

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. 2124 of 2010 () IN WP(C).9805/2004

AGAINST THE JUDGMENT IN WP(C) 9805/2004 of HIGH COURT OF
KERALA DATED 03-04-2006

APPELLANT(S)/PETITIONER :-

SINOJ JOHN, AGED 27 YEARS, S/O.LATE P.R.JOHN,
PULICKAL HOUSE, CHANDIROOR PO
CHERTHALA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S)/RESPONDENTS :-

1. SENIOR ADMINISTRATIVE OFFICER,
CENTRAL INSTITUTE OF FISHERIES, NAUTICAL AND
ENGINEERING TRAINING, NEW DELHI.
2. THE CHIEF INSTRUCTOR, CENTRAL INSTITUTE
OF FISHERIES, NAUTICAL AND ENGINEERING TRAINING
KOCHI.
3. SENIOR ADMINISTRATIVE OFFICER,
CENTRAL INSTITUTE OF FISHERIES
NAUTICAL AND ENGINEERING TRAINING, KOCHI.
4. UNION OF INDIA, REP.BY ITS SECRETARY,
MINISTRY OF FISHERIES, NEW DELHI.

R1 TO 4 BY ADV. SRI.S.KRISHNAMOORTHY, CGSC
BY ADV. SRI.P.PARAMESWARAN NAIR, ASG OF INDIA

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

jvt

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

W.A. No.2124 of 2010

Dated this the 12th day of January, 2015

J U D G M E N T

Shaffique, J.

This appeal has been filed by the writ petitioner challenging the judgment dated 3.4.2006 in W.P.(C) No.9805 of 2004. The writ petition was filed challenging the rejection of the petitioner's claim for compassionate appointment.

2. The facts involved in the writ petition would disclose that the petitioner's father, P.R.John while working as Cook Grade I in the Central Institute of Fisheries, Nautical & Engineering Training, Kochi expired on 10.4.2001. An application was submitted on 7.9.2001 seeking for compassionate appointment. On the basis of the application submitted, the petitioner was informed by a memo dated 10.10.2001 that on account of a ban imposed by the Government, it was not possible to fill any vacancies and that his application would be considered along with other similarly placed persons. Thereafter, the petitioner's mother submitted another representation on 1.11.2001, which was produced as

Ext.P2. Subsequent to the representation submitted by his mother, Ext.P4 dated 4.4.2003 was issued wherein it is stated that appointment on compassionate basis cannot be granted as the committee has decided not to give appointment to the petitioner. It was also mentioned that they have taken into consideration the retirement benefits, income certificate issued by the Village Officer and the financial condition of the petitioner's family. Again a representation was given by the petitioner's mother on 21.4.2003 which was considered by the committee and the claim was re-considered and rejected by Ext.P5. At that stage the petitioner has filed the writ petition.

3. A counter affidavit has been filed inter alia stating that initially there was a ban for making appointment on compassionate basis and later the matter was considered and the petitioner was informed that his case cannot be taken into account on compassionate grounds. Further it is stated that a committee has been constituted with three members and that committee considered the application of the petitioner and taking into consideration of the retirement benefits, income

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certificate issued by the Village Officer, the request for compassionate appointment has been rejected. Further in the counter affidavit, it is stated that in addition to the said factors it was also noticed that the petitioner's father late P.R.John had constructed a house in 5 cents of property and that the family was also paid retirement benefits (in addition to family pension). Having considered the said factual situation, the request was denied. In the counter affidavit in addition to the aforesaid factual situation, it is also mentioned that the respondents had to consider the number of vacancies for direct recruitment and only 5% of the vacancies falling under the direct recruitment can be filled with compassionate appointment. Under these circumstances, the respondents justified the stand taken by the committee in rejecting the claim of the petitioner.

4. The learned Single Judge having considered the rival claims, observed that in so far as the matter has been considered by a duly constituted committee and a decision was rendered by the said committee, which is neither arbitrary nor actuated by any mala fides, there is no reason to

interfere with the decision making process and hence the writ petition was dismissed.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents.

6. Learned counsel for the appellant relied upon a judgment of the Supreme Court in **Mumtaz Yunus Mulani (Smt) v. State of Maharashtra and others** [(2008) 11 SCC 384] to contend that the receipt of family pension or retirement benefit shall not be a reason for denying the benefit of compassionate appointment. Another judgment relied upon is **Govind Prakash Verma v. Life Insurance Corporation of India and others** [(2005) 10 SCC 289] wherein also similar proposition is upheld. Learned counsel further relied upon the decision of the Supreme Court in **Balbir Kaur and another v. Steel Authority of India Ltd. and others** [2000 (6) SCC 493]. There is no dispute to the above proposition laid down by the Hon'ble Supreme Court. It is true that the payment of terminal benefits or the monthly family pension shall not be a criteria for denying consideration of compassionate appointment. But, it is

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relevant to note that as far as this case is concerned it is clearly stated that a committee has considered the claim of the petitioner and rejected the request of compassionate appointment. It is also mentioned that the petitioner's father had constructed a house in 5 cents of property which is also a fact, that has been taken note of by the committee. It is in addition to this that reference is made stating that the petitioner's family has been paid the retirement benefit, family pension etc. Under such circumstances, when a duly constituted committee had already taken a decision based on various factors including the fact that they have a place to reside in an extent of 5 cents of property and a building was constructed by the deceased, the committee cannot be said to have committed any error in arriving at the said conclusion.

7. The learned Single Judge also did not find it necessary to exercise the discretion to set aside the opinion expressed by the committee as there was no arbitrariness or malafides in the said decision making process. Under such circumstances, we do not think it necessary to interfere with the decision of the learned Single Judge in exercise of the

W.A. No.2124 of 2010

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appellate jurisdiction.

In the absence of any ground to interfere with the discretion exercised by the learned Single Judge, this Writ Appeal is dismissed.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE

Jvt