

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

OP(KAT).No. 337 of 2015 (Z)

AGAINST THE ORDER IN TA 857/2012 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 04-02-2015

PETITIONER/APPLICANT:

P.N.SOMAN
S/O NARAYANAN, WORKS MANAGER IN FULL ADDITIONAL
CHARGE OF MECHANICAL ENGINEER STATE WATER
TRANSPORT DEPARTMENT, ALAPPUZHA
(PRESENTLY WORKING AS WORKS MANAGER, STATE
WATER TRANSPORT DEPARTMENT D&R SECTION,
ALAPPUZHA-688 001)

BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
PUBLIC WORKS DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001
2. THE DIRECTOR
STATE WATER TRANSPORT DEPARTMENT
ALAPPUZHA-688001
3. SRI. K.K. SASIDHARAN
DIRECTOR, STATE WATER TRANSPORT DEPARTMENT
ALAPPUZHA-688 001
4. SRI. K. BABU
WORKING AS MECHANICAL ENGINEER,
STATE WATER TRANSPORT DEPARTMENT, ALAPPUZHA-688 001
5. THE KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTON,
THIRUVANANTHAPURAM-695 004

R1 TO R3 BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE
R5 BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1: TRUE COPY OF THE REPRESENTATION DT. 17/6/97

EXT.P2: TRUE COPY OF THE TEMPORARY APPOINTMENT ORDER
GIVEN TO THE 4TH RESPONDENT

EXT.P3: TRUE COPY OF THE REPRESENTATION DT. 11/1/97

EXT.P4: TRUE COPY OF THE COMMUNICATION SENT BY THE 3RD
RESPONDENT TO THE PETITIONER

EXT.P5: TRUE COPY OF THE REPRESENTATION DT. 26/12/77

EXT.P6: TRUE COPY OF THE NOTIFICATION DT. 10/2/98

EXT.P7: TRUE COPY OF THE JUDGMENT IN OP 4491/98-I DT.
9/3/98

EXT.P8: TRUE COPY OF THE GO (RT) 215/1998/TRAN DT.
29/6/98

EXT.P9: TRUE COPY OF THE MEMO DT. 7/8/1998 ISSUED BY
THE 2ND RESPONDENT

EXT.P10: TRUE COPY OF THE DECLARATION OF THE
PETITIONER DT. 11/8/98

EXT.P10(A): TRUE COPY OF THE GO (RT) 380/98/TRANS DT.
29/10/98

EXT.P11: TRUE COPY OF THE REPRESENTATION DT. 9/11/98
SUBMITTED BY THE PETITIONER

EXT.P12: TRUE COPY OF THE REPRESENTATION DT. 29/1/1999
SENT BY THE PETITIONER

EXT.P13: TRUE COPY OF THE LETTER NO. 405/D1/99/TRANS
DT. 22/1/99

EXT.P13(A): TRUE COPY OF THE REPLY DT. 19/5/99 ISSUED
BY THE 1ST RESPONDENT

EXT.P14: TRUE COPY OF THE JUDGMENT IN OP 21586/99-T DT.
2/12/05

EXT.P15: TRUE COPY OF THE REPRESENTATION DT. 1/7/06 BY
THE PETITIONER TO GOVERNMENT

EXT.P16: TRUE COPY OF THE LETTER NO. 2367/D1/06/TRANS
DT. 28/8/06 TO THE PETITIONER

EXT.P17: TRUE COPY OF THE GO (RT) 40/01/TRANS
DT.1/2/2001

EXT.P18: TRUE COPY OF THE LETTER ISSUED BY THE DIRECTOR
TO THE SECRETARY.

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EXT.P19: TRUE COPY OF THE LETTER DT. 10/7/2002

EXT.P20: TRUE COPY OF THE LETTER DT. 25/1/2002 BY THE
DIRECTOR TO THE PETITIONER.

EXT.P21: TRUE COPY OF THE MEMORANDUM DATED 31.12.2007 TO
THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

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

O.P.(KAT) No.337 of 2015

Dated this the 4th day of November, 2015

JUDGMENT

Surendra Mohan,J.

The petitioner was working as Works Manager in the Water Transport Department. He was put in charge of the post of Mechanical Engineer. He had filed a Writ Petition before this Court challenging the denial of regular promotion to him as Works Manager. The said Writ Petition, W.P.(C) No.29881 of 2006 was transferred to the Kerala Administrative Tribunal ("the KAT" for short) and re-numbered as T.A. No.857/2012. The said application has been dismissed by the KAT. The petitioner challenges the said order in this Writ Petition.

2. According to Sri.V.A. Muhammed who appears for the petitioner, the vacancy of Works Manager arose on 11.6.1997. As on the date of occurrence of the vacancy, the petitioner had not completed 2 years of service in the cadre of Foreman. Two years service in the cadre of Foreman is a necessary qualification for being appointed as Works Manager. The petitioner completed

the required two years service only on 27.8.1997. Therefore, he became qualified for being appointed to the post of Works Manager only on 27.8.1997. Since no eligible person was available to be promoted as Works Manager, the vacancy has been reported to the Kerala Public Service Commission ("the PSC" for short) for being filled up through Direct Recruitment in accordance with the Note to Rule 28(b)(IA) of Part II KS & SSR.

3. According to the learned counsel, the PSC has notified the vacancy only in the gazette dated 10.2.1998. Long before the said date, the petitioner had become fully qualified to be promoted to the post of Works Manager. In fact, the petitioner was promoted to the said post under Rule 9(a)(i) of the General Rules from 29.10.1998, he is continuing as such. Despite notifying the said vacancy, the PSC has not made any selection pursuant to the notification. Therefore, the vacancy has been re-notified. Since the petitioner has been continuing as Works Manager from 29.10.1998 for the past 16 years, it is contended that, he is entitled to be regularised in the said post. According to the learned counsel, the KAT committed a serious error in dismissing the Transfer Application. Counsel placed reliance on the decision in **Padmanabhn Nair v. Dy. Director** [1991(1) KLT 337(F.B.)] to contend that, where no person was qualified to be appointed to the post on the date of occurrence of the said

vacancy, the senior most though unqualified on the date of occurrence of the vacancy, is entitled to be appointed to the said post. Acquisition of the necessary qualification by any of the seniors on a subsequent date would not, according to the learned counsel, prejudice the rights of the junior. The said dictum applies to the present case for the reason that, the petitioner had acquired the necessary qualification and had become entitled for promotion two months after the date on which the vacancy had occurred. Therefore, it is contended that, a direction for promoting him on regular basis to the said post is necessary to be issued.

4. This OP(KAT) is posted before us for admission. We have heard the counsel at length. It is not in dispute that, the vacancy had arisen on 11.6.1997 and that, on the said date the petitioner was not possessed of the required qualification of two years service in the cadre of Foreman. In view of the above, as on the date of occurrence of the vacancy, the petitioner was not qualified to be promoted. It is also not in dispute that, there were no other qualified persons who were entitled to be promoted to the said post on the date of occurrence of the said vacancy.

5. In view of the above, in terms of the Note to Rule 28(b) (IA) of Part II KS & SSR, the vacancy was reported to the PSC for

Direct Recruitment. We do not find anything wrong in the action of the authorities in so reporting the vacancies. We find that the subsequent acquisition of the necessary qualification by the petitioner would not render the action of the authorities in reporting the vacancy to the PSC for Direct Recruitment, invalid. The KAT has also taken note of the fact that, the petitioner would certainly be entitled to claim appointment to any vacancy that has arisen, after the date on which the petitioner acquired the necessary qualification for promotion as Works Manager.

6. For the foregoing reasons, we do not find any infirmity in the impugned order of the KAT.

The Writ Petition fails and it is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
04.11.2015