

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WA.No. 520 of 2010 () IN OP 24229/2001

**AGAINST THE ORDER/JUDGMENT IN OP 24229/2001 of HIGH COURT OF KERALA
DATED 02/12/2009**

APPELLANT(S)/2ND RESPONDENT:

**KERALA MOTOR TRANSPORT WORKERS WELFARE
FUND BOARD, REPRESENTED BY CHIEF EXECUTIVE OFFICER
BEACH ROAD, KOLLAM.**

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT(S)/PETITIONER/R1,3 & ADDL.R5 TO 16:

- 1. R.SULEKHA DEVI, JUNIOR SUPERINTENDENT,
OFFICE OF THE DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
KOLLAM.**
- 2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LABOUR AND REHABILITATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 3. V.K.RAJENDRAN,
DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
KOTTAYAM.**
- 4. S.RADHAKRISHNAN,
DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
KOZHIKODE.**
- 5. G.SIVA PRASAD,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
EX-EMPLOYEES CO-OPERATIVE BANK BUILDING, KOTTAYAM.**
- 6. V.B.RAJEEV,
ADDITIONAL DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
DWARAKA BUILDING, THEVALLY.P.O, ANANDAVALLEESWARAM
KOLLAM.**

7. M.ABDUL SALIM, U.D.CLERK,
HIGHER GRADE, OFFICE OF THE DISTRICT EXECUTIVE
OFFICER, KERALA MOTOR TRANSPORT WORKERS WELFARE
FUND BOARD, ALAPPUZHA.
8. G.P.SEETHALAKSHMI AMMA,
DISTRICT EXECUTIVE OFFICER, KERALA MOTOR TRANSPORT
WORKERS WELFARE FUND BOARD, T.C.NO.29.2.759
KUTHIRAVATTOM ROAD, KUNNUPURAM, THIRUVANANTHAPURAM.
9. P.SUDHARMA DEVI,
DISTRICT EXECUTIVE OFFICER, KERALA MOTOR TRANSPORT
WORKERS WELFARE FUND BOARD, PUTHURKARA ROAD
NEAR GROUND, AYYANTHOL.P.O, THRISSUR-3.
10. KUMARI JALAJA.V,
ADDITIONAL DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
PALARIVATTOM, KOCHI.
11. OBERLIN JOSEPH.P.J,
ADDITIONAL DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
PUTHENKARA ROAD, NEAR GROUND, AYYANTHOLE
THRISSUR-3.
12. K.G.SYAMALA KUMARY,
ADDITIONAL DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
NADAKKAVU, KOZHIKODE.
13. M.SHAMSUDEEN,
DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
ROBINSON ROAD, NEAR RAILWAY GATE, PALAKKAD.
- *14. R.RAJENDRAN NAIR,
DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
BUILDING NO.10557, THODUPUZZHA.P.O.
- *15. C.AHAMMED, U.D.CLERK,
OFFICER OF THE DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
NEAR MALAYALA MANORAMA, MANJERI ROAD, MOONNAMPADI
MALAPPRUAM.

(*R14 AND 15 ARE DELETED FROM THE PARTY ARRAY AS PER ORDER DATED
29/7/2013 IN IA NO.525/13.)

16. BABY JOSEPH,
DISTRICT EXECUTIVE OFFICER
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
ASHOKA BUILDING, THALICAVU, TEMPLE ROAD
KANNUR.

R1 BY ADV. SRI.H.B.SHENOY
R1 BY ADV. SRI.B.ASHOK SHENOY
R6,R9,R11 & 16 BY ADV. SRI.B.MOHANLAL
BY SMT.K.AMMINIKUTTY
BY SR.GOV.T.PLEADER SRI.P.I.DAVIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-09-2015, ALONG
WITH WA. 527/2010 & 580/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. Nos. 520, 527 & 580 of 2010

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Dated this, the 3rd day of September, 2015

J U D G M E N T

Shaffique, J.

These appeals have been filed by separate respondents challenging judgment dated 2/12/2002 in OP No.24229/2001 by which the learned Single Judge had allowed the original petition filed by the 1st respondent in these appeals, who is hereinafter referred to as the petitioner. This original petition is filed challenging Exts.P6, P8 to P10 and P12 orders issued by the 2nd respondent by which the seniority of the petitioner had been recasted and she was superseded and assigned a different seniority. Petitioner also prayed for a direction to the respondents to retain the petitioner's seniority in the cadre of LD Clerk and all consequentially promoted cadres as was assigned in terms of Ext.P1 gradation list.

2. The short facts involved in the original petition would disclose that the petitioner was appointed as LD Clerk along with

respondents in the year 1986. Later she was promoted to the post of UD Clerk as per order dated 6/8/1992. She was promoted to the post of Head Clerk as per proceedings dated 3/6/1995. All promotions were made on the basis of Ext.P1 gradation list prepared on 1/11/1991 and her promotions had been accepted by the Government as well.

3. In the meantime, it seems that the respondents issued Ext.P5 gradation list which was objected by several persons. In Ext.P5, petitioner's seniority was shown as Sl.No.10. An enquiry was conducted in the matter and ultimately proceedings dated 23/1/2001 was passed by the Chief Executive Officer of the Kerala Motor Transport Workers Welfare Fund Board recasting the advice list and thereby the seniority of the petitioner had been substantially interfered with. This was challenged by the petitioner by submitting a representation, which ultimately came to be rejected in terms of Ext.P8, P10 and P12 orders of the authorities. It is challenging the aforesaid action of the respondents that this original petition has been filed and the reliefs are sought for.

4. The Board as well as the private respondents filed counter affidavits supporting their stand in the matter. It was *inter*

alia contended that the gradation list prepared in terms of Ext.P1 was not final and the promotions granted to the petitioner and others were provisional which was not approved by the Government. Though it was mentioned in Ext.P2 order dated 6/8/1992 that the Board in its meeting held on 1/8/1992 had approved the gradation list of LD clerks and LD Typists, there was no such resolution and that apart the Government had not approved such gradation list. The gradation list was finalised after framing of the rules in 2000 and on that basis, it was noticed that the seniority granted to the petitioner was not correct as her marks were less than that of the private respondents. It is stated that in Ext.P1 gradation list, her serial number was shown as 11 whereas her actual entitlement was only to be under Sl.No.28 as the other persons had more marks than that of the petitioner while the selection process was undertaken.

5. Learned Single Judge after considering the entire matter observed that though Ext.P1 gradation list was in force since 1991, no action had been taken by the private respondents to challenge the same. That apart, it was observed that, though it was contended by the respondent authority that the statement in

Ext.P2 regarding the approval of gradation list by the Board was incorrect, the resolution dated 1/8/1992 has not been produced. It was further mentioned that there was some material to indicate that the petitioner's mark was less than that of the private respondents. However, since no steps were taken by the private respondents or the Board, as the case may be, to recast the gradation list after it was finalised in 1991, taking into consideration the sit back theory, no interference was called for to Ext.P1 gradation list and therefore, the learned Single Judge quashed Exts.P6, P8 to P10 and P12.

6. It is impugning the aforesaid judgment that these appeals have been filed.

7. It is argued on behalf of the learned counsel appearing on behalf of the Board as well as the other appellants that the learned Single Judge was not justified in interfering with the gradation list prepared after the framing of the rules. It is pointed out that the list prepared by the Board was not approved by the Government which is evident from Ext.R2(d) letter dated 3/12/1991 wherein the Secretary to Government had called upon the Chief Executive Officer to forward the final gradation list for

approval after calling for objections, if any. It is further argued that the gradation list has to be prepared based on the marks obtained. Learned counsel appearing for the appellants in WA No.580/2010 would submit that the said appellants along with the petitioner comes under Ezhava category and since the appointments were made on the same day, the seniority has to be reckoned with reference to the marks obtained by them. It is submitted that when it is not disputed and when the learned Single Judge had already found that the marks obtained by the petitioner was less than the marks obtained by the other candidates, definitely, her ranking should be below the appellants. The same submission has been made by the learned counsel appearing on behalf of the appellant in WA No.527/2010. It is therefore argued that the learned Single Judge was not justified in interfering with the gradation list prepared after recasting the same as the entire exercise has been done by rectifying the seniority list based on the marks obtained by each candidate.

8. On the other hand, learned counsel appearing for the petitioner supports the stand taken by the learned Single Judge.

9. It is relevant to note that as far as the appointment of

the petitioner is concerned, in Ext.R2(a) dated 22/2/1986, the Government had permitted the selection to be conducted by an interview board constituted in that regard. Ext.R2(b) is the advice list of 28 persons selected for appointment in which the petitioner was shown at Sl.No.11. This apparently is the advice list issued by the Board to the Government. Ext.R2(c) dated 01/4/1986 would indicate that the advice list issued by the Board had been approved by the Government. Paragraphs 7 and 8 are relevant, which read as under:

"7. In the letter read as 7th paper above, the Chief Executive Officer has reported that he invited panel of names from the Director of Employment for filling up the sanctioned posts of Lower Division Clerks, Lower Division Typists (English and Malayalam) and the Confidential Assistants. The Chief Executive Officer has further reported that interview cards were sent to all the candidates and interviews were held at Trivandrum and Ernakulam between 11th and 16th March, 1986. Based on the recommendations of the Selection Committee the Chief Executive Officer has advised 28 candidates for appointment as Lower Division Clerks, 14 candidates for appointment as L.D.Typists (English), 1 candidate for appointment as L.D.Typist (Malayalam). It is further mentioned that of the 4 vacancies of Lower Division Clerks reserved for Scheduled Castes 3 vacancies have been kept

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unfilled for want of candidates. Further, one more vacancy of Lower Division Clerk has been kept unfilled in view of the direction of the High Court of Kerala. Against the one vacancy of Confidential Assistant all the 7 persons appeared for the interview were found to be unsuitable and hence nobody was selected. While forwarding the advice list for appointment as Lower Division Clerks and L.D.Typists the Chief Executive Officer has reported that the lists have been prepared according to the communal rotation given by the Employment Exchange. He has recommended that all the persons shown in the above advice list may be appointed by Government. The advice lists are appended below.

8. In the circumstances recommended by the Chief Executive Officer, now in exercise of the powers under Sub-section 1 of Section 7 of the Motor Transport Workers Welfare Fund Act 1985, Government hereby appoint the person mentioned in the lists No.1 as Lower Division Clerks and in the list No.II as L.D.Typist (English) and in the list No.III as L.D.Typist (Malayalam) under the Kerala Motor Transport Workers Welfare Fund Board and the District Office there-under in the pay scales already approved thereof. Individual posting orders will be issued by the Chief Executive Officer of the Board subject to availability of funds with the Board and subject to actual necessity and observing the principles of economy and following communal rotations and standing orders in this regard. The

Chief Executive Officer will be personally responsible to see that the above instructions on economy and actual necessity and communal rotation etc. are strictly observed and appointment made only on a phased programme. Expenditure on the staff will be fully met from the funds of the Board”.

10. Further, it is evident from Ext.P3 dated 3/6/1995 that the promotion granted to the petitioner again coming under Sl.No.11 has been approved and this also indicates that the Government had approved the seniority in the post of Head Clerks. The relevant order reads as under;

“As per G.O. read as first paper above 13 posts of Head Clerks were created in Kerala Motor Transport Workers Welfare Fund Board in G.O. read as second paper above orders were issued prescribing MOP and Account Test (Lower) as the minimum qualification for promotion from the feeder category of U.D. Clerk to Head Clerk pending finalisation of Special Rules.

As per the letter read as third paper above the Chief Executive Officer has forwarded proposals for the appointment of 13 Head Clerks by promotion from Upper Division Clerks. Government have examined the proposal in detail and are pleased to accord sanction for the appointment of 13 Head Clerks in the Kerala Motor Transport Workers Welfare Fund Board temporarily by promoting the

following U.D.Clerks based on their Seniority against the 13 posts of Head Clerks created as per the G.O. dated 31.12.94.

- 1. S.Santha Kumary*
- 2. G.Rajeevan*
- 3. L.P.Aravindakshan*
- 4. K.P.Vasantha*
- 5. A.P.,Ashith*
- 6. T.A.Lila Beevi*
- 7. D.Amala*
- 8. B.Mable*
- 9. T.C.Vijayan*
- 10.R.Sreeranjana Nair*
- 11.R.Sulekha Devi*
- 12.G.Sivaprasad*
- 13.V.B.Rajeev*

The promotion of Smt.K.P.Vasantha (Sl.No.4) is subject to the condition that she will acquire the required test qualification of Account Test (Lower) within a period of 3 years with effect from 18.3.1995 failing which she will be reverted from the post (Vide Rules 13A (1)(a) and 13 A (2) of the General Rules”.

11. From the above factual circumstances involved in the matter, it is clear that the Government had already approved the gradation list in terms of Ext.P1 and had even referred in Ext.P3 that the appointment to the post is based on the seniority as referred to in the said order. Under such circumstances, we do not

W.A. No.520/10 & conn.cases

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think that the Board was justified in recasting the said gradation list and therefore, the learned Single Judge was justified in forming an opinion that after several years, it is not open for the Board to recast the gradation list, which will affect the seniority of the petitioner.

Under such circumstances, we do not think that there is any error in the judgment of the learned Single Judge and accordingly, these appeals are dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge