

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

OP(KAT).No. 348 of 2015 (Z)

ORDER IN OA (EKM) 25/2015 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 16-06-2015

PETITIONERS/RESPONDENTS 7 TO 20:

1. PRAVEEN KUMAR V., AGED 47 YEARS,
S/O.SRI.P.VASUDEVAN NAMBOOTHIRI,
PRESENTLY WORKING AS SECTION OFFICER,
ADVOCATE GENERAL'S OFFICE,
ERNAKULAM-682 031. PRESENTLY RESIDING AT
LAVENDER 3F, SKYLINE APARTMENTS, PETTA,
THRIPOONITHURA, ERNAKULAM-682 038.
2. JOY C.V., AGED 44 YEARS, S/O.THE LATE VARGHESE,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE,
ERNAKULAM-682 031. RESIDING AT CHULLY HOUSE,
AMALAPURAM, AYYAMPUZHA.P.O., ERNAKULAM-683 581.
3. SAIJU GOPAL P, AGED 44 YEARS,
S/O.SRI.M.E.GOPALAN, ASSISTANT SECTION OFFICER,
ADVOCATE GENERAL'S OFFICE, ERNAKULAM-682 031
RESIDING AT PANAKKAPARAMBIL HOUSE,
VALLUVALLY, KOONAMMAVU.P.O., N.PARUR,
ERNAKULAM - 683 518.
4. NILEENAA.S., AGED 39 YEARS, W/O.SRI.JOTHISH K.S.,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE,
ERNAKULAM-682 031. RESIDING AT CF6 205,
AISWARAYANAGAR, THAIKKATTUKARA.P.O.,
ALUVA, ERNAKULAM - 683 106.
5. G.RAMACHANDRAN NAIR, AGED 44 YEARS,
S/O.SRI.R.GANGADHARA PANICKER,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE,
ERNAKULAM-682 031. RESIDING AT SREESYLAM HOUSE
CMC-10, CHERTHALAI.P.O., ALAPPUZHA-688 524.
6. MANOJ K.N., AGED 44 YEARS, S/O.SRI.NARAYANAN,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE,
ERNAKULAM-682 031. PRESENTLY RESIDING AT IIIA 2/10,
NGO QUARTERS, THRIKKAKARA.P.O., ERNAKULAM-682 021.

7. CHANDINI K.N., AGED 43 YEARS, W/O.SRI.K.U.VIJAYAN,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE,
ERNAKULAM-682 031. RESIDING AT KOCHUPURACKAL HOUSE,
AIMS P.O., PONEKKARA, ERNAKULAM.
8. LIZY P.J., AGED 50 YEARS, W/O.THE LATE BABU,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE,
ERNAKULAM-682 031. RESIDING AT PANIKULANGARA HOUSE,
P.O.POYYA, THRISSUR - 680 733.
9. SUPRIYA K.S., AGED 38 YEARS, W/O.SRI.T.G.SUDHEESH BABU,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE,
ERNAKULAM - 682 031 (PRESENTLY ON DEPUTATION AS SECRETARY
KERALA LEGAL SERVICE AUTHORITY, KODUNGALLOOR,
RESIDING AT THALASSERRY HOUSE, WEST ARAKULAM,
KODUNGALLOOR.P.O., THRISSUR DISTRICT, PIN-680 664.
10. ASHA M.R., AGED 48 YEARS, W/O.THE LATE ASOKAN M.K.,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE
ERNAKULAM-682 031. RESIDING AT MALAYIL HOUSE
NIRAVATH ROAD, MARADU.P.O., ERNAKULAM-682 304.
11. RAJALEKSHMY S., AGED 42 YEARS,
W/O.SRI.BABU T.K, ASSISTANT SECTION OFFICER,
ADVOCATE GENERAL'S OFFICE, ERNAKULAM-682 031
RESIDING AT THANATH HOUSE, MARAMPILLY.P.O.,
ALUVA, ERNAKULAM-683 105.
12. AJU C.A., AGED 42 YEARS, W/O.SRI.ABDULLA,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE,
ERNAKULAM-682 031. PRESENTLY ON DEPUTATION AS SECRETARY
KERALA LEGAL SERVICE AUTHORITY, CHAVAKKAD,
RESIDING AT 'DARUSSALAM', P.O.TALIKULAM
THRISSUR-680 569.
13. VASU P.K., AGED 43 YEARS, S/O.SRI.P.TKUNJATHAN,
ASSISTANT SECTION OFFICER, ADVOCATE GENERAL'S OFFICE
ERNAKULAM-682 031. RESIDING AT PERUNTHIKKARA HOUSE
KUMARAPURAM.P.O., MORAKKALA(W), ERNAKULAM-683 565.
14. RAJEEV B, AGED 38 YEARS,
S/O.THE LATE BHASKARAN ACHARY,
ASSISTANT SECTION OFFICER,
ADVOCATE GENERAL'S OFFICE,
ERNAKULAM-682 031. (PRESENTLY ON DEPUTATION
AS SECRETARY KELSA , THIRUVALLA),
RESIDING AT THAMARAPPALLIL HOUSE
PULIYOOR.P.O., CHENGANNUR, ALAPPUZHA-689 510.

BY ADVS.SRI.ANTONY MUKKATH
SRI.JOS LEO JOSE

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 6:

1. RAJASHREE K., AGED 38 YEARS, W/O.RIJU V.,
ASSISTANT TRAINEE (CONFIDENTIAL ASSISTANT(SELECTION GRADE),
PRESENTLY WORKING AS SECTION OFFICER
OFFICE OF THE ADVOCATE GENERAL, ERNAKULAM
KOCHI-682 031. RESIDING AT FLAT NO.105, SUI SUMMIT,
NEAR HIGH COURT OF KERALA, ERNAKULAM, KERALA-682 031.
 2. STATE OF KERALA REPRESENTED BY
THE SECRETARY TO GOVERNMENT
LAW DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, KERALA-695 001.
 3. ADVOCATE GENERAL, OFFICE OF THE ADVOCATE GENERAL,
ERNAKULAM, KERALA 682 031.
 4. SECRETARY TO ADVOCATE GENERAL,
OFFICE OF THE ADVOCATE GENERAL,
ERNAKULAM, KERALA 682 031.
 5. TEJU JOSE M., ASSISTANT SECTION OFFICER,
OFFICE OF THE ADVOCATE GENERAL,
ERNAKULAM, KERALA 682 131.
 6. A.V. AMBROSE, ASSISTANT SECTION OFFICER,
PRESENTLY WORKING AS SECTION OFFICER,
OFFICE OF THE ADVOCATE GENERAL,
ERNAKULAM, KERALA 682 031.
 7. SINDHU S., ASSISTANT SECTION OFFICER,
OFFICE OF THE ADVOCATE GENERAL, ERNAKULAM 682 031.
- BY GOVERNMENT PLEADER SMT. REKHA VASUDEVAN
- THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	-	PHOTOCOPY OF THE ORIGINAL APPLICATION (EKM) NO.25 OF 2015 FILED BY THE 1ST RESPONDENT-APPLICANT IN THE OA. ALONG WITH ANNEXURES 1 TO 15.
ANNEXURE A1		TRUE COPY OF THE SUBMISSION DATED 07.02.2011.
ANNEXURE A2		TRUE COPY OF THE MEMO NO. M2-6728/2011 DATED 21.02.2011 OF THE ADVOCATE GENERAL.
ANNEXURE A3		TRUE COPY OF THE REPRESENTATION DATED 21.12.2011 SUBMITTED BY THE APPLICANT TO THE GOVERNMENT
ANNEXURE A4		TRUE COPY OF THE ORDER NO. M2-48427/2012 DATED 29.10.2012 OF THE ADVOCATE GENERAL
ANNEXURE A5		TRUE COPY OF THE SUBMISSION DATED 27.07.2013 SUBMITTED BY THE APPLICANT
ANNEXURE A6		TRUE COPY OF THE TRUE COPY OF THE ORDER NO. AD.B2-32615/2013 DATED 11.11.2013 OF THE ADVOCATE GENERAL
ANNEXURE A7		TRUE COPY OF THE SUBMISSION DATED 15.10.2013 OF THE 5TH RESPONDENT
ANNEXURE A8		TRUE COPY OF THE APPEAL PETITION DATED 18.11.2013 SUBMITTED BY THE 5TH RESPONDENT WITHOUT ENCLOSURES TO THE SECRETARY TO GOVERNMENT
ANNEXURE A9		TRUE COPY OF THE SUBMISSION OF THE 5TH RESPONDENT TO THE GOVERNMENT
ANNEXURE A10		TRUE COPY OF THE WRITTEN OBJECTION DATED 18.10.2014 OF THE APPLICANT TO THE SECRETARY TO GOVERNMENT
ANNEXURE A11		TRUE COPY OF THE G.O.(MS) NO. 223/14/LAW DATED 31.12.2014 OF THE 1ST RESPONDENT
ANNEXURE A12		TRUE COPY OF THE G.O.(P) NO. 27/88/P&ARD DATED 29.06.1998 OF THE 1ST RESPONDENT
ANNEXURE A13		TRUE COPY OF THE JUDGMENT DATED 12.06.2007 IN WP(C) NO. 6178/2007-I OF THE HON'BLE HIGH COURT OF KERALA.
ANNEXURE A14		TRUE COPY OF THE JUDGMENT DATED 12.06.2007 IN WP(C) NO. 12228/2007 OF THE HON'BLE HIGH COURT OF KERALA
ANNEXURE A15		TRUE COPY OF THE G.O.(RT.) NO. 4954/2002/GAD DATED 31.07.2002 OF THE 1ST RESPONDENT

- EXHIBIT P2 - PHOTOCOPY OF THE REPLY STATEMENT DATED 24.03.2014 OF THE 1ST RESPONDENT IN THE OA WITHOUT ANNEXURE.
- EXHIBIT P3 - PHOTOCOPY OF THE REJOINDER STATEMENT FILED ON BEHALF OF THE 1ST RESPONDENT AND RESPONDENTS 4 TO 6 (APPLICANT AND RESPONDENTS 5 TO 7 IN THE OA)
- ANNEXURE A16 TRUE COPY OF THE LETTER NO. 19466/S-E1/2015GAD DATED 23.03.2015 OF THE STATE PUBLIC INFORMATION OFFICER AND UNDER SECRETARY, GENERAL ADMINISTRATION (SERVICES-E) DEPARTMENT.
- ANNEXURE A17 TRUE COPY OF THE LETTER NO. 6232/ADMIN(5)/2015/LAW DATED 07.04.2015 OF THE ADDITIONAL LAW SECRETARY AND STATE PUBLIC INFORMATION OFFICER, LAW DEPARTMENT.
- EXHIBIT P4 - PHOTOCOPY OF THE REPLY STATEMENT DATED 10.05.2015 OF THE RESPONDENTS 5 TO 7 (RESPONDENTS 4 TO 6 IN THE OA)
- ANNEXURE R4(a) TRUE COPY OF THE ORDER NO. AD.B2-33615/2013 DATED 11.11.2013 ISSUED BY THE 2ND RESPONDENT
- ANNEXURE R4(b) TRUE COPY OF THE ORDER NO. AD.B2-33615/2013 DATED 19.11.2013 ISSUED BY THE 2ND RESPONDENT
- ANNEXURE R4(c) TRUE COPY OF THE ADDITIONAL GROUNDS TO APPEAL FILED BY THE 5TH RESPONDENT BEFORE THE GOVERNMENT
- ANNEXURE R4(d) TRUE COPY OF THE DRAFT KERALA ADVOCATE GENERAL'S OFFICE SERVICE (AMENDMENT) SPECIAL RULES, 2009.
- ANNEXURE R4(e) TRUE COPY OF THE DRAFT SPECIAL RULES FOR THE KERALA ADVOCATE GENERAL'S OFFICE SUBORDINATE SERVICE RULES, 2009.
- ANNEXURE R4(f) TRUE COPY OF THE RELEVANT EXTRACT OF THE G.O.(P) NO. 515/85/FIN DATED 16.09.1985 OF THE GOVERNMENT
- EXHIBIT P5 - PHOTOCOPY OF THE ORDER DATED 16.06.2015 IN OA(EKM) 25/2015 OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM BENCH.

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.A. TO JUDGE.

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

O.P(KAT) NO.348 OF 2015

Dated this the 16th November, 2015.

JUDGMENT

Surendra Mohan, J.

The respondents 7 to 20 in O.A.25/2015 of the Kerala Administrative Tribunal ('KAT' for short) have filed this original petition challenging Ext.P5 order allowing the original application. The original application was filed by the first respondent herein. The first respondent while working as the seniormost Confidential Assistant (senior grade) was promoted as Confidential Assistant (selection grade) in the vacancy that arose consequent to the retirement of another Confidential Assistant (selection grade). While she was working in the said post, she had applied for being considered for promotion to the post of Section Officer by transfer. For the purpose, she requested by submitting Annexure A5 that

she may be selected for one year training as an Assistant. The request was allowed by Annexure A6 order and the first respondent is at present working as an Assistant. The said order Annexure A6 was challenged by the petitioners before the Government. As per Annexure A11 order dated 31.12.2014 the appeal filed by the petitioners was allowed and Annexure A6 order was set aside. The first respondent had filed the original application challenging Annexure A11.

2. KAT considered the contentions of the rival parties, held that the post of Confidential Assistant (selection grade) was only a post that was upgraded to enhance the promotional avenues and to avoid stagnationn of Senior Grade Confidential Assistants. Therefore, nothing prevented a person who was working as a Confidential Assistant (selection grade) from requesting for being considered for promotion to the post of Section Officer. In the above view of the matter, the original application has been allowed.

3. According to Antony Mukkath who appears for the petitioners the KAT has committed an error in proceeding on

the basis that, the post of Confidential Assistant (selection grade) was only an upgraded post. According to the counsel, the first respondent is at present drawing a salary that is in excess of the salary of the Section officer. Therefore, actually she is occupying a higher post by her request and she has sought for a promotion to a lower post. Though the above aspect was pointed out, the same is not considered. Strong exception is also taken by the learned counsel to the view taken by the KAT that Rule 8 of the K.S & S.S.R is applicable to the case of the first respondent. Therefore, the counsel seeks interference with Ext.P5. The learned Govt. Pleader who appears for the Advocate General, the third respondent herein points out that, the KAT has considered the issue in the proper perspective. According to the learned counsel, the KAT has taken note of the fact that originally there was no post of Confidential Assistant (selection grade) in the office of the Advocate General. The same was only an upgradation of an existing post. It is further pointed out that, the ratio for promotion to the post of

Section Officer is 15:1:1. Therefore, the turn of Confidential Assistants would arise only when 15 assistants are promoted to the post. It is considering the limited scope for promotion available to the confidential assistants also that Annexure A6 order was passed. It is further pointed out that as is clear from Annexure A4 order, the promotion of the first respondent was not on the basis of an option exercised by her. Since Annexure A11 order has proceeded on the assumption that the promotion was on the basis of an option the same was liable to be set aside, as rightly done by the KAT.

4. Heard. A perusal of Annexure A4 shows that, the permission granted to the first respondent was not on the basis of an option exercised by her. She was promoted when the vacancy arose with the retirement of a Confidential Assistant (selection grade). Therefore, as rightly held by the KAT, the said order could not be construed in such a manner as to prejudice the legitimate right of the first respondent for further promotion. It is true that she had not challenged

Annexure A4 but had accepted the same. But that does not foreclose her right to request for promotion to the post of section officer. We are not accepting the contentions of the counsel for the petitioner that the post of Confidential Assistant (selection grade) is a separate and higher post. It is only an upgradation of the existing post for the purpose of preventing stagnation. Therefore the said contention of the counsel for the petitioner is rejected.

For the foregoing reasons we find no grounds to admit this writ petition or to grant any of the reliefs sought for. The same is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

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/True copy/

