

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

OP(KAT).No. 323 of 2015 (Z)

AGAINST THE ORDER IN OA 483/2015 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 30.07.2015

PETITIONER/APPLICANT::

REJIMON P.R., S/O.RAVEENDRAN, AGED 40 YEARS
PULIMOOTIL HOUSE, KUMARAKOM NORTH P.O., KOTTAYAM,
KERALA - 686 563.

BY ADVS.SRI.BRIJESH MOHAN
SMT.RESMI G. NAIR

RESPONDENTS/RESPONDENTS::

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1. KERALA PUBLIC SERVICE COMMISSION REPRESENTED BY ITS
SECRETARY, PATTON,
THIRUVANANTHAPURAM, KERALA - 695 004.
 2. DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION,
PATHANAMTHITTA, KERALA - 608 086.
 3. THE DIRECTOR, SCHEDULED CASTE DEVELOPMENT DEPARTMENT,
THIRUVANANTHAPURAM - 695 033.

BY SENIOR GOVERNMENT PLEADER SRMT. REKHA VASUDEVAN
BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1: TRUE COPY OF OA.NO.483/2015 BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL ALONG WITH ANNEXURES A1 TO A9.

EXT.P2: TRUE COPY OF THE ORDER DATED 24/03/2015 OF THE KERALA ADMINISTRATIVE TRIBUNAL IN OA NO.483/2015.

EXT.P3: TRUE COPY OF MA NO.1621/2015 IN OA NO.483/2015 BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM ALONG WITH ANNEXURE A10.

EXT.P4: TRUE COPY OF THE ORDER DATED 01/07/2015 OF THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM IN OA NO.483/2015.

EXT.P5: TRUE COPY OF THE REPLY STATEMENT FILED ON BEHALF OF RESPONDENTS 1 AND 2 IN OA.NO.483/2015 IN KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

EXT.P6: TRUE COPY OF THE ORDER DATED 30/07/2015 OF THE KERALA ADMINISTRATIVE TRIBUNAL THIRUVANANTHAPURAM IN OA NO.483/2015.

EXT.P7: TRUE COPY OF R.A.NO.18/2015 IN OA,NO.483/2015 FILED BY THE PETITIONER BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

EXT.P8: TRUE COPY OF THE ORDER DATED 01/09/2015 OF THE KERALA ADMINISTRATIVE TRIBUNAL IN R.A.NO.18/2015 IN OA.NO.483/2015.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.ATO JUDGE

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(KAT). No.323 of 2015

Dated this the 6th day of November, 2015

JUDGMENT

Surendra Mohan,J.

The petitioner was a candidate who had applied for appointment to the post of Male Warden in the Scheduled Caste Development Department pursuant to Annexure-A1 notification dated 15.06.2012 issued by the Public Service Commission ("the PSC" for short). He had submitted his application for appointment in the Pathanamthitta District. According to the notification, 3 years experience as Warden in a hostel recognized by the Social Welfare Department was a necessary qualification apart from a pass in S.S.L.C. or equivalent examination. As per the experience certificate produced by the petitioner, he had worked for only 1 year as Male Warden and for the remaining 2 years, his experience was as Care Taker. The Public Service Commission took the view that he did not satisfy the qualification prescribed. Therefore, he was treated as disqualified. A

representation submitted by the petitioner was also rejected. It was challenging the said action that the Original Application was filed before the Kerala Administrative Tribunal ("the KAT" for short). As per Ext.P6 order, the KAT has disposed of the petitioner's Original Application with the following directions:

"4. We heard learned counsel on both sides and went through the pleadings and materials on record. Though, there is any difference in the nomenclature, whether the posts are the same is a matter, which has to be examined by the PSC after giving an opportunity of being heard to the applicant. The applicant may file a representation setting out his contention before the PSC; in that event, the first respondent shall afford an opportunity of being heard to the applicant and take a decision in the matter, that is, whether his contention is correct and if so, whether Annexure A4 to A7 could also be accepted as valid like Annexure A3. This decision, the PSC shall take within six weeks from the date of receipt of a copy of this order after affording an opportunity of being heard to the applicant. In the meantime, the advices to the vacancy, if any, reported to the post of Male Warden in Pathanamthitta in Schedule Caste Development Department may be put to hold. This direction we are issuing, as we are told that the applicant is the person who got the highest marks in the interview for the post. It means, if he is included in the ranked list, he is

the claimant for the vacancy, if any, reported and pending with the PSC. It is clarified this order will not affect the candidate, if any, who is already advised.

The Original Application is disposed of as above."

2. As may be seen from the above, the directions of the KAT contains a rider that, the said order would not affect the candidate, if any who has already been advised. Since the number of vacancies available are only 2, according to the petitioner, the above condition that has been stipulated denies to the petitioner the relief that has been granted in the earlier part of the direction.

3. In view of the above, the petitioner had sought for a review of the order by filing R.A. No.18 of 2015. However, the Review Application has been dismissed by Ext.P8 order, holding that, the condition had been imposed by the Tribunal, consciously.

4. According to Advocate Smt. Resmi G. Nair who appears for the petitioner, nobody had a case before the Tribunal that any person had been advised to the post in question. The petitioner had been permitted to appear for the interview by the Tribunal, upon finding that the qualification and experience

possessed by him satisfied the requirement of Annexure A1 notification. At the interview, he stood first.

5. For the above reasons, it was held that the petitioner's claim required to be considered by the PSC. It was with the above objective in mind that the said direction has been issued by the Kerala Administrative Tribunal.

6. We have heard the learned Government Pleader as well as the learned Standing Counsel for the PSC.

7. Since the KAT has directed the PSC to examine the claim of the petitioner and to take a decision after hearing him as to whether his contention that he possessed all the necessary qualifications was correct or not, we are inclined to order that, the said exercise be completed at the earliest. The reason stated by the KAT for imposing a condition that the candidate if any already advised would not be affected by such decision, was in view of the fact that no person who is likely to be affected had been made a party to the Original Application.

8. The above drawback could be rectified, by providing an opportunity of being heard to any such person who has been so advised. Therefore, it shall be sufficient that any person who has been so advised by the PSC also is heard by the PSC in

accordance with the directions of the KAT contained in Ext.P6 order. The PSC shall also be at liberty to obtain the views of the Government with regard to the question as to whether the two posts, viz., Male Warden and Care Taker were equivalent and/or interchangeable.

9. This Original Petition is accordingly disposed of directing the petitioner to submit a representation to the PSC setting out his contentions within a period of one week from the date of receipt of a copy of this judgment. If such a representation is submitted, the same shall be considered and a decision shall be taken thereon by the PSC, after ascertaining the views of the Government Departments concerned and affording an opportunity of being heard to the petitioner as well as any candidate who has been advised for appointment to the notified post. In the meantime, all advices to the vacancies reported to the PSC of the post of Male Warden in Pathanamthitta District in the Scheduled Caste Development Department shall be kept in abeyance. It is made clear that the advices if any already made by the PSC shall also be subject to the decision to be taken, in accordance with the above direction.

As noted by the KAT in its order, we are also issuing the

above directions considering the fact that the petitioner is the person who has secured the highest marks in the interview for the post.

Sd/-

**K. SURENDRA MOHAN
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.A. To Judge

smv
06.11.2015