

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WA.No. 707 of 2009

AGAINST THE JUDGMENT IN WP(C) 11809/2007 DATED 19-02-2008
.....

APPELLANT/PETITIONER :

SINDHU M., D/O.BALACHANDRAN,
AGED 38 YEARS, "SURYAKANTHI",
NEAR KRISHNA NAGAR, PERRORKADA,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.T.SHYAMKUMAR

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
LOCAL ADMINISTRATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE CHIEF TOWN PLANNER,
OFFICE OF THE CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM.
3. THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION,
PATTAM, THIRUVANANTHAPURAM.

R1 & R2 BY SR.GOVERNMENT PLEADER, SRI.P.I. DAVIS.
R3 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 707 OF 2009

Dated this the 29th day of June, 2015

JUDGMENT

Shaffique, J.

This appeal is filed by the petitioner challenging judgment dated 19.02.2008 passed in W.P.(C) No.11809 of 2007. The writ petition was filed seeking to quash Ext.P7 Notification and for a direction to the 3rd respondent not to take any action pursuant to Ext.P7 Notification.

2. The facts involved in the writ petition would disclose that the petitioner was the 3rd rank holder in the rank list for the post of Deputy Town Planner. A direction had been issued by this Court in W.P.(C) No. 19463 of 2003 by which it was mentioned that rank Nos.1 and 2 have relinquished their appointment and they have sent necessary communication. Therefore, the petitioner was entitled to be advised from the rank list dated 08.07.2003 to the post of Deputy Town Planner. This Court disposed of the writ petition directing the Public Service Commission to advise the petitioner before the expiry

of the rank list. It was also pointed out that in respect of the vacancies which arose prior to the amendment of the Special Rules are to be filled up as per the unamended Rules and the vacancies that arose after the amendment are to be filled based on the amended Rules. In fact after the amendment to the Special Rules, vacancies in the post of Deputy Town Planner has to be filled by way of promotion only and not by way of direct recruitment.

3. Petitioner submitted that despite the directions issued, the Public Service Commission did not advise her before the expiry of the rank list and issued a fresh Notification for the post of Deputy Town Planner. Ext.P7 is the said notification which was under challenge. According to the petitioner, when directions has been issued by this Court in W.P.(C) No.19463 of 2003, it was not possible for the Public Service Commission to issue a fresh notification in terms of Ext.P7 and the petitioner was the eligible candidate entitled for appointment to the said post.

4. The learned Single Judge after having considered the matter observed that when the vacancy which was available was of a Latin Catholic community vacancy and since there was no Latin Catholic candidate in the list, the vacancy was made available to the first eligible Scheduled Caste candidate. But it so happened that, an eligible candidate was included in the rank list as Rank No.1 and he was advised on 12.08.2003. The question as to whether the NJD vacancy reported is of SC candidate or Latin Catholic does not make any difference having regard to the circumstances. The stand of the Commission was that in terms of Rule 14 to 17 of the KS & SSR, if no candidate is available to a particular turn, that turn cannot be passed over to any other community, and the vacancy should be filled by renotifying the post, therefore the petitioner was not entitled for any relief. With regard to the direction given in the petition, it was observed that the direction clearly indicated that the petitioner should be advised only if she is the person to be advised consequent to the

relinquishment of the two persons, and she should be advised before the expiry of the rank list. Taking the view that by giving such direction this court has not found the eligibility of the petitioner, learned Single Judge dismissed the writ petition. It is impugning the said judgment, this appeal is filed.

5. This appeal was originally dismissed. But later, a Review Petition came to be filed placing reliance on certain information received by the appellant under the Right to Information Act. It is contended that the vacancy originally available was not that of a Latin Community, but it was an open vacancy. In that view of the matter, the Public Service Commission was wrong in making a submission before this Court that the vacancy available was that of a Latin Community.

6. It is brought to our notice by the learned counsel for the appellant that during the pendency of this appeal, the Public Service Commission has already taken steps to appoint a Latin Catholic candidate from the rank list in terms of Ext.P7 Notification and that the vacancy had been filled up. As matters

stand today, there cannot be any appointment to the vacancy by way of direct recruitment on account of the amendment of the Rules and that the Latin Catholic vacancy has already been filled up by virtue of subsequent notification. Under such circumstances and as the candidate appointed in the Latin Catholic community vacancy is not before this Court, we do not think it necessary to interfere with the order passed by learned Single Judge.

In the result, the Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**