

Amanulla A Vs. State of Kerala

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Court : Kerala

Decided On : Jul-06-2015

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Amanulla A

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON & THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY,THE6H DAY OF JULY201515TH ASHADHA, 193 OP(KAT).No. 217 of 2015 (Z)

----- PETITIONER(S)/APPLICANT:-:
----- AMANULLA A. AGED34YEARS S/O.ALI HASSAN A., RAIHANA MANZIL, UMMANAZHI P.O. PULPATTA, PALGHAT DISTRICT - 678 632 WORKINGAS ALOWER PRIMARY SCHOOL ASSISTANT IN ALPS UMMANAZHI, PALAKKAD DISTRICT. BY ADVS.SMT.AYSHA YOUSEFF SMT.MOLLY JACOB RESPONDENT(S)/RESPONDENTS:-:

----- 1. STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT AGRICULTURAL DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM - 695 001.

2. DIRECTOR OF AGRICULTURE VIKAS BHAVAN, TRIVANDRUM - 695 033.

3. PRINCIPAL AGRICULTURAL OFFICER CHEMBUKAVU, TRICHUR - 682 030.

4. THE KERALA PUBLIC SERVICE COMMISSION REPRESENTED BY ITS SECRETARY, PATTOM TRIVANDRUM - 695 004.

5. KERALA PUBLIC SERVICE COMMISSION DISTRICT OFFICE, TRICHUR - 682 030. R BY GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI R4 BY SRI.SASIDHARAN, SC,PSC THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR ADMISSION ON0607-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: avk OP(KAT).No. 217 of 2015 (Z)

----- APPENDIX PETITIONER(S)' EXHIBITS
----- EXHIBIT P1. PHOTO COPY OF THE OA(EKM)
18/2015 ON THE FILE OF THE KERALA ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH (THIRUVANANTHAPURAM). EXHIBIT P2. PHOTO COPY
OF THE

ORDER

IN O.A.(EKM)18/2015. RESPONDENT(S)' EXHIBITS NIL
----- //TRUE COPY// PA TO JUDGE avk
P.R.RAMACHANDRA MENON & P.V.ASHA, JJ -----
O.P.(KAT) No.217 of 2015 ----- Dated this the 6th day of
July, 2015

JUDGMENT

P.R.RAMACHANDRA MENON Interference declined by the Kerala Administrative Tribunal with regard to the challenge raised by the petitioner as to the cancellation of the Advice Memo issued by the PSC and the consequent cancellation of the appointment order, made the petitioner to approach this Court by filing the present Original petition.

2. The sequence of events reveals, that the petitioner herein was working as an LPSA in the ALPS, Ummanazhi from 2009. While so, he came across a notification issued by the PSC for selection to the post of Driver Grade II in various departments and he applied for the same. On coming out successful in the selection, the petitioner was included in the rank list and Annexure A1 advice

memo was issued by the PSC on 19.11.2013. The petitioner was served with Annexure A2 appointment order dated 31.12.2013 issued by the third respondent, instructing the petitioner to join duty as Driver Grade II within 15 days in the Department of Agriculture. On receipt of the said order, the petitioner sought for extension of time, pointing out that he was working as 'LPSA'. After considering the request, for granting 45 O.P.(KAT) No.217 of 2015 ::2:: days of extension of time it was granted by the competent authority as per Annexure A3 order dated 20.1.2014. Admittedly, the petitioner did not choose to join thereafter and sought for further extension till 31.3.2014 as per the application preferred in this regard. The request made by the petitioner was recommended by the second respondent/Director of Agriculture vide Annexure A4 dated 13.2.2014, and forwarded to the 1st respondent/Government. The matter was considered by the 1st respondent, who sent Annexure A5 reply dated 5.3.2014 to the second respondent/Director of Agriculture pointing out that the request for extension of time, to join duty can be considered by the appointing authority to an extent of 90 days and that appropriate orders could be issued in this regard. It was also made a mention therein that, if the incumbent joined duty after 3 months, the seniority would be fixed in terms of Rule 27 (c) of Part II of KS and SSR Rules. The case of the petitioner is that, this was never intimated to the petitioner on time and he was virtually waiting for a reply. It is conceded that no application was preferred by the petitioner for further extension of time. The case projected before this Court is that, in the meanwhile, the petitioner was quite indisposed because of some serious ailments and he was advised to take rest by the doctor. It was thereafter that, he requested to permit him to join duty, which was not allowed. According to the petitioner, O.P.(KAT) No.217 of 2015 ::3:: he was required to meet the authorities of the PSC and accordingly an application was filed before the PSC as well. But the request made by the petitioner was turned down and he was served with Annexure A6 proceeding dated 11.6.2014, whereby the "advice" was cancelled; followed by Annexure A8 dated 7.7.2014, cancelling the appointment as well.

3. Met with the situation, the petitioner approached the Government, by filing a representation which did not turn to be fruitful. The petitioner was intimated as per Annexure-A10 dated 31.10.2014 that the cancellation of "advice" was pursuant to reporting of NJD vacancy to the Public Service Commission and that there was

nothing to be interfered. This made the petitioner to approach the Tribunal by challenging the proceedings, by filing O.A No.18/2015. After taking note of the facts and figures,interference was declined and the O.A was dismissed, which made the petitioner to approach this Court by filing the present Original Petition.

4. Heard Smt.Molly Jacob, the learned counsel appearing for the petitioner as well as Sri.M.Mohammed Shafi,the learned Government Pleader at length.

5. On going through the materials on record, it is seen that, the petitioner's request, to have extension of time was granted initially, as per Annexure A3 dated 20.01.2014, for a period of 45 days and subsequently till 31.03.2014,pursuant to O.P.(KAT) No.217 of 2015 ::4:: Annexure A5. The case of the petitioner is that no communication in this regard was ever sent to the petitioner, as mentioned already. But the contention does not appear to be correct in view of the contents of Annexure A8 dated 7.7.2014, whereby, the petitioner's application dated 30.6.2014, was replied as devoid of any merit. In the said reply, it has been clearly stated by the 3rd respondent that the extension of time granted till 31.3.2014, was communicated to the petitioner from the office of the 3rd respondent as per letter dated 25.3.2014, which was sent by registered post. It was suppressing the said fact, that the petitioner chose to approach the 3rd respondent by filing an application dated 30.6.2014, which in turn was rejected as per Annexure A8. This being the position, the version of the petitioner that the petitioner was never informed of the extension of time is not liable to be entertained. Even otherwise, the application sought for further extension of time and recommended and sanctioned as per Annexures A4 and A5 respectively was only up to 30.3.2014. There is no case for the petitioner that he had preferred any other application seeking for further extension of time, beyond 31.3.2014. It was in the said circumstance, that the appointing authority chose to inform the position to the PSC, reporting the 'NJD' vacancy on 26.4.2014. Pursuant to this, there was no other alternative for the PSC, but to have cancelled the advice which has been ordered as per Annexure A6, followed by O.P.(KAT) No.217 of 2015 ::5:: cancellation of the appointment as well. This being the position, the version of the petitioner that, cancellation of the advice and appointment was done by the competent authority/concerned respondent without serving any notice, is devoid of

any merit or bonafides. The factual position as well as the legal aspects have been discussed in detail by the Tribunal while passing Ext P2 order. This Court does not find any tenable ground, so as to call for interference. The Original Petition fails and same is dismissed accordingly. Sd/- P.R.RAMACHANDRA MENON JUDGE
Sd/- P.V.ASHA JUDGE //TRUE COPY// PA TO JUDGE avk

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