

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

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WA.No. 1603 of 2014 () IN WP(C).4248/2011

AGAINST THE ORDER/JUDGMENT IN WP(C) 4248/2011 of HIGH
COURT OF KERALA DATED 17-06-2011

APPELLANT(S)/1ST PETITIONER:

K.K. ABUBAKER
S/O.KAREKADU MOIDEEN, PENSIONER
RESIDING AT PADINJARE MURI, MULLASSERY VILLAGE
THIRUNELLOOR DESOM, CHAVAKAD TALUK,
THRISSUR DISTRICT.

BY ADVS.SRI.A.N.KUTTAN
SRI.C.CHANDRASEKHARAN

RESPONDENT(S)/RESPONDENTS/PETITIONER 2-5:

1. THE DIRECTOR, EMPLOYEES STATE INSURANCE
MEDICAL SERVICE
THIRUVANANTHAPURAM, PIN-695002.

2. THE SECRETARY
LABOUR AND WELFARE DEPARTMENT,
GOVERNMENT OF KERALA
THIRUVANANTHAPURAM, PIN-695002.

3. THE ACCOUNTANT GENERAL
STATE OF KERALA, THIRUVANANTHAPURAM, PIN-695001.

4. T.G.GIRIJA
PERUKKUDY HOUSE, MELOOR P.O., CHALAKUDY
PIN-680311.

5. C.C.SHAHIDA
C/O.MOHAMMED HANEEFA, PALAYAMKOTT HOUSE, KAROOR
WEST CHALAKUDY P.O., THRISSUR DISTRICT,
PIN-680311.

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6. P.K.RAMAN
PUTHUKULANGARA HOUSE, KUTTOOR VILLAGE,
KUTTOOR P.O.
THRISSUR DISTRICT, PIN-680013.

7. T.THANKAM
THALAPPILLY HOUSE, MOORKANIKARA, KOZHUKKULLY
THRISSUR, PIN-680752.

R1 BY GOVERNMENT PLEADER SRI.C.R. SHYAM KUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

APPELLANT'S ANNEXURES

ANNEXURE A1: TRUE COPY OF G.O. (P)
NO. 899/98/155/FIN DATED 10-3-1998

ANNEXURE A2: MEDICAL CERTIFICATE
G.O. (RT) 593/29001/HFWD DT. 28-2-
2001

ANNEXURE - A3: MEDICAL CERTIFICATE
D/16-12-2008 FROM DR. GEEVAR ZACH

ANNEXURE : A4: MEDICAL CEERTIFICATE
DATED 12-5-2014 FROM KOTTAKKAL ARYA
VAIDYA SALA

ASHOK BHUSHAN , Ag. CJ,
&
A.M.SHAFFIQUE, J.

.....
W.A.No. 1603 of 2014
.....

Dated this the 18th day of February, 2015

JUDGMENT

Shaffique, J.

This Writ Appeal has been filed by the first petitioner in W.P.C. No. 1603 of 2014 challenging the judgment dated 17-06-2011 in the above Writ Petition. Writ Petition was filed by five petitioners who were in service of the Insurance Medical Service Department of the Government of Kerala, seeking time bound higher grade benefits allegedly due to them while they were in service. They retired from service on 31-8-2007, 31-12-2006, 30-6-2006, 31-3-2010 and 30-4-2006 respectively.

2. The learned Single Judge dismissed the Writ Petition on

the ground of delay and laches. It is argued by the learned counsel for the appellant that despite the fact that they were entitled to fourth time bound higher grade, the same was not granted.

3. Before this Court, a counter affidavit has been filed by respondents 1 and 2 as directed by this Court. In the said counter affidavit it is stated that the appellant while working as part-time Cleaner was posted as Hospital Attendant Gr.II with effect from 2-08-1976, on regular basis. He was given promotion as Hospital Attendant Grade-II with effect from 14-7-1984. Thereafter, he was granted Ist Higher Grade in the post of Hospital Attendant on completion of 10 years with effect from 2-08-1986, IInd time bound Higher Grade on completion of 20 years with effect from 2-8-1996 and IIIrd time bound higher grade on completion of 23 years of service with effect from 1999. Further it is stated that the appellant was appointed as Nursing Assistant by transfer as per order dated 20-4-1994. Reference is

made to the Special Rules of Kerala Insurance Medical Subordinate Services framed as per Government Order dated 24/93/P & ARD dated 29-03-1993. It is provided that when a person is appointed to the post of Nursing Assistant by transfer the same has to be treated as entry post or cadre and the entitlement for the time bound higher grade has to be reckoned from the said entry post and, therefore, the appellant is not entitled for the 4th time bound higher grade as claimed by him.

4. The learned counsel for the appellant submits that in the light of the Government Order as aforesaid, the appellant may not be entitled for 4th time bound higher grade. However, the learned counsel for the appellant submits that certain other benefits due to the appellant has not been given so far. The Writ Petition was filed seeking the relief of time bound higher grade only. No other relief has been sought for in this Writ Petition.

Under such circumstances, the petitioner is not entitled to

claim any other benefits. The fact that the petitioner is entitled for time bound higher grade is clear from the affidavit filed on behalf of respondents 1 and 2 with reference to the Government Order. Under such circumstances, we do not think that the appellant is entitled for any relief as claimed in this Appeal. The learned Single Judge has rightly dismissed the Writ Petition on the ground of delay and laches. Even on merit, no grounds are made out for interfering with the judgment of the learned Single Judge. Accordingly, this Writ Appeal is dismissed.

Sd/- ASHOK BHUSHAN ,
Ag. CHIEF JUSTICE

Sd/-A.M.SHAFFIQUE,
JUDGE

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/truecopy/

P.S.toJudge