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E.P.Ramanan Vs. State of Kerala

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Court : Kerala

Decided On : Aug-18-2014

Judge : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

Appellant : E.P.Ramanan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE MONDAY, THE18H DAY OF AUGUST201427TH SRAVANA, 1936 OP(KAT).No. 120 of 2014 (Z) ----------

JUDGMENT
IN OA4122013 of KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM ..... PETITIONER: E.P.RAMANAN, LINEMAN, HEAD WORK SECTION, PEECHI DAM, IRRIGATION DEPARTMENT, THRISSUR DISTRICT-680 653. RESIDING AT ERUMAKUZHI PARAMBIL, P.O.IRIMBILIYAM, MALAPPURAM DISTRICT-679 572. BY ADV. SRI.BENNY GERVACIS RESPONDENTS:

1. STATE OF KERALA REP. BY SECRETARY TO GOVERNMENT, SC & ST DEVELOPMENT DEPARTMENT, TRIVANDRUM-695 001.

2. CHIEF ENGINEER, PWD (DESIGN AND ADMINISTRATION), VIKAS BHAVAN P.O., NEAR MUSEUM, TRIVANDRUM-695 033.

3. CHIEF ENGINEER, IRRIGATION DEPARTMENT, VIKAS BHAVAN P.O., NEAR MUSEUM, TRIVANDRUM-695 033.

4. THE ASSISTANT EXECUTIVE ENGINEER, HEAD WORK SECTION, PWD IRRIGATION, PEECHI DAM, THRISSUR-680 653. BY SR.GOVT. PLEADER SRI.R.PADMARAJ THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON3007-2014, THE COURT ON ON1808-2014, DELIVERED THE FOLLOWING: OP(KAT).No. 120 of 2014 (Z) APPENDIX PETITIONER(S)' EXHIBITS EXHIBIT P1 TRUE COPY OF THE OA ALONG WITH ITS ANNEXURES. EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT FILED ON BEHALF OF THE1T RESPONDENT EXHIBIT P3 TRUE COPY OF THE REPLY STATEMENT FILED ON BEHLAF OF THE2D RESPONDENT AND ITS ANNEXURES. EXHIBIT P4 TRUE COPY OF THE REJOINDER FILED BY THE APPLICANT TO THE REPLY STATEMENTS FILED BY THE RESPONDENT NOS.1 AND2ALONG WITH ITS ANNEXURE. EXHIBIT P5 TRUE COPY OF THE

ORDER
PASSED BY THE HONBLE KERALA ADMINISTRATIVE TRIBUNAL IN OA NO.412/2013 DATED121/2014. RESPONDENT(S)' EXHIBITS: NIL /TRUE COPY/ P.A. TO JUDGE Ashok Bhushan, Ag.CJ & A.M.Shaffique, J.

---------- O.P.(K.A.T.)No.120 of 2014 ---------- Dated this the 18th day of August, 2014

JUDGMENT
Ashok Bhushan, Ag.CJ.

We have heard learned counsel for the parties.

2. This petition has been filed praying for the following reliefs: i) call for the documents relating to Exhibits P1 to P5 peruse the same and set aside Exhibit P5 order in O.A.No.412 of 2013 dated 12.1.2014; ii) to issue a direction permitting the

petitioner to continue in service in the Public Works Department as Lineman, Head Work Division, Peechi Dam, Thrissur till his attaining the age of superannuation. iii) issue such other appropriate order or direction as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

3. The brief facts giving rise to this petition are: Petitioner was appointed as Lineman in the Irrigation Department based on advice dated 07.08.1986. OP(KAT) 120/14 2 Appointment order was issued on 18.09.1986 and he joined duty on 06.10.1986. Petitioner's appointment was treated to be regular with effect from 06.10.1988 by order dated 12.10.1993. Government issued a communication dated 09.02.1993 informing that petitioner does not belong to Adi Andhra, which is a Scheduled Caste community and his caste is Kumbharan, which is one of the Other Eligible Communities. The Government Order directed cancellation of Scheduled Caste community certificates issued to the petitioner and his family members. Applicant, along with his sister, challenged the said order of the Government by filing O.P.No.16687/1993. This Court vide judgment and order dated 26.06.2001 allowed the petition and directed that order be treated as notice and petitioners were given opportunity to file their objections. It was further observed by the Court that case of the petitioner shall be dealt with as per the provisions of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community OP(KAT) 120/14 3 Certificates Act, 1996 (Act 11 of 1996). It was further ordered that no additional benefits should be availed of by the petitioners which are available to the members of Scheduled Caste community till the Scrutiny Committee finally decides the matter. Government after hearing the petitioners issued an order dated 27.05.2003 holding that applicant and his sister did not belong to Adi Andhra and all academic records of the applicant and his family members should be corrected by showing their caste as Kumbharan (OEC). Government also directed termination of the services of the petitioner.

4. A show cause notice was issued to the petitioner by the Chief Engineer, Public Works Department (Admn.) dated 05.03.2010 asking the petitioner to show cause as to why he should not be terminated from the services within fifteen days from the date of receipt of a copy of that notice. Applicant submitted a reply. Thereafter, an order dated 06.02.2013 was passed by the Chief Engineer terminating

OP(KAT) 120/14 4 the services of the applicant with immediate effect. Challenging the said order, O.A.No.412/2013 was filed by the petitioner before Kerala Administrative Tribunal, which has been decided by judgment and order dated 12.02.2014, against which order this original petition has been filed.

5. The Tribunal by the order upheld termination of the services of the petitioner. With regard to the claim of the petitioner for salary due to him which was not paid, Tribunal observed that said point was not raised before the Government or considered by the Government, hence the said claim is left open. It was ordered that petitioner can pursue the said grievance before the departmental authorities.

6. After hearing learned counsel for the parties, a Division Bench of this Court by order dated 17.03.2014 admitted this writ appeal only on two issues. It is useful to quote paragraph 4 of the order, which is to the following effect: OP(KAT) 120/14 5 " Hence, this petition under Article 227 of the Constitution of India is admitted on two issues; namely, as to whether the petitioner was appointed and admitted to duty in the general turn and on the issue as to whether there is any need of direction to the Government regarding any unpaid portion of salary etc. All other issues stand closed hereby." This Court vide above order also directed the petitioner to continue in service.

7. The first issue which is to be considered in this petition is as to whether petitioner was appointed and permitted to join duty in the general category or he was given appointment as a Scheduled Caste category candidate. In the memo which was issued to the petitioner, it was indicated that he was appointed as a member of Scheduled Caste category candidate and he was asked to show cause as to why he be not declared as belonging to OEC. By order dated 27.05.2003 passed by the Government on the basis of verification by the Scrutiny Committee, it was declared that petitioner and members of his family did OP(KAT) 120/14 6 not belong to Adi Andhra community, a Scheduled Caste, but they belong to Kumbharan, which is OEC.

8. Although learned counsel for the petitioner submitted that petitioner was not appointed as a Scheduled Caste category candidate, but in the writ petition, no such material has been brought on record to substantiate his plea.

9. In the reply statement filed by the first respondent before the Tribunal, it was categorically stated that petitioner was advised for recruitment as Assistant Lineman (Electrical) in the department in Thrissur District on 07.08.1986 in the Scheduled Caste reservation turn under the general recruitment. It is useful to quote paragraph 6 of the affidavit, which was sworn by the Under Secretary, Scheduled Castes/Scheduled Tribes Development Department, which is to the following effect: "Regarding the averments in para7, the Chief Engineer, Public Works Department (Administration) in his letter No.Vig.9/417/94 dated 06.09.10 informed Government that OP(KAT) 120/14 7 the District Officer, Kerala Public Service Commission, Thrissur vide their letter No.RIV (3)31/04 dated 23.07.10 informed that the applicant E.P.Ramanan was advised for recruitment as Assistant Lineman (Electrical) in the department in Thrissur District on 07.08.1986 in Scheduled Caste reservation turn under the general recruitment. Hence the argument in this paragraph is not correct. The applicant is deliberately trying to distort the facts to mislead this Honourable Court and also to achieve his end." Although the applicant has stated that he was not appointed as a Scheduled Caste category candidate, no materials were brought on record to prove that his appointment was not as a Scheduled Caste category candidate. There being specific pleading on behalf of the respondents that petitioner was advised by the Commission under reservation quota as Scheduled Caste, we have no reason to disbelieve the said case set up by the State.

10. The second issue which need to be considered is as to whether applicant was entitled to receive the salary as a Lineman which was received by his counter parts during the period he continued in service after proceedings were OP(KAT) 120/14 8 initiated asking him to show cause. The Tribunal has clearly stated that even though termination order of the petitioner is upheld, he is allowed to retain the salary he received. There is no dispute that during all these periods petitioner has been working as a Lineman and has received salary without any service benefits including increment, revision of pay scale etc. Earlier, when petitioner, along with his sister, filed O.P.No.16687/1993 challenging the order declaring their caste as Kumbharan, this Court disposed of the petition with the observation that no additional benefits shall be availed of by the petitioners available to the members of the Scheduled Caste community till the Scrutiny Committee finally

decides the matter. It is useful to quote the last paragraph of the judgment and order of this Court, which is to the following effect: "In the above circumstances, Ext.P5 may be treated as a show cause notice and petitioners may give their reply in detail within three months from today to the Scrutiny Committee and Scrutiny Committee may issue notice, take evidence and give a OP(KAT) 120/14 9 finding in accordance with the provisions in Act No.11 of 1996 as well as in consonance with the principles of natural justice. Till fresh orders are passed by the Scrutiny Committee, no action based on Ext.P5 order shall be taken on the petitioners. It is made clear that since the matter is under dispute, no disciplinary action can be taken on the petitioners. But no additional benefits shall be availed by the petitioners on the ground that they belong to scheduled caste community till Scrutiny Committee finally decides the matter. The original petition is disposed of accordingly." 11. The order of this Court was that no additional benefits which may be admissible to the petitioner as Scheduled Caste category candidate should be given to the petitioner till the matter is finally decided by the Scrutiny Committee. The order clearly meant that no further benefits can be claimed by the petitioner on the basis that he belongs to Scheduled Caste category candidate or any other benefits admissible as a Scheduled Caste category candidate be granted. The order cannot be read to mean that the normal benefits which were admissible to the OP(KAT) 120/14 10 petitioner working as a Lineman in the department should be denied. A person allowed to continue in service is entitled to all benefits attached to the post including revision of pay, increment, etc. Petitioner, in the writ petition, has clearly pleaded that salary was freezed at the stage in which he was drawing salary as per the initial order dated 09.02.1993 issued to him. It was pleaded that petitioner was not granted any benefit of increment or any other pay revision benefits and he continued to draw his salary in the initial scale of pay without any further enhancement. His scale of pay on the date of appointment as Assistant Lineman was ` 290-425 which has been subsequently revised as ` 575-900. We are of the considered opinion that although petitioner was not entitled to any other benefit which was admissible to Scheduled Caste category candidate, he was entitled for the benefit attached to the post, i.e., pay revision and increment. OP(KAT) 120/14 11 12. The above submission was raised before the Tribunal, but the Tribunal held that since the point was not raised before the

Government or considered by the Government, same is left open. The Tribunal upheld termination of the services of the petitioner and rightly so, petitioner who entered into service as a Scheduled Caste category candidate and it has been declared that he does not belong to Scheduled Caste community, petitioner's appointment has rightly been terminated by the department.

13. The judgment of the Apex Court reported in R.Vishwanatha Pillai v. State of Kerala and others ((2004) 2 SCC105 was a case where Supreme Court had an occasion to consider the entitlement of a person to hold a post who entered into service on a post meant for a reserved category candidate and it was subsequently found that he does not belong to the said category and was wrongly appointed. The Apex Court held that such person OP(KAT) 120/14 12 has no right to continue in the post. It is useful to quote paragraph 15 of the judgment, which is to the following effect: "This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment OP(KAT) 120/14 13 would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the

service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all." No illegality has been committed by the Government in terminating the services of the petitioner after finding that he do not belong to Adi Andra, which is a Scheduled Caste community. The order of the Government dated 27.05.2003 holding that he does not belong to Scheduled Caste community of Adi Andhra was never challenged and the said order has already become final.

14. Learned counsel for the petitioner referred to certain judgments in support of his submission that petitioner be allowed to continue in service. He placed OP(KAT) 120/14 14 reliance on the decision reported in State of Maharashtra v. Om Raj ((2007) 14 SCC488. It was a case where petitioner claiming to be SC/ST category candidate was admitted to a professional college and after completing his studies entered into service. In the facts of the said case, the court held that benefits derived shall stand protected.

15. Another case reported in Punjab National Bank and another v. Vilas S/o Govindrao Bokade and another ((2008) 14 SCC545 is referred. In the said case, Maharashtra Government itself passed a resolution on 15.06.1995 saving appointments of non-tribals appointed prior to 15.06.1995. In the facts of the said case, appointment was protected.

16. Another judgment which need to be referred is judgment of the Apex Court reported in Kavita Solunke v. State of Maharashtra and others ((2012) 8 SCC430. In the said case, appellant was appointed claiming benefit of ST Halba. Subsequently, the caste certificate was OP(KAT) 120/14 15 invalidated on the ground that he belongs to Koshti. The Apex Court held that appointment/admission based on reservation category cannot be saved where candidates seeking appointment or admission is found guilty of conduct that would disentitle him/her from claiming any relief.

17. One more submission pressed by the petitioner is that his sister was similarly situated, but her appointment was saved. Said argument has been specifically considered in paragraph 7 of the order of the Tribunal. The Tribunal noticed that even if petitioner in that case did not raise any claim for reservation, being a qualified hand, she would have been included in the rank list and advised. In the above background, appointment of the sister of the petitioner was saved. The Tribunal has rightly distinguished the above case and did not extend the benefit to the petitioner.

18. In view of the foregoing discussions, we are of the view that Tribunal did not commit any error in OP(KAT) 120/14 16 upholding termination of the petitioner's services and the order of the Tribunal to that extent has to be affirmed. We, however, hold that petitioner, during the period he continued in service as Lineman, was entitled to receive normal salary as revised from time to time along with the benefit of increments which could not have been denied to him, since persons discharging duties in the same post have got the said benefits. We clarify that while working in the post of Lineman, petitioner is not entitled to receive any benefit which was admissible to a Scheduled Caste category candidate. To the above extent, we modify the judgment and order of the Tribunal. In the result, OP(KAT) is disposed of in the following manner: i. The termination order of the petitioner dated 06.02.2013 is upheld. ii. The petitioner shall, however, be entitled to receive the normal emoluments attached to the post of Lineman OP(KAT) 120/14 17 including the benefit of pay revision and increment during the period he continued in service. iii. Respondent No.2 shall consider and take appropriate decision regarding payment of due salary to the petitioner during the period he continued in service and issue consequential order within a period of three months from the date of receipt of copy of this judgment. Ashok Bhushan, Acting Chief Justice A.M.Shaffique, Judge tkv

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