

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

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

OP(KAT).No. 273 of 2015 (Z)

**AGAINST THE JUDGMENT IN TA 762/2013 of KERALA ADMINISTRATIVETRIBUNAL,
THIRUVANANTHAPURAM DATED**

PETITIONER(S):

- 1. N.HEMACHANDRAN, AGED 54 YEARS
HEAD OF SECTION IN MECHANICAL ENGINEERING
KERALA GOVERNMENT POLYTECHNIC COLLEGE, KOZHIKODE-5
KERALA.**
- 2. K.A.ABU,
HEAD OF SECTION IN MECHANICAL ENGINEERING
NOW WORKING AS HEAD OF SECTION IN TOOL AND DIE ENGINEERING
GOVERNMENT POLYTECHNIC COLLEGE, KUNNAMKULAM, KERALA.**
- 3. V.M.SREENIVASAN,
HEAD OF SECTION IN MECHANICAL ENGINEERING
NOW WORKING AS HEAD OF SECTION IN TOOL AND DIE ENGINEERING
GOVERNMENT POLYTECHNIC COLLEGE, KUNNAMKULAM, KERALA.**
- 4. R.VIJAYAN,
HEAD OF SECTION IN MECHANICAL ENGINEERING
KERALA GOVERNMENT POLYTECHNIC COLLEGE, PALAKKAD
KERALA.**
- 5. B.NAZARUDEEN,
HEAD OF SECTION IN MECHANICAL ENGINEERING
CENTRAL POLYTECHNIC COLLEGE, THIRUVANANTHAPURAM
KERALA.**

**BY ADVS.SRI.S.RAMESH
SRI.NAVEEN.T
SMT.POOJA SURENDRAN**

RESPONDENT(S):

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

**2. THE DIRECTOR OF TECHNICAL EDUCATION,
THIRUVANANTHAPURAM, KERALA.**

**3. SRI.M.R.JAYACHANDRAN,
LECTURER IN MECHANICAL ENGINEERING
MAHARAJAS TECHNICAL INSTITUTE, THRISSUR, KERALA.**

R1 & R2 BY GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1- TRUE COPY OF THE ORDER NO.EC3/35942/92 DATED 07.03.1995
OF THE 2ND RESPONDENT.

EXHIBIT.P2- TRUE COPY OF ORDER NO.EC3/35942/92 DATED 21.10.95 OF THE
2ND RESPONDENT.

EXHIBIT.P3- TRUE COPY OF THE ORDER NO.CE3/24230/96 DATED 17.10.96 OF
THE 2ND RESPONDENT.

EXHIBIT.P4- TRUE COPY OF SPECIAL RULES ISSUED AS PER G.O.(P)
NO.261/89/H.END DATED 21.12.1989.

EXHIBIT.P5- TRUE COPY OF THE ORDER NO.EC2/31857/98/DTE DATED 26.9.98
OF THE 2ND RESPONDENT.

EXHIBIT.P6- TRUE COPY OF SELECT LIST ISSUED AS PER NOTIFICAATION
NO.EG1/29310/97 DATED 23.07.1999.

EXHIBIT.P7- TRUE COPY OF THE ORDER NO.EG1/29310/97 DATED 14.12.1999
OF THE 2ND RESPONDENT.

EXHIBIT.P7(A)- TRUE COPY OF THE RELEVANT EXTRACT OF THE SENIORITY
LIST OF LECTURET ECT PUBLISHED AS PER EXT.P7.

EXHIBIT.P8- TRUE COPY OF SELECT LISAT ISSUED AS PER G.O.(P)
NO.43/03/H.EDN DATED 21.04.2003.

EXHIBIT.P9- TRUE COPY OF ODER G.O.(RT) NO.1021/03/H.EDN DATED
18.07.2003.

EXHIBIT.P10- TRUE COPY OF JUDGMENT DATED 25.02.2003 IN OP
NO.6570/2003 OF THIS HON'BLE COURT.

EXHIBIT.P11- TRUE COPY OF ORDER G.O.(RT) NO.1256/2003/H.EDN DATED
30.08.2003 ISSUED BY THE GOVERNMENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

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

O.P.(KAT)No.273 of 2015

Dated this the 10th day of August, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J

A strange grievance has been projected by the petitioners herein against the verdict dated 18.6.2015, passed by the Kerala Administrative Tribunal in T.A.No.762/2013 in spite of the fact that, the order impugned in the said transfer application has already been set aside and the matter has been caused to be reconsidered.

2. The sequence of events is as follows. The petitioners herein, were working as Assistant Lecturers and considering the seniority and such other credentials, they were promoted to hold the chair of the Head of the section and are working accordingly. It appears that there was some dispute with regard to the seniority raised by the 3rd respondent herein, who after the initial qualification of Diploma, acquired the Degree (B.Tech) as well and was holding the post of Draftsmen Grade I. Pointing out that the 3rd respondent was qualified in all respects, to be appointed to the post of Lecturer and such other relevant aspects claiming seniority over and above, the petitioners herein he had approached this Court by filing O.P.No.1840/2002, wherein Ext.R3 (i) judgment was passed on 21.3.2003 holding that the 3rd respondent is not entitled to have the

relief as sought for. Despite this, the 3rd respondent approached this Court again, after filing a representation before the Government and sought to have the said representation considered and disposed of within a specific time frame, by filing W.P.(C).No.36900/2003. It was pursuant to the said course of action pursued by the 3rd respondent, that the said writ petition was disposed of at the admission stage itself, as per Ext.P10 judgment dated 25.2.2003, directing the Government to have the matter considered and disposed of accordingly. Pursuant to the said direction, the Government passed Ext.P11 order dated 30.08.2003, whereby a decision, detrimental to the rights and interests of the petitioner was taken after affording an opportunity of hearing to the 3rd respondent. In other words, no such opportunity was ever given to the petitioners herein and hence the same was sought to be challenged by them by filing W.P.(C).No.36900/2003 before this Court.

3. It is revealed from the proceedings that the said writ petition came to be transferred to the Kerala Administrative Tribunal, where it was numbered as T.A.No.762/2013. After hearing both the sides, the Tribunal found considerable force in the submissions and contentions raised from the part of the petitioners/applicants and that the impugned order was passed by the Government in violation of the principles of natural justice, in so far as no opportunity of hearing was ever afforded to the petitioners.

It was accordingly, that Exhibit P11 order was set aside and the matter was directed to be reconsidered, after affording an opportunity of hearing to both the sides. This made the petitioners to approach this Court challenging the said order stating that the matter could not have been caused to be re-opened; having attained finality by virtue of Ext.R3 (i) judgment. It is also pointed by the learned counsel appearing for the petitioners, that the seniority of the petitioners herein stands settled years back and that the settled seniority not liable to be unsettled.

4. Heard the learned Government Pleader as well.

5. After going through the pleadings and proceedings, this Court finds that the attempt made by the 3rd respondent to have the seniority fixed, was prima facie a subject matter of consideration before a learned single Judge of this Court in W.P.(C). No. 36900/2003 wherein, Ext.R3 (i) judgment was passed answering the position against the 3rd respondent. Whether the representation preferred by the 3rd respondent subsequently before the Government was liable to be acted upon is a different point. If no other issue was there, than the issue considered by this Court in Ext.R3 (i) judgment, disposal of the representation by causing the same to be considered would have made a futile exercise. Anyhow, since the petitioners herein did not get an opportunity to explain and defend the proceedings before the Government, when Ext.P11 order was passed, the same was rightly interfered by the Tribunal

by passing the order in the T.A.No.762/2013.

4. Considering the question whether, a declaration could be made by this Court as now sought for from the part of the petitioners, non-suiting the 3rd respondent, this Court finds that a direction was already issued by a single Bench of this Court as per Ext.P10 judgment, directing the Government to consider the representation and pass appropriate orders. The said direction still stands. The course pursued by the Tribunal by passing order in the T.A after setting aside Ext.P11 order is only to give effect to Ext.P10 judgment passed by this Court, as to the manner of consideration of representation. This being the position, unless the directions given by the learned single Judge vide Ext.P10 to have the matter reconsidered is caused to be reviewed, (if there is any sustainable ground), the authority concerned is bound to give effect to Ext.P10 judgment. This alone has been directed by the Tribunal. As such, it is not a fit case to call for interference by way of the present original petition, as the relief sought for by the petitioners to set aside Ext.P11 has already been granted by the Tribunal.

6. There need not be any apprehension for the petitioners, that there might be a chance for reversion, as the impugned order, whereby seniority of the 3rd respondent was ordered to be given over and above the petitioners herein stands no more, having the same set aside by the Tribunal. In the said circumstance, no prejudice would be caused to the petitioners herein by moving the

matter before the Government who is to consider all the facts and circumstances leading to the issue involved, including the verdict passed by the learned single Judge by way of Ext.R3 (i). Without prejudice to the rights and liberties of the petitioners in this regard, interference is declined and the original petition is dismissed.

**Sd/-
P.R.RAMACHANDRA MENON
JUDGE**

**Sd/-
BABU MATHEW P.JOSEPH
JUDGE**

//TRUE COPY//

PA TO JUDGE

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