

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

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WA.No. 1834 of 2010 IN WP(C).19521/2009

AGAINST THE JUDGMENT IN WP(C) 19521/2009 DATED 21-05-2010

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APPELLANT/PETITIONER :

P.MOLY, LOWER DIVISION CLERK
DISTRICT SOCIAL WELFARE OFFICE, KANNUR

BY ADVS.SMT.K.K.CHANDRALEKHA
SRI.GOPAKUMAR G. (ALUVA)

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA
REP.BY CHIEF SECRETARY TO GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
2. SECRETARY TO GOVERNMENT
SOCIAL WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANATHAPURAM
3. DIRECTOR OF SOCIAL WELFARE DEPARTMENT
THIRUVANANTHAPURAM

R1 TO R3 BY SPL.GOVERNMENT PLEADER, SMT. GIRIJA GOPAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 1834 OF 2010

Dated this the 8th day of January, 2015

JUDGMENT

Shaffique, J.

The appeal is filed by the writ petitioner challenging the judgment dated 21.05.2010 in W.P.(C) No.19521 of 2009.

2. The writ petition is filed seeking for a direction to quash Ext.P3 seniority list to the extent it places the petitioner in rank No.176 as against 85A. The facts involved in the writ petition disclose that the writ petitioner joined service as Lower Division Clerk in the Agricultural Department in Kasaragod District on 21.06.2001. She was transferred to the Social Welfare Department on 08.11.2001. Thereafter she requested for inter district transfer from Kasaragod to Kannur which was granted and she joined on 18.11.2005. When Ext.P3 seniority list was published, her seniority in the Social Welfare Department was reckoned with effect from 18.11.2005 which was the date on which she joined Kannur on inter district transfer. She made a representation claiming that her

previous service also should be reckoned for preparing the seniority list. She also relied upon certain documents. She also submitted Ext.P9 representation for considering her case. Since no action was taken to rectify the anomaly pointed out by her, she filed the writ petition.

3. Learned Single Judge, after referring to the proviso to Rule 27(a) of Part II KS & SSR, found that seniority of persons on inter unit or inter departmental transfer from one unit to another within the same department or from one department to another, as the case may be, on request from such persons shall be determined with reference to the date of their joining duty in the new unit or department. Though the petitioner challenged Ext.P8 Government Order, viz G.O.(P) No.36/91/P&ARD dated 07.11.1996, even without going into such factual aspects, the writ petition was disposed of permitting the petitioner to rejoin duty at Kasaragod and declared that the claim of petitioner fails.

4. Impugning the aforesaid judgment, this appeal has been filed. The learned counsel for the appellant has strenuously

argued that though the Government Order has been issued in this regard, the same has not been implemented.

5. The learned Government Pleader arguing on behalf of the respondent placed before us the Full Bench judgment of this Court in **Ramachandran v. Madhu** [2012 (2) KLT 283 (FB)] in which the Full Bench had occasion to consider the right for inclusion in the seniority list with reference to the persons who had taken inter district transfer. The issue in this case is covered by the said judgment and paragraph 43 of which reads as under:

"43. Therefore, going by the stipulations in various executive orders including Ext.P1 any transfer, inter-unit or inter-district-wise, will have to be substantively with the lien after a period of five years. The instances of relaxation are minimum and even in the case of relaxation it will have to be done by the Council of Ministers. Rule 27(a) of KS & SSR prescribes the principle wherein seniority can be reckoned when appointments are made otherwise than on the advice by the Public Service Commission. The first proviso provides for fixation of seniority of persons on mutual or inter-unit or inter-departmental transfer from one unit to another, etc. The provisions of KSR and that of KS & SSR when considered together, will show that as far as determination of permanent cadre is concerned, it will have to be done by the Government in respect of each service, class, category and grade. (Rule 2(18) of KS & SSR). In fact, the definition of 'cadre' in Rule

12(4) of Part I K.S.R. means "the strength of a service or part of the service sanctioned as a separate unit". A "member of service" means "a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been *substantively transferred* or reduced to another service, or been discharged otherwise than for want of a vacancy". (Rule 2(9) of KS & SSR). The words "substantively transferred" are quite important. We have already discussed Rules 16 to 20 of Part I K.S.R. providing for termination, transfer of lien, etc. Therefore, only if a person is substantively transferred with lien alone, he can be considered to have been transferred to the other unit. Unless and until the lien is transferred for various purposes including seniority, the transferees will have to be treated as borne in the parent unit itself. They can get seniority in the transferred unit only if the lien gets transferred in terms of the rules and eligibility for inter-district transfer can be acquired only after five years service in the district of appointment, based on which they can get seniority in the transferred units. Therefore, clearly it is a case where the persons like the appellants will not get seniority based on the present orders of transfer on completion of five years in the unit of appointment without a substantive transfer with lien, which alone could have enabled them for assignment of seniority under the proviso to Rule 27(a) of KS & SSR. The general power of transfer conferred under Rule 32 of KS & SSR will also show that a "member of a service" or class of a service may be required to serve in a post borne on the cadre of such service or class. The provisions of Rule 8 of KS & SSR are also important here and it will show that for all purposes of getting the service benefits to a person the parent cadre is

important. Rule 8 enables a 'member of service' who is absent from duty in such service to return back to that service if he is not otherwise ineligible, as held by the Full Bench in **Balakrishnan Nair's case** (supra). Therefore, when the appellants were transferred without transfer of lien, their rights are retained in the parent unit itself which includes seniority. Rule 10 of the Special Rules herein, as already mentioned, states that for the purpose of appointment, discharge and reappointment, seniority and appointment as a full member, the Excise division shall be the unit. Herein, the Excise division is equivalent to a revenue district. In that view of the matter, the appellants cannot get seniority as claimed by them based on Exts.P3 to P5 in the new division. Since the appellants were not transferred with their lien, it cannot be treated as an inter-unit transfer in strict sense and at any point of time they were liable to be transferred to the parent division."

6. Having regard to the law laid down by the Full Bench of this Court with reference to Rule 27(a) of Part II KS & SSR, we do not think that the petitioner has any claim to sustain that her prior service in the Kasaragod District has to be considered for preparation of the seniority list. In the light of the aforesaid statutory provision, we do not think that the petitioner is entitled to succeed her claim. Even though the petitioner has submitted a review petition, Ext.P9, there is no reason to take a different view than that of the Full Bench view.

Hence we do not find any error in the judgment of the learned Single Judge and accordingly the Writ Appeal is dismissed.

**Ashok Bhushan,
Acting Chief Justice.**

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