

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

OP(KAT).No. 333 of 2015 (Z)

**AGAINST THE JUDGMENT IN OA 2445/2014 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 11-05-2015**

PETITIONER(S):

- 1. THE ADDITIONAL CHIEF SECRETARY
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. THE SPECIAL SECRETARY
GENERAL ADMINISTRATION (SPL-E) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

BY ADV. GOVERNMENT PLEADER

RESPONDENT(S)/APPLICANT IN OA :

**V. RADHAKRISHNAN NAIR, AGED 58 YEARS
S/O. VELAYUDHAN NAIR, RETIRED ADDITIONAL SECRETARY
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, RESIDING AT REKHA NIVAS
PANGAPPARA, KARYAVATTOM, THIRUVANANTHAPURAM-695 581.**

R BY GOVERNMENT PLEADER SRI.VIJU ABRAHAM

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

avk

OP(KAT).No. 333 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF THE OA NO.2445/2014 WITH ANNEXURES.

P2 : COPY OF THE REPLY STATEMENT IN OA 2445/2014.

P3 : COPY OF THE JUDGMENT DTD.11.5.2015 IN OA NO.2445/2014.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

**P.N.RAVINDRAN
&
BABU MATHEW P.JOSEPH,JJ.**

O.P.(KAT).No.333 of 2015

Dated this the 30th day of October, 2015

JUDGMENT

P.N.RAVINDRAN, J.

The order passed by the Kerala Administrative Tribunal on 11.5.2015 allowing O.A.No.2445 of 2014 filed by the respondent is under challenge in this original petition filed under Article 226 and 227 of the Constitution of India. The brief facts of the case are as follows:-

2. While the respondent herein was working as Joint Secretary in the Finance Department of the Government of Kerala, he was considered for promotion to the cadre of Additional Secretary to Government for the year 2011 by the Departmental Promotion Committee constituted for the purpose. Relying on uncommunicated adverse remarks in his confidential reports for the period from 10.3.2009 to 23.10.2009, the Departmental Promotion Committee superceeded him. He represented

against the super cession, but it was rejected. He thereupon moved the Kerala Administrative Tribunal by filing O.A.No.556 of 2012. After notice to the respondents therein namely, the State of Kerala, represented by the Principal Secretary to Government, Finance Department, the Convener of the Departmental Promotion Committee and his juniors who were arrayed as respondents 3 to 21 therein, the Kerala Administrative Tribunal held that the decision of the Departmental Promotion Committee to supercede the respondent is vitiated. The Kerala Administrative Tribunal accordingly quashed the communication issued by the Convener of the Departmental Promotion Committee rejecting his representation against his supercession and directed that the promotions effected by the Government order dated 31.3.2011 based on the list prepared by the Departmental Promotion Committee will be treated as provisional and that it will be reviewed based on the reconsideration of the claim of the respondent for inclusion in the select list

for the year 2011. The Kerala Administrative Tribunal also directed as follows:-

“ In the result, the second respondent is directed to reconsider the claim of the applicant for inclusion in Annexure A3 in accordance with law ignoring Annexure A8 adverse remarks, within a period of two months from the date of receipt of a copy of this order. If his claim for inclusion in the said list is upheld, then he shall be granted all consequential benefits arising out of that decision admissible as per the rules without any further delay.”

3. The State of Kerala and the convener of the Departmental Promotion Committee challenged that order by filing O.P.(KAT) No.1604 of 2013 in this Court. By judgment delivered on 27.6.2013, a Division Bench of this court, to which one of us (Babu Mathew P.Joseph, J) dismissed the original petition and directed implementation of the order passed by the Tribunal at the earliest. The Division Bench also took note of the fact that following the directions issued by the Tribunal, the claim of the respondent for inclusion in the select list has been considered and he has been included in the select

list as Sl.No.4A. The Division Bench accordingly directed that further action on this basis should be proceeded with at the earliest. The Government thereupon issued G.O. (Rt.)No. 9329 of 2013 dated 20.11.2013 to notionally promote the respondent to the cadre of Additional Secretary in the scale of pay of Rs.46640-59840 (revised) with effect from 1.4.2011, the date on which his junior Smt.S.J.Valsala assumed charge of the post of the Additional Secretary subject to the condition he will not be entitled to arrears of salary and allowances. It was also clarified that such promotion will be for the limited purpose of pensionary benefits as contemplated in Rule 23 (C) of Part I, Kerala Service Rules. The first respondent thereupon moved the Government by submitting a representation dated 10.1.2014 and prayed for re-consideration of the decision promoting him on a notional basis without arrears of salary and allowances. The request was rejected and the decision communicated to him by letter dated 4.3.2013. He thereupon filed

O.A.No.2445 of 2014 before the Kerala Administrative Tribunal challenging the Government order dated 20.11.2013 and the Government letter dated 4.3.2014. The Government order dated 20.11.2013 was produced and marked as Annexure A1 and the Government letter as Annexure A2. One of the main grounds raised by the respondent in his petition before the Kerala Administrative Tribunal was that Rule 23(C) is meant to be applied in cases where promotions are made to posts even though vacancies do not exist, that it applies only to those who do not assume charge even after issuance of the promotion order and therefore, Annexure A1 order to the extent it denies arrears of salary and allowances to him, is liable to be quashed. The State of Kerala and the respondents in O.A.No.2445 of 2014 opposed the application by filing a reply statement. The Kerala Administrative Tribunal considered the rival contentions and allowed O.A.No.2445 of 2014 by Ext.P3 order passed on 11.5.2015. The Tribunal held that as the petitioner

was promoted against a clear vacancy and he was denied promotion at the appropriate time, he cannot be denied arrears of salary. The Kerala Administrative Tribunal accordingly directed disbursement of arrears of salary and allowances to the respondent with effect from the date of promotion to the cadre of Additional Secretary, within two months from the date of receipt of copy of the order. The said order is under challenge in this original petition filed under Articles 226 and 227.

4. We heard Sri.Viju Abraham, learned Senior Government Pleader appearing for the petitioners. We have also gone through the pleadings and the materials on record. It is evident from Annexure A1 order which was impugned before the Kerala Administrative Tribunal that the respondent's promotion to the cadre of Additional Secretary was against a vacant post. He was promoted with effect from 1.4.2011, the date on which his immediate junior Smt.S.J. Valsala assumed charge in the post of Additional Secretary. To effectuate the promotion

of the respondent Smt.C.Mary, the junior most Additional Secretary to Government was reverted and he was promoted vide G.O.(Rt).No.7009/13/GAD dated 27.08.2013. Though the respondent was promoted against a vacancy which arose consequent on the reversion of the junior most Additional Secretary, for reasons best known to them, the petitioners have taken the stand that as the promotion effected by the Government order dated 27.8.2013 is a notional promotion, the respondent will not be entitled to back arrears. The Kerala Administrative Tribunal, has, after considering the rival contentions, repelled the contention of the petitioners that in view of Rule 23 (C) of Part I KSR, the respondent is not entitled for arrears of salary with effect from the date on which he was promoted to the date on which he assumed charge. The relevant portion of the judgment of the Kerala Administrative Tribunal reads as follows:-

“The first respondent has filed a reply statement in which reliance is placed on Rule 23(C) of Part 1, KSR. It is submitted that the applicant is entitled to arrears of

salary only with effect from the date he assumed charge. He can get arrears of salary, and that too for one year, if only there is no change in the duties of the promotion post. If the duties are the same, the incumbent may claim arrears of salary, subject to a maximum of one year. So in the light of Rule 23(C), the applicant is not eligible for arrears of salary, as he was promoted only notionally.”

5. After hearing the learned Senior Government Pleader appearing for the petitioners, we are satisfied that no exception can be taken to the reasoning given by the Tribunal in the impugned order. As rightly pointed out by the Kerala Administrative Tribunal, the respondent's promotion was not on a notional basis. It was on a regular basis. Such promotion was ordered after reverting the junior most Additional Secretary namely Smt.C.Mary. That apart, as pointed out by Kerala Administrative Tribunal, the explanatory note to G.O.(P). No.629/2010/Finance dated 25.11.2010 by which Rule 23 (C) was introduced in Part I of the KSR states that notional promotions are generally ordered in the absence

of vacant posts under exigencies of service consequent to retrospective revision of seniority, supersession of the senior by the junior and also in compliance with court directions. In such circumstances, as the respondent herein was wrongly superceded and the supercession was found to be bad by the Tribunal and that decision had attained finality with the dismissal of O.P.(KAT) No.1604 of 2014 by a Division Bench of this court, the petitioners cannot any longer contend that the promotion given to the respondent was notional. The Kerala Administrative Tribunal has in earlier round of litigation held that if the claim of the respondent herein for inclusion in select list is upheld, he shall be granted all consequential benefits arising out of that decision, admissible as per rules. Though the learned Government Pleader contended that the expression "admissible as per rules" has to be interpreted to mean as per Rule 23(C) of Part-I KSR, having regard to the facts stated above and the reasons given by the Kerala Administrative Tribunal in paragraph

5 of the impugned order, the said contention cannot be accepted.

For the reasons stated above, we hold that there is not merit in the challenge to the impugned order. The original petition fails and is accordingly dismissed with a direction to the petitioners to give effect to the orders passed by the Kerala Administrative Tribunal expeditiously and in any event within two months from the date of receipt of a copy of this judgment.

**Sd/-
P.N.RAVINDRAN
JUDGE**

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

//TRUE COPY//

PA TO JUDGE

AVK

