

# GOVERNMENT OF KERALA

## Abstract

*PUBLIC SERVICES- PROMOTION BY THE APPLICATION OF THE 1:1 RATIO BETWEEN GRADUATES AND NON- GRADUATES- EXTENSION OF THE BENEFIT TO THE NON- GRADUATES SENIOR TO THE LAST GRADUATE IN SERVICE AS ON 1-11-1957 WHO ACQUIRED GRADUATE QUALIFICATION PRIOR TO 19-6-1968-REVIEW OF ORDERS ON THE BASIS OF THE JUDGEMENT OF THE HIGHCOURT IN O.P.No.4048-74-ORDERS ISSUED.*

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GENERAL ADMINISTRATION (SERVICES D) DEPARTMENT

G.O.(Ms) No 299/78/GAD.

Dated, Trivandrum, 23<sup>rd</sup> June 1978.

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- Read:-1. G.P.No S(C) 4-14527/56/ Public (Services-D) Department dated 19-11-1957.  
2. G.O.(MS)No. 105/58/PD dated 31-1-1958.  
3. G.O.Ms.No543/61/PD dated 4-7-1961.  
4. G.O.Ms.No196/68/PD dated 19-6-1968.  
5. G.O.(P) No. 114/73/Public ( Services-D) Department dated 26-4-1973.  
6. Government letter.No.50494/SD5/73/PD Dated26-5-1973 addressed to all Heads of Departments.  
7. Government letter No.50494/SD5/73/PD dated 7-11-1973 addressed to all Heads of Departments.  
8. Government letter No. 50494/SD5/73/PD dated 6-6-1974 addressed to all Heads of Departments  
9. Government letter. No 48435/SD1/77/GAD dated 2-3-1978 addressed to all Heads of Departments.

## ORDER

In the G.P read as first paper above, it was ordered, among other things, that there would be a ratio of 1:1 between graduates and non- graduates both for promotion from lower division to upper division and from upper division to the supervisory posts in the offices other than the Secretariat, Public Service Commission and High Court. This ratio was introduced as a temporary measure till the last graduate in service as on 1-11-1957 in a category was promoted to the next higher category. Thereafter there would be no ratio. In the G.O. read as second paper above, the benefit of the 1:1 ratio was made available to the non-graduates also who were senior to the last graduate in service on 1-11-1957 but who acquired graduate qualification subsequent to 1-11-1957. In a few Departments, as the last graduates who acquired graduate qualification subsequently secure an undue advantage in that the benefit of the 1:1 ratio was conferred on them even beyond the normal date on which it would have ceased to exist of the last graduate as on 1-11-1957 had qualified in time. Government therefore ordered in the G.O read as fourth paper above that the non-graduates granted in the G.P read as 1st paper above the extended to all non- graduates who

were senior to the last graduates in service as on 1-11-1957 and who acquired qualification subsequently, but prior to 19-6-1968, irrespective of whether the last graduate as on 1-11-1957 got promoted to the next higher cadre or not, by that time. On the basis of the representation received from the Secretary, Travancore Registering Officer's Association, this order was stayed by Government on 26-5-1973- vide letter read as sixth paper above. In the letter read as seventh paper above the Head of Departments were requested to work out the details of persons in the respective Departments who would be benefited by the Go read as fifth paper read as above and also to issue notices univocally to the persons who would be adversely affected by its implementation call for objectives, if any and forward the representation received in reply, to Government. The objections so, received by examined by Government and rejected. The stay on the implementation of the G.O read as fifth paper above was also vacated in Government letter read as eighth paper above.

2. In O.P No 4048/74 filed in the High Court of Kerala by Smt.J. Mariamma and two others of the Registration Department the orders in the G.O. read as a fifth paper above were challenged. The O.P was disposed of by the High Court in its judgment dated with the following direction:-

“ It is , therefore, necessary to quash Ext.P-13 order (letter dated 6-6-1974 read as 8<sup>th</sup> paper above ) and to direct the 1<sup>st</sup> respondent to consider the matter afresh fter giving an opportunity to the petitioners and respondents. No 3 and 7 for personal hearing. Such of the petitioners or respondents who choose to submit any representation or supplementary representation may do so within a period of one month from today. I quash Ext.P-13 order. I direct as aforesaid. The matter shall be considered and disposed of within a period of six months from today”.

3. The Court has since granted extension of time for the implementation of the above direction.

4. In prudence of the said judgment the petitioners in the O P submitted similar representations to Government praying for the cancellation of the G.O read as fifth paper above. The respondents in the O.P too submitted two joint representations in favors of implementing the G.O. The Petitioners and the respondents in the O P were heard by the Additional Secretary to Government, General Administration Department on 20-8-1977.

5. Following were the main objectives raised by the petitioners.

(i) The normal date of promotion of the last graduate L.D Clerk in the Registration Department was 7-10-1963. The benefit of the ratio is therefore available only to those non- graduates in service who acquired graduation before 7-10-1963.

(ii) The respondents 3 to 7 in the O P became graduates only after 7-10-1963. Hence the orders regarding the ratio are not applicable to them.

(iii) The graduate non- graduate ratio is intended only as a temporary measure till the due date of promotion of the last of the existing graduates in the category as on 1-11-1957. In the case of the Registration Department, the benefit of the ratio, therefore, ceased to be available from 7-10-1963.

(6) These three objectives can be summarized into a single general major objection, namely that conferment of the benefits of the ratio after the normal date of promotion of last graduate of a category in a Department is irregular since it is contrary to the basis principle of the graduate non graduate ratio scheme that there will be no ratio after the last graduate as on 1-11-1957 is promoted to the next higher grade and such irregular conferment of the benefit after the promotion of the last graduate would be detrimental to the promotion prospects of senior non – graduates who did not acquire graduate qualification.

7. The Registration Department to which the petitioners in the said OP belong is one in which the normal date of promotion of the last graduate as on 1-11-1957 was 7-10-1963. But, according to the G.O fifth cited the benefit of the ratio would be continued to be availed of even after 7-10-1963 up to 19-6-1968. The respondents 3 to 7 in the O P also belong to the Registration Department. They were non- graduates senior to the last graduate on 1-11-1950 who acquired graduation and were promoted after the normal date of promotion of the last graduate ( ie 7-10-1963) availing of the benefit of the ratio and super siding the petitioners in the O p who are senior non- graduates. According to the respondents in the O P the objections of the petitioners are not sustainable for the following reason:

“ By the restriction imposed in G.O.Ms.196/PD dated 19-6-1968, respondents 3 to 7 were denied the benefit of the ratio and that mistake has been sought to be rectified by G O Ms. 114 dated 26-4-1973”.

8. They also argues that in the judgment of the High Court dated 19-2-1976 in O P No 3195/1975 filed by one of the beneficiaries of the G.O. dated 26-4-1973 directed that the GO Ms.No 31/76/Food dated 23-11-1976. According to them, there was an implied assurance in G.O.Ms 105/PD dated 31-1-1958 that all non- graduate ( seniors to the last graduate on 1-11-1957 ) who acquired graduation will have the benefit of the ratio and this benefit bought to be available to them without any time-limit. Their argument was that it was wrong to have introduced a time-limit as in G.O.Ms.No.196/PD dated 19-6-1968 ( ie till the normal date of promotion of the last graduate) and that the GO dated 26-4-1973 was intended to rectify this partly by allowing them the benefit till 19-6-1968.

10. Government carefully examined the contentions of the petitioners and the respondents. Soon after the formation of Kerala the Government, after a thorough examination of the question of continuance of the T.C Government's graduate ratio scheme, issued in consultation with the Heads of Departments and Government of India a revised sachem in 1957. (GP.SC4-14527/56/PD dated 19-11-1957) according to which the ratio was reduced to 1:1 and it was to be discontinued with the promotion of last graduate in category as on 1-11-1957 to the higher category. It was therefore a fundamental necessity that all subsequent orders in this scheme should be consistent with the provisions of the above order.G.O.MsNo105/PD dated 31/1/1958 stipulates that “those non graduates now in service who may acquire graduate qualification subsequent to 1-11-1957 will also come within the category of graduate for the purpose of qualifying service and ratio”. This portion can be treated only as subject to the stipulation in the said GP that there will be no ratio after the promotion of last

graduate as on 1-11-1957 to the higher category. So Government in fairness should limit the ratio benefit till the promotion of last graduate only. In this view, the objectives raised by the petitioners were reasonable.

11. For the reasons stated above Government came to the tentative conclusion that the G.O read as fifth paper might be cancelled with retrospective effect. The proposal, with reasons therefore, was communicated to all Heads of Departments, with instructions to circulate copies of the same to all employees of the Department who would be adversely affected by the proposal, allowing them a definite time limit till 25-3-1978 for filing objections, if any- vide Government letter read as 9<sup>th</sup> paper above. In a large number of the remaining ones, the objections referred to in Para 5 above have been repeated.
12. Some of the petitioners have requested for personnel hearing before disposing of the matter. Government have already heard the petitioners and respondents in O P no 4048/74 as directed in the judgment in the O.P . A further hearing to all those who have asked for hearing is found to be not necessary in as much as they have already been given a reasonable opportunity to state their case and such representations filed by them have also been given the consideration. A few grounds of objections contained in those representations are examined below:
  - (a) The High Court on its judgment dated 2-3-1977 in O P No.4048/74 has not expressed any view in the merits of the G.O read as fifth paper above.
  - (b) The direction of the High Court is based on some peculiar conditions and special feature obtaining in the Registration Department and applies only so that disturbed.
  - (c) The settles seniority cannot be disturbed.
  - (d) G.O.(P)No. 114/73/PD dated 26-4-1973 was issued to set right the hardship commonly caused by G.O (Ms) No 196/68/ PD dated 19-6-1968.
  - (e) All orders issued on the subject, which were only executive directions, have retrospective operation. So there can be no objection to give retrospective effect to the G.O read as fifth paper above.
  - (f) It will be volatile of section 115 (7) of the S.R Act and General Rule 35 not to extend the benefit of the ratio to all non- graduates in service on 1-11-1957 who acquired graduate qualification subsequent to 1-11-1957 and to restrict it to the “ normal date of promotion of the last graduate”.
  - (g) In the judgment in O P No 2975/74 and O. P No.3033/75, the Division Bench of the High Court of Kerala has examined the validity of the G.O read as fifth paper above and upheld it. Hence, Government have no jurisdiction to cancel that G.O. The direction of the single Bench of the High Court “ to consider the matter afresh” does not cloth Government with jurisdiction to issue executive orders retrospectively.
  - (h) G.O.(Ms) 196/68/PD dated 19-6-1968 which limits the operation of the G.P read as 1<sup>st</sup> paper above to a notional date different from the date of actual promotion of the last graduate as on 1-11-1957 varies from

Department to Department. It was in order to fix a definite time limit for the ratio that Government issued the order \read as fifth paper above extending the ratio to all non-graduates who are senior to last graduates in service as on 1-11-1957 and who acquired graduate qualification subsequently, but prior to 19-6-1968.

- (i) It will be unjust, illegal and arbitrary to undo the valid promotions effected under the rules and orders in force at the relevant point of time by canceling the orders retrospectively. It will also be violative of General Rule 28 (bb) of the Kerala State and Subordinate Services Rules 1958, according to which promotions have to be made in accordance with the conditions existing at the time of occurrence of the vacancy.

13. The above objections have been carefully examined by Government. It is with due regard to the nature, scope and content of the GO read as 1<sup>st</sup> paper above, as subsequently clarified, that the proposal to cancel the G.O fifth cited was formulated by Government. The Graduate non- graduate ratio introduced with effect from 1-11-1957 had the basic content that the operation of the ratio would be temporary till the last existing graduate in a category was promoted to the next higher category. It was the G.O fifth cited which changed the position by bringing in a clause to the effect that the ratio would be applied irrespective of whether the last graduate as on 1-11-1957 got promoted to the higher grade or not by that time. To this extent, it is the G.O read as fifth paper above that has the effect of unsettling settled issues. The High Court has observed in its judgment dated 2-3-1977 in O.P.No. 4048/74 that the contentions raised on behalf of the petitioners which were referred to therein, required closer and detailed examination and directed Government to consider the matter afresh. So it is open to Government to take any appropriate decision having due regard to the various aspects of the issue, after satisfying the requirements of natural justice. When such a review of the existing orders is made on a general question like this, Government cannot confine it to any particular Department. It is true that if the G.O fourth cited is brought into operation again the ratio will cease to exist in different Departments on different dates,. Depending upon the “ normal date” of promotion of the last graduate. But this principle will uniformly apply in all Departments and will be consistent with the intention of Government to do away with the ratio after the normal date of promotion of the last graduate.
14. There is no violation of the provisions of the S.R Act and the Kerala State and Subordinate Service Rules, as alleged. The disturbance of the settled seniority is the inevitable result of the review of the existing orders on the subject, which is for rectifying a grave anomaly as explained in para 9 above.
15. O.P.No. 2975/74 and 3033/75 sought to quash the G.O.read as fifth paper. Government defined it. The Division Bench of the High Court decided in favor of Government’s stand. The substance of the above judgment is that so long as Special Rules concerning the ministerial service has not come into force, Government is competent to issue executive orders regarding qualifications required for promotion to higher grade even retrospectively and

hence the G.O. was held valid by the Court. The Court did not enter into the merit of the G.O., i.e. On issues concerning the ratio scheme and the legitimacy or otherwise for the benefit of the scheme for those who graduated after the normal date of promotion of last graduate etc. The judgment upholds Government's competency to issue executive orders concerning promotions etc., even retrospectively. The above judgment does not also contain anything to restrain Government from rectifying any anomaly concerning the scheme of graduate non graduate ratio. In the circumstances all the objections referred to above are devoid of any merit and are therefore rejected. Government direct that the G.O. read as fifth paper can be cancelled with retrospective effect so that the G.O. read as fourth paper above will continue to be in post without any modification. Government also direct that the persons who would sustain reversion as a result of the cancellation of the G.O. fifth read above and surrendering their existing ranks to their. Legitimate seniors need not be reverted. Governments are pleased to order on compassionate grounds to create supernumerary posts on temporary basis in the respective grades to protect such persons against reversion. Such temporary posts will continue as long as they are regularly absorbed in the respective grades on the basis of their revised seniority position or retirement on super annuation whichever is earlier. The Heads of Departments will move the concerned Administrative Departments of the Secretariat with specific proposals for creation of supplementary posts.

16. Reversion from pay, if any consequent on the retrospective cancellation of the G.O. fifth cited will be waived.

By order of the Governor,  
N.R. AUGUSTINE,  
Additional Secretary to Government

To

All Heads of Departments and Offices.  
All Departments (all sections) of the Secretariat.  
The Secretary, Kerala Public Service Commission (with C.L)  
The Registrar, High Court, Ernakulam (with C.L )]

The Accountant General (This order issues with the concurrence of Finances Department)

The Finance Department ( This has the approval of the Finance Secretary)

The Advocate General, Ernakulam (with C.L)

The Secretary, Kerala State electricity Board, Trivandrum (with C.L)

The Private Secretary to Chief Minister.

The Stenographers to Chief Secretary and Additional Chief Secretary.

Copy to:- Smt.J.Mariyamma

Smt. B. Sumangala Amma

Sri. M.V.Mathai

Sri.N. Hrishekesan Asari.

( Petitioners in the O.P No 4048/74)

Sri. K. Varghese

Sri. K. Thankappan

Sri. K.N. Govindan

Ari.A.N.Ramachandran Nair.

(Respondents 3 to 7 in the above O.P)

Through the Inspector General  
of Registration.

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