

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

OP(KAT).No. 355 of 2015 (Z)

AGAINST THE ORDER IN O.A.NO. 2151/2014 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 06.04.2015.

PETITIONER(S):

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HIGHER EDUCATION (H),
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
KERALA - 695 001.
2. THE DIRECTOR OF PRINTING,
GOVERNMENT CENTRAL PRESS, THIRUVANANTHAPURAM,
KERALA - 695 001.

BY GOVERNMENT PLEADER, SMT. REKHA VASUDEVAN

RESPONDENTS:

1. BIJUKUMAR R.K.,
S/O. RAJAYYAN, PACKER GRADE I, GOVERNMENT CENTRAL PRESS,
THIRUVANANTHAPURAM, PIN - 695 001,
RESIDING AT LOVELAND, UCHAKADA, KATTACHALKUZH P.O.,
BALARAMAPURAM, THIRUVANANTHAPURAM, KERALA - 695 501.
2. SURESH KUMAR S.S.,
S/O. SHANMUGHAN CHETTIAR, LASCAR GRADE-I,
GOVERNMENT PRESS, MANNANTHALA, THIRUVANANTHAPURAM,
PIN - 695 015, RESIDING AT ASWATHY, MAILAMOODU P.O.,
THIRUVANANTHAPURAM, KERALA - 695 609.

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 21-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.T.O.

OP(KAT).No. 355 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: COPY OF O.A.NO. 2151/2014 WITH ANNEXURES.

EXT.P2: COPY OF REPLY STATEMENT FILED ON BEHALF OF THE 2ND
RESPONDENT IN O.A.NO.2151/2014.

EXT.P3: COPY OF THE ORDER DATED 06/04/2015 IN O.A.NO. 1667/2014 OF THE
HON'BLE KERALA ADMINISTRATIVE TRIBUNAL.

EXT.P4: COPY OF THE JUDGMENT DATED 06/01/2009 IN O.P.NO. 4484/2001 OF THE
HON'BLE HIGH COURT.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

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

O.P.(KAT) No.355 of 2015

Dated this the 21st day of November, 2015

JUDGMENT

Surendra Mohan, J.

The State has filed this Original Petition aggrieved by the order dated 06.04.2015 of the Kerala Administrative Tribunal (KAT, for short) in O.A.No.2151 of 2014. As per the impugned order, the KAT has directed the 1st petitioner to consider the claim of the Respondents for promotion to the cadre of Printer Grade-I that arose between 15.03.2010 and 26.06.2014 provided, they were qualified in accordance with the seniority in the feeder category.

2. The Respondents are working as Packer Grade-I and Lascar Grade-I respectively, under the 2nd petitioner. As per the Special Rules, their posts were included in the feeder category for appointment by transfer to the post of Printer Grade-II. They are having the prescribed qualifications for the said post. But the post of Printer Grade-II was declared as a vanishing category. By Annexure-A15 Government Order

dated 15.03.2010, it is provided that those who are qualified for appointment by transfer as Printer Grade-II could be appointed by transfer as Printer Grade-I directly. On the basis of Annexure-A15, the Respondents staked their claim for appointment as Printer Grade-I. Their claim was rejected by the 2nd petitioner by Annexure-A10 order dated 08.11.2013. Thereafter, against the said order, the Respondents preferred Annexure-A13 appeal before the Government. By Annexure-A14 order dated 26.03.2014, the KAT directed the Government to consider the representation submitted by the Respondents. Pursuant to the said direction, the Government by Annexure-A17 order dated 02.07.2014 rejected the claim of the Respondents. The Respondents therefore challenged Annexure-A10 and Annexure-A17 before the KAT.

3. Annexure-A15 was a Government Order issued recognizing the fact that, due to conversion of the Letter Press into Offset Press, the post of Printer Grade-II had become a vanishing category. Recognizing the above situation, Annexure-A15 was issued by the Government, declaring the category of Printer Grade-II to be a vanishing category and ordering that the employees in the feeder category for

promotion to Printer Grade-II shall be considered for promotion to the category of Printer Grade-I. It was in terms of the Government Order, Annexure-A15, that the Respondents raised their claim for promotion. However, the Government Order Annexure-A15 was subsequently modified by Annexure-A16 dated 26.06.2014.

4. According to the learned Government Pleader, Annexure-A16 had been issued for the reason that, the promotions provided by Annexure-A15 had been ordered without taking note of the direction issued by this Court in Ext.P4 judgment. As per Ext.P4 judgment dated 06.01.2009, this Court had, after considering the rival claims of two sets of employees of Government Presses for appointments, issued a direction to the Government to see that all appointments to be made to Offset Presses in Government Presses shall be strictly in accordance with the Draft Special Rules. Since the issue of Annexure-A15 in the face of the direction contained in Ext.P4 was by mistake, it was only to correct that mistake, Annexure-A16 was issued.

5. The learned Government Pleader has placed reliance on the decision of the learned Single Judge of this Court in

'Sherafuddin v. State of Kerala' [2004 (2) KLT 731], where, it has been held that the power under Rule 39 is to be invoked in the interests of equity and justice and that such power can be exercised with retrospective effect for doing complete equity. The order of the KAT is unsustainable, according to the learned Government Pleader, in the light of the above dictum.

6. Heard. It is not in dispute that, the Respondents were borne on the feeder category from which promotion is to be made to the post of Printer Grade-II. With the conversion of Letter Presses into Offset Presses, the category of Printer Grade-II has become a vanishing category and has been declared to be so by Annexure-A15 order. In view of the fact that the declaration in Annexure-A15 would short circuit the promotional avenues of the employees in the feeder category from which promotion to Printer Grade-I has to be made, the said portion has been deleted by Annexure-A16. The same has been done since the direction contained in Ext.P4 judgment had been omitted to be taken note of. It is true that, Ext.P4 contains a direction to the Government to make promotions and all appointments in the Offset Presses in the Government Presses are to be made strictly in accordance with the Draft

Special Rules. It is also true that, Annexure-A15 was issued after Ext.P4. Annexure-A15 is dated 15.03.2010. Annexure-A16 was issued only on 26.06.2014. Therefore, we notice that the Respondents are eligible to make their claim for appointment as Printer Grade-I. We are informed by the learned Government Pleader that, the Special Rules have not been brought into force till date. The same has been forwarded to the Public Service Commission. The concurrence of the said authority is awaited. The above being the position, we do not find that, the order issued by the KAT suffers from any infirmity as pointed out. As already noticed above, the direction of this Court was in the year 2009. It was for the petitioners to have taken steps to bring the Special Rules into force. We notice from Ext.P4 that, even at the time of passing of Ext.P4 judgment, the position was that the Special Rules in its draft form was remaining forwarded to the P.S.C for concurrence. The situation has not progressed despite the lapse of six years.

7. With respect to the incidental question as to whether the State has the power to invoke the provisions of Rule 39 of the K.S.&S.S.R retrospectively, we refrain from

considering the same in this case, in view of the factual situation noticed above. The above question is left open to be considered in a proper case, later.

8. For the above reasons, we find no grounds to admit this Original Petition or to grant any of the reliefs sought for. The same is therefore dismissed.

Sd/-
**K. SURENDRA MOHAN
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-
21.11.2015