



**GOVERNMENT OF KERALA**

**Abstract**

Local Self Government – Panchayat Department – Order dated 21.02.2017 in OA(EKM) 806/2016 filed by Sri. Krishnankutty C and others before the Hon'ble Kerala Administrative Tribunal - Complied with - Orders issued.

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**LOCAL SELF GOVERNMENT (EPA) DEPARTMENT**

G.O.(Rt)No.2953/2017/LSGD

Dated, Thiruvananthapuram,29/08/2017

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- Read :
1. G.O(Rt) No. 1744/16/LSGD , dated 25.05.2016
  2. Proceedings No. E13-14/2014 dated 16.04.2015 of the Director of Panchayats, Thiruvananthapuram
  3. Order dated 21.02.2017 in OA(EKM) 806/2016 filed by Sri. Krishnankutty C and others before the Hon'ble Kerala Administrative Tribunal
  4. Letter No. OA(E) 806/2016 dated 17.05.2017 of the Advocate General, Kerala, Thiruvananthapuram
  5. Letter No. E13-14/2014 dated 15.03.2016 of the Director of Panchayats, Thiruvananthapuram

**ORDER**

Sri. Krishnankutty C and others have filed OA(EKM) 806/2016 before the Hon'ble Kerala Administrative Tribunal with a prayer to invoke Rule 39 of Part II, KS&SSRs so as to retain them in the promoted post for the reason that the first and third applicants have already passed the requisite tests and the second applicant has crossed the age of 45.

2. By disposing the OA(EKM) 806/2016 filed by Sri. Krishnankutty C and others the Hon'ble Kerala Administrative Tribunal have directed the 1st Respondent to pass appropriate orders within a period of two months from the date of receipt of a copy of the order and the interim order granted by the Tribunal against the reversion of the applicants will continue till the issuance of final orders by the first respondent.

3. The 1st applicant, a member of Scheduled Caste community was appointed as LDC and his satisfactory completion of probation was declared on 14/05/2004 and was promoted as UDC as per order dated 30/07/2007 of the Director of Panchayat, by granting the benefit of exemption provided under Rule 13 A(1) a of Part II KS&SSRs. He was subsequently promoted as Accountant. While continuing

as Accountant, the Director of Panchayats issued direction to the Deputy Director of Panchayats, Palakkad reverting the Applicant to the post of Lower Division Clerk. Pursuant to this, the Deputy Director of Panchayats issued posting orders. Similarly the 2nd and 3rd Applicants in the OA are aggrieved by the proposal to revert them from the post of Accountant.

4. The matter in question was examined with the extant Rules in KS&SSRs, Rule 39 of Part II, KS&SSRs and with reference to the report of the Director of Panchayats as per paper read as 5<sup>th</sup> above and the contentions put forth by the Applicants.

5. The applicants were promoted as UDC by granting the benefit of exemption as provided under Rule 13 A (1) (a) of KS&SSRs Part II. Subsequently the applicants were promoted to the post of Accountant disregarding the fact that they failed to acquire test qualification within 3 years. All the 3 applicants had not acquired test qualification within a period of 3 years from the date of promotion as provided under Rule 13 A(2) of KS &SSRs, Part II. Therefore the stand taken by the Director of Panchayats in the matter of reversion is correct and maintainable. Moreover the reversion ordered as per paper read as 2<sup>nd</sup> above was issued after hearing the Applicants.

6. The petitioners are seeking to invoke Rule 39 of Part II, KS&SSRs in this case so as to retain them in the promoted post for the reason that the first and third applicants have already passed the requisite tests and the second applicant has also crossed the age of 45. Rule 39, Part II KS&SSRs is a discretionary power vested with Government to deal with a case in such a manner as may appear to the Government to be just and equitable. Government can exercise the said power to relax the Rules in those cases in which hardship is caused in the implementation of those rules to meet a particular situation or where injustice has been caused to either the individual employee or class of employees and in those cases where gross injustice or inequality is seen resulting from the application of Rule in all its rigour. However, this discretionary power is not meant to be exercised arbitrarily, to give undue advantage or favour to an individual employee. Generally, rules should not be relaxed in individual cases unless there are compelling reasons justifying such relaxation.

7. Passing of departmental tests is a prerequisite for promotion to the post of Upper Division Clerk. Since the petitioners belong to SC/ST communities, they were promoted giving an additional 3 year relaxation as per Rule 13A(1)(a) of Part II KS&SSRs. The Rule 13A(2) of Part II KS&SSRs clearly states that one who does not pass the departmental tests within three years shall be reverted to his previous post and shall not again be eligible for appointment under this clause. The applicants were reverted as per the condition stipulated in Rule 13A(2) of Part II KS&SSRs. The said rule does not give any protection to an employee who has passed the departmental test beyond the three year relaxation period.

8. The employees of and above the age of 45 years are exempted only in the case where a new test or tests of a higher standard the passing of which may be a condition precedent for benefits like increments, promotion, completion of probation, etc., are introduced. No such new test or test of a higher standard has been introduced in the case of petitioners and as such the petitioners are not eligible for relaxation under Rule 13A(3)(iii) of Part II KS&SSRs.

9. The petitioners are seeking relaxation of general conditions in statutory rules is only for individual benefits and it is purely not a just and equitable case to invoke Rule 39 of Part II KS&SSRs. The Government, therefore, doesnot find any justifiable reason for invoking Rule 39 of Part II, KS&SSRs in this case. Allowing such requests will make a bad precedent and also open a flood gate of similar demands/litigations.

10. In the light of the facts and circumstances as detailed above, the request of the Applicants to cancel the order reverting them to the post of Lower Division Clerk is declined and the order of Hon'ble Administrative Tribunal read as 3<sup>rd</sup> paper above is hereby complied with accordingly.

(By Order of the Governor)

**S. MOHAN DAS**  
ADDITIONAL SECRETARY TO GOVT.

To

1. The Advocate General, Kerala, Thiruvananthapuram Branch (with covering letter)
2. Shri Krishnankutty, Prejeesh Bhavan, Edathilpadam, Mudappalloor P.O, Palakkad – 688 537
3. Shri Sisan P V, Puthenveeduparambil House, Vaniyakkadu, Mannam P.O, North Paravur, Ernakulam – 676 633
4. Smt. Beena K, Abhi Nivas, Agali P.O(AVIP Quarters), Attappady – 687 786
5. The Director of Panchayats, Thiruvananthapuram
6. The Deputy Director of Panchayats, Palakkad
7. Web & New media, I&PRD.
8. The Director, Information Kerala Mission (for publishing on official Website)
9. Stock File/Office Copy(File No. 376/EPA1/15/LSGD)



Forwarded/By Order



Section Officer