

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WA.No. 1419 of 2013 IN WP(C).15603/2012

AGAINST THE JUDGMENT IN WP(C) 15603/2012 DATED 24-05-2013

APPELLANT/PETITIONER:

K.JALADHARAN
KUZHIYANATHU VEEDU, NALLILA
KOLLAM-691 515. (ADDITIONAL REGISTRAR (RTD)
KERALA LOK AYUKTA, LEGISLATURE COMPLEX
THIRUVANANTHAPURAM-695 033).

BY ADVS.SRI.B.RAGUNATHAN
SRI.G.GOPALAKRISHNA PILLAI
SRI.R.SRINATH
SRI.VIPIN VARGHESE

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
VIGILANCE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.
3. KERALA LOK AYUKTA
REPRESENTED BY REGISTRAR, KERALA LOK AYUKTA
LEGISLATURE COMPLEX, THIRUVANANTHAPURAM-695 033.

R1-R2 BY SENIOR GOVERNMENT PLEADER SRI.VIJU THOMAS
R3 BY ADV. SRI.K.JAJU BABU (SR.)
R3 BY ADV. SMT.M.U.VIJAYALAKSHMI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

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W.A.No.1419 of 2013

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Dated this the 8th day of October, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

- 1.We have heard the learned counsel for the appellant, the learned Senior Counsel for the third respondent, Lok Ayukta; and the learned Government Pleader. The writ petitioner is the appellant. The situation in hand is a direct result of the enormous delay on the part of the Government in formulating the service rules for the staff of the Lok Ayukta.
- 2.Sometime in 1999 the institution of Lok Ayukta came into being in the State of Kerala. Following that, the office of Lok Ayukta had to be manned by appropriate staff. Services were lent including by offering staff of High Court of Kerala. The writ appellant/writ petitioner is one among them.

3. The fact of the matter remains that even as of now, the service rules as far as the Lok Ayukta staff are concerned had not been formulated. With the passage of time, it became necessary to have the post of Additional Registrar. The method of recruitment to that post was as discernible from the Government orders that govern the field. It could be by deputation, promotion etc. Since nobody was available for deputation and there was no service rules coming into force, the Lok Ayukta repeatedly wrote to the Government to finalise the recruitment rules. With passage of time, the institution of Lok Ayukta found it extremely difficult to sustain its activities through support from requisite personnel. Under such circumstances, the members of the Lok Ayukta, including the Lok Ayukta and Upa Lok Ayuktas discussed the matter and concluded on the administrative side to promote the writ petitioner as Additional Registrar w.e.f. 05.06.2004. After doing that, when ratification was sought for, the Government ultimately granted ratification on 15.12.2007, but pegged the monetary benefits of the appellant for the post of Additional Registrar that it would run only from the date of ratification, i.e., 15.12.2007, instead of 05.06.2004, the date of promotion. For this, they made 15.12.2007 as the date of declaration of

satisfactory completion of probation of the petitioner. The fact of the matter remains that the absorption into the service of Lok Ayukta was made by the Government through Ext.P2 Government Order dated 22.07.1999 stating that the services of the persons absorbed thereby were found inevitable and sanction is accordingly ordered to absorb the three persons named therein who were there on deputation from the High Court of Kerala to the service of the Kerala Lok Ayukta. Such absorption on regular basis necessarily carries with it the requirement to provide a mechanism whereby their service conditions were continued to be protected. The failure of the Governmental machinery to formulate and finalise the rules of recruitment and appointment into service of Lok Ayukta is not a matter which could have, in any manner, been utilised to deprive the writ petitioner/writ appellant of the amounts due towards pay and allowances and other payables as would be available to the post of Additional Registrar with effect from 05.06.2004, i.e., the date on which he was promoted to that post. It is not in dispute that the appellant discharged the duties and responsibilities and worked without any complaint from the Lok Ayukta's office regarding his contribution of labour.

4. Though the primary judicial system of the State, that is to say, the High Court and the subordinate judiciary, are institutionally crippled, owing to insufficient staff support, the wisdom of the executive limb of governance has quite often been to require deputation from the staff in the judicial system to be made to those institutions which are treated as establishments which are otherwise involved in delivery of justice in terms of the Constitution and the laws. The placid approach of the executive limb of governance in this regard is apparently on an assumed superiority laced with a presumed political supremacy, owing to its connectivity to the higher echelons of the political institution of governance. The People of India, particularly of this State, should see the pittance of budget allocation made year after year to support the judicial system of courts and other judicial establishments. Precarious is the budget allocation for the judicial limb which is treated to be the strongest pillar of democracy. If We, the People of India; the citizen as a whole which is the ultimate repository of the constitutional power of governance, gets informed of such paltry financial support to the judicial system even when vociferous charges are levied about

the mounting arrears of litigations pending in courts, the collective will of the People would may have to be held back from institutionally slapping the administrative moieties on the issue of frugal budgetary support to the judicial system.

5. Under the aforesaid circumstances, we are of the view that it is arbitrary and impermissible to refuse the appellant the monetary benefits of his officiation as Additional Registrar from 05.06.2004 to 15.12.2007 on the mere premise that his probation was duly declared only on 15.12.2007 and the Government had ratified the promotion only on that day. Hence, the impugned judgment of the learned single Judge, refusing to grant relief to the writ petitioner to the extent of the monetary benefits from 05.06.2004 to 15.12.2007, is not sustainable.

In the result, the impugned judgment is set aside and the writ appeal and the writ petition are ordered declaring that the writ petitioner/writ appellant is entitled to the monetary benefits (salary and other perquisites) from 05.06.2004 to 15.12.2007 in the post of Additional Registrar with all attendant benefits and perquisites for the period from 05.06.2004 to 15.12.2007, as

sought for by him in the writ petition. Resultantly, Exts.P7, P8 and P11 to the extent it declines monetary benefits (salary and other perquisites) from 05.06.2004 to 15.12.2007 are quashed to that extent. It is directed that the monetary accruals in terms of this judgment shall be released to the appellant/petitioner, without fail, within a period of two months from the date of receipt of a copy of this judgment. No costs.

sd/-

Thottathil B.Radhakrishnan, Judge

sd/-

Anu Sivaraman, Judge

sj

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P.A.TO JUDGE