

Nishad Vs. the State of Kerala

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Court : Kerala

Decided On : Oct-31-2013

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : Nishad

Respondent : The State of Kerala

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 THURSDAY, THE 31ST DAY OF OCTOBER 2013 9TH KARTHIKA, 1935 OP(KAT).No. 1226 of 2013 (Z)

----- PETITIONER(S): ----- 1.
NISHAD,SASI.P.T., PUTHENPURACKAL HOUSE, KANJIRAVELI
NERIAMANGALAM.P.O., IDUKKI DISTRICT.

2. SHIBU.M.S., S/O.J.MOHANRAJ, M.S.BHAVAN, AYITHIKUZH
PARASUVAIKAL.P.O., THIRUVANANTHAPURAM DISTRICT.

3. VALSALA.M., D/O.THAMI.M, KUNNUMMAL HOUSE, VALLIKKAPATTA.P.O.,
MANKADA, MALAPPURAM DISTRICT.

4. SANAL KUMAR, S/O.C.M.SIVARAMAN, CHENNAMANGALAM HOUSE,
IRINJALAKUDA, PADIYOOR.P.O., THRISSUR DISTRICT.

5. VIJESH.T.P.,S/O.VIJAYAN VADYAR, THALAYANATTUPARAMBIL HOUSE KOTTAKKAL, KUTTIPPURAM.P.O., MALAPPURAM DISTRICT. BY ADV. SRI.O.D.SIVADAS RESPONDENT(S): ----- 1. THE STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-695 001.

2. THE SECRETARY TO GOVERNMENT, DEPARTMENT OF AGRICULTURE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM. 695 001.

3. THE DIRECTOR OF AGRICULTURE, DIRECTORATE OF AGRICULTURE, VIKAS BHAVAN THIRUVANANTHAPURAM-695 033. tss O.P.(KAT) 1226/2013 4. THE SECRETARY KERALA PUBLIC SERVICE COMMISSION, PATTOM THIRUVANANTHAPURAM. 695 004.

5. THE KERALA PUBLIC SERVICE COMMISSION REPRESENTED BY ITS SECRETARY, PATTOM THIRUVANANTHAPURAM. 695 004. R1 TO R3 BY SR. GOVERNMENT PLEADER SRI.P.M.JOSEPH R4-5 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR ADMISSION ON 31.10.2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: tss OP(KAT).No. 1226 of 2013 (Z) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1-

ORDER

IN O.A.NO.76 OF 2013 PASSED BY THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM DATED 25.01.2013. EXHIBIT P2- TRUE COPY OF THE O.A.NO.76 OF 2013 FILED BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL. EXHIBIT P3- TRUE COPY OF THE G.O(MS)NO.87/08/GAD DATED 21.02.2008 ISSUED BY THE GOVERNMENT. EXHIBIT P4- TRUE COPY OF THE REPLY DATED 16.01.2013 ISSUED BY THE INFORMATION OFFICER. P5:- COPY OF THE NOTIFICATION ISSUED BY THE PUBLIC SERVICE COMMISSION VIDE 227/2008. RESPONDENT(S)' EXHIBITS ----- R3(A):- COPY OF G.O.(MS) 153/2013/GAD DTD. 30.5.2013. TRUE COPY P.A. TO JUDGE tss THOTTATHIL B.RADHAKRISHNAN & BABU MATHEW P.JOSEPH, JJ.

..... OP(KAT) No.1226 of 2013
..... Dated this the 31st day of October,
2013.

JUDGMENT

Thottathil B.Radhakrishnan, J.

1.Public Service Commission issued notification for category No.227 in the gazette dated 13.06.2008 for selection to the post of Agricultural Assistant Grade-II by direct recruitment (from among Scheduled Castes/Scheduled Tribes only). That recruitment is, essentially, a special recruitment in terms of Rule 17A of Part-II of the Kerala State and Subordinate Services Rules. The total number of vacancies notified for SC members were 65 and for ST members were 51. Going by paragraph Nos.7 and 9 of the counter affidavit, sworn to on behalf of the Public Service Commission on 04.04.2013 in this original petition, which arises from a decision of the Kerala Administrative Tribunal, the Public Service Commission has clearly stated that advices were issued as against 65 SC/ST vacancies and 50 ST vacancies, and one vacancy reserved exclusively for ST candidates could not be filled up due to the non-availability of sufficient ST candidates in the ranked OP(KAT) No.1226 of 2013 -2- list. It is also pointedly stated that the vacancy set aside exclusively for ST candidates cannot be filled up by SC candidates, even though ST candidates are not available in the ranked list. Following circular No.8 of 1994, the remaining one vacancy reserved for ST candidates was notified in the gazette dated 15.11.2012 with category No.557 of 2012. One NJD vacancy for the post of Agricultural Assistant Grade-II (special recruitment for SC / ST) was advised on 22.12.2012 and one vacation vacancy was advised on 13.02.2013. Altogether 117 candidates have been advised from the list. With the aforesaid, we see that the petitioners went to the Tribunal by making omnibus statement that there is deficiency in the representation of SC/ST members in the Department of Agriculture, and therefore, assessment of the dearth of such hands has to be made and reported during the currency of the ranked list brought into force in terms of the notification. The Tribunal rightly noted that the said list cannot be operated as if it is a general list. 2.In this original petition, without producing any

such material OP(KAT) No.1226 of 2013 -3- before the Tribunal, the petitioners have produced Ext.P3 Government Order of 2008 and they try to make out a case that the vacancy position and the deficiency of SC/ST candidates in the Department of Agriculture notified in 2008 were never followed up by making further assessments in the subsequent years. We, therefore, issued an interlocutory order requiring the Director of Agriculture to file a statement. The Director forwarded a report made by him to the Government and the Government has considered the details and after having reviewed the details furnished by the Director of Agriculture Department, the Government has ordered that there is no scope to reserve any post for special recruitment from among SCs/STs in any category in the Agricultural Department for the period as on 01.01.2011. This exhausts whatever the petitioners wanted before the Tribunal. 3.Now, the learned counsel for the petitioners wants to say that on the basis of Ext.P3, there has to be a further look into the question as to whether the decision in the present Government OP(KAT) No.1226 of 2013 -4- Order, i.e., GO(MS) No.153/2013/GAD dated 30.05.2013 is in order. We are sitting here in judicial review of a decision rendered by the Kerala Administrative Tribunal under the Administrative Tribunals Act. The limit to which the original application before the Tribunal could have gone, had gone through there. We are not to visit beyond that. Therefore, while we do not conclude the petitioners on the correctness or otherwise of Ext.R3(a) Government Order dated 13.05.2013 produced or any decision of the Government in this regard, this original petition fails on all other issues. In the result, this original petition is dismissed. (THOTTATHIL B.RADHAKRISHNAN, JUDGE) (BABU MATHEW P. JOSEPH, JUDGE) jg/1/xi

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