

**GOVERNMENT OF KERALA****Abstract**

Health & Family Welfare Department - Order of the Hon'ble High Court dated 24/06/2024 in OP(KAT)Nos. 48/2024, 49/2024 and 53/2024 - Complied with - Orders Issued

HEALTH & FAMILY WELFARE (E) DEPARTMENT

G.O.(Rt)No.1889/2024/H&FWD Dated,Thiruvananthapuram, 09-08-2024

- Read 1 G.O.(MS)No.395/81/HD dated 19/12/1981
2 G.O.(MS)No.188/91/H&FWD dated 24/12/1991
3 G.O.(MS) No.80/2004/H&FWD dated 15/04/2004
4 G.O.(MS)No.123/2009/ H&FWD dated 23/5/2009
5 Order dated 05/07/2019 of the Hon'ble High Court in OP (KAT) No. 342/2018, 390/2018 and 423/2018
6 G.O.(Rt)No. 2939/2019/H&FWD dated 05/12/2019
7 Letter No. EG1-50961/2019/DHS dated 03/02/2020 from Director of Health Services, Thiruvananthapuram
8 G.O.(Rt)No.282/2020/ H&FWD dated 10/02/2020
9 Order dated 21/07/2023 of the Hon'ble Kerala Administrative Tribunal in OA No. 379/2020, 1973/2020 and 1977/2021
10 Order dated 24/06/2024 of the Hon'ble High Court in O.P. (KAT) Nos.48, 49 & 53 of 2024

ORDER

After the pronouncement of FSSAI Act, Commissionerate of Food Safety was constituted and PFA Wing (Prevention of Food Adulteration) under Director of Health Services was bifurcated and brought under the Control of Commissioner of Food Safety. While the PFA Wing is functioning under the Health Service Department, the method of appointment to the post of Food Inspector (Re designated as Food Safety Officer) is as per, Government Orders read as 1st, 2nd and 3rd paper above. At that time Health Inspectors and Junior Health

Inspectors were the feeder category among the Departmental Candidates for the promotion to the post of Food Inspector.

2. After promulgation of FSSAI Act, the post of Food Inspector was re-designated as Food Safety Officer and new qualification and method of appointment to the post of Food Safety Officers were introduced. Accordingly, appointment to the post can be done through direct recruitment only. Meanwhile a WP(C)No.18175/2010 filed before the Hon'ble High Court of Kerala (which was later transferred to the Kerala Administrative Tribunal and renumbered as TA-3933/2012), claiming that several vacancies of Food Inspectors were kept vacant before 05/08/2011 (the date on which the Food safety and standards Rules came into force) in which the Junior Health Inspectors were eligible to be appointed to that vacancies. The same was disposed by the Hon'ble Kerala Administrative Tribunal in a common order dated 25/07/2018 stating that the relief sought by the applicants in TA No.3933/2012, OA No.2142, 2410 of 2015, 2493 of 2016, 351 and 497 of 2017 cannot be granted and directed the respondents to fill the 15 vacancies of Food Safety Officer from the rank list published by the Public Service Commission dated 09.09.2016.

3. Aggrieved by the said order, petitioners filed OP(KAT) No.342/2018, OP(KAT)No.390/2018 and OP(KAT)No.423/2018 against the impugned order of Hon'ble KAT dated 25/07/2018. The Hon'ble High Court of Kerala in the judgement read as 5th paper above disposed the OPs and directed that all vacancies of Food Inspectors (approximately five in number) existed up to the date of coming in to force of the Food Safety and Standards Rules, 2011 on 5.8.2011 should be filled up by qualified Junior Health Inspectors. The Junior Health Inspectors shall be promoted to the re-designated post of Food Safety Officer by the appointing authority under the Food Safety and Standards Act, 2006. The remaining substantive vacancies to the post of Food Safety Officer shall be filled up from the rank list published by the Public Service Commission on 09.09.2016.

4. In compliance to the judgement, Director of Health Services and Commissioner of Food Safety had submitted applications of the petitioners for appointment to the post of Food Safety Officers. Representations from persons other than petitioners were also received. The Hon'ble High Court of Kerala had directed to fill the 5 vacancies of

Food Safety Department from qualified Junior Health Inspectors. As Government could not identify the eligible persons to be promoted from the details obtained from the Director of Health Services and from the Commissioner of Food Safety, a decision could not be taken at once. In the meantime, the petitioners preferred filing Contempt of Court Case(C)No.2139/2019 before the Hon'ble High Court of Kerala. Hence, as per Government order read as 6th paper above, direction has been given to the Director of Health Services to prepare and furnish a proposal in respect of the qualified Junior Health Inspectors fit for promotion to the post of Food Inspectors based on their seniority and qualification in accordance with the judgement. Accordingly as per 7th paper read above, Director of Health Services prepared the list of departmental candidates fit for promotion to the post of Food Inspectors which includes 8 senior most candidates who were Health Inspectors before 05/08/2011 who were fit for promotion to the post of Food Inspector (Re designated as Food Safety Officer). Junior Health Inspectors with regular service of 5 years can be considered only in the absence of Health Inspectors. Hence, Junior Health Inspectors were not included in the above list. Meanwhile, the Hon'ble High Court of Kerala, in interim order dated 16/12/2019 in OP(KAT)No. 527/2019, had ordered that out of the five vacancies, one vacancy is still remaining and that vacancy shall not be filled, until further orders from the Court. As there is a stay in filling fifth vacancy, Government had appointed first four candidates in the seniority list, as Food Safety Officers as per Government Order read as 8th paper above. Based on the said order, the Hon'ble High Court closed the Contempt of Court Case (C)No. 2139/2019 filed by the petitioners.

5. Aggrieved by the Government order read as 8th paper above, the petitioners who filed OP (KAT) earlier filed OA 379/2020, OA 1973/2020 and OA 1977/2021 before the Honorable Kerala Administrative Tribunal. The incumbents who have appointed as Food Safety Officers as per Government Order read as 8th paper above have also filed OA No.474/2020 before Hon'ble Kerala Administrative Tribunal requesting to implement the directions in the said Government Order.

6. Accordingly, the Hon'ble Kerala Administrative Tribunal, Thiruvananthapuram dated 21/07/2023 ordered that, the steps adopted

by the official respondents 1 and 2 to fill up the vacancies which arose in the post of Food Inspectors prior to 05.08.2011 by promoting and appointing persons, other than the petitioners before the Hon'ble High Court of Kerala was not legally correct. Persons who are now promoted had never raised any claims for promotion and they had not challenged the order of this Tribunal. All those directions of the Tribunal still holds the field, except to the extent modified by the Hon'ble High Court. Therefore, orders impugned in O.A Nos. 379/2020, 1973/2020 and 1977/2021 are quashed and it is hereby declared that benefit of the modification made in Annexure A4 Judgment is applicable only to the applicants in O.A Nos. 379/2020, 1973/2020 and 1977/2021. O.A No. 474/2020 is dismissed. It is further declared that all the applicants in O.A Nos. 379/2020, 1973/2020 and 1977/2021 are entitled to be considered and appointed against the post of Food Inspectors/ Food Safety Officers, pursuant to Annexure A4 Judgment expeditiously at any rate within a period of 3 months of date of receipt of this order.

7. Accordingly, Government filed OP (KAT)No. 48/2024 against the order dated 21/07/2023 in OA No. 1977/2021, OP (KAT)No. 49/2024 against the order dated 21/07/2023 in OA No. 1973/2020 and OP (KAT)No. 53/2024 against the order dated 21/07/2023 in OA No. 379/2020.

8. The Hon'ble High Court in OP (KAT)Nos. 48, 49 & 53 of 2024 dated 24/06/2024 against the order dated 21.07.2023 in OA No.1977 of 2021 Kerala Administrative Tribunal, Thiruvananthapuram ordered that only the petitioners who had approached before this Court alone should be considered in respect of the vacancies which arose prior to 5.8.2011. In the light of the inter-party judgment there is no further scope for Government to prepare a seniority list contrary to the directions of the Court. Further ordered that, any other observations and findings by the Tribunal that the judgment would also enable others to claim for appointment is unwarranted and ought not to have been decided in this matter especially when this matter can be decided solely based on the earlier judgment of the Court.

9. Government have examined the matter in detail and hereby direct the Director of Health Services and the Commissioner of Food Safety to take necessary action in the matter and issue necessary orders to the petitioners in OA No. 1977/2021, OA No. 1973/2020 and OA No. 379/2020 so as to appoint the Junior Health Inspectors under

Director of Health Services as Food Safety Officers in the Commissionerate of Food Safety as directed in the judgment dated 26/04/2024 in OP (KAT)No. 48, 49 & 53 of 2024 based on their seniority and the vacancies earmarked as on 5.8.2011.

10. The direction contained in the order read as 9th and 10th paper above is thus complied with.

(By order of the Governor)
CHITHRA K DIVAKARAN
JOINT SECRETARY

To:

The Advocate General, Ernakulam / Thiruvananthapuram. (With C/L)
The Director of Health Services, Thiruvananthapuram
The Commissioner of Food Safety, Thiruvananthapuram
The Petitioners concerned (through the Director of Health Services)
The Accountant General (A&E/Audit), Thiruvananthapuram
Stock File / Office Copy.

Forwarded /By order

Section Officer