

Rajendrakumar T vs Station Commandant

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Court : Kerala

Decided On : Feb-22-2022

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : WP(C)/2025/2022

Appellant : Rajendrakumar T

Respondent : Station Commandant

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY, THE 22ND DAY OF FEBRUARY 2022 / 3RD PHALGUNA, WP(C) NO. 2025 OF 2022 PETITIONER/S: RAJENDRAKUMAR T AGED 55 YEARS SON OF LATE ACHUTHAN NAIR, OFFICE ASSISTANT, ECHS POLYCLINIC, RESIDING AT LAKSHMI KRIPA, MURUKANI, CHOKKANATHAPURAM P.O., PALAKKAD, PIN - 678005 BY ADV C.S.GOPALAKRISHNAN NAIR RESPONDENT/S:

1 STATION COMMANDANT ECHS CELL, STATION HEAD QUARTERS ARMY, RED FIELDS, COIMBATORE, PIN - 641018 2 OFFICE IN CHARGE ECHS CELL, STATION HEAD QUARTERS, ARMY, RED

FIELDS, COIMBATORE, PIN - 641018 3 OFFICE IN CHARGE ECHS POLYCLINIC, ESTATE JUNCTION, PUTHUPARIYARAM.P.O., PALAKKAD, PIN - 678731 4 GENERAL OFFICER COMMANDING KERALA AND KARNATAKA SUB AREA, ECHS CUBBON ROAD, BENGALURU, PIN - 560001 5 UNION OF INDIA REP. BY ITS SECRETARY, MINISTRY OF DEFENCE, SOUTH BLOCK, NEW DELHI, PIN - 110001

OTHER PRESENT: ASGI S.MANU THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14.02.2022, THE COURT ON 22.02.2022 DELIVERED THE FOLLOWING: -2-

JUDGMENT

Dated this the 22nd day of February, 2022 The petitioner retired from the Army Medical Corps as Naik on 01.05.2004, after rendering service for 17 years. During 2017-18, the first respondent invited applications for the post of Peon in the Ex-serviceman Contributory Health Scheme (ECHS) Polyclinic at Palakkad. The petitioner submitted application and was selected and appointed as per Ext.P7 dated 04.01.2018. The appointment, which was initially for a period of 12 months from 09.02.2018 to 07.02.2019, was extended every year thereafter. While so, by Ext.P8 order dated 30.03.2021, the petitioner was appointed as Office Assistant at ECHS, Palakkad for a period of 11 months from 01.04.2021 to 28.02.2022. On appointment, the petitioner was given consolidated pay of Rs.17,000/- per month, - 3- as evidenced by Ext.P8.

2. While continuing in the post of Office

Assistant, the petitioner came across

Palakkad. The posts notified in Ext.P9 were that of Information Technology Network Technician, Peon/Office Assistant/Chowkidar and Honorary Lady Attendant. The petitioner claims to have submitted an application for the notified post. As he was not called for interview, he made enquiries and it was informed that the petitioner is not eligible to be appointed, since he had

crossed the upper age limit of 55

employees at ECHS Polyclinic is 60 years. The petitioner apprehends that his service will be terminated with effect from 01.03.2022 and another person appointed in his place. Hence, -4- this writ petition seeking a direction to allow the petitioner to continue in the present post till he completes the age of 60 years.

3. Heard Sri.C.S.Goplakrishnan Nair, learned Counsel for the petitioner and Sri.S.Manu, learned Assistant Solicitor General.

4. Learned Counsel for the petitioner

relied on the decision in State of Haryana and others v. Piara Singh and others [1992 (4) SCC 118 to contend that a casual employee should not be replaced by another casual employee. The other contention is that the upper age limit of 55 years is applicable only to employees of ECHS Organization and not for contractual employees like the petitioner.

5. Learned ASG contended that the dictum laid down in Piara Singh has no application to the petitioner's case. It is also contended that absolutely no material is produced in support of -5- the contention that the petitioner had applied for the notified post and was not allowed to participate in the interview on the premise that he had crossed the upper age limit as 55 years.

6. As rightly contended by the learned ASG,

the decision in Piara Singh has no application to the pe

months, the petitioner cannot aspire to continue indefinitely or contend that he shall not be replaced with another contractual employee. Such contention, if entertained, will be to the detriment of the other unemployed persons.

7. As regards the challenge against the

upper age limit, there is no evidence of the petitioner having applied pursuant to Exts.P9 and P10 or of his application having been rejected. The legal position is no longer res integra in the light of the Constitution Bench decision of -6- the Apex

Court in State of Karnataka v. Umadevi and others [(2006) 4 SCC 1]. Pertinently, the petitioner has neither any complaint about prescription of upper age as 55 years in the notification raised before the authorities nor he challenged the notification in this writ petition. As such, I find no reason to grant the omnibus relief sought. In the result, the writ petition is dismissed. Sd/- V.G.ARUN JUDGE Scl/ -7-
APPENDIX OF WP(C) 2025/2022 PETITIONER ANNEXURES

COPY SERVED

COPY SERVED DETAIL THROUGH GMAIL TODetails

DATED 13.03.2017 Exhibit P2 TRUE COPY OF THE GRADUATION CERTIFICATE DATED 30.04.2004 Exhibit P3 TRUE COPY OF THE ARMED FORCES SERVICES SECURITY TRAINING CERTIFICATE DATED 30.04.2004 Exhibit P4 TRUE COPY OF THE CERTIFICATE OF PROFICIENCY DATED 30.04.2004 Exhibit P5 TRUE COPY OF THE CHARACTER CERTIFICATE DATED 26.04.2004 Exhibit P6 TRUE COPY OF THE CERTIFICATE ISSUED BY THE LBS CENTREFOR SCIENCE AND TECHNOLOGY THIRUVANANTHAPURAM

Exhibit P7 TRUE COPY OF THE APPOINTMENT ORDER

DATED 04. 01. 2018, NO. 108/8/BD/06 OCT 17/76/ECHS ISSUED BY THE 1ST RESPONDENT Exhibit P8 TRUE COPY OF THE APPOINTMENT ORDER NO. 30.03.2021 Exhibit P9 TRUE COPY OF THE EMPLOYMENT NOTICE ISSUED BY THE 1ST RESPONDENT Exhibit P10 TRUE COPY OF THE NEWSPAPER ADVERTISEMENT IN MATHRUBHOOMI DAILY ON 09.12.2021

Exhibit P11

TRUE COPY OF THE REPLY NO. Exhibit P12

TRU

CERTIFICATE ISSUED BY 3RD RESPONDENT DATED 14.12.2021 Exhibit P14 TRUE COPY OF THE MEDICAL FITNESS CERTIFICATE ISSUED BY THE MEDICAL SPECIALIST OF ECHS, PALAKKAD, DATED -8- 15.12,2021 Exhibit P15 TRUE COPY OF THE COMMUNICATION NO. TO THE ECHS HEAD QUARTERS.

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