPARTMENT, KAP
COMMERCIAL CENTRE, 3RD FLOOR, RAILWAY STATION ROAD,
ALUVA, ERNAKULAM DISTRICT,
PRESENTLY WORKING IN OFFICE OF DEPUTY COMMISSIONER,
AUDIT DIVISION, MINI CIVIL STATION,
ANGAMALY, ERANAKULAM, PIN - 683572
- 3 SHANA A,
AGED 42 YEARS
W/O. VINOD KUMAR B.P., OFFICE OF THE JOINT COMMISSIONER
OF STATE TAX, TAX PAYER SERVICES,
KOZHIKODE, STATE GST DEPARTMENT, SGST COMPLEX, 3RD



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FLOOR, JAWAHAR NAGAR, ERANHIPALAM P.O.,
KOZHIKODE, PRESENTLY WORKING AS SENIOR AUDIT ASSISTANT,
OFFICE OF THE JOINT COMMISSIONER(AUDIT),SGST
DEPARTMENT, JAWAHAR NAGAR, ERANHIPALAM P.O.,
KOZHIKODE, PIN - 673006

- 4 JALAJA T, W/O. SHAJI R.,
AGED 42 YEARS
SENIOR TAX ASSISTANT,
OFFICE OF THE JOINT COMMISSIONER OF STATE TAX, TAX
PAYER SERVICES, KOZHIKODE, JAWAHAR NAGAR,
ERANHIPALAM P.O.,KOZHIKODE, NOW WORKING IN THE OFFICE
OF THE DEPUTY COMMISSIONER, TAX PAYER SERVICES
DIVISION,VATAKARA, KOZHIKODE, PIN - 673006
- 5 JESNA RAVINDRAN G., (WRONGLY SHOWN AS JESNA R. IN THE
O.A.),
AGED 42 YEARS
SENIOR TAX ASSISTANT,OFFICE OF THE JOINT COMMISSIONER
OF STATE TAX AUDIT,KOZHIKODE, 3RD FLOOR,
STATE GST DEPARTMENT,SGST COMPLEX,
JAWAHAR NAGAR, ERANHIPALAM P.O.,KOZHIKODE,
PIN-673 006, NOW WORKING IN THE OFFICE OF THE DEPUTY
COMMISSIONER (AUDIT), AUDIT DIVISION, VATAKARA,
PIN - 673101

BY ADVS.
S.P.ARAVINDAKSHAN PILLAY
N.SANTHA
V.VARGHESE
PETER JOSE CHRISTO
S.A.ANAND
K.N.REMYA
L.ANNAPOORNA
FAIRUZ M.

RESPONDENTS/APPLICANTS AND RESPONDENTS 1 TO 9, 11, 12, 13, 14 TO
18, 20, 21, 25 TO 50 IN O.A.:



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- 1 ANUMOL P S,
D/O K K SOMAN, SENIOR TAX ASSISTANT,
TAXPAYER SERVICES CIRCLE,
STATE GOODS AND SERVICES TAX DEPARTMENT, MINI CIVIL
STATION, CHENGANNUR, ALAPPUZHA ,RESIDING AT MADATHIL
PADMAVILASAM, KEEZHCHERIMEL CHENGANNUR,ALAPPUZHA,
KERALA, PIN - 689121
- 2 SUJA P NAIR,
W/O PRADEEP U PILLAI, SENIOR TAX ASSISTANT,
O/O JOINT COMMISSIONER, TAXPAYER SERVICES, SGST
DEPARTMENT, SECOND FLOOR, BSNL BHAVAN,
OPP HPO, ALAPPUZHA RESIDING AT ANIZHAM (H), KOMANA,
AMBALAPUZHA ALAPPUZHA, PIN - 688561
- 3 MUHAMED UVAIS M,
S/O MUHAMED A, SENIOR TAX ASSISTANT, O/O ASSISTANT
COMMISSIONER, TAXPAYER SERVICES CIRCLE FORT,
THIRUVANANTHAPURAM, RESIDING AT FATHIMA MANZIL
NEERKUNNAM, VANDANAM P O, ALAPPUZHA,
PIN - 688005
- 4 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAX
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 5 SECRETARY TO GOVERNMENT,
PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 6 THE COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPARTMENT,
O/O THE COMMISSIONER, TAX TOWERS, KARAMANA P.O.
THIRUVANANTHAPURAM, PIN - 695002
- 7 THE SPECIAL COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPARTMENT,
O/O THE SPECIAL COMMISSIONER 9TH FLOOR,
TAX TOWERS KARAMANA P.O THIRUVANANTHAPURAM,
PIN - 695002



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- 8 ATHUL A L,
 SENIOR TAX ASSISTANT, O/O THE JOINT COMMISSIONER OF
 STATE TAX (AUDIT), STATE GST COMPLEX,
 BAPUJI NAGAR, ASRAMAM, KOLLAMN , PIN - 691002
 (DELETED)
- 9 SMITHA V,
 SENIOR TAX ASSISTANT,
 O/O THE JOINT COMMISSIONER OF STATE TAX, AXPAYER
 SERVICES, STATE GST COMPLEX,
 BAPUJI NAGAR, ASRAMAM, KOLLAM ,
 PIN - 691002 (DELETED)
- 10 SOUMYA CHANDRAN,
 SENIOR TAX ASSISTANT,
 O/O JOINT COMMISSIONER OF STATE TAX (AUDIT) ,
 KOTTAYAM, STATE GST DEPARTMENT,
 2ND FLOOR COLLECTORATE BUILDING,
 COLLECTORATE P.O., KOTTAYAM ,
 PIN - 686002 (DELETED)
- 11 JYOTSANA,
 SENIOR TAX ASSISTANT, O/O DEPUTY COMMISSIONER
 INTELLIGENCE STATE GST DEPARTMENT,
 2ND FLOOR, FINANCIAL COMPLEX,
 MINI CIVIL STATION, PATHANAMTHITTA ,
 PIN - 689645 (DELETED)
- 12 MANOJ M.,
 SENIOR TAX ASSISTANT,
 O/O JOINT COMMISSIONER OF STATE TAX TAXPAYER
 SERVICES, KOZHIKODE,
 STATE GST DEPARTMENT, SGST COMPLEX, LLLRD FLOOR,
 JAWAHAR NAGAR COLONY, ERANHIPALAM,
 P.O.KOZHIKODE , PIN - 673006 (DELETED)
- 13 RAMEESA T,
 SENIOR TAX ASSISTANT,
 O/O JOINT COMMISSIONER OF STATE TAX TAXPAYER SERVICES
 STATE GST DEPARTMENT SGST COMPLEX,
 TRD FLOOR, JAWAHAR NAGAR COLONY ERANHIPALAM, P.O.



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KOZHIKODE , PIN - 673006 (DELETED)

- 14 SOUMYA RAMDAS,
SENIOR TAX ASSISTANT, AUDIT DIVISION, STATE GST
DEPARTMENT CIVIL STATION,
MALAPPURAM, KERALA , PIN - 676505 (DELETED)
- 15 SUDHEESH P,
SENIOR TAX ASSISTANT, OFFICE OF THE JOINT COMMISSIONER
OF STATE TAX PAYER SERVICES,
STATE GST DEPARTMENT,
SGST COMPLEX, 3RD FLOOR, JAWAHAR NAGAR
COLONY, ERANHIPALAM P.O.,
KOZHIKODE , PIN - 673006 (DELETED)
- 16 JISHA V U. ,
SENIOR TAX ASSISTANT,
O/O THE JOINT COMMISSIONER OF STATE TAX, TAXPAYER
SERVICES, STATE GST DEPARTMENT,
COMMERCIAL TAXES COMPLEX, 1ST FLOOR,
POOTHOLE, THRISSUR PIN - 680004 (DELETED)
- 17 MANULAL,
SENIOR TAX ASSISTANT O/O DEPUTY COMMISSIONER
INTELLIGENCE,
STATE GST DEPARTMENT B1 BLOCK CIVIL STATION,
MALAPPURAM , PIN - 676505 (DELETED)
- 18 SUJATHA,
SENIOR TAX ASSISTANT,
O/O THE JOINT COMMISSIONER OF STATE TAX, TAXPAYER
SERVICES, STATE GST DEPARTMENT,
FIRST FLOOR, SGST COMPLEX, PALAKKAD ,
PIN - 678001 (DELETED)
- 19 SUBHEESH,
SENIOR TAX ASSISTANT,
O/O THE JOINT COMMISSIONER OF STATE TAX,
TAXPAYER SERVICES, STATE GST DEPARTMENT,
FIRST FLOOR, SGST COMPLEX, PALAKKAD ,
PIN - 678001 (DELETED)



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- 20 BALTHILAK,
 SENIOR TAX ASSISTANT,
 O/O JOINT COMMISSIONER OF STATE TAX TAXPAYER
 SERVICES, STATE GST DEPARTMENT,
 SGST COMPLEX, 3RD FLOOR,
 JAWAHAR NAGAR COLONY, ERANHIPALAM,
 P.O. KOZHIKODE , PIN - 673006 (DELETED)
- 21 ARUN KRISHNAN ,
 SENIOR TAX ASSISTANT,
 O/O THE JOINT COMMISSIONER OF STATE TAX, TAXPAYER
 SERVICES, STATE GST COMPLEX, BAPUJI NAGAR,
 ASRAMAM, KOLLAM , PIN - 691002 (DELETED)
- 22 MANJULA,
 SENIOR TAX ASSISTANT, O/O JOINT COMMISSIONER,
 AUDIT, STATE GST DEPARTMENT,
 SGST COMPLEX, MATTANCHERRY, BAZAR ROAD,
 COCHIN , PIN - 682002 (DELETED)
- 23 SHALIMOL,
 SENIOR TAX ASSISTANT,
 O/O JOINT COMMISSIONER OF STATE TAX, TAXPAYER
 SERVICES, KOZHIKODE,
 STATE GST DEPARTMENT, SGST COMPLEX 3RD FLOOR,
 JAWAHAR NAGAR COLONY ERANHIPALAM,
 P.O. KOZHIKODE , PIN - 673006 (DELETED)
- 24 SREELEKHA L,
 SENIOR TAX ASSISTANT, O/O STATE TAX OFFICER,
 TAXPAYER CIRCLE ALAPPUZHA SOUTH,
 CIVIL STATION ALAPPUZHA , PIN - 688001 (DELETED)
- 25 RUHALATH,
 SENIOR TAX ASSISTANT,
 O/O THE JOINT COMMISSIONER OF STATE TAX,
 TAXPAYER SERVICES,
 STATE GST DEPARTMENT FIRST FLOOR,
 SGST COMPLEX, PALAKKAD , PIN - 678001 (DELETED)
- 26 DHANYA S,
 SENIOR TAX ASSISTANT,



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O/O THE JOINT COMMISSIONER OF STATE TAX,
TAXPAYER SERVICES, STATE GST DEPARTMENT,
COMMERCIAL TAXES COMPLEX, FIRST FLOOR,
POOTHOLE, THRISSUR , PIN - 680040 (DELETED)

- 27 SUMALEKHA,
SENIOR TAX ASSISTANT,
O/O THE JOINT COMMISSIONER OF STATE TAX, TAXPAYER
SERVICES, STATE GST COMPLEX,
BAPUJI NAGAR ASRAMAM, KOLLAM ,
PIN - 691002 (DELETED)
- 28 SARANYA,
SENIOR TAX ASSISTANT,
O/O THE DEPUTY COMMISSIONER OF STATE TAX
(INTELLIGENCE), STATE GST COMPLEX,
BAPUJI NAGAR ASRAMAM, KOLLAM ,
PIN - 691002 (DELETED)
- 29 PRASANTH M,
SENIOR TAX ASSISTANT,
O/O THE JOINT COMMISSIONER OF STATE TAX,
TAXPAYER SERVICES, STATE GST DEPARTMENT,
STATE GST COMPLEX, BAPUJI NAGAR, ASRAMAM,
KOLLAM , PIN - 691002 (DELETED)
- 30 SUJANA P.C,
SENIOR TAX ASSISTANT,
O/O JOINT COMMISSIONER OF STATE TAX, AUDIT,
2ND FLOOR, STATE GST DEPARTMENT,
SGST COMPLEX, AWAHAR NAGAR, ERANHIPALAM,
KOZHIKODE , PIN - 673006 (DELETED)
- 31 BINDU M.,
SENIOR TAX ASSISTANT,
O/O THE JOINT COMMISSIONER OF STATE TAX, TAX PAYER
SERVICES, STATE GST DEPARTMENT,
ANAPPARA BUILDING, NEAR LEO HOSPITAL JUNCTION,
KALPETTA , PIN - 673121 (DELETED)
- 32 REKHA E J,
SENIOR TAX ASSISTANT, O/O DEPUTY COMMISSIONER



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INTELLIGENCE STATE GST DEPARTMENT, GST COMPLEX, GROUND
FLOOR POOTHOLE, THRISSUR, PIN - 680004 (DELETED)

- 33 DHANYA V G,
SENIOR TAX ASSISTANT, O/O THE JOINT COMMISSIONER OF
STATE TAX, TAXPAYER SERVICES STATE GST DEPARTMENT,
COMMERCIAL TAXES COMPLEX, 1ST FLOOR POOTHOLE,
THRISSUR , PIN - 680004 (DELETED)
- 34 JEENA MARY,
SENIOR TAX ASSISTANT,O/O THE JOINT COMMISSIONER OF
STATE TAX (AUDIT),STATE GST COMPLEX, BAPUJ NAGAR,
ASRAMAM KOLLAM , PIN - 691002 (DELETED)
- 35 MANJULA C R,
SENIOR TAX ASSISTANT, O/O THE JOINT COMMISSIONER OF
STATE TAX (AUDIT),STATE GST COMPLEX, BAPUJI NAGAR,
ASRAMAM, KOLLAM , PIN - 691002
- 36 NADEER T P,
SENIOR TAX ASSISTANT, O/O JOINT COMMISSIONER OF STATE
TAX TAXPAYER SERVICES,KOZHIKODE, STATE GST DEPARTMENT,
SGST COMPLEX, 3RD FLOOR, JAWAHAR NAGAR COLONY,
ERANHIPALAM, P.O., KOZHIKODE, PIN - 673006 (DELETED)
- 37 ABIN SEBASTIAN,
SENIOR TAX ASSISTANT, O/O JOINT COMMISSIONER OF STATE
TAX TAXPAYER SERVICES,KOZHIKODE STATE GST DEPARTMENT,
SGST COMPLEX, 3RD FLOOR,JAWAHAR NAGAR COLONY,
ERANHIPALAM, P.O.,KOZHIKODE , PIN - 673006 (DELETED)
- 38 SAJITHA M,
SENIOR TAX ASSISTANT, O/O JOINT COMMISSIONER OF STATE
TAX, (AUDIT), 2ND FLOOR, STATE GST DEPARTMENT, SGST
COMPLEX, JAWAHAR NAGAR, ERANHIPALAM, KOZHIKODE , PIN -
673006 (DELETED)
- 39 SHYNI K K,
SENIOR TAX ASSISTANT, O/O JOINT COMMISSIONER OF STATE
TAX, (AUDIT) KOZHIKODE,IIND FLOOR, STATE GST
DEPARTMENT, SGST COMPLEX, JAWAHAR NAGAR, ERANHIPALAM,
KOZHIKODE , PIN - 673006 (DELETED)



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- 40 MUMTHAS,
SENIOR TAX ASSISTANT, O/O DEPUTY COMMISSIONER
INTELLIGENCE, STATE GST DEPARTMENT, B1 BLOCK, CIVIL
STATION, MALAPPURAM , PIN - 676505 (DELETED)
- 41 MANJUMOL,
SENIOR TAX ASSISTANT, O/O JOINT COMMISSIONER OF STATE
TAXPAYER SERVICES,
STATE GST DEPARTMENT, 1ST FLOOR,
COLLECTORATE BUILDING,
COLLECTORATE P.O, KOTTAYAM , PIN - 686002
(DELETED)
- 42 APARNA K R,
SENIOR TAX ASSISTANT,
O/O JOINT COMMISSIONER OF STATE TAXPAYER SERVICES,
STATE GST DEPARTMENT, 1ST FLOOR, COLLECTORATE
BUILDING, COLLECTORATE P.O, KOTTAYAM ,
PIN - 686002
(DELETED)
- 43 JEETHU ALPHONSA,
SENIOR TAX ASSISTANT, O/O JOINT COMMISSIONER OF STATE
TAXPAYER SERVICES, STATE GST DEPARTMENT, FIRST FLOOR
COLLECTORATE BUILDING, COLLECTORATE P.O,
KOTTAYAM , PIN - 686002
(DELETED)
- 44 AGNUS SINDHYA,
SENIOR TAX ASSISTANT,
OFFICE OF THE JOINT COMMISSIONER OF STATE TAX, TAX
PAYER SERVICES, STATE GOODS AND SERVICES TAX
DEPARTMENT, BSNL BUILDING, 2ND FLOOR,
HEAD POST OFFICE ROAD, ALAPPUZHA ,
PIN - 688001
(DELETED)
- 45 ANJANA,
SENIOR TAX ASSISTANT,
O/O THE JOINT COMMISSIONER OF STATE TAX TAXPAYER
SERVICES, STATE GST DEPARTMENT,



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B2 BLOCK CIVIL STATION, MALAPPURAM ,
PIN - 676505 (DELETED)

- 46 ABDUL RASHEED,
 SENIOR TAX ASSISTANT, O/O THE JOINT COMMISSIONER OF
 STATE TAX, TAXPAYER SERVICES,
 STATE GST DEPARTMENT, B2 BLOCK, CIVIL STATION,
 MALAPPURAM , PIN - 676505 (DELETED)
- 47 ASWANI V,
 SENIOR TAX ASSISTANT, O/O THE JOINT COMMISSIONER OF
 STATE TAX, TAX PAYER SERVICES, STATE GST DEPARTMENT,
 ANAPPARA BUILDING NEAR LEO HOSPITAL JUNCTION,
 KALPETTA , PIN - 673121 (DELETED)
- 48 JALAJAKUMARI P. ,
 SENIOR TAX ASSISTANT,
 O/O JOINT COMMISSIONER OF STATE TAXPAYER SERVICES,
 STATE GST DEPARTMENT, 1ST FLOOR COLLECTORATE
 BUILDING, COLLECTORATE P.O, KOTTAYAM,
 KERALA, PIN - 686002 (DELETED)

R8 TO R48 ARE DELETED AT THE RISK OF THE PETITIONERS AS
PER ORDER DATED 8/10/2024 IN IA 2/2024 IN OP (KAT)
356/2024) ,

BY ADVS.
S.PRASANTH (AYYAPPANKAVU)
VARSHA BHASKAR
ANUPAMA SIBI
MALAVIKA K.
N.R.REESHA
SR.GOV'T. PLEADER SMT.NISHA BOSE

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
HEARING ON 20.11.2024, THE COURT ON 20.12.2024 DELIVERED THE
FOLLOWING:



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CR

JUDGMENT**P.Krishna Kumar, J.**

On 21/10/2023, the Government of Kerala issued an order granting a one-time exemption to the State Government employees who had not passed departmental tests which are necessary for promotion in the wake of the COVID-19 pandemic on conditions that, (a) the exemption would apply only to those who had applied for the departmental tests in the year 2020 and 2021 but failed to acquire the test qualification, and (b) that they should acquire the test qualification in the very next departmental tests. If those conditions are satisfied, they will be given a promotion, effective from the date the juniors have been granted a promotion. The validity of the said order is the subject matter of this petition.

2. The circumstances in which the said order was



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passed are described in Annexure A9 order. The government received representations from employees and organisations that, owing to the outbreak of COVID-19, various employees lost their opportunity to attend the departmental tests, and accordingly, they lost seniority to those who had already passed the test qualification. The government further stated in Annexure A9 that several junior employees had overtaken their seniors in promotion because the seniors were prevented from attending departmental tests due to the COVID-19 pandemic. The Government noted that this would further affect the senior employees in all their future promotions. Accordingly, the Government decided to restore their seniority on the said conditions by relaxing the provisions contained in Rule 28b(iA) and 28b(bb) of Part II of Kerala State and Subordinate Services Rules ('KS & SSR', for short).

3. Annexure A9 was challenged by the party respondents herein who were included in Annexure A7



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seniority list of the Senior Clerks in the State Goods and Services Tax Department. According to them, the relaxation granted is unjust as those senior employees had several opportunities to acquire the test qualification, and further, the relaxation was beyond the powers conferred on the government.

4. The Government contended that Annexure A9 order had been issued in consultation with the Public Service Commission, invoking Rule 39 of part II, KS & SSR, which empowers the Government to exercise its discretionary powers to relax the rules when the situation warrants, and that the benefit granted was just a one-time affair and the same was confined only to the seniors who were otherwise qualified for the promotion, as also, on the aforementioned conditions. The Government further contended that under Rule 13 A(4) of Part II, KS & SSR, a maximum number of chances are prescribed for passing the mandatory departmental tests within the exemption period. The action of the



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Government to preserve justice could not be treated as dilution of the prevailing rule provisions, it is urged.

5. After adverting to the contentions raised by both sides, the learned Tribunal set aside Annexure A9 order to the extent it relates to the promotion to the cadre of Senior Clerk/Senior Tax Assistant, mainly for the reason that the seniors who were granted exemption had got several chances to appear for the tests before the outbreak of COVID-19 pandemic.

6. Heard the learned counsel on both sides. The learned Senior Government Pleader Smt.Nisha Bose and the learned counsel appearing for the party respondents, Sri. Prasanth S. submitted hearing notes to substantiate their conditions.

7. The learned Senior Government Pleader vehemently contended that Annexure A9 order was passed with the approval of the Governor, taking into account the extraordinary circumstances that prevailed during



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the years 2020 and 2021, that Article 162 of the Constitution of India empowers the Government to pass such orders to meet the extraordinary situation, as the executive power of the State extends to any matter in which the legislature of the State has power to make laws. It is also contended that Annexure A9 order was passed in consonance with the provisions contained in Article 166 of the Constitution of India, and it did not offend any of the statutory provisions, as it was issued under Rule 39 of Part II of the KS & SSR. It is also argued that several employees who applied for the departmental test were not able to participate in the examination conducted by the Kerala Public Service Commission due to the pandemic crisis. While issuing the said order, the Government imbibed the doctrine of impossibility i.e., a person shall not be denied his right merely because he cannot perform an act or comply with the condition that is impossible to perform or comply with, the learned Government Pleader urged by



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referring to the decision in **State of Madhya Pradesh v. Narmada Bacho Andolan and Others** [(2011) 7 SCC 639]. It is also submitted that Rule 28b(bb) of Part II, KS & SSR prescribes only that the conditions existing at the time of occurrence of vacancy have to be looked into in *ordinary situations*, which presupposes that in an extraordinary situation, the Government can deviate from it.

8. Sri. V. Varghese, the learned counsel appearing for the petitioners, supported the contentions of the learned Senior Government Pleader and further submitted that even when the departmental tests were conducted during the time of the pandemic, the employees were not in a position to prepare for the examination or to attend it due to various restrictions imposed by the Government as well as their individual health challenges. He also pointed out that one of the two mandatory tests was not even conducted by the PSC because of the restrictions imposed at that time.



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9. Sri Prasanth S., the learned counsel appearing for the party respondents, forcefully submitted that there are no grounds to interfere with the impugned order as Annexure A9 was issued in an arbitrary fashion and it violates Rule 28b(bb) of Part II, KS &SSR, which mandates that the promotions must be based on qualifications possessed at the time when the vacancy occurs. It also violates Rule 28 b (iA) as the said provision provides that when a select list is prepared subsequent to the occurrence of a vacancy, no person who was not qualified for inclusion in the select list at the time of occurrence of the vacancy shall be included in the select list for appointment against that vacancy. Rule 28b(iA) and Rule 28b(bb) are to be read together. It is not legally possible to give relaxation to the rules retrospectively in view of the law laid down by the Full Bench of this Court in **James Thomas and Others v. Chief Justice, High Court of Kerala and Others** [1977 KLT 622(F.B.)]. The said case considers the impact of Rule



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28b(bb) of Part II, KS & SSR and the exemption permissible as per Rule 36 of the Kerala High Court Service Rules, which is identical to Rule 39 of KS & SSR; he submits.

10. Sri. Prasanth S. further persuasively contended that the power of relaxation of rules can be exercised by the Government under Rule 39 of KS & SSR only in exceptional circumstances after analysing the individual cases, and it cannot be exercised for giving a blanket exemption as it is done in Annexure A9. Retrospective relaxation granted on the basis of an executive order is arbitrary and illegal; it is urged. Learned counsel placed reliance on the decision in **T.C.Sreedharan Pillai and Others v. State of Kerala** (1973 KLT 151) to contend that the power under Rule 39 can be exercised in individual cases based on distinct and substantial differences and the said power should not be used to undermine the substantive conditions of service such as seniority and promotion based on



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qualifications. The decisions in **The Income Tax Officer, Aleppey v. M.C.Ponnoose and Others** (AIR 1970 SC 385) and **Ex-Major N.C.Singhal v. Director General, Armed Forces Medical Services, New Delhi and Another** (AIR 1972 SC 628) were referred to by the learned counsel to contend that executive orders passed by the State Government granting exemption cannot have retrospective operation or to confer eligibility for promotion. The learned counsel also placed reliance on the decisions in **Upendranath v. Mabel Franco** (2006 (4) KLT SN 70), **Aboobacker v. Emilia Morris** (2020 (1) KLT OnLine 1092), **Punjab Water Supply & Sewerage Board v. Ranjodh Singh and Others** [(2007) (2) SCC 491], **Union of India & Others v. Somasundaram Viswanath** [(1989) 1 SCC 175] and **B.N.Nagarajans and Others. v. State of Karnataka** [(1979) 4 SCC 507].

11. As the decision of this case mainly revolves around the interpretation of Rule 28b(bb) of Part II, KS & SSR, it is profitable to refer to the said provisions,



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which read as follows:

“28b(bb): Promotion which depends upon the passing of any examination.- Promotion in a service or class which depends upon the passing of any examination (General or Departmental) shall ordinarily be made with reference to the conditions existing at the time of occurrence of the vacancies and not with reference to those at the time when the question of promotions is taken up.”

12. No doubt, ordinarily, promotions in service are typically made with reference to the conditions existing at the time of occurrence of vacancies, rather than the time of actual promotion. Similarly, the plenary power conferred under Rule 39 of Part II, KS & SSR, on the Government should be exercised after analysing individual cases, and blanket exemptions cannot be made. However, the impugned government order was passed in the most extraordinary circumstances due to the COVID-19 outbreak. The Government found that several employees were unable to attend the examination. Some of the examinations were not even conducted. The said order was



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passed after analysing various circumstances and fixing a realistic and reasonable condition: the exemption would apply only to those who had applied for the examination during the pandemic and succeeded in the test qualification in the immediate next opportunity. It is unquestionable that the COVID-19 pandemic had a profound impact on public life in Kerala. No evaluation or analysis is required to determine the persons affected by the pandemic crisis. Every human being living in a civil society was adversely affected by the pandemic in one way or another and hence it would be an exercise in futility if we compel the Government to make such an evaluation before issuing an order of the above nature. Nevertheless, the Government fairly and reasonably limited the scope of the Government order to those who had applied for the test during the pandemic and further carefully added a condition that the benefit would be provided only to those who could succeed the test qualification in the next opportunity. Such a provision



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cannot be assailed for its overbreadth in the given circumstance.

13. Significantly, Rule 28b(bb) of Part II, KS & SSR, contemplates a situation of the above nature, implying that the Government could have exempted a specified class of persons from the rigour of Rule 28b(bb) even without resorting to Rule 39. The term "**ordinarily**" in the provision suggests that promotion shall typically be made with reference to the conditions existing at the time of occurrence of vacancies, but extraordinary circumstances may warrant a deviation from this ordinary course of action. Therefore, it is implicit in the said provision itself that a deviation is possible in an extraordinary circumstance.

14. However, it is necessary to examine whether the above finding is in conflict with the law settled by the Full Bench of this Court and the Apex Court in the decisions referred to above. The learned Tribunal set



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aside Annexure A9, following the Full Bench decision in **T.C Sreedharan Pillai's** case (supra), holding that the exemption granted in Annexure A9 is more or less similar to the one which was considered by the Full Bench and thus the dictum laid down therein is squarely applicable in the present case.

15. It is necessary to refer to paragraph 12 of the impugned order, which reads as follows:

“12.It is relevant to note that the seniors who are granted exemption got several chances to appear in the tests several years prior to the outbreak of Covid pandemic and they could appear in the tests conducted even in the year 2020. It is not a case that they got only one chance to appear in the test and that test was not held in time. From the documents produced along with the rejoinder, it is evident that the PSC has conducted the test even in 2020, apart from the innumerable tests conducted before that. Annexure A13 and



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A14 series would show that the party respondents who entered appearance and filed reply statements had appeared and failed in tests of January and July 2020. The exemption granted in Annexure A9 is more or less similar to the one which was considered by the Full Bench in Sreedharan Pilla's case (cited Supra). We find that the dictum laid down therein is squarely applicable in this case and thus the relaxation granted as per Annexure A9 order is unsustainable. Moreover in the present case the tests from which exemption are granted are essential qualifications for the post of Senior Tax Assistant. Grant of such exemption is beyond the authority and it does not come under the purview of Rule 39 of KS&SSR."

We cannot agree with the above observations because the factual and legal aspects considered by the said Full Bench were not at all similar to the present case. It is true that in the said case, the Government order under



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challenge was giving exemption to a category of employees by considering them as a "special case" and thereby restoring seniority to them over the juniors who got promotions prior to them because they were test qualified at the time of occurrence of vacancies, and that the Government order further provided a condition that the seniors should pass the test qualification in the immediate next opportunity. The Tribunal might have been persuaded by the above factual similarities in arriving at a conclusion that the law laid down in the said case is squarely applicable to the present one. In that case, there was no justification for the seniors who were not test-qualified when the vacancy had arisen. The Government was moved by their representation for no extraordinary reasons as in the present case. Undoubtedly, in such circumstances, the Government was not expected to issue such an order under Rule 39, as it violates Rule 28b(bb), which provides that promotion shall ordinarily be made with reference to the conditions



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existing at the time of occurrence of vacancies. This is the circumstance in which the Full Bench of this Court laid down that Rule 39 cannot be regarded as conferring an arbitrary power on the Government to ignore the existing service rules and to deal with cases of a few officers contrary to it. Even while holding so, the Full Bench held as follows:

“20. **Ordinarily**, therefore, it is not expected that the power under R.39 should be resorted to merely for the purpose of getting round the provision contained in any of the general rules or special rules. **R.39 is to be invoked only to meet exceptional situations where gross injustice or inequity is seen to result from the application of the rules in all their rigour.** In such cases and such cases alone, R.39 empowers the designated authority to mete out equity and justice by passing appropriate orders in relaxation of the provisions of the rules concerned

We have also indicated that in rare and exceptional cases where there are valid grounds for a reasonable classification, it



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is permissible under R.39 to accord a special treatment by granting a partial or even total relaxation of a substantive provision contained rules.”

(emphasis added)

The Government order under challenge is precisely coming within the above fold and thus the same cannot be overturned by applying certain other observations made by the Full Bench which are not relevant in the present context.

16. In **Showkath Ali v. State of Kerala (2008(1)KLJ 923)**, a Division Bench of this court had the occasion to consider the validity of a Government order that was issued under Rule 39 of Part II, KS & SSR for giving exemption to Assistant Sub Inspectors of Police from passing the departmental test from the rigour of Rule 13A of the KS & SSR, after referring to the law settled in **T.C.Sreedharan Pillai's** case (supra). In the said case, the Special Rules applicable to the Sub Inspectors of



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Police insists a pass in the departmental test conducted by the KPSC as a mandatory condition for promotion, but the test was not conducted by the KPSC and thus they could not pass that qualifying examination. The Division Bench, after referring to paragraph 20 of the judgement in **T.C. Sreedharan Pillai**'s case, observed as follows:

“9.The reasons stated by the Government disclose an extra ordinary situation and the injustice that was meted out to the Assistant Sub Inspectors of Police, warranting invocation of its powers under R.39 of K.S. & S.S.R. Reasoning of the Government that it was illogical and unjustified to ask the Assistant Sub Inspectors of Police to appear for the test after rendering service of 12 years in the post also cannot be said to be unreasonable. We are satisfied that Government was justified in invoking the power under R.39 of K.S. & S.S.R. and in our considered view, there is nothing illegal in Ext. P6 order of the Government.”

17. The Division Bench further followed the law



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laid down in **Sherafuddin v. State of Kerala 2004 (2) KLT 731**, where also certain Circle Inspectors of Police were exempted from passing the prescribed test in relaxation of the Special Rules by invoking Rule 39 as the test was not conducted in time. In **Sherafuddin's** case (supra), the question of the permissibility of issuing a Government order with retrospective effect to give exemption to a class of persons was also considered. After following the decisions in **M.Venkateswarlu v. Government of Andhra Pradesh [(1996) 5 SCC 167]** and **Santhosh Kumar v. State of Andhra Pradesh [(2003) 5 SCC 511]**, this court held that when there is failure of justice resulting inequity and injustice, Rule 39 of the General Rules of the KS & SSR has to be invoked even with retrospective effect for doing complete equity. Thus, it is evident that extraordinary circumstances require extraordinary treatment and the same is within the implicit scheme of KS & SSR as evident from Rule 28b(bb) as well as Rule 39. This principle is upheld in **T.C Sreedharan Pillai's** case



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(supra) itself, as also in **Showkath Ali's** and **Sherafuddin's** case (supra). The only difference is that, here, in the estimation of the government, senior employees could not have passed or attended the exam due to the pandemic crisis, whereas, in the said cases, the exam was not conducted.

18. We are mindful of the devastating impact of the pandemic on our daily lives and how the nation has tackled the crisis during 2020-2021. The COVID-19 pandemic had a catastrophic impact on our daily lives and the nation's response to the crisis in 2020-2021 was unprecedented. The stringent measures, including lockdowns, zonal restrictions, and the judicial directions for decongesting prisons and suspending statutory limitation periods, are testaments of the far-reaching consequences of the pandemic. Given these extraordinary circumstances, it is illogical to differentiate between the two situations, as both are characterized by the doctrine of impossibility and force



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19. The Full Bench of this Court in **James Thomas's** case (supra) considered a situation analogous to the one in **T.C. Sreedharan Pillai's** case (supra). The exemption or relaxation at issue in that case was not granted in response to exceptional or extraordinary circumstances, as mentioned earlier. Consequently, the court was not required to examine its validity in light of the implicit safeguards provided in Rule 28b(bb) and Rule 39 of Part II, KS & SSR. For the same reason, we are not advertent to the other decisions cited by the learned counsel for the party respondents.

20. The Tribunal found that the seniors who were granted exemption had several chances to appear in the test prior to the outbreak of COVID-19, and further, they have appeared in some of the tests conducted even during the pandemic period. The Tribunal also observed that it was not a case where the seniors got only one chance to



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appear in the test or that the test was not held in time. We cannot uphold the said reasoning on multiple scores. The petitioners had indeed failed several times on previous occasions when they attempted the examination for test qualification. However, it is not a fair and valid reason to set aside the order passed by the Government resorting to its power under Rule 39 of Part II, KS & SSR, and Article 162 of the Constitution. A candidate has a vested right to be considered for promotion if he possesses the required qualifications at the relevant time. Ordinarily, if he/she fails to pass the test qualification before the material period, he/she has no justification to challenge the promotion given to juniors who already possess the necessary qualifications. Nevertheless, the number of attempts a candidate takes to pass the test qualification is not considered a relevant criterion for promotion or selection. Consequently, candidates have every right to get qualified, even on the last day of the applicable date, regardless of the number



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of attempts they previously utilised.

21. In response to the extraordinary circumstances caused by the COVID-19 pandemic, which prevented candidates from clearing the examination conducted during the year 2020-2021, the Government issued the said relaxation order with such a rider. Given that the pandemic affected the entire world, it is common knowledge that not everyone was in a position to prepare for the examination, even if they could have attended it. To ensure a level playing field, the Government issued the said direction, which is fair, reasonable, and well-balanced, as it extended the benefit only to those who had applied for the examinations and those who cleared it in the immediate next opportunity.

22. Sri.Prasanth S., the learned counsel for the party respondents, raised another contention based on Rule 28 b(iA) of the KS & SSR that no person who was not qualified for inclusion in the select list at the time of



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occurrence of vacancy shall be included in the select list for appointment against that vacancy. We are of the view that Rule 28b(iA) and Rule 28b(bb) are to be read together and when there is an extraordinary circumstance of the above nature, it is well within the power of the Government to relax the conditions in favour of a well-defined class as above mentioned.

23. For the above reasons, we find that the impugned order of the Tribunal is liable to be set aside.

The Original Petition is allowed accordingly and the impugned order is set aside.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE



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APPENDIX OF OP(KAT) 356/2024

PETITIONER'S ANNEXURES

Annexure A1	TRUE COPY OF ORDER NO.CT/9997-2019-A3 DATED 22.04.2022 ISSUED BY THE 4TH RESPONDENT.
Annexure A2	TRUE COPY OF ORDER NO.CT/9997-2019-A3 DATED 29.08.2022 ISSUED BY THE 4TH RESPONDENT.
Annexure A3	TRUE COPY OF RELEVANT PAGES OF ORDER NO.CT/3/2023- A3 DATED 12.01.2023 ISSUED BY THE 4TH RESPONDENT.
Annexure A4	TRUE COPY OF THE CERTIFICATE ID 112445#1#6 DATED 21.07.2020 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 1ST APPLICANT FOR PASSING THE ACCOUNT TEST(LOWER) .
Annexure A4 (a)	TRUE COPY OF THE CERTIFICATE ID 112445#1#27 DATED 21.07.2020 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 1ST APPLICANT FOR PASSING THE AGRICULTURAL INCOME TAX AND SALES TAX TEST
Annexure A5	TRUE COPY OF THE CERTIFICATE ID 98437#1#6 DATED 06.08.2019 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 2ND APPLICANT FOR PASSING THE ACCOUNT TEST(LOWER) .
Annexure A5 (a)	TRUE COPY OF THE CERTIFICATE ID 107320#1#9 DATED 03.09.2020 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 2ND APPLICANT FOR PASSING THE ACCOUNT TEST(HIGHER)
Annexure A5 (b)	TRUE COPY OF THE CERTIFICATE ID 113635#1#27 DATED 28.09.2020 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 2ND APPLICANT FOR PASSING THE AGRICULTURAL INCOME TAX AND SALES TAX TEST



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Annexure A6	TRUE COPY OF THE CERTIFICATE ID 107366#1#6 DATED 03.09.2020 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 3RD RESPONDENT FOR PASSING THE ACCOUNT TEST (LOWER) .
Annexure A6 (a)	TRUE COPY OF THE CERTIFICATE ID 107366#1#9 DATED 03.09.2020 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 3RD RESPONDENT FOR PASSING THE ACCOUNT TEST (HIGHER)
Annexure A6 (b)	TRUE COPY OF CERTIFICATE ID 120948#1#27 DATED 19.03.2021 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION TO THE 3RD RESPONDENT FOR PASSING THE AGRICULTURAL INCOME TAX AND SALES TAX TEST
Annexure A7	TRUE COPY OF ORDER NO.CT/5587/2022-PD(S) 4 DATED 25.07.2023 ISSUED BY THE 3RD RESPONDENT ALONG WITH THE FINAL SENIORITY LIST OF SENIOR CLERKS APPOINTED TO THE VACANCIES FOR THE PERIOD FROM 01.01.2020 TO 31.12.2021.
Annexure A8	TRUE COPY OF THE ORDER DATED 13.09.2023 OF THIS HON'BLE TRIBUNAL IN O.A. 1651/2023.
Annexure A9	TRUE COPY OF G.O. (MS.) NO.20/2023/P&ARD DATED 21.10.2023 ISSUED BY THE 2ND RESPONDENT.
Annexure R3 (a)	TRUE COY OF THE PROCEEDINGS IN ORDER NO.CT/5587/2022-G4 DATED 04.01.2024 OF THE ADDITIONAL COMMISSIONER TPS, STATE GOODS AND SERVICES TAX DEPARTMENT, THIRUVANANTHAPURAM ALONG WITH REVISED SENIORITY LIST OF SENIOR CLERKS APPOINTED TO THE VACANCIES FOR THE PERIOD FROM 01.01.2020 TO 31.12.2021.
Annexure R3 (b)	TRUE COPY OF THE U.O.NOTE OF THE COMMISSIONER, STATE GOODS AND SERVICES TAX TOWERS, THIRUVANANTHAPURAM.
Annexure A10	TRUE COPY OF ORDER NO.CT/5587/2022-G4 DATED 04.01.2024 ISSUED BY THE 3RD RESPONDENT ALONG



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WITH THE FINAL SENIORITY LIST OF SENIOR
CLERKS APPOINTED TO THE VACANCIES FOR THE
PERIOD FROM 01.01.2020 TO 31.12.2021.

- Annexure R10 (a)** TRUE COPY OF GOVERNMENT LETTER NO.RULES-
1/1/2024-P&ARD DATED 11.01.2024.
- Annexure R10 (b)** TRUE COPY OF THE LETTER DATED 02.02.2024
ISSUED BY THE COMMISSIONER OF STATE GOODS AND
SERVICES TAX DEPARTMENT TO THE ADVOCATE
GENERAL, KERALA.
- Annexure A11** TRUE COPY OF THE APPLICATION DATED 26.02.2024
UNDER THE RIGHT TO INFORMATION ACT, 2005
SUBMITTED BY SRI.BILAL ABDUL WAHAB BEFORE THE
STATE PUBLIC INFORMATION OFFICER, KERALA
PUBLIC SERVICE COMMISSION.
- Annexure A12** TRUE COPY OF THE REPLY NO.IDSII(3)/917247/
2024/GW DATED 15.03.2024 SENT BY THE STATE
PUBLIC INFORMATION OFFICER, KERALA PUBLIC
SERVICE COMMISSION TO SRI.BILAL ABDUL WAHAB
- Annexure A13** TRUE COPY OF THE EXAMINATION RESULT OF THE
10TH RESPONDENT FOR THE DEPARTMENTAL TEST
CONDUCTED IN JANUARY 2020 BY THE KERALA
PUBLIC SERVICE COMMISSION.
- Annexure A13 (a)** TRUE COPY OF THE EXAMINATION RESULT OF THE
11TH RESPONDENT FOR THE DEPARTMENTAL TEST
CONDUCTED IN JANUARY 2020 BY THE KERALA
PUBLIC SERVICE COMMISSION.
- Annexure A13 (b)** TRUE COPY OF THE EXAMINATION RESULT OF THE
13TH RESPONDENT FOR THE DEPARTMENTAL TEST
CONDUCTED IN JANUARY 2020 BY THE KERALA
PUBLIC SERVICE COMMISSION.
- Annexure A13 (c)** TRUE COPY OF THE EXAMINATION RESULT OF THE
22ND RESPONDENT FOR THE DEPARTMENTAL TEST
CONDUCTED IN JANUARY 2020 BY THE KERALA
PUBLIC SERVICE COMMISSION.



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Annexure A13(d)	TRUE COPY OF THE EXAMINATION RESULT OF THE 23RD RESPONDENT FOR THE DEPARTMENTAL TEST CONDUCTED IN JANUARY 2020 BY THE KERALA PUBLIC SERVICE COMMISSION.
Annexure A13(e)	TRUE COPY OF THE EXAMINATION RESULT OF THE 25TH RESPONDENT FOR THE DEPARTMENTAL TEST CONDUCTED IN JANUARY 2020 BY THE KERALA PUBLIC SERVICE COMMISSION.
Annexure A14	TRUE COPY OF THE EXAMINATION RESULT OF THE 10TH RESPONDENT FOR THE DEPARTMENTAL TEST CONDUCTED IN JULY 2020 BY THE KERALA PUBLIC SERVICE COMMISSION.
Annexure A14(a)	TRUE COPY OF THE EXAMINATION RESULT OF THE 11TH RESPONDENT FOR THE DEPARTMENTAL TEST CONDUCTED IN JULY 2020 BY THE KERALA PUBLIC SERVICE COMMISSION.
Annexure A14(b)	TRUE COPY OF THE EXAMINATION RESULT OF THE 13TH RESPONDENT FOR THE DEPARTMENTAL TEST CONDUCTED IN JULY 2020 BY THE KERALA PUBLIC SERVICE COMMISSION.
Annexure A14(c)	TRUE COPY OF THE EXAMINATION RESULT OF THE 22ND RESPONDENT FOR THE DEPARTMENTAL TEST CONDUCTED IN JULY 2020 BY THE KERALA PUBLIC SERVICE COMMISSION.
Annexure A14(d)	TRUE COPY OF THE EXAMINATION RESULT OF THE 23RD RESPONDENT FOR THE DEPARTMENTAL TEST CONDUCTED IN JULY 2020 BY THE KERALA PUBLIC SERVICE COMMISSION.
Annexure A14(e)	TRUE COPY OF THE EXAMINATION RESULT OF THE 25TH RESPONDENT FOR THE DEPARTMENTAL TEST CONDUCTED IN JULY 2020 BY THE KERALA PUBLIC SERVICE COMMISSION.
Exhibit -P1	TRUE COPY OF O.A.NO.2287/2023 FILED BEFORE



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THE KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.

- Exhibit P2** TRUE COPY OF M.A.NO.87/2024 IN
O.A.NO.2287/2023 FILED BY THE 3RD RESPONDENT
OF THE HON'BLE KAT.
- Exhibit P3** TRUE COPY OF M.A.NO.106/2024 IN
O.A.NO.2287/2023 FILED BY THE APPLICANTS OF
THE HON'BLE KAT.
- Exhibit-P4** TRUE COPY OF THE REPLY STATEMENT FILED ON
BEHALF OF THE RESPONDENTS 11, 13, 22, 23, 24
AND 25 IN O.A.2287/2023 OF THE HON'BLE
TRIBUNAL.
- Exhibit-P5** TRUE COPY OF M.A.NO.107/2024 IN O.A.2287/2023
OF THE HON'BLE KAT.
- Exhibit-P6** TRUE COPY OF THE REPLY STATEMENT FILED ON
BEHALF OF THE 10TH RESPONDENT IN
O.A.2287/2023 OF THE HON'BLE COURT.
- Exhibit-P7** TRUE COPY OF REJOINDER FILED BY THE
APPLICANTS TO THE REPLY STATEMENT FILED BY
RESPONDENTS 10,11,13,22,23,24 AND 25 IN
O.A.NO.2287/2023 OF THE HON'BLE TRIBUNAL.
- Exhibit P8** TRUE COPY OF THE JUDGMENT DATED 29.01.2024 IN
OP(KAT) NO.34/2024 OF THIS HON'BLE COURT.
- Exhibit P9** TRUE COPY OF THE FINAL ORDER DATED 09.08.2024
IN O.A.NO.2287/2023 OF THE HON'BLE KAT.