

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

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WA.No. 1154 of 2012 (K) IN WP(C).33705/2011

AGAINST THE JUDGMENT IN WP(C) 33705/2011 DATED 23-12-2011

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APPELLANT/PETITIONER IN WPC :

MAHESH M. AGED 35 YEARS
S/O.MADHAVAN.M, LOWER DIVISION CLERK
OFFICE OF THE ASSISTANT CONSERVATOR OF FORESTS
SOCIAL FORESTRY DIVISION, WAYANAD, KALPETTA.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SMT.SMITHA GEORGE

RESPONDENTS/RESPONDENTS :

1. THE CHIEF CONSERVATOR OF FORESTS (NORTHERN CIRCLE)
KUNNATHUNCHAL, THANA, KANNUR-670001.
2. THE ASSISTANT CONSERVATOR OF FORESTS,
SOCIAL FORESTRY DIVISION, WAYANAD, KALPETTA-673121.
3. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

BY SPL. GOVT. PLEADER, SMT. GIRIJA GOPAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 1154 OF 2012

Dated this the 27th day of January, 2015

JUDGMENT

Shaffique, J.

The appeal is filed by the petitioner challenging the judgment dated 23.12.2011 in W.P.(C) No.33705 of 2011.

2. The writ petition is filed challenging Ext.P9, an order issued by the Chief Conservator of Forests, dismissing the petitioner from service on the ground that the petitioner who was appointed as a Lower Division Clerk as per order dated 10.08.2005 under the reserved quota for physically handicapped was later found to be not having physical disability as stated by the petitioner.

3. The facts involved in the writ petition would disclose that the writ petitioner was appointed as Lower Division Clerk as per order dated 10.08.2005 and he joined service on 16.08.2005. A complaint came to be received indicating that large scale appointments have been made in the reserved seats, which was considered by the authorities.

Since he was appointed on the ground that he is having a physical disability of 40%, medical examination was conducted. It was understood during the examination by District Hospital that he was acting disability. Hence he was referred to Calicut Medical College for further examination and in the audiogram and audiometry tests conducted on 24.12.2010 by ENT Department of Medical College it was found that his audibility is normal and that he is acting disability. Based on the said report disciplinary action was taken against the appellant. He was also served with a charge memo and the statement of allegations. Petitioner submitted a reply to the charge memo, but he did not appear for personal hearing. He was also given an opportunity to submit documents to prove that he has genuine disability, but he did not avail the opportunity. Accordingly, after considering the reply, the authority found that he had obtained Government service as per the Scheme under which handicapped candidates are directly appointed into Government service, by producing bogus certificate and he has no right to continue in service. Hence he was terminated from the service.

4. Learned Single Judge after considering the contentions urged on behalf of the petitioner dismissed the writ petition. Impugning the judgment of the learned Single Judge, the learned counsel for the appellant submits that though the Special Medical Team has found that the hearing capacity of the petitioner is normal, it was only on account of the fact that his hearing capacity has increased after the date of appointment in service. At the time of appointment he has produced certificate to prove that he has 40% hearing disability. In so far as the said certificate is still valid, there was no reason to issue any show cause notice to the petitioner nor to terminate him from service. Further he should have been given opportunity to prove that he has the physical disability at the relevant point of time. It is also contended that termination from service was in violation of the principles of natural justice.

5. Having gone through Ext.P9 it is clear that the authority concerned has gone into the entire aspect of the matter and has relied on the Medical Board Certificate in order to arrive at the finding. As to whether a person is a disabled person or not

at the time of appointment, admittedly needs expert opinion. The petitioner was examined by the Doctors of District Hospital and thereafter on finding that he had no hearing deficiency, for further examination he was sent to the Medical College and a special team considered his case and they were also of the opinion that he was not suffering from any hearing disability. Under such circumstances the authority was justified in issuing the show cause notice and terminating him from service.

6. It is argued that the order of termination was served in violation of the principles of natural justice. The learned counsel for the appellant relied upon the judgment of a Constitution Bench in **Managing Director, ECIL, Hyderabad v. B.Karunakar** [AIR 1994 SC 1074] to contend that no proper enquiry had been conducted and the report of the enquiry had not been furnished to the petitioner which clearly amounts to violation of the principles of natural justice. Another judgment relied upon is **Manohar Lal Sharma v. Principal Secretary** [(2014) 9 SCC 614] wherein the Supreme Court had occasion to observe that the principles of natural justice, though universal,

must be realistically and pragmatically applied. Another judgment relied upon is **Abhay Kumar Singh v. State of Bihar** [(2015) 1 SCC 90]. That was a case in which in regard to selection of Police Constables, an issue had arisen where the candidates had the minimum height requirements. The Supreme Court held that the appellants had manipulated and got their height wrongly recorded as more than their actual height. At the same time, responsibility for recording of correct height was that of the Department and after the appellants were duly selected and appointed and were in service for four years, their termination in the facts and circumstances, is too harsh. Hence a direction was issued to give them fresh appointment as Constables against available vacancies. Yet another judgment relied upon is **Union of India v. Mohd. Ramzhan Khan** [(1991) 1 SCC 588] wherein the Supreme Court had occasion to consider an issue relating to the departmental enquiry with reference to Rule 14 of the CCS(CCA) Rules, 1965. It was held that non-supply of adverse material to the affected person and taking a decision against him on that basis constitute violation of rules of natural justice.

7. On the other hand, the learned Government Pleader has relied upon the judgment of the Supreme Court in **R.Viswanatha Pillai v. State of Kerala and others** [(2004) 2 SCC 105]. Paragraph 15 of the Apex Court judgment reads as follows:

"15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste Community, then the very basis of his appointment was taken away. His appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be

said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is not appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all."

8. The medical certificate produced by the petitioner indicates that the petitioner was having 40% hearing disability and it was later found that he was not suffering any hearing disability. Perusal of the order indicates that the show cause notice has been issued on a specific ground for which the petitioner had given reply. Thereafter he had not participated in the proceedings. Under such circumstances the Chief Conservator of further Forests has passed Ext.P9 order. Therefore, absence of notice cannot be a ground to invalidate the proceedings. Ext.P9 clearly states that notice had been issued to the petitioner. Petitioner does not have a case that he was not given copies of the Medical Reports. This, therefore, is a

case in which the very appointment is void from its very inception as held in **Viswanatha Pillai's case (supra)**.

Under such circumstances, we do not find any reason to interfere with the judgment of the learned Single Judge. Accordingly, the Writ Appeal is dismissed.

**Ashok Bhushan,
Acting Chief Justice.**

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