

Rishna Rahim vs State of Kerala

Rishna Rahim vs State of Kerala

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Court : Kerala

Decided On : Apr-23-2024

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : WP(C)/10913/2024

Appellant : Rishna Rahim

Respondent : State of Kerala

Judgement :

W.P.(C) Nos.7163 & 10913 of 2024 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY,
THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946 WP(C) NO.
7163 OF 2024 PETITIONER: ANSU SARA MATHEW AGED 28 YEARS
D/O. MATHEW.Y., BABY VILLA, ARUKALICKAL WEST, VAYALA P.O.,
PARAKODE, PATHANAMTHITTA DISTRICT,, PIN - 691554 BY ADVS.
M.A.VAHEEDA BABU SABU THOZHUPPADAN BABU
KARUKAPADATH P.U.VINOD KUMAR ARYA RAGHUNATH
KARUKAPADATH WAZIM BABU P.LAKSHMI AYSHA E.M. SHIFANA
KAISE DENNIS BIJU RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, HOME (C) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,, PIN - 2 THE HIGH COURT OF KERALA, REPRESENTED BY ITS REGISTRAR (GENERAL), HIGH COURT BUILDING, ERNAKULAM, PIN - 682031 BY ADVS. ADVOCATE GENERAL OFFICE KERALA Amith Krishnan H SHRI.N.MANOJ KUMAR, STATE ATTORNEY() K.R.RANJITH, GOVERNMENT PLEADER WITH STATE ATTORNEY() B.G.HARINDRANATH (SR.)(K/378/1984)

W.P.(C) Nos.7163 & 10913 of 2024 2 GOWRI DEV(K/003380/2023) P.DEVIKRISHNA(k/002502/2023) OTHER PRESENT: ADV.P.C.SASIDHARAN FOR HIGH COURT IN WPC 10913/24 THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.04.2024, ALONG WITH WP(C).10913/2024, THE COURT ON 23/04/2024 DELIVERED THE FOLLOWING: W.P.(C) Nos.7163 & 10913 of 2024 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY, THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946 WP(C) NO. 10913 OF 2024 PETITIONER: RISHNA RAHIM AGED 35 YEARS W/O MITHUN, DARUL ILYAS, DILKUSH APARTMENTS, RAJAPPAN JUNCTION, BAZAR P.O., ALAPPUZHA, PIN - 688012 BY ADVS. M.A.VAHEEDA BABU BABU KARUKAPADATH P.U.VINOD KUMAR ARYA RAGHUNATH KARUKAPADATH WAZIM BABU P.LAKSHMI AYSHA E.M. SHIFANA KAISE DENNIS BIJU RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, HOME (C) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,, PIN - 2 THE HIGH COURT OF KERALA REPRESENTED BY ITS REGISTRAR (GENERAL), HIGH COURT BUILDING, ERNAKULAM, PIN - 682031 BY ADVS. ADVOCATE GENERAL OFFICE KERALA P.C SASIDHARAN SHRI.N.MANOJ

KUMAR, STATE ATTORNEY() K.R.RANJITH, GOVERNMENT
PLEADER WITH STATE ATTORNEY() THIS WRIT PETITION (CIVIL)
HAVING COME UP FOR ADMISSION ON W.P.(C) Nos.7163 & 10913 of
2024 4 11.04.2024, ALONG WITH WP(C).7163/2024 AND
CONNECTED CASES, THE COURT ON 23/04/2024 DELIVERED THE
FOLLOWING: W.P.(C) Nos.7163 & 10913 of 2024 5 V.G.ARUN J.
----- WP(C).Nos.7163 & 10913 of 2024 -----
Dated this the 23rd day of April 2024

JUDGMENT

The petitioners are aggrieved by the non-inclusion of their names in select list of candidates and consequential denial of appointment as Civil Judge (Junior Division) in the Kerala Judicial Service. The essential facts, with reference to the documents in W.P.(C)No.7163 of 2024, are as under;

The High Court of Kerala issued Ext. P2 notification dated 19.01.2023, inviting applications from qualified candidates for appointment to the post of Munsiff - Magistrate in the Kerala Judicial Service against 13 NCA and 56 regular vacancies. The petitioners submitted applications seeking appointment to the regular vacancies notified. Based on their performance in the written examinations and viva voce, the petitioners' names were included in Ext.P3 merit list dated 15/12/2023. The petitioner in W.P.(C) No.7163 of 2024 was included at serial/rank No.27, and the

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petitioner in W.P.(C) No.10913 of 2024 at serial/rank No. 64, in the merit list of candidates to regular vacancies. According to the petitioners, based on the rank in the merit list, their names were included at serial Nos.40 and 48 in the select list of candidates forwarded to the Government, for the Governors approval. The petitioners allege that, after forwarding a list containing the names of 48 selected candidates,

the High Court recalled that list and forwarded another list of 39 candidates. The latter list was approved by the Governor and Ext.P4 notification, dated

candidates as Civil Judge (Junior Division) Trainees to the General Vacancies of the selection year 2023.

2. Heard Advocate M.A.Vaheeda Babu, learned Counsel for

the petitioners, Senior Advocate B.G.Hareendranath and Advocate P.C.Sasidharan for the High Court of Kerala and Special Government Pleader, Adv.K.R.Ranjith, for the State.

3. Learned Counsel for the petitioners contended that, having

notified 56 regular vacancies and having forwarded a select list of 48 candidates, the High Court could not have reduced the number of selected candidates to 39. The illegal reduction and recasting of select list has resulted in the petitioners' being denied the W.P.(C) Nos.7163 & 10913 of 2024 7

appointment legitimately due to them. Relying on Ext.P7 affidavit filed by the High Court of Kerala before the Supreme Court of India in Civil Appeal No.1867 of 2006 (Malik Mazhar Sultan & Anr. v. U.P. Public Service Commission & Ors), it is submitted that, admittedly 21 temporary Civil Judges (Junior Division) were appointed to reduce the impact of vacancies of regular officers in the cadre and as on 31/12/2023, the total vacancies in the cadre of Civil Judge (Junior Division) was 58, out of which no candidates were available for 8 vacancies (NCA). It is hence contended that, if the vacancies notified and to which candidates were available were filled up, the petitioners would have been appointed. Instead of doing that, the number of selected candidates was reduced in a most arbitrary manner.

4. Learned Counsel appearing for the High Court referred to

Ext.R2(a) to demonstrate the manner in which the 69 vacancies, including NCA vacancies, as on 31/12/2023 was computed. It is submitted that, for the purpose of computing the 56 regular vacancies, all existing vacancies and anticipated vacancies that may arise due to retirement, promotion and creation of new courts in the year 2023 were considered. Over and above this, additional 10% vacancies were also notified, anticipating elevation of District Judges to the High Court. After completion of the selection process

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and publication of the merit list, a select list was drawn up as per Rules 5(3) and 7 of the Kerala Judicial Service Rules, 1991 and in terms of Rules 14 to 17 of the Kerala Service and Subordinate Service Rules, 1958. Thereafter, on re-assessment of the available vacancies, shortage of 11 anticipatory vacancies was noticed. According to the learned Counsel, the shortage of 11 vacancies had occurred due to various unforeseen circumstances. In view of the shortage of 11 posts, it became imperative to recast the select list, failing which an awkward situation, of no vacancies being available to accommodate 11 of the Civil Judges (Junior Division) trainees, would have arisen. It is not possible to overcome this shortage by accommodating the 11 officers in future vacancies also, in view of the clear-cut directions issued by the Supreme Court in Malik Mazhar Sultan (supra) and the observations in High Court of Kerala v. Reshma A. & Others (ILR 2021 (1) Kerala 335). It is contended that, since recasting of the select list was done for valid and bona fide reasons, this Court cannot interfere with the selection process on the premise that computation was not done with mathematical precision. Moreover, mere inclusion of their names in the merit list does not vest the petitioners with any indefeasible right to appointment. In support of this contention, reliance is placed on the decisions of the Apex Court in

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5. From the arguments advanced, it has come out that a

select list of 50 candidates was initially forwarded to the Government. Thereafter, the list was recalled and another list of 39 candidates forwarded. Hence, the only issue arising for consideration is whether the High Court could have recalled that list and reduced the number of selected candidates. The explanation for such reduction and recasting available at paragraph 8 of the counter affidavit extracted below for convenience, assumes importance;

A. The then Chairman and Managing Director of KSEB Ltd. vide letter dated 03/06/2022, requested that Officers need not be deputed to the post of 'Legal Advisor and DEO, KSEB' till further intimation, in view of the corporatization of the Board and framing of new Rules. Thus, the promotee cadre post, if filled, that would have arisen at the lowest cadre, did not materialize. A true copy of the letter from KSEB is produced herewith and marked as Exhibit R2(b).

B. The High Court on its administrative side re-fixed the cadre strength in the cadre of District & Sessions Judge W.P.(C) Nos.7163 & 10913 of 2024 10

as 184 from 169 vide order dated 19/05/2023, which happened well after the notification of the vacancies. Consequently, the 25% quota for direct recruits in the said cadre went up by 4 posts from 42 to 46. Resultantly, there occurred a reduction of 4 promotion posts that would ultimately be available for 4 fresh Civil Judges (Junior Division). A true copy of the order dated

R2(c).

C. 10% of the vacancies were additionally notified in anticipation of 5 vacancies that would have arisen due to elevation. However, during 2023 only 3 officers in the cadre of District & Sessions Judge, were elevated. Two elevations did not occur as anticipated. Hence, there occurred a reduction of 2 consequent vacancies in the lowest cadre.

D. Out of 13 vacancies expected consequent to creation of 14 new Courts, 4 viz. Special Court (Additional District and Sessions Court) for the trial of Puttingal Devi Temple fireworks mishap case, an Arbitration Court as well as 2 more FTSCS did not materialize during 2023, though the Government had issued orders establishing the said Courts. The said Courts did not commence functioning so as to create vacancies as anticipated.

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From the explanation it is evident that, recasting of the select list was necessitated due to imponderables. Although learned Counsel for the petitioners would contend that some of the situations pointed out in the explanation had existed even as on the date on which Ext.P2 notification was published, that is no reason to hold the recasting itself to be bad.

6. In this context, it may be worthwhile to notice that, in the

decision dated 04/01/2007 in Malik Mazhar (supra), the Supreme Court had directed the High Courts to calculate the number of vacancies to be notified for the annual selection by reckoning the following factors;

(i) Existing vacancies.

(ii) Future vacancies that may arise within one year due to retirement.

(iii) Future vacancies which may arise due to promotion, death or otherwise say 10 percent of the number of posts.

As the third stipulation, of notifying 10% of the number of posts towards future vacancies which may arise due to promotion, death or otherwise had resulted in a large number of vacancies being notified, the Supreme Court in its decision dated 24/03/2009 in W.P.(C) Nos.7163 & 10913 of 2024 12 Malik Mazhar (supra), modified the direction as under; 3. In supersession of the order passed by this Court on 4-1-2007, this Court directs that in future the High Courts/PSCs shall modify the existing number of vacancies plus the anticipated vacancies for the next one year and some candidates also be included in the wait-list. To this extent earlier order is modified.

7. Taking into consideration the above modification, the Supreme Court in Reshma (supra) directed that the following three factors should be borne in mind while computing the vacancies to be notified; i) The existing number of vacancies, ii) the anticipated vacancies for the next year, and iii) some candidates are to be included in the wait-list.

8. Although there is some merit in the contention that the

uncertainty in the number of regular vacancies notified could have been avoided, if the computation was made on the basis of the factors mentioned in Reshma (supra), instead of including the 10 percent towards future vacancies, that, by itself, is no reason to interfere with the selection process, as the select list was recast for

W.P.(C) Nos.7163 & 10913 of 2024 13 valid and sustainable reasons. Further, inclusion in the merit list, or a wrongly cast select list, does not confer the petitioners with an indefeasible right to appointment. Being so, no interference in exercise of the extraordinary jurisdiction under Article 226 is warranted. Hence, the writ petitions are dismissed. Sd/- V.G.ARUN JUDGE dpk W.P.(C) Nos.7163 & 10913 of 2024 14 APPENDIX OF WP(C) 10913/2024 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE RELEVANT PORTION OF THE

NOTIFICATION DATED 19/01/2023 CALLING FOR APPLICATIONS FROM QUALIFIED CANDIDATES FOR THE KERALA JUDICIAL

SERVICE EXAMINATION-2023 FOR APPOINTMENT TO THE POST OF MUNSIFF-MAGISTRATE IN THE KERALA JUDICIAL SERVICE AGAINST 13 NCA AND 56 REGULAR VACANCIES (69 TOTAL VACANCIES) Exhibit P2 A TRUE COPY OF THE OF THE NOTICE DATED 15/12/2023 ISSUED BY THE 2ND RESPONDENT, PUBLISHING THE MERIT LIST OF CANDIDATES FOR DIRECT RECRUITMENT INCLUDING TOTAL 106 CANDIDATES WHO HAD QUALIFIED IN THE KERALA JUDICIAL SERVICE EXAMINATION, 2023 FOR APPOINTMENT AS MUNSIFFS-MAGISTRATES WHEREIN THE PETITIONER WAS INCLUDED AS SERIAL/RANK NO. 64 Exhibit P3 A TRUE COPY OF THE GAZETTE NOTIFICATION DATED CANDIDATES AS CIVIL JUDGE (JUNIOR DIVISION) TRAINEES IN THE KERALA JUDICIAL SERVICE BY DIRECT RECRUITMENT FOR THE GENERAL VACANCIES OF THE SELECTION FOR THE YEAR 2023 (REC NO.3/2023), ON RECOMMENDATION BY THE 2ND RESPONDENT Exhibit P4 A TRUE COPY OF THE GAZETTE NOTIFICATION DATED CANDIDATES AS CIVIL JUDGE (JUNIOR DIVISION) TRAINEES IN THE KERALA JUDICIAL SERVICE BY DIRECT RECRUITMENT FROM NCA SELECTION (REC NO.1/2023), ON RECOMMENDATION BY THE 2ND RESPONDENT Exhibit P5 A TRUE COPY OF THE GAZETTE NOTIFICATION DATED CANDIDATES AS CIVIL JUDGE (JUNIOR DIVISION) TRAINEES IN THE KERALA JUDICIAL SERVICE BY DIRECT RECRUITMENT FROM NCA SELECTION (REC NO.2/2023), ON RECOMMENDATION BY THE 2ND RESPONDENT, Exhibit P6 A TRUE COPY OF THE AFFIDAVIT DATED 16/02/2024 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE HON'BLE SUPREME COURT OF INDIA IN CIVIL APPEAL NO.1867/2006, Exhibit P7 A TRUE COPY OF THE DIVISION BENCH JUDGMENT DATED COURT,

W.P.(C) Nos.7163 & 10913 of 2024 15 APPENDIX OF WP(C) 7163/2024 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE OF THE NOTICE DATED 20/02/2020

ISSUED BY THE 2ND RESPONDENT PUBLISHING THE MERIT LIST OF CANDIDATES FOR DIRECT RECRUITMENT WHO HAD QUALIFIED IN THE KERALA JUDICIAL SERVICE EXAMINATION, 2019 FOR APPOINTMENT AS MUNSIFF- MAGISTRATE WHEREIN THE PETITIONER WAS INCLUDED AS SERIAL NO. 50, Exhibit P2 A TRUE COPY OF THE RELEVANT PORTION OF THE NOTIFICATION DATED 19/01/2023 CALLING FOR APPLICATIONS FROM QUALIFIED CANDIDATES FOR THE KERALA JUDICIAL SERVICE EXAMINATION- 2023 FOR APPOINTMENT TO THE POST OF MUNSIFF-MAGISTRATE IN THE KERALA JUDICIAL SERVICE AGAINST 13 NCA AND 56 REGULAR VACANCIES (69 TOTAL VACANCIES) Exhibit P3 A TRUE COPY OF THE OF THE NOTICE DATED 15/12/2023 ISSUED BY THE 2ND RESPONDENT, PUBLISHING THE MERIT LIST OF CANDIDATES FOR DIRECT RECRUITMENT INCLUDING TOTAL 106 CANDIDATES WHO HAD QUALIFIED IN THE KERALA JUDICIAL SERVICE EXAMINATION, 2023 FOR APPOINTMENT AS MUNSIFFS- MAGISTRATES WHEREIN THE PETITIONER WAS INCLUDED AS SERIAL/RANK NO. 27, Exhibit P4 A TRUE COPY OF THE GAZETTE NOTIFICATION DATED CANDIDATES AS CIVIL JUDGE (JUNIOR DIVISION) TRAINEES IN THE KERALA JUDICIAL SERVICE BY DIRECT RECRUITMENT FOR THE GENERAL VACANCIES OF THE SELECTION FOR THE YEAR 2023 (REC NO.3/2023), ON RECOMMENDATION BY THE 2ND RESPONDENT Exhibit P5 A TRUE COPY OF THE GAZETTE NOTIFICATION DATED CANDIDATES AS CIVIL JUDGE (JUNIOR DIVISION) TRAINEES IN THE KERALA JUDICIAL SERVICE BY DIRECT RECRUITMENT FROM NCA SELECTION (REC NO.1/2023),ON RECOMMENDATION BY THE 2ND RESPONDENT Exhibit P6 A TRUE COPY OF THE GAZETTE NOTIFICATION DATED CANDIDATES AS CIVIL JUDGE (JUNIOR DIVISION) TRAINEES IN THE KERALA JUDICIAL SERVICE BY DIRECT RECRUITMENT FROM NCA SELECTION (REC NO.2/2023), ON RECOMMENDATION BY THE 2ND RESPONDENT,

W.P.(C) Nos.7163 & 10913 of 2024 16 Exhibit P7 A TRUE COPY OF THE AFFIDAVIT DATED 16/02/2024

SUBMITTED BY THE 2ND RESPONDENT BEFORE THE HON'BLE SUPREME COURT OF INDIA IN CIVIL APPEAL NO.1867/2006 Exhibit P8 A TRUE COPY OF THE RELEVANT PORTION OF THE NOTIFICATION DATED 31/01/2024 CALLING FOR APPLICATIONS FROM QUALIFIED CANDIDATES FOR THE KERALA JUDICIAL SERVICE EXAMINATION-2024, Exhibit P9 A TRUE COPY OF THE DIVISION BENCH JUDGMENT DATED COURT,

RESPONDENT EXHIBITS

Exhibit A true copy of the detailed chart in relation t R2(a) computation of vacancies for regular selection is produced herewith and marked as Exhibit R2(a) Exhibit A true copy of the letter dated 03/06/2022 from R2(b) KSEB is produced herewith and marked as Exhibit R2(b) Exhibit A true copy of the order dated 19/05/2023 is R2(c) produced herewith and marked as Exhibit R2(c).

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