

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

OP(KAT).No. 81 of 2014 (Z)

AGAINST THE ORDER IN TA 782/2013 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM, DATED 03-01-2014

PETITIONER(S) :

M. K. BIJU, AGED 38 YEARS,
S/O. LATE MANIKANTAN PILLAI,
IIND GRADE OVERSEER MUNICIPAL OFFICE, KAYAMKULAM,
PRESENTLY WORKING AS OVERSEER GRADE I,
KOLLAM CORPORATION, KOLLAM.

BY ADVS.SRI.T.GOPALAKRISHNAN
SRI.SURESH KUMAR PANICKER B/O

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVT.,
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695001.
2. THE DIRECTOR OF URBAN AFFAIRS,
THIRUVANANTHAPURAM - 695 001.

SENIOR GOVERNMENT PLEADER SRI. REJI JOSEPH.

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY
HEARD ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

:2:

OP (KAT) .No. 81 of 2014 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

- P1 : COPY OF THE GO (MS) NO.234/97/LAD OF GOVT. DTD.17.10.1997.
- P2 : COPY OF THE GO (P) NO.7/95/P & AR DTD.30.3.1995.
- P3 : COPY OF THE REPRESENTATION OF THE PETITIONER DTD.15.10.1999.
- P4 : COPY OF THE JUDGMENT IN OP NO.21885/2000 DTD.20.3.2003.
- P5 : COPY OF THE GO (MS) NO.88/2004/LAD DTD.1.3.2004.
- P6 : COPY OF THE GO (RT) NO.3219/97/GE DTD.17.9.1997.
- P6 (A) : COPY OF THE GO (MS) NO.166/95/H.EDN. DTD.10.10.1995.
- P6 (B) : COPY OF THE GO (MS) 17/96/PW & T DTD.25.1.1996.
- P6 (C) : COPY OF THE GO (MS) NO.1/97/PW & T DTD.1.1.1997.
- P7 : COPY OF ORDER NO.A4-31913/97 OF CE DTD.8.7.1998.
- P8 : COPY OF THE GO (MS) NO.286/03/G.EDN. DTD.25.8.2003.
- P9 : COPY OF THE REVIEW PETITION FILED BEFORE THE 1ST RESPONDENT
DTD.1.4.2004.

RESPONDENT(S) ' EXHIBITS

: NIL

// True Copy//

P.A. to Judge

SS

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

O.P.(KAT) No.81 of 2014

Dated this the 29th day of July, 2015

JUDGMENT

C.K. Abdul Rehim, J

This original petition is filed challenging Annexure-A4 order passed by the Kerala Administrative Tribunal, in T.A.No.782/2013 on 03.01.2014. The petitioner herein is the petitioner before the Tribunal and the respondents are the respondents therein.

2. Brief history of the case is that, the petitioner was appointed as Work Superintendent in the Municipal Common Service under the Compassionate Appointment Scheme, by virtue of Ext.P1 order, dated 17.10.1997, on the basis that his father died in harness while employed as Junior Health Inspector at Alappuzha Municipality. While in service the petitioner had

approached the respondents seeking change of category based on Ext.P2 Government Order (G.O.(P).No.7/95/P&AR, dated 30.03.1995) for the reason that he was having the qualification of Diploma in Civil Engineering and was eligible to be appointed as Overseer/ Draftsman Grade-I. But the claim for change of category was rejected by the Government through letter dated 02.03.2000. The petitioner challenged the said decision in a writ petition filed before this court, O.P.No.21885/2000. In Ext.P4 judgment this court found that, the petitioner's claim was rejected without affording him any opportunity of personal hearing. Therefore the decision impugned was quashed and the Government was directed to reconsider the claim for category change in accordance with law, after affording the petitioner an opportunity of personal hearing, within a time limit stipulated in Ext.P4 judgment. Ext.P5 is the consequential order passed by the Government. The claim was again rejected observing that a person who got

appointment under the Compassionate Employment Scheme not entitled to seek a category change under Ext.P2 Government Order and that category change could not be allowed with respect to any person who accepted the employment under the Compassionate Employment Scheme. Being aggrieved by Ext.P5 decision, the petitioner preferred W.P.(C)No.5701/2005 before this court. The above writ petition was transferred to the Kerala Administrative Tribunal and numbered as T.A.No.782/2013. The Tribunal had disposed of the matter through Annexure-A4 order, finding that the petitioner is not eligible for getting category change on the basis of Ext.P2 Government Order. Aggrieved by the said decision of the Tribunal, this original petition is filed.

3. Ext.P2 is the guidelines formulated by the Government with respect to providing compassionate employment for dependents of person who dies in harness. Clause-15 of Ext.P2 stipulates that the appointment under

the scheme will be limited to posts in Subordinate Service, Assistant Grade Service, and Part Time Contingent Service, to which direct recruitment will be one of the methods of appointment. But under Clause-15(b) it is provided that, with respect to applicants having MBBS or B.S.c(Engg.) or similar Technical Qualifications will be appointed under the scheme in the usual posts of entry into Government service to which persons with such qualifications are appointed, irrespective of the fact whether such posts are in the Gazetted Cadre or carrying Gazetted scale of pay. Under Clause-39 of Ext.P2 it is provided that, Medical and Engineering Graduates and other technically qualified persons who were given appointment in subordinate service without taking into account of their qualifications based on orders then in force will be given change of appointment prospectively according to availability of vacancies in the usual entry post to which persons with such qualifications are appointed.

4. There is no dispute that the petitioner at the time of his appointment was holding Diploma in Civil Engineering and he was qualified to be appointed as 'Overseer/Draftsman Grade-I', at the time when Ext.P1 order of appointment was issued. Going by clause-39 of Ext.P2 Government Order it cannot be disputed that the Government have permitted change of category on a prospective basis with respect to technically qualified persons who were given appointment in subordinate service without taking into account of their qualifications. The said clause provides that such persons can be given a change of appointment according to availability of vacancies in the usual entry posts to which persons with such qualifications are normally appointed. But in Ext.P5 order of the Government it is mentioned that, Ext.P2 Government order does not permit change of category with respect to persons who got employment under the compassionate scheme. This appears to be not correct and is contrary to the

provisions contained in Ext.P2, specifically clause- 39.

5. Before the Tribunal the respondents have raised a contention that Ext.P2 Government order was modified by virtue of Ext.R2(a) (produced along with the counter affidavit filed before the Tribunal). From Ext.R2(a) (GO(P).No.12/99/P& ARD, dt. 24.5.1999) it is evident that the Government have issued fresh guidelines in supersession of all the existing orders to regulate the appointments under the compassionate employment scheme. Under clause-16 of Ext.R2(a) it is restricted that the appointment under the scheme will be limited only to class III and class IV posts in the subordinate service, Last Grade Service and in part- time contingent service, to which direct recruitment is one of the methods of appointment. It is to be noted that any exemption as that of clause 15(b) in Ext.P2, enabling appointment of persons to the usual entry posts on the basis of qualification or as that of clause-39 in Ext. P2 enabling a change of category for such persons

having higher qualifications, is conspicuously absent in Ext.R2(a). Therefore going by stipulations contained in the modified Government order (Ext. R2(a)) the petitioner cannot seek a change of category to any higher post on the basis that he was qualified to be appointed in service in a higher entry post. In the impugned order the Tribunal found that the applicant had submitted Ext.P3 representation seeking change of category only on 15.10.1999, after issuance of Ext.R2(a) order dt. 24.5.1999. The Tribunal noticed that since Ext.P2 Government order was superseded by Ext.R2(a) order tenability of his claim need to be considered on the basis of the subsequent guidelines.

6. But Sri.Suresh Kumar Panicker, learned counsel who argued the matter under instructions of Adv. T.Gopalakrishnan, had drawn our attention to clause (3) of Ext.R2(a) Government order. It stipulates that the applications received on or after the date of issuance of

Ext.P2 order shall be disposed of in accordance with the said order and pending applications as on the date of Ext.R2 (a) shall be dealt with as per the earlier orders. Basically, the reference in clause (3) is with respect to applications received under the dying-in-harness scheme for employment. In the case of the petitioner the relevant application is not one seeking appointment under the dying-in-harness scheme. But it is an application seeking category change based on Ext.P2. Therefore such an application need to be considered on the basis of Ext.P2 itself. However, if the application was submitted only after supersession of Ext.P2 by Ext.R2(a) order, then it cannot be contended that such an application is maintainable. But on the facts of the case at hand, learned counsel for the petitioner had drawn our attention to Ext.P3 representation. Ext.P3 representation would indicate that the same was submitted only when his earlier representation was not considered and when the respondents have not taken any

steps based on such representation. There is a specific reference in Ext.P3 with respect to an earlier representation submitted on 13.1.1998, through proper channel. It is also mentioned in Ext.P3 that, “after several submissions seeking for benefit of said Government Order, representation dt. 13.1.1998 was submitted by him through proper channel as cited under reference which has not been responded so far.” The respondents in their counter affidavit filed before the Tribunal had not disputed the fact that such a representation was submitted by the petitioner on 13.1.1998 itself. Further it is evident that when the petitioner approached this court in the earlier OP. No.21885/2000, copy of such a representation was produced, marked as Ext.P8, which is evident from the appendix of Ext.P4 judgment. If the petitioner had raised any claim for category change as early as on 13.1.1998 i.e. prior to Ext.R2(a), it need to have been considered on the basis of the provisions contained in Ext.P3. In such

circumstances the claim cannot be denied on the basis of Ext.R2(a) guidelines issued on a later date superseding Ext.P2.

7. Learned counsel for the petitioner further pointed out that the Government have allowed category change in the case of various similarly placed employees, who were appointed under the compassionate employment scheme. Ext.P6, Ext.P6(a) to P6(c) are similar orders issued by the Government allowing category change, with respect to persons appointed under the compassionate employment scheme. On a perusal of Ext.P6 it is evident that one Sri. B.Ramakrishnan, who was a Diploma holder in Civil Engineering was appointed as 3rd Grade Overseer under the scheme. When he approached the Government seeking category change the same was allowed and he was given posting as Overseer Gr-I (Civil) in the next arising vacancy in the Irrigation Department. Similarly in Ext.P6 (a) Sri. P.S Vinod, who was appointed as IIIrd Grade

Overseer under the compassionate scheme was given category change as 1st Grade Overseer in the same department, prospectively. Likewise in Ext.P6(b) Sri. G.Baburajan, who was appointed as IIIrd Grade Overseer in PWD under compassionate appointment scheme was permitted to have a change of category as 1st grade Draftsman against a vacancy reported by the departmental authorities. The same is the case of Sri. C.S.Arun in Ext.P6 (c), wherein an appointment made as LD Clerk in the PWD was permitted to be changed as 1st Grade Draftsman in the same department. We are of the considered opinion that the Government have failed to take note of the change of category permitted to similarly situated persons when it declined the claim raised by the petitioner.

8. In the impugned order the Tribunal had also found that the benefits provided under clause 15(b) and clause 39 of Ext.P2 cannot be available to the petitioner in view of the fact that the qualification of Diploma in Civil

Engineering cannot be compared with the persons mentioned in clause 15(b). But, we take note of the fact that the wording contained in clause 15(b), which is an exemption from the appointment in normal cases, is to the effect that persons having MBBS or B.Sc (Engineering) or similar technical qualifications will be appointed under the scheme in the usual entry posts. Clause 39 provides that Medical and Engineering Graduates and other technically qualified persons who were given appointment in subordinate service will be entitled for the benefit of change of appointment prospectively. Considering the fact that the petitioner had acquired a technical qualification of Diploma in Civil Engineer and taking note of the fact that he was entitled to have appointed in the entry cadre of Overseer/Draftsman Gr.I considering his qualification, we do not think that the view taken by the Tribunal in this regard is correct and proper.

9. Under the above mentioned circumstances we

hold that the petitioner is entitled to seek a change of category under clause 39 of Ext.P2 Government order, provided he had submitted any representation prior to Ext. R2(a). We are of the considered opinion that the Government have to consider the claim on the basis of the above findings and on the basis of category change permitted in similarly situated other cases. If the petitioner had submitted a representation seeking category change on 13.1.1998, as contended by him and mentioned in Ext.P3, it is to be held that the petitioner is entitled to be allowed with a category change on a prospective basis, subject to availability of vacancy in the post of Overseer/Draftsman Gr. I. Therefore we are inclined to remit back the matter to the Government for taking a fresh decision based on the above observations.

10. Under the above mentioned circumstances, this writ petition is allowed. Ext.P5 order of the Government, which is confirmed in Annexure A-4 order of

the Administrative Tribunal, is hereby quashed. The 1st respondent is directed to reconsider the matter on the basis of Ext.P3 request, taking note of the observations contained hereinabove and to take a fresh decision in the matter, after affording an opportunity of personal hearing to the petitioner, as early as possible, at any rate within a period of 3 months from the date of receipt of a copy of this judgment.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge

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