

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

OP (KAT) .No. 206 of 2015 (Z)

(AGAINST THE ORDER/JUDGMENT IN OA 295/2014 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 13.08.2014)

PETITIONER(S) :

RAJAN M. AGED 476 YEARS
LOWER DIVISION CLERK, TIRUR MUNICIPALITY, TIRUR
MALAPPURAM DISTRICT 676 101

BY ADVS.SRI.A.G.BASIL
SRI.P.K.SEBASTIAN

RESPONDENTS/RESPONDENTS:

1. DEPARTMENT OF LOCAL SELF GOVERNMENT,
REPRESENTED BY ITS SECRETARY GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001

2. DIRECTOR OF URBAN AFFAIRS
MUSEUM JUNCTION, THIRUVANANTHAPURAM 695 001

3. TIRUR MUNICIPALITY
REPRESENTED BY ITS SECRETARY, TIRUR
MALAPPURAM DISTRICT, 676 101

4. DEPARTMENT OF ADMINISTRATIVE REFORMS,
REPRESENTED BY ITS SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANTHAPURAM 695001

BY SR.GOVERNMENT PLEADER SHRI JOSEPH GEORGE
R3 BY MR. P.K. VIJAYAMOHANAN

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 206 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE COPY OF ORIGINAL APPLICATION (O.AEKM) NO. 295 /2014) FILED
BY THE PETITIONER

EXT.P2: TRUE COPY OF THE ORDER IN O.A.(EKM) NO. 295/2014 OF THE KERALA
ADMINISTRATIVE TRIBUNAL AT THIRUVANTHAPURAM (CAMP SITTING ERNAKULAM)
DATED 13/8/2014

EXT.P3: TRUE COPY OF THE CONDUCT CERTIFICATE ISSUED BY THE
SECRETARY,TIRUR MUNICIPALITY ISSUED TO THE PETITIONER DATED 16/4/2015

RESPONDENT(S) ' EXHIBITS

/TRUE COPY/

P.S. TO JUDGE.

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

.....
O.P.(KAT) No.206 OF 2015
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Dated this the 21st July, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Grievance of the petitioner is in respect of the stipulation made by the Kerala Administrative Tribunal while rendering Ext.P2 judgment in O.A.No.295 of 2014 with regard to the eligibility of the petitioner to be promoted against the post of U.D. Clerk and the necessity to obtain the test qualification within the span of three years, which according to the petitioner could only be prospective as the eligibility of the petitioner has to be decided with reference to the factual sequence as narrated in the Original Petition.

2. The petitioner joined the service as L.D. Clerk way back on 14.02.2003, pursuant to the selection conducted by the PSC and the probation was declared on 14.02.2005. He belongs to a Scheduled Caste Community. By virtue of relevant provisions of

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law, test qualification was necessary for the purpose of promotion as envisaged under Rule 13A of Part II KS & SSR. By virtue of the credentials of the petitioner, it is stated that he can aspire for promotion being a Schedule Caste Community and that test qualification shall be obtained within three years from the date of promotion. Since the eligibility of the petitioner to get promotion was not considered by the Department, he approached the Tribunal by filing O.A.No.295 of 2014 with the following prayers:

"A. Direct the respondents to promote the applicant to the post of Upper Division Clerk with effect from 14.02.2005, the date of successful declaration of probation of the applicant, with all service benefits, including fixation of pay and scale of pay, sanctioning of increments, payments of arrears of promotion salary etc.

B. Any other order/orders, direction/directions as this Hon'ble Tribunal deems fit and proper under the facts and circumstances of the case. "

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3. After hearing both the sides, the matter was disposed of by the Tribunal as per Ext.P2 order dated 13.08.2014 and operative portion of which is as follows:

"We heard the learned Counsel on both sides. Going by Rule 13A(1), the applicant is entitled to be considered for promotion without clearing the departmental tests with effect from the date his probation was declared, that is, from 14.2.2005. Therefore, the second respondent is directed to consider promoting the applicant to one of the vacancies available as on 14.2.2005 for want of test qualified hands, or which arose on 14.2.2005 or thereafter consistent with his seniority. He is eligible to be promoted at least with effect from the date his immediate junior was promoted. He shall be allowed to continue in that post, if he clears the departmental tests within the three year period. Otherwise, he can be reverted and he will be eligible to get salary of the higher post during the period of three years. The second respondent shall pass orders in this regard within two months from the date of receipt of

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a copy of this order.”.

The learned Counsel for the petitioner points out that the stipulation that he shall be allowed to continue in that post, if he clears the departmental tests within the three year period, failing which he would be reverted, is detrimental to his rights and interests. According to the petitioner, such stipulation could only be prospective, otherwise, his rights and interests will be grossly affected.

4. Heard the learned Government Pleader appearing for the respondents as well.

5. After hearing both the sides and after going through the rule position and turn of events, this Court finds that no modification is required to be made to Ext.P2 except to the extent that the words “**from the date of this order**” be added to the second penultimate sentence. On effecting the correction as above, it will read as follows:

“He shall be allowed to continue in
that post, if he clears the departmental

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tests within the three year period from the
date of this order."

Rest of Ext.P2 order will remain intact. With the above
modification, the Original Petition stands disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**BABU MATHEW P. JOSEPH,
JUDGE.**

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