

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 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

WA.No. 1008 of 2014 ( ) IN WP(C).25351/2012

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AGAINST THE JUDGMENT IN WP(C) 25351/2012 DATED 20/06/2014

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APPELLANT/PETITIONER IN WP(C) :

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VYSHAK C., AGED 29 YEARS  
S/O CHANDRAMOHANAN NAIR  
RESIDING AT BHARATHI KESAVAM, MUTTOM (PO), HARIPAD

BY ADVS.SRI.M.V.THAMBAN  
SRI.R.REJI  
SMT.THARA THAMBAN  
SRI.B.BIPIN

RESPONDENTS/RESPONDENTS IN WP(C) :

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1. TRAVANCORE DEVASWOM BOARD  
NANTHANCODE, THIRUVANANTHAPURAM, PIN - 695 001  
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY, TRAVANCORE DEVASWOM BOARD, NANTHANCODE  
THIRUVANANTHAPURAM, PIN - 695 001.
3. THE DEVASOM COMMISSIONER  
OFFIC OF THE DEVASWOM COMMISSIONER  
THIRUVANANTHAPURAM, PIN - 695 001.
4. THE DEPUTY COMMISSIONER (ADMINISTRATION)  
OFFICE OF THE DEVASOM COMMISSION,  
THIRUVANANTHAPURAM, PIN - 695 001.
5. THE SUB GROUP OFFICER  
TRAVANCORE DEVASOM BOARD, KANDIYOOR, MAVELIKKARA  
ALAPPUZHA DISTRICT, PIN - 690 101.

R1 TO R5 BY ADV. SRI.A.N.RAJAN BABU, SC, TDB

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 16-02-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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W.A. No. 1008 OF 2014  
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Dated this the 16<sup>th</sup> day of February, 2015

**JUDGMENT**

**Shaffique, J.**

This appeal is filed by the writ petitioner challenging the judgment dated 20.06.2014 in W.P.(C) No. 25351 of 2012.

2. The writ petition is filed seeking for a declaration that petitioner is fully qualified to be appointed as Lower Division Clerk/Sub Group Officer Grade II and he is entitled to be promoted on the basis of Ext.P1, Circular dated 08.05.2012, issued by the Travancore Devaswom Board. The Circular called calling upon those persons who had been appointed as Peon on 'compassionate' appointments who have initially sought for appointment to the post of Lower Division Clerk/Sub Group Officer, to submit their option to the post of Lower Division Clerk/Sub Group Officer, provided they had the requisite basic educational qualification. Petitioner claims that he was a person who was appointed as 'Watcher' in the office of 4<sup>th</sup> respondent-Deputy Commissioner(Administration). He was appointed in the year 2004. It is submitted by the

petitioner that though he had applied and was eligible to be appointed to the post of Lower Division Clerk/Sub Group Officer, since there were no vacancies, he had agreed to be appointed to the post of Watcher. However, pursuant to Ext.P1 Circular, petitioner submitted Ext.P2 representation dated 09.05.2012. When the same has remained unconsidered, petitioner approached this Court and by judgment dated 31.07.2012 in W.P.(C) No.17952 of 2012, this Court directed the Devaswom Board to consider the petitioner's representation after affording him an opportunity to be heard. Pursuant to the same, Ext.P6 order dated 12.10.2012, has been issued rejecting the claim of the petitioner *inter alia* stating that since the petitioner had given an undertaking that he will not claim the post of Lower Division Clerk/Sub Group Officer, petitioner's claim cannot be considered. It is impugning the aforesaid decision taken by Travancore Devaswom Board and seeking for appointment to the post of Lower Division Clerk/Sub Group Officer, this writ petition has been filed.

3. Counter affidavit has been filed by the respondent *inter alia* stating that Ext.P1 Circular has been issued only

seeking for option from Peons and that too was a concession that was extended by the Board. Further it is submitted that the benefit cannot be granted to the petitioner as he has relinquished his right to be appointed to the post of Lower Division Clerk/Sub Group Officer.

4. Having regard to the aforesaid factual issues, the learned Single Judge taking note of the contentions urged, dismissed the writ petition.

5. Heard learned counsel for the appellant as well as learned counsel for the respondents.

6. It is argued by learned counsel for the appellant that as per Ext.P4, proceedings of Travancore Devaswom Board dated 01.07.2011, Sl.No.XXVII(a), relates to various categories of employees of which Peon Grade II, Lascar, Sweeper, Gardner etc including Watcher come under the same category. When Ext.P1 Circular has been extended to Peons, the same benefit ought to have been granted to other categories of workers also. It is argued that, the petitioner who had opted for being appointed as Lower Division Clerk, as he was qualified to the said post, was entitled to be appointed as Lower Division Clerk/Sub

Group Officer and the contrary view taken by the Board is absolutely illegal. Reference was also made by learned counsel for the appellant on Exts.P7, P8 and P9 orders by which certain other persons were also appointed to the post of Lower Division Clerk.

7. On the other hand, learned counsel for the respondent Board would submit that Peons come under the category of establishment employees whereas others are treated as temple employees and therefore there is sufficient reason to classify between Peons and other category of employees coming under temple employees category.

8. Having regard to the above factual situation, it is relevant to note that as far as Ext.P1 Circular is concerned, option was given only to one category of employees namely, Peons. Therefore, petitioner apparently cannot claim the benefit of Ext.P1. Petitioner points out Ext.P8 order of the Board to indicate that another person was also given the same benefit. The appointment given under Ext.P8 order was not challenged. As far as the benefit given to a person who had been appointed as Peon, it is settled position of law that he will have to be

remain in the said post until he gets an opportunity to claim the benefit given under Ext.P1, which is not a promotion granted to one category of employees coming under Sl. No.XXVII(a). It is an option given to certain type of employees who were given appointments under the Dying-in-harness scheme, though they have applied to the post of Lower Division Clerk/Sub Group Officer. Since Ext.P1 benefit cannot be claimed by the petitioner, no such benefit can be extended to the petitioner. There was no challenge to Ext.P1 Circular as well.

9. Learned counsel for the appellant had relied on the judgment of this Court in **George v. State of Kerala** [1998 (2) KLT 637]. Perusal of said judgment indicates that it was a case in which this Court has come to the conclusion that there cannot be permanent relinquishment to the post of Headmaster. That was a case in which issue was with regard to promotion to the post of Headmaster. The said judgment has no application to the facts of the present case. In this case the claim made was seeking the benefit under Ext.P1 Circular, where an option was given for persons who were appointed as Peons under the dying-in-harness scheme.

Under such circumstances, we are of the view that learned Single Judge was justified in rejecting the claim of the petitioner. We do not find any good ground to interfere with the judgment of the learned Single Judge and accordingly the Writ Appeal is dismissed.

**Ashok Bhushan,  
Acting Chief Justice.**

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