

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

OP(KAT).No. 38 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 62/2015 of KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM DATED 19.01.2015

PETITIONER(S) :

P.L.SHEEJA, AGED 39 YEARS,
W/O.RAJEEVAN, CHANGARA NIVARTH, C.M.C.33
CHERTHALA P.O., PIN - 688 524, ALAPPUZHA DISTRICT
EMPLOYED AS CONFIDENTIAL ASSISTANT
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION
JAGATHY, THIRUVANANTHAPURAM, KERALA, PIN - 695 014.

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.ANNAPOORNA

RESPONDENT(S) :

1. THE SECRETARY
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
KERALA - 695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
DIRECTORATE OF PUBLIC INSTRUCTION, JAGATHY
THIRUVANANTHAPURAM, KERALA - 695 014.
3. A.K.RAJAN, CONFIDENTIAL ASSISTANT,
EDUCATION DEPARTMENT, CENTRAL TEXT BOOK OFFICE
FORT P.O., THIRUVANANTHAPURAM, PIN - 695 023.

R1 & R2 BY SRI.T.RAMAPRASAD UNNI, SR. GOVERNMENT PLEADER

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP
FOR ADMISSION ON 18-02-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

OP(KAT).No. 38 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1- COPY OF THE O.A.NO.62/15 FILED BY THE PETITIONER BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

P2- COPY OF THE REQUEST DATED 22.3.10 OF THE 3RD RESPONDENT.

P3- COPY OF THE ORDER NO.C2/21915/08/DPI DATED 19.4.10 OF THE 2ND RESPONDENT.

P4- COPY OF REPRESENTATION DATED 24.9.10 SUBMITTED BY THE 3RD RESPONDENT BEFORE HTE 2ND RESPONDENT.

P5- COPY OF LETTER NO.C2/71854/11/DPI DATED 24.11.2011 OF THE STATE PUBLIC INFORMATION OFFICER IN THE OFFICE OF THE 2ND RESPONDENT.

P6- COPY OF LETTER NO.CC/127/11/KKD DATED 14/11/2011 ISSUED TO THE PETITIONER BY THE STATE PUBLIC INFORMATION OFFICER, SUPER CHECK CELL (MALABAR REGION), KOZHIKODE.

P7- COPY OF THE ORDER DATED 19.1.15 IN O.A.62/15 OF THE TRIBUNAL.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE.

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

.....
OP(KAT) No.38 of 2015
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Dated this the 18th day of February, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.We have heard the learned counsel for the petitioner and the learned Senior Government Pleader.
- 2.Petitioner challenges the order issued by the Kerala Administrative Tribunal dismissing her original application. She is a Confidential Assistant working in the office of the Director of Public Instructions. She challenged the Government Order by which the third respondent's claim for seniority over the applicant was upheld by the Government, upturning the decisions of the authorities below. The learned Tribunal has rightly noted that the applicant and the third respondent would stand governed by the provisions of Rule 27(a) of the Kerala State and Subordinate Services Rules, "Rules", for short . That being so, the Tribunal was justified in holding that the said Rule would apply in such a

manner that the third respondent would be entitled to be treated as senior to the applicant. Ultimately, the Tribunal also repelled the plea of the applicant that the third respondent had not challenged the seniority list within time and had not followed appropriate statutory proceedings by way of appeal before superior authorities in terms of the Rules within the time limit prescribed. The Tribunal noted that after the final gradation list was published within one month after publication of the final seniority list, the third respondent had moved the Director of Public Instructions and the DPI had rejected it on 07.05.2011. He again moved the DPI seeking review of that order. That motion was rejected by the DPI on 12.08.2011. Appeal to the Government was, thereafter, filed on 12.09.2011, that is to say, within one month of the rejection of the application for review as placed before the DPI. Under such circumstances, we do not find any illegality in the Tribunal having held that there is no delay or laches on the part of the third respondent in challenging the seniority assigned to the applicant above him. We do not see that

the mere fact that there is no specific rule granting power of review to the DPI would be of any consequence. We say so because the Government have in its ultimate decision arrived at the correct result on appropriate application of the relevant statutory rules. Under such circumstances, the Tribunal rightly rejected the applicant's claim that she is entitled to the benefit of sit back and, hence, the third respondent could not have made a sustainable claim before the Government. We do not find any reason to disagree with the findings of the learned Tribunal. There is no jurisdictional error or illegality in the impugned decision of the Tribunal. Be that as it may, the learned counsel for the applicant tells us that the impugned decision would result in financial repercussion and may lead to recovery. The original application did not relate to any relief against any recovery. Yet, we clarify that while the findings of the Tribunal as affirmed hereby would stand, this judgment and the order of the learned Tribunal would not stand in the way of the applicant raising objections, on any other ground, to any recovery, if proposed by

the Government. We do this particularly because it is not in dispute that the applicant had officiated and discharged duties and responsibilities as against the post in which she was working. Subject to that, this original petition is dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

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