

Satheesh Kumar R vs P. Jothi

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Court : Kerala

Decided On : Jul-11-2022

Judge : Honourable Dr. Justice a.K.Jayasankaran Nambiar,Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : OP(KAT)/335/2021

Appellant : Satheesh Kumar R

Respondent : P. Jothi

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. MONDAY, THE 11TH DAY OF JULY 2022 / 20TH ASHADHA, 1944 OP(KAT) NO. 335 OF 2021 AGAINST THE ORDER IN OA 75/2018 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM PETITIONER/APPLICANT: SATHEESH KUMAR R AGED 40 YEARS S/O S.RAVEENDRAN, SENIOR CLERK, DIRECTORATE OF AGRICULTURE, VIKAS BHAVAN, THIRUVANANTHAPURAM, RESIDING AT PARAVILAKATHU PUTHEN VEEDU, KANDALA P.O.THIRUVANANTHAPURAM-695 512 BY ADVS. S.MUHAMMED

HANEEFF M.H.ASIF ALI ASHIK ALI M.H. RESPONDENTS

1 P. JOTHI W/O T.P. MAANIKUTTAN, RESIDING AT SIVASMRITHI T.C.29/649) (1), SEEVELI NAGER (S 90) KAITHAMUKKU, PETTAH P.O.THIRUVANANTHAPURAM-695 024, WORKING AS SENIOR CLERK, DIRECTORATE OF AGRICULTURE DEVELOPMENT AND FARMERS WELFARE DEPARTMENT, VIKAS BHAVAN P.O. THIRUVANANTHAPURAM-695 033. 2 THE SECRETARY TO GOVERNMENT, AGRICULTURE DEPARTMENT, GOVERNMENT SECRETARIAT, STATUE, THIRUVANANTHAPURAM, KERALA-695 001. 3 THE DIRECTOR, AGRICULTURE DEVELOPMENT AND FARMERS WELFARE DEPARTMENT, DIRECTORATE OF AGRICULTURE, VIKAS BHAVAN P.O.THIRUVANANTHAPURAM, KERALA-695 033. 4 SENIOR ADMINISTRATIVE OFFICER, DIRECTORATE OF AGRICULTURE, :2:

VIKAS BHAVAN P.O.THIRUVANANTHAPURAM, KERALA-695 033. R1 BY ADV.T.C.KRISHNA BY SRI.BIJOY CHANDRAN, GOVERNMENT PLEADER THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR ADMISSION ON 11.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :3: A.K.JAYASANKARAN NAMBIAR & MOHAMMED NIAS C.P., JJ
----- OP(KAT)No.335 of
2021 ----- Dated this the 11th day of July,
2022

JUDGMENT

Mohammed Nias.C.P. J. The petitioner challenges the order dated 5.11.2019 in OA No.75 of 2018 in which he was not a party as well as the review filed by him as RA (EKM)12 of 2021 in OA No.75 of 2018 of the Kerala Administrative Tribunal, Thiruvananthapuram. The short facts necessary for deciding the above Original Petition (KAT) are as follows:- The first respondent in this original petition challenged the

order cancelling the exemption granted to her under Rule 13A(1)(a) of

Part II KS & SSR and the reassignment of the date of appointment as Senior Clerk from 01.04.2010 to 5.1.2012. The Tribunal allowed the application of the first respondent on three grounds (1) on interpretation of Rule 13A(1)(a) and 13A(2) it was noticed that when an exemption is granted under Rule 13A(1)(a) and the beneficiary failed to pass the test within three years, and had to be reverted, the three years was to be reckoned from the date of such appointment or in other words the date on which the exemption was granted. It was noted that the first respondent was granted the benefit from 1.4.2010 and she passed the :4: requisite test in January 2012, i.e., within three years, therefore, the

order of reversion was held to be bad. Apart from this the Tribunal also

found the applicant was on leave without allowances and had re-joined service only on 1.4.2010 and that when an employee was on leave without allowances as per the provisions of Appendix XIIC Part I KSR, the above employee would lose the opportunity for promotion during the above period as against his junior who was eligible for such promotion. The applicant thus could be considered for promotion only after she re- joined on 29.3.2010 as against the vacancy which occurred thereafter. Taking note of this, it was held that the promotion had to take effect from 1.4.2010 and could not be given an anterior date to dis-entitle her the benefit. The petitioner, a non-party, filed a review stating that the Tribunal went wrong in allowing the claim of the first respondent overlooking the dictum laid down in Jayakumar v. State of Kerala and others [2014 (4) KLT 173], which laid down that three years as mentioned above has to be reckoned from the date of arising of the vacancy and not the date of such appointment. The Tribunal did not accept the said contentions and dismissed the review application. Being aggrieved by the same, this original petition is filed.

2. At the outset we are at a loss to understand as to how the

petitioner herein can be treated as aggrieved by the order of the Tribunal which held in favour of the first respondent herein in a litigation where the petitioner was not a party, and where none of the rights of the :5: petitioner stood affected, much less adversely affected. The reason for filing the above original petition appears to be paragraph 12 of the Tribunal's original order which held that going by Rule 13A(1) of the Rules, a member belonging to the Scheduled Caste/Scheduled Tribe, who has not passed the test, but if otherwise qualified, he/she will have to be granted temporary appointment (promotion) under Rule 13A(1) and the person will get three years from the date of order of appointment from qualifying the obligatory test for promotion. The Tribunal had further held that the three years has to be reckoned from the date of

order of appointment. This according to the petitioner is against the

judgment in Jayakumar (supra) and the order of the Tribunal will be

followed in other cases also and there is a likelihood of the juniors of the petitioner stealing a march over him if they also make a claim on the basis of the judgment passed by the Tribunal. The petitioner submits that on the basis of the order of the Tribunal, there are various others who are in the line who will overtake the petitioner in seniority based on the judgment originally passed and that is the reason why he approached the Tribunal with a review. As noted earlier, none of the rights of the petitioner are presently affected by the order of the Tribunal. The petitioner cannot, therefore have any locus or cause of action at present to challenge the orders, which are not binding on him, in this Original petition.

3. This Court had directed the learned Government Pleader to

:6: find out as a matter of fact as to when the vacancy arose regarding the appointment of the first respondent. The learned Government Pleader submits that the vacancy as a matter of fact arose only on 1.4.2010 and therefore, the first respondent's claim actually is in tune with relevant Rules mentioned above. In such circumstances, the order of the Tribunal cannot be faulted in any manner. In

that view of the matter, we dismiss the original petition (KAT) as not maintainable at the instance of the petitioner. The petitioner will be free to challenge any orders if passed and which would adversely affect his rights. The original Petition (KAT) is accordingly dismissed. Sd/- A.K.JAYASANKARAN NAMBIAR, JUDGE Sd/- MOHAMMED NIAS C.P., JUDGE dtk 12.7.2022 :7: APPENDIX OF OP(KAT) 335/2021 PETITIONER'S EXHIBITS Exhibit P1 A TRUE COPY OF MEMORANDUM OF OA NO KERALA ADMINISTRATIVE TRIBUNAL ANNEXURE A1 A TRUE COPY OF ORDER NO SA(1) 41532/2010 DATED 19.2.2013 ANNEXURE A2 A TRUE COPY OF ORDER NO SA(1) 41532/2010 DATED 11.11.2013 ANNEXURE A3 A TRUE COPY OF ORDER NO SA(1) 41532/2010 DATED 19.3.2014 ANNEXURE A4 A TRUE COPY OF ORDER NO SA(1) 41532/2010 DATED 12.6.2014 ANNEXURE A5 A TRUE COPY OF ORDER NOSA(4) 7241/12 DATED 23.2.2015 ANNEXURE A6 A TRUE COPY OF ORDER NO SA(4) 7242/14 DATED 23.2.2015 ANNEXURE A7 A TRUE COPY OF THE REPRESENTATION DATED 4.8.2015 ANNEXURE A8 A TRUE COPY OF COMMUNICATION FROM 2ND RESPONDENT TO THE 1ST RESPONDENT DATED 4.8.2015 ANNEXURE A9 A TRUE COPY OF THE COMMUNICATION FROM 2ND RESPONDENT TO THE 1ST RESPONDENT DATED 6.4.2016 ANNEXURE A10 A TRUE COPY OF THE REPORT OF THE 2ND RESPONDENT TO THE 1ST RESPONDENT DATED 6.4.2016 ANNEXURE A11 A TRUE COPY OF GO(RT) NO 393/2016/AGRI DATED 26.4.2016 ANNEXURE A12 A TRUE COPY OF ORDER NO SA(4) 7241/14 DATED 5.5.2016 Exhibit P1(A) A TRUE COPY OF THE MA NO 1664/2019 IN OA NO 75/2018 ON THE FILE OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL ANNEXURE A13 A TRUE COPY OF GO(MS) NO 1061/2019 /REV DATED 9.7.2019 AANNEXR RA1 TRUE COPY OF THE JUDGMENT DATED 4.6.2014 IN OP(KAT0 NO 3590 OF 2013 ON THE FILE OF THE HON'BLE HIGH COURT OF KERALA ANNEXURE RA2 COPY OF ORDER IN OA NO 75/2018 DATED 5.11.2019 ON THE FILE OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL :8: Exhibit P5 A TRUE COPY OF THE OBJECTION FIELD BY THE 1ST RESPONDENT IN RA(EKM) NO 12/2201 ON THE FILE OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL Exhibit P6 A TRUE COPY OF THE ORDER DATED 11.10.2021 IN RA(EKM) NO 12/2021 ON THE FILE OF THE HON'BLE KERALA

ADMINISTRATIVE TRIBUNAL Exhibit P2 A TRUE COPY OF THE REPLY STATEMENT FILED BY THE 2ND RESPONDENT IN OA NO 75/2018 ON THE FILE OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL Exhibit P3 A TRUE COPY OF THE ORDER DATED 5.11.2019 IN OA NO 75/2018 ON THE FILE OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL Exhibit P4 A TRUE COPY OF THE MEMORANDUM OF RA(EKM) NO 12/2021 FILED BY THE PETITIONER BEFORE THE HON'BLE TRIBUNAL

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