

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 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

OP(KAT).No.233 of 2015 (Z)

AGAINST THE ORDER IN TA 6165/2012 of KERALA ADMINISTRATIVETRIBUNAL,
THIRUVANANTHAPURAM DATED 19-05-2014

PETITIONER:

P.M.JOHNACHAN,
PULICKAL HOUSE,
THATHAMPALLY P.O.,
ALAPPUZHA DISTRICT
PIN - 688 013.

BY ADVS. SRI.P.S.KRISHNA PILLAI
SMT.S.ANJUSHA

RESPONDENTS:

1. STATE OF KERALA, REP. BY THE SECRETARY,
PLANNING AND ECONOMIC AFFAIRS DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
PIN - 695 039.
2. THE DIRECTOR OF ECONOMICS AND STATISTICS,
VIKAS BHAVAN,
THIRUVANANTHAPURAM.
PIN - 695 039.

BY SR. GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No.233 of 2015 (Z)

APPENDIX

PETITIONER'S EXTS:-

EXT.P1:- TRUE COPY OF JUDGMENT DATED 30/01/03 IN OP 13077/02.

EXT.P2:- TRUE COPY OF JUDGMENT DT. 21/7/05 IN WPC 7688/04.

EXT.P3:- TRUE COPY OF THE LETTER NO. 9395/D2/2006/PLG DT. 25/9/06.

EXT.P4:- TRUE COPY OF THE ORDER NO.EB (1) 4943/04/DES DT 25/9/04.

EXT.P5:- TRUE COPY OF LETTER NO.5934/D2/2007/PLG DT. 30/4/07.

EXT.P6:- TRUE COPY OF REPRESENTATION DT. 30/5/08 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P7:- TRUE COPY OF LETTER NO.7619/D2/2008/PLG DT. 28/8/08 FROM 1ST RESPONDENT TO THE PETITIONER.

EXT.P8:- TRUE COPY OF REPRESENTATION DT. 13/10/08 SUBMITTED BY PETITIONER BEFORE 1ST RESPONDENT.

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

O. P. (K.A.T.) No.233 of 2015

Dated this the 14th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

Whether filing of repeated representations will extend the original cause of action so as to call for interference of this Court, notwithstanding the delay, is the primary question to be considered. Has the Tribunal gone wrong in declining interference with reference to the sequents of events and the proceedings finalised by the competent authority with regard to the denial of promotion to the post of Taluk Statistical Officer is the next point to be considered on merits.

2. The factual position disclosed from the proceedings reveals that the petitioner was working as a Research Associate in the Department of Economics and Statistics and

he retired from the service on 31/10/2004. When the petitioner was in service, there was an instance of denial of promotion to him to the post of Taluk Statistical Officer. According to the petitioner, he was eligible to be promoted, but his case was not considered. Then he was constrained to approach this Court by filing O.P. No.13077 of 2002. After hearing both the sides, the said original petition was disposed of as per Ext.P1 judgment dated 30/01/2003. The factual sequence has been referred to in the said judgment, particularly as to the initiation of disciplinary proceedings and culmination of the proceedings. In fact, the original petition was disposed of recording the undertaking made by the first respondent that non-inclusion of the name of the petitioner was for a valid reason (in view of the pendency of the criminal case) and that his name would be considered in the next DPC as informed to him vide Ext.R1(d) referred to therein. The disciplinary proceedings against the petitioner

were finalised barring one increment without cumulative effect and the challenge raised before the Appellate Authority came to be futile as the appeal was dismissed declining interference. The said order was sought to be challenged by filing W.P.(C) No.7688 of 2004. After hearing both the sides, the learned single Judge of this Court found that the proceedings were finalised without adhering to the principles of natural justice and accordingly, the impugned orders were set aside as per Ext.P2 judgment. It was also observed by the learned single Judge that the petitioner had already retired from the service by the time. Hence, the Government was not given any opportunity to pass fresh orders after complying with the principles of natural justice.

3. Despite finalisation of the proceedings as above, the petitioner was never given promotion as claimed by him, which made him to file repeated representations before the concerned authorities, of course obtaining replies then and

there. Finally, the petitioner approached this Court by filing W.P.(C) No.7277 of 2009 raising various contentions, which was sought to be rebutted by the respondents 1 and 2 by filing separate counter affidavits. While so, pursuant to the constitution of the Tribunal, the case was transferred to the KAT, where it was numbered as T.A. No.6165 of 2012. The matter was finally heard on 19/05/2014 and the Tribunal observed that, but for filing representations before the Government, the petitioner had not sought to approach the competent authority/DPC if at all any subsisting grievance was there. It was also observed by the Tribunal that, pursuant to Ext.P1 judgment passed by this Court, the matter was considered by the DPC who found the petitioner unsuitable for promotion to the post of Taluk Statistical Officer. The position was intimated to the petitioner vide Ext.P3 communication dated 25/09/2006. Subsequent to the representation, the position was reiterated as per Ext.P5

dated 30/04/2007. The petitioner filed a further representation on 30/05/2008 i.e. Ext.P6, in response to which reply was given to him as per Ext.P7 dated 28/08/2008. It was thereafter that the petitioner sought to approach this Court by filing a writ petition which subsequently came to be transferred to the Tribunal, where it was renumbered as T.A. No.6165 of 2012, as mentioned above. In the said circumstances, interference was declined and the T.A. was dismissed with reference to the limited power of judicial review, which in turn is sought to be challenged by filing this original petition.

4. Heard Sri.P.S.Krishna Pillai, the learned counsel for the petitioner and the learned Senior Government Pleader at length.

5. After hearing both the sides and having gone through the materials on record, this Court finds that non-consideration of the petitioner for promotion, when the turn

occurred in the concerned year, was because of the pendency of the disciplinary proceedings against him. Subsequently, based on the undertaking given before the learned single Judge and direction issued by the Bench as per Ext.P1, claim of the petitioner was considered by the subsequent DPC and he was not found suitable to be promoted to the post in question. The outcome was intimated to the petitioner as per Ext.P3 communication dated 25/09/2006. There is no case for the petitioner that he was never served with the said communication. It was never sought to be challenged by filing any proceedings either before this Court or before the competent authorities. The petitioner, on the other hand, was pursuing the matter by simply filing representations and every time, it was being replied as per Ext.P5 dated 30/04/2007, and later as per Ext.P7 dated 28/08/2008. There is no case for the petitioner that any attempt was made by him to challenge Ext.P5

dated 30/04/2007 earlier, before filing W.P.(C) No.7277 of 2009 before this Court. It is settled law that filing of repeated representations will not give rise to the cause of action to be extended, as per ruling of the Apex Court in **S.S. Rathore v. State of M.P. (AIR 1990 SC 10)**. It is also seen that the interference declined by the Tribunal is not merely with reference to the non-pursuit of the remedy, but based on the merit as well. We find it difficult to interfere, as no tenable ground is raised for consideration. Accordingly, interference is declined and the original petition is dismissed.

Sd/-

P. R. RAMACHANDRA MENON
JUDGE

Sd/-

BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

