

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WA.No. 1197 of 2013

AGAINST THE JUDGMENT IN WP(C) 8203/2011, DATED 24-06-2013

APPELLANT(S)/PETITIONER:

**M.CHANDRAN PILLAI,
CISF NO.8440105/843150043/SI/EXE
NOW POSTED TO CISF UNIT, INTERNATIONAL AIRPORT
THIRUVANANTHAPURAM.**

BY ADV. SRI.M.RAJAGOPALAN

RESPONDENT(S):

- 1. UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI-110001.**
- 2. DIRECTOR GENERAL OF CISF
CISF HEAD QUARTERS, LODHI ROAD, NEW DELHI-110001.**
- 3. THE COMMANDANT
CISF UNIT, CSI AIRPORT, MUMBAI-400001.**
- 4. THE COMMANDANT, CISF UNIT, VSSC,
THIRUVANANTHAPURAM-695001.**

BY ADV. SRI.T.SANJAY, CGC

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

THOTTATHIL B. RADHAKRISHNAN

&

K.HARILAL, JJ.

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W.A.No.1197 of 2013

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Dated this the 22nd day of January, 2015

JUDGMENT

Thottathil B.Radhakrishnan,J.

1.The writ petitioner is in appeal. The matter was considered by the Division Bench on 28.8.2014 and an order was issued. That reads as follows:

“1. This appeal is by the writ petitioner in WP(C) No.8203 of 2011. The issue is as to his entitlement for promotion as Assistant Sub Inspector (ASI) in CISF. He joined CISF as a Head Constable (Driver). Appointment to the category of ASI is by promotion from Head Constables (General Duty) and Head Constables (Driver) in the ratio of 5:1.

2. In Ext.P1 judgment dated 12.11.2008 in OP No.21032 of 2002 the learned single Judge held that the petitioner was entitled to be promoted as ASI [wrongly stated as Head Constable

(Driver) in the judgment] in 1996 as per the ratio prescribed. The establishment was, therefore, directed to issue appropriate orders giving retrospectivity to the promotion with effect from 1996 with consequential monetary benefits. In the writ appeal filed by the establishment against that judgment, the Division Bench in Ext.P3 judgment reversed the judgment of the learned single Judge in part and ordered the original petition with a direction to the establishment to review the promotions effected to the category of ASI from among Head Constables (Driver) during the period from 1993 to 1999 and to examine whether the employee would have been eligible to be considered for promotion by the Departmental Promotion Committee and would have been selected for promotion as ASI during the said period, had the field of choice been restricted to eligible Head Constables (Driver) who had the required length of five years' regular service and had passed the Promotion Cadre Course. It was directed that the said exercise shall be carried out and completed within four months from the date on

which the establishment receives certified copy of that judgment. It was also clarified that since no other Head Constable (Driver), who is senior to the employee who has approached this Court, has raised any claim, the said exercise need to be undertaken only for the purpose of deciding whether the employee involved in this litigation would have been selected for promotion to the category of ASI earlier than 2000, by restricting the field of choice to eligible Head Constables (Driver), who had the required length of service and had passed the Promotion Cadre Course. Thereafter, the establishment issued Ext.P4 order which was found to be bad for non-compliance of the directions. On the teeth of contempt of court proceedings, that was withdrawn and Ext.P5 was issued. The contempt of court case was closed leaving the employee with liberty to seek relief from writ jurisdiction. That is how the writ petition from which this writ appeal arises came to be filed.

3. In answer to the writ petition, the establishment filed a counter affidavit

and also placed therewith Ext.R2(a) in an attempt to show that it had carried out the drill required to satisfy the directions contained in Ext.P3 judgment of the Division Bench.

4. Having bestowed our anxious consideration to Ext.R2(a), we are unable to take the view that appropriate action has been taken to conclude on the question, that had to be decided by the establishment, going by the terms of Ext.P3 judgment. The ratio 5:1 to be maintained for promotion has, necessarily, to be maintained on the cadre strength and not on the vacancy position. This is trite law. That being so, the available slot for Head Constables (Driver) to move to the cadre of ASI had to be identified and determined and the petitioner's case ought to have been singularly considered, since this Court had directed that others had not raised any claim before the competent authority, including in the Court.

In view of the aforesaid, at the outset, we thought that the matter can be relegated to the establishment

again. But, the checkered career of this litigation prompts us to consider whether this could end by the establishment placing its views correctly, if necessary, by carrying out appropriate further assessment of the materials. Hence, this matter is adjourned directing the establishment to place a specific affidavit on record, through the second respondent, after appropriately assessing the entire requirements in terms of the directions contained in Ext.P3 judgment. Such affidavit shall be on board, without fail, on or before 28.11.2014.

Post on 02.12.2014.

Hand over. “

2. An affidavit has been sworn to by the second respondent on 24.11.2014. That has been placed on record. We have gone through that affidavit and have heard the learned counsel for the appellant and the learned Central Government Counsel.

3.As is noted in the aforequoted order, the fact of the matter remains that promotion has to be by maintaining a ratio of 5:1 between Head Constables (General Duty) and Head Constables (Driver). As noted in paragraph 4 of the aforequoted order, while a ratio is to be maintained for promotion, that has to be ensured on the cadre strength and not on the vacancy position. In spite of the fact that the second respondent has sworn to the affidavit dated 24.11.2014, we see that there is no answer on the issue as to whether cadre strength was maintained or whether the vacancy position was determined and maintained based on the cadre strength. Here, we may note that the definite contention of the appellant is that even in W.A.No.1047 of 2009, the stand of the Department was specific that there was a deficiency in the number of Head Constables (Driver) to be promoted as ASI and it was therefore through Ext.P3 judgment that this Court had issued direction to consider the case of the appellant individually. That ought to

have been done with effect from the period as against 1993 onwards. While the learned Central Government counsel refers to Union of India and others v. B.S.Darjee and another [2011(10) SCC 186], we think that in the case in hand, having regard to the binding nature of Ext.P3 judgment of the Division Bench inter partes, the respondents have to necessarily carry out the exercise of identifying the actual eligibility date of the appellant-writ petitioner based on the cadre strength by a review of the cadre strength with effect from 1993.

For the aforesaid reasons, this writ appeal is allowed vacating the impugned judgment, quashing Ext.P6 impugned in the writ petition and directing that the respondents will consider the case of the appellant-writ petitioner for promotion as ASI with retrospective effect from March, 1993 after determining whether cadre strength was maintained in the ratio 5:1 between Head Constables (General Duty) and Head

Constables (Driver). Upon the appropriate slot being determined by applying the ratio to the cadre strength, the appellant-writ petitioner will be allotted as against it. Consequential benefits as may be due in accordance with law will also be granted. The writ appeal is ordered accordingly.

THOTTATHIL B.RADHAKRISHNAN
JUDGE

K.HARILAL
JUDGE

Sha/