

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WA.No. 96 of 2011 ()

**AGAINST THE JUDGMENT IN WP(C) 8138/2009 OF THIS HONOURABLE COURT
DATED 21-10-2010**

APPELLANTS: PETITIONER IN THE WRIT PETITION

**K.P. RAJAGOPALAN NAIR
KOTTAPPURATHU VEEDU, ANAYADI P.O., VIA SOORANADU
QUILON DISTRICT,
(RETIRED SUPERINTENDENT, DISTRICT JAIL, TRIVANDRUM.)**

BY ADV. SRI.ISSAC GEORGE

RESPONDENTS : RESPONDENTS IN THE WRIT PETITION :

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVT. OF KERALA, GOVT. SECRETARIAT
TRIVANDRUM-1**
- 2. PRINCIPAL SECRETARY,
HOME DEPARTMENT (B), GOVT. OF KERALA,
GOVT. SECRETARIAT, TRIVANDRUM-1**

R1 & R2 BY SPL. GOVT. PLEADER SMT. GIRIJA GOPAL

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE A(1) : TRUE COPY OF KERALA GAZETTE NOTIFICATION
NO. E-1-23032/2001 DT. 8TH APRIL 2002, SELECT LIST OF
JAILORS.

ANNEXURE A(2) TRUE COPY OF ORDER OF PROMOTION OF
K. RADHAKRISHNAN, JUST SENIOR AS PER ANNEXURE A1.

ANNEXURE A(3) TRUE COPY OF THE PRESS REPORT DATED 25-11-2010,
DECCAN HERALD.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

**ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.**

*** * * * ***

W.A.No.96 of 2011

Dated this the 12th day of January 2015

J U D G M E N T

Shaffique,J

Petitioner in W.P.C.No.8138/2009 has filed this writ appeal challenging the judgment dated 21/10/2010. In the writ petition, petitioner sought to quash Ext.P5 and a direction to the 2nd respondent to promote the petitioner notionally to the next higher post of Central Prison/Open Jail Superintendent with effect from 24/06/2006.

2. The facts involved in the writ petition would disclose that the petitioner was seniormost Deputy Jailor in the Prison Department as per the seniority list available as on 01/10/2001. He claimed that he was entitled to get provisional promotion. The matter was considered by the Government and Ext.P5 order was passed inter alia observing that the post of Superintendent, Central Prison being very sensitive, it is not advisable to give provisional

promotion without the recommendation of DPC. Hence his claim was rejected. Petitioner relied upon a few orders by which, according to him, provisional promotions have been granted to similarly situated persons by the Department. The learned Single Judge, after referring to Rule 31 of the Kerala State and Subordinate Service Rules, observed that the petitioner cannot have a right to seek provisional promotion. Provisional promotion can be granted by the appointing authority only in public interest and that too when there is an emergency. Rule 31 of KS & SSR reads as under:

“31. Temporary promotion.- (a) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from a lower category and there would be undue delay in making such promotion in accordance with the rules, the Appointing Authority may promote a person otherwise than in accordance with the rules, temporarily.”

3. It was therefore found that when the matter is clearly within the discretion of the Government, petitioner cannot claim the same as a right. That apart, it was observed that Ext.P5 order was passed on 13/02/2007 and the petitioner had retired from service on 28/02/2007. He remained in service upto 20/03/2007 by virtue of an interim order passed in W.A.No.456/07. This writ petition was filed only on 12/03/2009. Further, the orders relied upon by the petitioner will not give him any unfettered right to claim provisional promotion. On this basis, the writ petition was dismissed.

4. The learned counsel for the appellant would further argue that similarly placed persons were given provisional provision. We do not think that the petitioner is entitled to claim provisional promotion as a matter of right. Rule 31 clearly indicates that temporary promotion is in public interest and owing to certain emergencies and it is purely within the discretion of the appointing authority to

grant such provisional promotion. The appointing authority having decided not to grant provisional promotion and formed an opinion that provisional promotion cannot be granted without the recommendation of DPC, we do not think that the learned Single Judge has committed any error in dismissing the writ petition .

We find no grounds to interfere with the judgment of the learned Single Judge and accordingly this writ appeal is dismissed.

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(A.M.SHAFFIQUE, JUDGE)

jsr

