

State of Kerala, vs Jayachandran C,

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SooperKanoon Citation : sooperkanoon.com/1316907

Court : Kerala

Decided On : May-31-2024

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Mr. Justice S.Manu

Appeal No. : OP(KAT)/545/2023

Appellant : State of Kerala,

Respondent : Jayachandran C,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MR. JUSTICE S.MANU FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946 OP(KAT) NO. 545 OF 2023 OA(EKM)NO.1633 OF 2023 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM PETITIONERS/RESPONDENTS 1 TO 3 IN OA :

1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, STATUE, THIRUVANANTHAPURAM -KERALA, PIN -

695001 2 THE COMMISSIONER OF EXCISE, EXCISE COMMISSIONERATE, VIKAS BAHAVAN P.O., NANDHAVANAM, THIRUVANANTHAPURAM-KERALA, PIN - 695033 3 THE ADDITIONAL COMMISSIONER OF EXCISE (ADMINISTRATION), EXCISE COMMISSIONERATE, VIKAS BAHAVAN P.O., NANDHAVANAM, THIRUVANANTHAPURAM-KERALA, PIN - 695033 SRI.A.J.VARGHESE, SR.GOVERNMENT PLEADER

RESPONDENTS/APPLICANTS AND 4TH RESPONDENT IN OA : 1 JAYACHANDRAN C, AGED 47 YEARS S/O. CHITHRAMBARAN C., ASSISTANT EXCISE INSPECTOR, EXCISE RANGE OFFICE, MATTANNUR, KANNUR, KERALA-670702, RESIDING AT RATATH HOUSE, THIRUVALATHUR P.O., KODUMBU, PALAKKAD-678551, KERALA, PIN 678551 2 SABIN T, EXCISE INSPECTOR, EXCISE RANGE OFFICE, PEERUMEDU, IDUKKI, KERALA, PIN - 685531 BY ADV T.R.RAJESH THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR ADMISSION ON 31.05.2024, ALONG WITH OP(KAT).548/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MR. JUSTICE S.MANU FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946 OP(KAT) NO. 548 OF 2023 AGAINST THE ORDER DATED 27.11.2023 IN OA (EKM) NO.1915 OF 2023 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM PETITIONERS/RESPONDENTS 1 TO 4 IN OA :

1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, STATUE, THIRUVANANTHAPURAM, KERALA, PIN - 695001 2 THE COMMISSIONER OF EXCISE, EXCISE

COMMISSIONERATE, VIKAS BAHAVAN P.O., NANDHAVANAM,
THIRUVANANTHAPURAM, KERALA, PIN - 695033 3 THE
ADDITIONAL COMMISSIONER OF EXCISE (ADMINISTRATION),
EXCISE COMMISSIONERATE, VIKAS BAHAVAN P.O.,
NANDHAVANAM, THIRUVANANTHAPURAM, KERALA, PIN - 695033 4
THE DIRECTOR OF VIGILANCE AND ANTI-CORRUPTION BUREAU,
DIRECTORATE OF VIGILANCE AND ANTI-CORRUPTION BUREAU,
THIRUVANANTHAPURAM-695033 SRI.A.J.VARGHESE,
SR.GOVERNMENT PLEADER

RESPONDENT/APPLICANT IN OA : C. SENTHIL KUMAR, S/O
CHANDRAN.P, AGED 39 YEARS, WORKING AS ASSISTANT EXCISE
INSPECTOR, EXCISE RANGE OFFICE, THALASSERY 670/01,
KANNUR DIVISION, RESIDING AT THAZHATHEPPURA HOUSE,
PUDUKKODE, KANNUR P.O., PALAKKAD, PIN - 678702 BY ADVS.
NIRMAL V NAIR ARATHI PRABHAKARAN THIS OP KERALA
ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR ADMISSION
ON 31.05.2024, ALONG WITH OP(KAT).545/2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

A.Muhamed Mustaque, J.

These original petitions were filed by the State challenging an order of the Tribunal ordering provisional promotion of the party respondents at the time of certain disciplinary proceedings were pending. Now it is stated at the bar that the disciplinary enquiry is over and the respondents in both cases have been exonerated. In such circumstances, there is no bar in considering respondents' promotion. Needful shall be done to promote the respondents temporarily at the earliest without any delay. These original petitions are disposed of as above. Sd/- A.MUHAMED MUSTAQUE, JUDGE Sd/- S.MANU, JUDGE rkj APPENDIX OF OP(KAT) 545/2023 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE ORDER OF SUSPENSION ISSUED BY THE 1ST RESPONDENT VIDE

GO(RT) NO.519/2022/TAXES DATED 01.07.2022

Annexure A2 TRUE COPY OF THE REINSTATEMENT ORDER

ISSUED BY THE 1ST RESPONDENT VIDE GO(RT) NO.237/2023/TAXES DATED 31.03.2023. Annexure A3 TRUE COPY OF CHARGE MEMO AND STATEMENT OF ALLEGATIONS SERVED ON THE APPLICANT BY THE 1ST RESPONDENT VIDE NO.TAXES.F2/71/2022-TD DATED 27.09.2022. Annexure A4 TRUE COPY OF GO(RT) NO.336/2023/TAXES DATED 25.05.2023 Annexure A5 TRUE COPY OF PROCEEDINGS OF THE 2ND

RESPONDENT VIDE ORDER

NO.EXC/2402/2022/XD3 DATED 04.02.2023. Annexure A6 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE APPLICANT BEFORE THE 2ND RESPONDENT DATED 01.06.2023. Annexure A7 TRUE COPY OF THE JUDGMENT DATED 04.06.2010 IN WP(C) NO.35926/2009. Annexure A8 TRUE COPY OF THE ORDER PASSED BY THIS HON'BLE TRIBUNAL OA 772/2022 DATED 19.12.2022 Annexure A9 TRUE COPY OF THE ORDER OF THIS HON'BLE TRIBUNAL DATED 03.07.2023 IN OA(EKM) Annexure A10 TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT VIDE ORDER NO.XD3-248635/2022 DATED 16.09.2023. Annexure A11 TRUE COPY OF THE COMMUNICATION ISSUED BY

THE 1ST RESPONDENT AND ADDRESSED TO THE 2ND RESPONDENT VIDE NO.TAXES-F1/196/2023- TAXES DATED 11.09.2023.

Exhibit P1 TRUE COPY OF THE OA(EKM) NO.1633/23 Exhibit P2 TRUE COPY OF THE INTERIM ORDER DATED 06.11.2023 IN OA(EKM) NO.1633/23 RESPONDENT EXHIBITS Exhibit R1(a) True copy of the interim order passed by this Hon'ble Court dated 14.07.2023 in OP(KAT)No.57/2023 Exhibit R1(b) True copy of the amendment notification issued vide G.O(Ms)180 dated Trivandrum 30.04.1966 Exhibit R1(c) The true copy of the Amendment notification issued by the Government G.O

(P) No. 26/2012/P and ARD dated 6/6/2012

Exhibit R1(d) True copy of the amendment notification issued by the Government by G.O(P)No.3/93/P and ARD dated 15.01.1993 Exhibit R1(e) True copy of the judgment of the Hon'ble Supreme Court in Grasim Industries Limited v. Collector of Customs, Bombay -

(2002) 4 SCC 297

Exhibit R1(f) True copy of the judgment of this Hon'ble Court dated 07.08.2018 in OP(KAT)No.300/2018 Exhibit R1(g) True copy of the judgment dated 30.07.2018 in OP(KAT)292/2018 Exhibit R1(h) True copy of the judgment dated 06.02.2018 in OP(KAT)No.60/2018 APPENDIX OF OP(KAT) 548/2023 PETITIONER ANNEXURES

Annexure A1 TRUE COPY OF THE ORDER NO.XD3-248635/2020 CRIME NO.6/2022 OF THE VACB, PALAKKAD DISTRICT. Annexure A3 TRUE COPY OF THE G.O (RT) NO.412/2022/TAXES DATED 24.05.2022 ISSUED BY THE 1ST RESPONDENT.

Annexure A4 TRUE COPY OF THE ORDER NO.XD3-248635/2020 F2/71/2022 TD DATED 27.08.2022 ISSUED BY THE 1ST RESPONDENT Annexure A7 TRUE COPY OF THE STATEMENT OF ALLEGATIONS NO.TAXES F2/71/2022 -TD DATED 27.08.2022 ISSUED BY THE 1ST RESPONDENT. Annexure A8 TRUE COPY OF THE REPLY DATED 23.09.2022 SUBMITTED BY THE APPLICANT TO THE CHARGE MEMO. Annexure A9 TRUE COPY OF THE FINAL ORDER DATED 23.02.2023 IN OA.(EKM) NO. 1294/2022 ON THE FILES OF THIS HON'BLE TRIBUNAL. Annexure A10 TRUE COPY OF THE G.O.(RT) NO. THE 1ST RESPONDENT. Annexure A11 TRUE COPY OF THE ORDER NO.EXC/2237/2022- XE4 DATED 11.04.2023 ISSUED BY THE 2ND Annexure A12 TRUE COPY OF THE JUDGMENT DATED 04.06.2010 IN W.P.(C)NO.35926/2009 ON THE FILES OF THE HON'BLE HIGH COURT OF KERALA. Annexure A13 TRUE COPY OF THE JUDGMENT DATED 06.09.2011 IN W.P.(C)NO.19486/2011 ON THE FILES OF THE HON'BLE HIGH COURT OF

KERALA. Annexure A14 TRUE COPY OF THE REPRESENTATION DATED 05.05.2023 SUBMITTED BY THE APPLICANT BEFORE THE 2ND RESPONDENT. Annexure A15 TRUE COPY OF THE LETTER NO.TR 1/2023 DATED 05.05.2023 ADDRESSED TO THE 2ND RESPONDENT BY EXCISE INSPECTOR, THALASSERY. Annexure A16 TRUE COPY OF THE FINAL ORDER DATED 11.07.2023 IN O.A (EKM) 724/2023 ON THE FILES OF THIS HONORABLE TRIBUNAL.

Annexure A17

TRUE COPY OF THE ORDER NO.XD3-24

13.11.2023 IN O.A (EKM) NO.1777/2023 ON THE FILES OF THIS HON'BLE TRIBUNAL. Exhibit P1 TRUE COPY OF THE OA(EKM) NO.1915/23 Exhibit P2 TRUE COPY OF THE INTERIM ORDER DATED 27.11.2023 IN OA(EKM) NO.1915/23. RESPONDENT EXHIBITS Exhibit R1(A) A TRUE COPY OF THE ENQUIRY REPORT NO. XVIG-175/2022 (VE 19/2022) DATED 4-6-2022 SUBMITTED BY THE EXCISE VIGILANCE OFFICER Exhibit R1(B) A TRUE COPY OF THE REQUEST DATED

29-9-2023 UNDER THE RIGHT TO INFORMATION ACT, 2005 SUBMITTED BY THE 1ST RESPONDENT BEFORE STATE PUBLIC INFORMATION OFFICER, VACB, PALAKKAD

Exhibit R1(C) A TRUE COPY OF THE REPLY NO.RTI -4214/2023/PKD DATED 20-10-2023 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER, VACB, PALAKKAD Exhibit R1(D) A TRUE COPY OF THE G.O. (RT) NO. THE 1ST PETITIONER IN THE O.P.(KAT) Exhibit R1(E) A TRUE COPY OF THE G.O.(RT) NO. THE 1ST PETITIONER IN THE O.P.(KAT) Exhibit R1(F) A TRUE COPY OF THE G.O.(RT) NO. THE 1ST PETITIONER IN THE O.P.(KAT) Exhibit R1(G) A TRUE COPY OF THE G.O.(RT) NO. THE 1ST PETITIONER IN THE O.P.(KAT) Exhibit R1(H) A TRUE COPY OF LETTER NO. TAXES- F1/196/2023-TAXES DATED 22-2-2024 ISSUED BY THE 1ST PETITIONER IN THE O.P.(KAT)

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