

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

OP(KAT).No. 4007 of 2012 (Z)

AGAINST THE ORDER/JUDGMENT IN TA 6446/2012 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 29-10-2012

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PETITIONER :

SUSHEELA T.R.,
D/O.RAMANKUTTY SPECIAL VILLAGE OFFICER
(UNDER ORDER OF REMOVAL) AMBALAVAYAL VILLAGE OFFICE,
BATHERY TALUK WAYANAD DISTRICT (RESIDING AT PANACHIYEL
AMBALAVAYAL P.O., SULTHAN BATHERY VIA,
WAYANAD DISTRICT PIN 673 593

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SMT.SMITHA GEORGE
SMT.ASHA BABU
SMT.G.ASHWINI
SRI.VINOD.S.PILLAI

RESPONDENTS :

1. THE DISTRICT COLLECTOR
CIVIL STATION COLLECTORATE KALPETTA WAYANAD
DISTRICT PIN 673121
2. THE DISTRICT DISABILITY BOARD
REPRESENTED BY ITS CHAIRMAN (THE SUPERINTENDENT),
DISTRICT HOSPITAL WAYANAD, MANANTHAVADY,
WAYANAD DISTRICT PIN 670 645
3. THE LAND REVENUE COMMISSIONER
LAND REVENUE COMMISSIONERATE PUBLIC OFFICES
MUSEUM THIRUVANANTHAPURAM 695001
4. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM 695001
5. THE STATE DISABILITY ASSESSMENT BOARD,
KERALA REPRESENTED BY THE CHIRMAN,
DIRECTORATE OF HEALTH SERVICES,
THIRUVANANTHAPURAM 695033

BY SPL. GOVERNMENT PLEADER, SMT. GIRIJA GOPAL

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON
27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

TRUE COPY OF TRANSFER APPLICATION (WRIT PETITION C NO 20838 OF 2011) DATED 15-07-2011 FILED BY THE PETITIONER OMITTING THE EXHIBITS.

EXT.P1 TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY THE INSTITUTE OF ENT SRIDHAR HOSPITAL CALICUT

EXT.P2 TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY THE ENT SPECIALIST GOVERNMENT HOSPITAL KALPETTA

EXT.P3 TRUE COPY OF THE DISABILITY CERTIFICATE ISSUED TO THE PETITIONER BY THE WAYANAD DISTRICT HOSPITAL MANATHAVADY

EXT.P4 TRUE COPY OF THE ORDER DATED 17-1-2005 ISSUED BY R1

EXT.P5 TRUE COPY OF THE ORDER DATED 27-11-2007 ISSUED BY R1

EXT.P6 TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY THE KERALA PUBLIC SERVICE COMMISSION DATED 10-09-2007

EXT.P7 TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY THE SURVEY AND LAND RECORDS DEPARTMENT DATED 11-03-2008

EXT.P8 TRUE COPY OF THE ORDER DATED 27-07-2009 OF THE TAHSILDAR(RR) AMBALAYAL

EXT.P9 TRUE COPY OF NOTICE DATED 14-12-2010 ISSUED BY THE DISTRICT MEDICAL OFFICER MANATHAVADY

EXT.P10 TRUE COPY OF NOTICE DATED 14-12-2010 ISSUED BY THE DISTRICT MEDICAL OFFICER MANATHAVADY

EXT.P11 TRUE COPY OF NOTICE DATED 21-03-2011 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT.

EXT.P12 TRUE COPY OF THE REPLY DATED 11-04-2011 SUBMITTED BY THE PETITIONER BEFORE R1

EXT.P13 TRUE COPY OF THE ORDER DATED 20-06-2011 ISSUED BY THE 1ST RESPONDENT.

EXT.P14 TRUE COPY OF THE REPORT DATED 22-12-2010 IN RESPECT OF THE PETITIONER.

EXT.P15 TRUE COPY OF THE COUNTER AFFIDAVIT DATED 18-08-2011 FILED ON BEHALF OF THE 1ST RESPONDENT.

EXT.P16 TRUE COPY OF THE ORDER DATED 3-11-2011 IN WPC NO 20838 OF 2011

EXT.P17 TRUE COPY OF THE REFERENCE MADE BY THE MEDICAL COLLEGE HOSPITAL THIRUVANANTHAPURAM DATED 24-11-2011

EXT.P18 TRUE COPY OF THE REPORT DATED 24-11-2011 ISSUED BY THE NATIONAL INSTITUTE OF SPEECH & HEARING.

EXT.P19 TRUE COPY OF THE COMMUNICATION DATED 8-8-2012 OF THE SUPERINTENDENT MEDICAL COLLEGE HOSPITAL THIRUVANANTHAPURAM

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EXT.P20 TRUE COPY OF THE REPORT DATED 24-08-2012 OF THE ENT DEPARTMENT
DIRECTORATE OF MEDICAL EDUCATION

EXT.P21 TRUE COPY OF THE REPLY AFFIDAVIT FILED BY THE PETITIONER IN TA NO 6446
OF 2012 ON THE FILE OF THE KERALA ADMINISTRATIVE TRIBUNAL

EXT.P22 TRUE COPY OF THE ORDER DATED 29-10-2012 IN TA NO.6446 OF 2012 ON THE
FILE OF THE KERALA ADMINISTRATIVE TRIBUNAL

RESPONDENTS' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, Ag.C.J. & A.M. SHAFFIQUE, J.

O.P.(KAT) No. 4007 OF 2012

Dated this the 27th day of January, 2015

JUDGMENT

Shaffique, J.

This Original Petition is filed against an interim order passed by the Kerala Administrative Tribunal on 29.10.2012 in T.A. No.6446 of 2012. Before KAT petitioner challenged Ext.P13, dated 20.06.2011, issued by the District Collector, Wayanad cancelling the appointment of the petitioner in a reserved seat for disabled person.

2. The facts involved in the case would disclose that the petitioner was appointed as Lower Division Clerk/Village Assistant on disability basis as per proceedings dated 17.01.2005 by the District Collector, Wayanad. The Handicapped Association of India, Wayanad Committee working for the welfare of women, children and handicapped persons received certain complaints regarding submission of bogus disability certificate by certain persons who got employment in Government service in Wayanad District. It was decided to verify the genuineness of the certificates produced by such candidates who got Government service.

They were directed to appear before the Medical Board. The petitioner appeared before the Medical Board and the District Medical Officer reported that the petitioner was acting as a disabled person whereas she is actually not a disabled person. Therefore, she was directed to appear before the authority concerned for hearing on 18.04.2011 to explain as to why her appointment should not be cancelled. The reply submitted by the petitioner was not satisfactory and the District Collector has cancelled the appointment given to her.

3. Before the Kerala Administrative Tribunal the petitioner sought to cancel the order of Wayanad District Collector dated 20.06.2011. Before the Tribunal it was contended that the impugned order was passed in violation of the principles of natural justice.

4. The Tribunal by the impugned order called upon the petitioner to appear before the SAT Hospital which is part of the Medical College Hospital, Thiruvananthapuram for conducting a BERA test to prove the genuineness of her claim that she was having hearing impediment with 40% disability. It is challenging

the aforesaid order of Tribunal this Original Petition has been filed.

5. The learned counsel for the appellant relied upon the judgment of a Constitution Bench in **Managing Director, ECIL, Hyderabad v. B.Karunakar** [AIR 1994 SC 1074] to contend that no proper enquiry had been conducted and the report of the enquiry had not been furnished to the petitioner which clearly amounts to violation of the principles of natural justice. Further reliance was placed on **Manohar Lal Sharma v. Principal Secretary** [(2014) 9 SCC 614]. Yet another judgment relied upon is **Union of India v. Mohd.Ramzhan Khan** [(1991) 1 SCC 588]. On the other hand, the learned Government Pleader has relied upon the judgment of the Supreme Court in **R.Viswanatha Pillai v. State of Kerala and others** [(2004) 2 SCC 105] to contend that their very appointment was void on account of fraud. Paragraph 15 of the Apex Court judgment reads as follows:

"15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled

Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste Community, then the very basis of his appointment was taken away. His appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud

or deceit, such an appointment is not appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.”

6. Having regard to the fact that the order passed by Tribunal is only for conducting the BERA Test to establish the claim made by the petitioner, we do not find it necessary to interfere with the said order passed by the Tribunal at this stage.

7. Even in regard to the question whether there is any violation of principles of natural justice, since the matter is pending consideration before the Tribunal, we do not think it necessary to adjudicate on the said issue, presently. The order does not suffer from any illegality, warranting interference in this petition. Accordingly, the Original Petition is dismissed.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**