

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WA.No. 1751 of 2013 () IN WP(C).34306/2005

AGAINST THE ORDER/JUDGMENT IN WP(C) 34306/2005 of HIGH COURT OF KERALA
DATED 22-07-2013

APPELLANT(S)/PETITIONER:

H. HALEEFATHUDEEN
DIRECTOR (RETD), KHADI AND VILLAGE INDUSTRIES BOARD
THIRUVANANTHAPURAM, RESIDING AT SAFA, VAZHAPPALLY
UMAYANALLOOR P.O., KOLLAM DISTRICT.

BY ADVS. SRI. R. RAJASEKHARAN PILLAI
SMT. SABINA JAYAN

RESPONDENT(S)/RESPONDENTS:

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1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY, INDUSTRIES DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
 2. THE KERALA KHADI AND VILLAGE INDUSTRIES BOARD
REPRESENTED BY ITS SECRETARY, KHADI BHAVAN, VANCHIYOOR
THIRUVANANTHAPURAM.

R1 BY GOVERNMENT PLEADER SMT. ROSE MICHAEL
R BY SRI. R. S. HARI KUMAR, SC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WA.1751/13

APPELLANT'S EXHIBITS:

ANNEXURE I: TRUE COPY OF THE JUDGMENT DATED 10.2.1999 IN OP.8755/97 OF THIS HON'BLE COURT.

ANNEXURE II: TRUE COPY OF THE ORDER NO.KB.7621/90/E1/I. DATED 29.5.2000.

/TRUE COPY/

PS TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

W.A.No.1751 of 2013

Dated this the 20th day of May, 2015

JUDGMENT

Antony Dominic, J.

- 1.This appeal is filed by the petitioner in W.P(C). 34306/05 aggrieved by the judgment of the learned single Judge rendered on 22.7.2013 dismissing the writ petition.
- 2.The appellant was working as a Deputy Director under the second respondent. One P.T.Surendran Pillai, another Deputy Director who was junior to the appellant, was promoted to the post of Director overlooking the claims of the appellant. This promotion was with effect from 16.4.1997. Appellant challenged his supersession before this Court in O.P.8755/97. By Annexure I judgment dated 10.2.1999, this Court held the denial of promotion to the appellant arbitrary and unreasonable. On that basis, the order of promotion, Ext.P3 therein, was quashed with a direction that consequences shall follow.
3. It appears that in 1999 itself the appellant filed OP.18024/99, claiming that he is entitled to be

promoted with effect from 1995. However, by judgment dated 9.10.2000, that writ petition was dismissed and the said judgment has become final. Still later, complaining that the respondents did not comply with the directions in the judgment in OP.8755/97, the appellant filed C.C.C.No.276/00. During the pendency of the said case, the respondents passed Annexure II order dated 29.5.2000, reverting Sri.P.T.Surendran Pillai to the post of Deputy Director with effect from 16.4.1997. Thereafter Ext.P2 order dated 26.8.2000 was issued promoting the appellant to the post of Director with immediate effect.

4. When C.C.C.276/00 came up for consideration before this Court on 28.8.2000, Ext.P2 order was produced and since the appellant was promoted as Director, the contempt case was closed holding that he will be entitled to all other perquisites attached to that post. Since the promotion ordered as per Ext.P2 was with effect from 28.8.2000, appellant claimed that his promotion should have been with effect from 16.4.1997, when his junior was promoted. Thereupon,

the respondents issued Exts.P5 and P6 orders notionally giving fixation with effect from 1.6.1995 and directing that the monetary benefits shall be only with effect from 28.8.2000 when the appellant assumed charge as Director. This order was confirmed by the Government by Ext.P7, where reliance was placed on Rule 23(a) of Part I KSR. It was in these circumstances the appellant filed the writ petition which came to be dismissed by the learned single Judge.

5. We heard learned counsel for the appellant and learned Government Pleader and have considered the submissions made before us.

6. It is true that under Rule 23(a) part I KSR, the eligibility of an officer to get monetary benefits on promotion is from the date when he takes charge. But this is a case where this Court has already found that appellant was illegally denied promotion when his junior was promoted with effect from 16.4.1997. It was on that basis that by Annexure A1, the

promotion of the appellant's junior Sri.P.T.Surendran Pillai was set aside by this Court with a direction that consequences shall follow. In such situation, Rule 23(a) Part I KSR cannot be relied on to deny monetary benefits consequent on the illegal denial of promotion to the appellant, which finding of this Court has become final. Therefore, we are of the view that the appellant ought to have been given all benefits of promotion with effect from 16.4.1997, the date on which his junior was illegally promoted. We, therefore, cannot sustain Exts.P5, P6 and P7 to the extent benefits claimed by the appellant with effect from 16.4.1997 are denied and the orders to that extent will stand set aside.

This writ appeal is therefore disposed of setting aside the judgment under appeal and directing the second respondent to extend all monetary benefits to the appellant treating him as having been promoted to the post of Director with effect from 16.4.1997. All consequential benefits shall be disbursed to the appellant as expeditiously as possible, at any rate

within three months of receipt of a copy of this judgment.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P.CHALY, Judge.

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