

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 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WA.No. 38 of 2013 IN WP(C).16923/2011

**AGAINST THE JUDGMENT IN WP(C) 16923/2011 of HIGH COURT OF KERALA
DATED 31-10-2012**

APPELLANTS/3RD & 4TH RESPONDENTS:

- 1. MONCY .T. MALIKKAL
S/O.LATE M.D THOMAS UPPER DIVISION CLERK
KERALA STATE AUDIO VISUAL AND REPROGRAPHIC CENTRE
RE-NAMED AS KERALA STATE CENTRE FOR ADVANCED PRINTING AND
TRAINING HEAD OFFICE COMPLEX VATTIYORKAVU
THIRUVANANTHAPURAM 695013
(NOW RESIDING AT THANVELIL HOUSE VADAVATTOOR P.O KOTTAYAM 686 010)**
- 2. SRI ANISH A.P AGED 50 YEARS
UPPER DIVISION CLERK
RENAMED AS KERALA STATE CENTRE FOR ADVANCED PRINTING AND
TRAINING HEAD OFFICE COMPLEX VATTIYOORKAVU
THIRUVANANTHAPURAM 695 013
(NOW RESIDING AT AMBALI PARAMBIL HOUSE P.O KADALUNDY
CALICUT 673302)**

BY ADV. SRI.T.O.XAVIER

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 2:

- 1. ABU.N, S/O.NOORUTHEENKUTTY
LOWER DIVISION CLERK
KERALA STATE AUDI VISUAL AND REPROGRAPHOIC CENTER
(RENAMED AS KERALA STATE CENTRE FOR ADVANCED PRINTING AND
TRAINING (NOW WORKING ON DEPUTATION TO KERALA STATE BEVERAGES
CORPORATION LTD TRIVANDRUM**

2. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001
3. THE MANAGING DIRECTOR
KERALA STATE AUDIO VISUAL AND REPROGRAPHIC CENTRE
(RE-NAMED AS KERALA STATE CENTRE FOR ADVANCED PRINTING AND
TRAINING HEAD OFFICE COMPLEX VATTIYOOR KAVU
THIRUVANANTHAPURAM 695 013
- R3 BY ADVS. SRI.K.ANAND (SR.)
SMT.LATHA KRISHNAN
SMT.K.K.RAZIYA SC
- R1 BY ADVS. SRI.B.S.KRISHNAN (SR.)
SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
- R2 BY SPECIAL GOVERNMENT PLEADER SMT. GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-03-2015, ALONG WITH WA. 260/2013, WA. 211/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES

**ANNEXURE A : TRUE COPY OF THE MINUTES OF THE 12TH GOVERNING BODY
DATED 11.3.1998**

ANNEXURE B : TRUE COPY OF THE PETITION DATED 10.1.2005

**ANNEXURE C : TRUE COPY OF THE PROCEEDINGS ISSUED BY THE 2ND
RESPONDENT DATED 4.7.2000**

RESPONDENT'S ANNEXURES

ANNEXURE R1(D) TRUE COPY OF THE SERVICE RULES

/TRUE COPY/

PA TO JUDGE

JJJ

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

W.A. Nos. 38 & 260 of 2013 &
W.A. No.211 of 2015

Dated this the 23th day of March, 2015

J U D G M E N T

A.M.Shaffique, J.

These appeals have been filed against the judgment dated 31.10.2012 in W.P.(C) No.16923 of 2011. Writ Appeal No.38/2013 has been filed by respondents 3 and 4 in the Writ Petition, Writ Appeal No.260/2013 has been filed by the petitioner in the Writ Petition, dissatisfied with the non grant of various monetary benefits to the petitioner and Writ Appeal No.211/2015 has been filed by the third party seeking leave of Court to file the same. Parties are referred to as shown in the Writ Petition.

2. The Writ Petition is filed by the petitioner claiming promotion to the post of Upper Division Clerk with effect from the date on which his juniors were promoted and

seeking all the consequential benefits arising from such promotion. It is *inter alia* contended by the petitioner that he entered into service as Office Assistant on 14.7.1995 and was promoted to the post of Lower Division Clerk on 24.9.1998. The post of L.D. Clerk is a feeder category to the post of U.D. Clerk. It was contended that the 3rd respondent joined service as L.D. Store Keeper on 22.2.1996 and the 4th respondent joined service as L.D. Store Keeper on 4.8.1995. L.D. Store Keeper is a lower post for which the prescribed qualification is SSLC or its equivalent and one year experience as Store Keeper; whereas the qualification for the post of L.D. Clerk, as per Service Rules, is Bachelor Degree. It is also stated that L.D. Store Keeper is not in the feeder category of L.D. Clerk. However, respondents 3 and 4, were granted postings as L.D. Clerk by way of category change, which was not in terms with Service Rules. This category change was

effected on 4.7.2000 and respondents 3 and 4 were promoted as U.D. Clerk from 14.06.2001. It is claiming the very same benefit that this Writ Petition has been filed.

3. The learned Single Judge, after taking into consideration, the relevant aspects of the matter formed an opinion that, a reference to Ext.P6 would indicate that the petitioner was also eligible to be promoted as U.D. Clerk. Though, the petitioner had submitted various representations, nothing was considered by the authorities. In the light of Ext.P6, the course of proceedings pursued by the respondents denying promotion to the petitioner was not correct and therefore a direction was issued to the 2nd respondent to pass appropriate orders to promote the petitioner as U.D. Clerk with effect from the date on which the juniors were given promotion and to restore the seniority lost to the petitioner accordingly. It was further observed that the petitioner shall be permitted to work as

U.D. Clerk on the basis of the orders to be passed and the fixation of salary shall be retrospectively on a notional basis. The monetary benefits shall only be prospective, in view of the particular facts and circumstances including the plight of the 2nd respondent, which is in the final stage.

4. While impugning the aforesaid judgment, the learned counsel appearing for the appellants in Writ Appeal No.38/2013 (respondents 3 and 4 in Writ Petition), *inter alia* contended that there is no basis for giving promotion to the Writ petitioner. However, nothing has been brought to our notice to indicate as to how respondents 3 and 4 are aggrieved by the promotion being granted to the petitioner. Further, it is clear that promotion has been granted to respondents 3 and 4 with effect from 14.6.2001. They came to the cadre of L.D. Clerk only on 4.7.2000, whereas the petitioner came to the said cadre on 24.09.1998. When this fact is not disputed there is no reason for the

appellants/respondents 3 and 4 to challenge the judgment and accordingly we are of the view that Writ Appeal No.38/2013 is liable to be dismissed.

5. Learned counsel appearing for the writ petitioner while impugning the judgment of the learned Single Judge to the extent of non granting of monetary benefits, raising his claim on the grounds in Writ Appeal No.260/2013, contend that the learned Single Judge ought to have directed grant of monetary benefits to the petitioner, effective from the date on which he should have been promoted. He also relied upon the judgment of the Division Bench of this Court in **Valsala Kumari Devi v. State of Kerala - 2011(3) KLT 549**. It is relevant to note that this is a case in which there was complete stagnation and no promotion was being effected because of the severe financial strain faced by the 2nd respondent. That apart, it is clear that though the petitioner had submitted

representations, he did not approach this Court within a reasonable time. He had approached this Court after 10 years from the date on which respondents 3 and 4 were promoted. In such circumstance, we do not think that the learned Single Judge has committed any error in not granting the monetary benefits. However, it is made clear that the petitioner was entitled to get promotion on notional basis and fixation of pay scale accordingly. Therefore, we do not think it necessary to modify the judgment of the learned Single Judge to the extent complained of.

6. As far as the appeal filed by the third party is concerned, the contention is that the third party along with the petitioner has submitted representation for giving the benefit of promotion in the manner in which respondents 3 and 4 were promoted. The learned counsel appearing for the third party appellant submits that promotion has to be made on the basis of eligibility, which has not been

determined by the governing body. If at all the Writ Petitioner is entitled for any promotion, the same benefit ought to have been granted to the third party as well. As far as her claim is concerned, if she is entitled to get promotion on the basis that respondents 3 and 4 had been promoted, it is always open for her to seek appropriate remedy before the authority concerned and if it is refused, to approach this Court in appropriate proceedings. In a Writ Petition filed by the petitioner it is not open for the third party to claim the said benefit and that too, when the review petition filed by her stands dismissed. Hence, we are of the view that it shall always be open for the third party appellant to agitate her rights before the appropriate authority and if her rights are refused, it shall always be open for her take up the matter before this Court in appropriate proceedings. Hence, this appeal is also liable to be dismissed.

In the light of the aforesaid observations, all the appeals are dismissed.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

Sd/-
A.M. SHAFFIQUE,
JUDGE.

/TRUE COPY/

PA TO JUDGE

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