

D.Prabhakaran Vs. the District Collector

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Court : Kerala

Decided On : Oct-01-2013

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : D.Prabhakaran

Respondent : The District Collector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH TUESDAY,THE1T DAY OF OCTOBER20139TH ASWINA, 1935 OP (CAT).No. 2142 of 2012 (Z) ----- OA.NO. 600/2011 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH ----- PETITIONER(S): ----- 1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, SSS DIVISION, SARDHAR PATEL BHAVAN, NEW DELHI-1.

2. THE DIRECTOR GENERAL, NATIONAL SAMPLE SURVEY ORGANIZATION (FOD), EAST BLOCK-6, LEVEL67, R.K.PURAM,NEW DELHI-110 066.

3. THE ADDITIONAL DIRECTOR GENERAL, NATIONAL SAMPLE SURVEY ORGANIZATION (FOD), EAST BLOCK-6, LEVEL67, R.K.PURAM,NEW DELHI-110 066.

4. THE DEPUTY DIRECTOR, NATIONAL SAMPLE SURVEY ORGANIZATION (FOD), CGO COMPLEX, VELLAYANI.P.O, THIRUVANANTHAPURAM-695 522. BY ADV. SRI.GEORGE JOSEPH, CGC RESPONDENT(S): -----

1. S.SATHEESH, ASST.SUPERINTENDING OFFICER(STATISTICAL INVESTIGATOR GRADE-II), NATIONAL SAMPLE SURVEY ORGANIZATION (FOD), S.S.S.,SUB REGIONAL OFFICE, KOCHI-682 037.

2. SMT. T.N.SHINEY MOLE, STATISTICAL INVESTIGATOR GRADE-I, N.S.S.O.(FOD), MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, 3RD FLOOR, BLOCK C-I WING, KENDRIYA BHAWAN, KOCHI-37. R1 BY ADV. SRI.N.UNNIKRISHNAN THIS OP (CAT) HAVING BEEN FINALLY HEARD ON2509-2013, ALONG WITH OP (CAT) NO. 2213 OF2012 THE COURT ON0110/2013 DELIVERED THE FOLLOWING: sts OP(CAT)NO.2142/2012 APPENDIX PETITIONER'S EXHIBITS: P1 COPY OF THE

ORDER

DATED1004/2012 OF THE CAT, ERNAKULAM BENCH IN O.A.NO.600/2011 P2 COPY OF THE O.A.NO.600/2011 FILED BEFORE THE HON'BLE CAT ERNAKULAM BENCH P3 COPY OF THE REPLY STATEMENT FILED IN O.A.NO.600/2011 BEFORE THE HON'BLE CAT ERNAKULAM BENCH P4 COPY OF THE M.A.(M.A.NO.89/2012) TO ACCEPT THE REPLY STATEMENT FILED IN O.A.NO.600/2011 BEFORE THE HON'BLE CAT ERNAKULAM BENCH P5 COPY OF THE M.A.(M.A.NO.276/2012) TO ACCEPT ADDL.DOCUMENTS FILED IN O.A.NO.600/2011 BEFORE THE HON'BLE CAT ERNAKULAM BENCH RESPONDENT'S EXHIBITS: R1(A) COPY OF THE OFFICE

ORDER

NO.A-32016/9/2011-E.II DATED1308/2012 R1(B) COPY OF THE

ORDER

NO.12016/5/2011-SSS DATED2712/2011 R1(C) COPY OF THE OFFICE

ORDER

NO.20013/1/G/2012/CHN DATED0110/2012 R1(D) COPY OF THE LETTER
NO.24/17/09-ESTT TVM/2093 DATED1112/2012 R1(E) COPY OF THE OFFICE

ORDER

NO.12015/1/2013-SSS DATED0402/2013 R1(F) COPY OF THE INTERIM

ORDER

DATED1802/2013 IN OP(CAT)NO.2142/2012 /TRUE COPY/ P.S.TO.JUDGE sts
Thottathil B.Radhakrishnan & Babu Mathew P.Joseph, JJ.

===== OP(CAT).Nos.2142 & 2213 of 2012
===== Dated this the 1st day of October,
2013 Judgment Thottathil B.Radhakrishnan, J.

1.OP(CAT).No.2213 of 2012 arises from O.A.No.560 of 2011 which was decided by the Central Administrative Tribunal, Ernakulam Bench as per order dated 21.2.2012. O.A.No.600 of 2011 from which OP(CAT).No.2142 of 2012 arises was decided by the Tribunal as per order dated 10.4.2012, also following the order it had issued in O.A.No.560 of 2011. The matter relates to the posting and transfer of two officers in the National Sample Survey Organisation. Since the issues are also similar, these original petitions were heard together. 2.The fundamental issue relates to the application OPCAT.2142& 2213/12 -:

2. :- of the guidelines regarding transfers, with reference to the retention of officers after promotion on ad hoc basis so far as it concerns the senior most persons in general, and female officials in particular. Though different interlocutory orders have now essentially obtained the fact situation where the respective employees are posted in the stations as ordered by the Tribunal, the complaint of one of the employees continues to the effect that he has not been given the benefit of the promotion that the Tribunal had preserved. We need not go to that issue because, that is a matter still within the domain of the Tribunal, including in jurisdiction, for further directions and also for action, if any, for violating the directions issued by it. 3.Be that as it may, having heard the learned counsel for the establishment and the learned counsel for the employees quite in extenso, we do not find that there is any legal infirmity or jurisdictional error in the Tribunal having arrived at the

conclusions that it has as regards the interpretation and application of the guidelines. The finding of the Tribunal in its order in OPCAT.2142& 2213/12 -:

3. :- O.A.No.560 of 2011 that what the establishment ought to have followed, to effectuate fully the guidelines is that on the basis of seniority, the postings ought to have been given after catering for female priority, cannot be faulted on any count. The Tribunal, therefore, rightly concluded that the junior most among the promotees would have to move out of Kerala and the applicant in that case could have been adjusted within Kerala, though his posting may not be in one of his choice stations. It was in the premise of this factual situation that the Tribunal ultimately concluded that the establishment should either undertake an exercise of posting out the junior most from Kerala State and post the applicant in O.A.No.560 of 2011 by accommodating him in a vacancy so arising or in the alternative, he should be treated as having been promoted on in situ basis and he should be retained at Trivandrum till a regular vacancy arises. The Tribunal's ultimate conclusion in O.A.No.560 of 2011 that the incumbent is entitled to be retained at Trivandrum on in situ basis by keeping intact his promotion as Statistical Investigator Grade I, does not, therefore, fall on any ground of illegality or jurisdictional error. OPCAT.2142& 2213/12 -:

4. :- 4.In so far as O.A.No.600 of 2011 is concerned, the Tribunal has essentially adopted the reasoning in O.A.No.560 of 2011 and has applied the same parameters. Therefore, we do not find any illegality in the order in O.A.No.600 of 2011, either. 5.Having thus concluded that no error of law or jurisdiction has been committed by the Tribunal in either among the impugned orders, we find that both these original petitions are bound to fail since we see no ground to interfere under Article 227 of the Constitution of India. In the result, these original petitions are dismissed. No costs. Thottathil B.Radhakrishnan Judge Babu Mathew P.Joseph Judge Sha/

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