

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

OP(KAT).No. 269 of 2015 (Z)

AGAINST THE ORDER DATED 10.06.2015 IN OA 632/2015 of KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER:

REVEENDRAN NAIR K. AGED 55 YEARS
S/O.G.KARUNAKARAN NAIR
ASSOCIATE PROFESSOR AND HEAD OF THE DEPARTMENT OF VEDANTA
GOVERNMENT SANSKRIT COLLEGE
THIRUVANANTHAPURAMPIN - 695 034 (UNDER ORDERS OF
TRANSFER TO GOVERNMENT SANSKRIT COLLEGE
THRIPUNITHURA), RESIDING AT PARVATHY BHAVAN
ERAYAMCODE, CHERIYAKONNI P.O., THIRUVANANTHAPURAM
KERALA -695 013.

BY ADVS.SRI.K.SASIKUMAR
SRI.S.ARAVIND
SRI.R.ROHITH

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, KERALA - 695 001.

2. THE DIRECTOR OF COLLEGIATE EDUCATION
DIRECTORATE OF COLLEGIATE EDUCATION, VIKAS BHAVAN
THIRUVANANTHAPURAM, KERALA - 695 033.

3. THE DEPARTMENT PROMOTION COMMITTEE
(HIGHER), FOR PROMOTION TO THE POST OF PRINCIPAL
GOVERNMENT SANSKRIT COLLEGES
REPRESENTED BY ITS CONVENER THE PRINCIPAL
SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, GOVT.SECRETARIAT
THIRUVANANTHAPURAM, KERALA - 695 001.

4. SMT.L.SULOCHANA DEVI
ASSOCIATE PROFESSOR, GOVERNMENT SANSKRIT COLLEGE
THIRUVANANTHAPURAM PIN - 695 034
(UNDER ORDERS FOR PROMOTION AS PRINCIPAL
GOVERNMENT COLLEGE, THRIPUNITHURA).

OP(KAT).No. 269 of 2015 (Z)

:2:

5. KERALA ADMINISTRATIVE TRIBUNAL
THIRUVANANTHAPURAM REP. BY ITS REGISTRAR, VANCHIYOOR P.O.
THIRUVANANTHAPURAM -695 028.

R BY GOVERNMENT PLEADER SRI. M. MOHAMMED SHAFI

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 269 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT.P-1: A TRUE COPY OF THE MEMORANDUM OF ORIGINAL APPLICATION.

EXT.P-2: A TRUE COPY OF THE MA NO.1257/2015 IN O.A. 632/2015

EXT.P-3: A TRUE COPY OF THE ORDER DATED 10.6.2015 PASSED BY THE HON'BLE
KERALA ADMINISTRATIVE TRIBUNAL IN O.A. 632/2015

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

**P.R. RAMACHANDRA MENON
&
SUNIL THOMAS, JJ.**

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O.P.(KAT) No. 269 of 2015

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Dated, this the 6th day of August, 2015

JUDGMENT

Ramachandra Menon, J.

Disposal of the O.A. filed by the petitioner challenging the promotion given to the 4th respondent to the post of Principal of the Sanskrit College, despite the fact that she happened to be the junior and leaving out the claim of the petitioner for want of 'confidential reports' in the earlier Departmental Promotion Committee (DCP in short) held on 16.05.2014, without considering the merits, but for directing the representation preferred, to be placed before the DPC (Higher) made the petitioner to approach this Court by filing this Original Petition for appropriate relief.

2. The sequence of events narrated in the original petition shows that the petitioner was working as Associate Professor in Government Sanskrit College, Thirvananthapuram. By virtue of the credentials of the petitioner, he was to be considered for promotion to the post of Principal. Though there were two posts, it so happened

that the DPC did not consider the eligibility of the petitioner for the post of Principal in the meeting convened on 16.05.2014, for the reason that confidential reports of the petitioner were not made available to the DPC, as discernible from Annexure A4 minutes of the meeting. The factual position that two vacancies of Principal were available as on 01.04.2014, is evident from Annexure A4. The petitioner had approached the Tribunal by filing O.A No. 597 of 2014, with regard to the claim for promotion to the post of Principal, as projected by way of Annexure A3 representation mentioned therein. But the said O.A. came to be disposed of only on 21.05.2014 (i.e., after convening the DPC on 16.05.2014), whereby the representation preferred by the petitioner was directed to be considered. It is stated that no order was passed pursuant to the said verdict passed by the Tribunal.

3. Later, allegedly based on a frivolous complaint (a copy of which has been produced as Annexure A5), a criminal case was registered against him with reference to same offence under the Information Technology Act and a charge memo was given. Explanation was offered by the petitioner, but no further steps were pursued in connection with the departmental proceedings. In the meanwhile, by virtue of registration of the crime, the petitioner

approached the Sessions Court, Thiruvananthapuram, by filing an application for anticipatory bail, which was considered and Annexure A6 order was passed on 18.11.2014, making it clear that, in the event of arrest of the petitioner, he shall be released on bail. Subsequently, the petitioner came to be suspended from service as per Ext. A7 order dated 06.12.2014, pending enquiry. The said order of suspension was sought to be challenged by filing Annexure A8 appeal before the Government and the same was directed to be considered, by the Tribunal as per Annexure A9 order. It is also borne out by records, that the petitioner was reinstated in service on reviewing the suspension, as per Annexure A10 order dated 12.03.2015. Eventhough Annexure A12 charge memo was issued, it was not pursued further, in view of retirement of the petitioner on attaining the age of superannuation on 31.05.2015.

4. It is seen from the proceedings that, when the petitioner was ordered to be reinstated as per Annexure A10, a rider was also placed, that the petitioner would be transferred to the Government Sanskrit College, Thriupunithura and that the petitioner would stand prohibited from entering the Government Sanskrit College, Thiruvananthapuram. Being aggrieved of the said rider, the petitioner approached the Tribunal by filing O.A. No.

472 of 2015, which was disposed of as per Annexure A11 order, directing the Government to consider and pass appropriate orders on the representation, if any, filed by the petitioner within one month as specified. While so, a fresh DPC was convened on 18.12.2014, but the petitioner was not considered for promotion to the post of Principal, Government Sanskrit College, Thiruvananthapuram for the reason that he was continuing under suspension as on that date. The 4th respondent, who was much junior, came to be considered and promoted to the post of Principal and a posting was given to her, as per Annexure A15, to the Government Sanskrit College, Thripunithura, against the existing vacancy. It is further contended that the 4th respondent got a transfer back to the Government Sanskrit College, Thiruvannanthapuram and is working there.

5. Being aggrieved of the course and events, the petitioner chose to challenge Annexure A15 proceedings by approaching the Tribunal as per O.A. No. 632 of 2015. The said O.A. was filed in March, 2015. Subsequently, the petitioner filed representation before the Government on 20.05.2015, explaining the facts and figures and seeking to convene an 'adhoc DPC', as one of the two posts of Principal in Government Sanskrit College was to be given

to the petitioner, based on the credentials of the petitioner as on 16.05.2014 (the date on which the original DPC was held and on which date, no adverse circumstance was in existence against the petitioner). A copy of the said representation was produced as Annexure MA1 along with the Miscellaneous Application dated 24.05.2015 filed before the Tribunal. It was referring to the factum of filing of the said representation for redressal of the grievance of the petitioner, that the O.A. was disposed of by the Tribunal as per Ext. P3 order dated 10.06.2015, directing the concerned respondent to cause Annexure MA1 representation to be placed before the 3rd respondent DPC (Higher) within three months from the date of receipt of a copy of the order. The learned counsel for the petitioner submits that, non-consideration of the merit involved has resulted in much adverse circumstances and seeks for intervention of this Court.

6. Heard the learned Government Pleader at length.

7. Nothing is borne out by records as to the reason, as to why the confidential reports of the petitioner were not placed before the DPC when it was convened on 16.05.2014. No incriminating circumstances were brought on record preventing the DPC from evaluating the merits of the petitioner in the meeting

held on 16.05.2014. Non-placing of the confidential reports alone is cited as the reason for non consideration of the candidature of the petitioner to the post of Principal, Government Sanskrit College, as revealed from Annexure A4 minutes. The factum of enlistment of the petitioner for being considered at 'serial No. 2' and availability of 'two' vacancies in the post of Principal are also discernible from Annexure A4. According to the petitioner, he has got a case that on coming to note that the confidential reports were not made available before the DPC, he had moved the concerned Principal to cause the same to be sent to the concerned authority for being placed before the DPC, which was not acceded to. In any view of the matter, non-procurement or non production of the confidential reports before the DPC on 16.05.2014 attributable as a lapse on the part of the Department cannot be taken to the disadvantage of the petitioner, as there no fault or laches is alleged on his part. This of course is a matter to be considered by the competent authority i.e. DPC and the eligibility of the petitioner is to be decided with reference to credentials as on 16.05.2015.

8. In the above circumstances, the first respondent is directed to convene an 'Adhoc DPC' and place all the relevant materials before the Adhoc DPC, with regard to the claim and

eligibility of the petitioner as on '16.05.2015'. The matter shall be considered by the Adhoc DPC and appropriate orders shall be passed in accordance with law. The entire exercise shall be completed, at the earliest, at any rate, within 'three months' from the date of receipt of a copy of this judgment. If the Adhoc DPC finds that the petitioner was eligible to be promoted to the post of Principal, Government Sanskrit College, against one of the two available posts as on 16.05.2015, further steps shall be taken by the concerned respondents to give effect to the same, which shall also be effected, at the earliest, at any rate, within one month thereafter.

Original Petition stands disposed of.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-
SUNIL THOMAS,
JUDGE

kmd

The date "16.05.2015" occurring in paragraphs 7 and 8 of the judgment dated 06/08/2015 in OP(KAT) No. 269/2015 is corrected as "16.05.2014" as per order dated 09/10/2015 in I.A. 12859/2015 in OP(KAT) No. 269/2015.

sd/-
REGISTRAR (JUDICIAL)