

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WA.No. 2507 of 2015 () IN WP(C).18389/2006

AGAINST THE JUDGMENT IN WP(C) 18389/2006 DATED 14.9.2015

APPELLANT(S)/3RD RESPONDENT IN WP :-

R.ANIL KUMAR, AGED 57 YEARS
S/O.D.RAMAKRISHNA SHENOY, COMPUTER ASSISTANT
SPICES BOARD, COCHIN-682 025.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 & 2 IN WP :-

1. SREELATHA S.
COMPUTER ASSISTANT, SPICES BOARD, ICRI KAILASANADU P.O.
MILADUMPARA, IDUKKI-685 553.
2. SPICES BOARD
REPRESENTED BY THE SECRETARY, SPICES BOARD
SUGANDHA BHAVAN, NH BYEPASS, PB NO.2277
PALARIVATTOM P.O., COCHIN-682 025.
3. THE CHAIRMAN
SPICES BOARD, SUGANDHA BHAVAN, NH BYPASS
P.B.NO.2277, PALARIVATTOM P.O., COCHIN-682 025.

BY SRI.ANTONY MUKKATH, SC, SPICES BOARD
BY SRI.S.RADHAKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-
11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

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

W.A. No.2507 of 2015

Dated this the 20th day of November 2015

J U D G M E N T

Shaffique, J.

This writ appeal has been filed by the 3rd respondent in the writ petition challenging the judgment dated 14.9.2015 in W.P.(C) No.18389 of 2006, by which, the learned Single Judge allowed the writ petition filed by the first respondent herein.

2. The writ petition was filed by the first respondent herein to challenge Ext.P11 and for a declaration that the petitioner is entitled to get seniority in the category of Computer Assistant as against the 3rd respondent. By Ext.P11, the Spices Board had finalised the inter-se seniority between the appellant and the first respondent/petitioner to the effect that the appellant was senior to the first respondent since his promotion with effect from 4.5.1988 in the same scale of pay of Computer Assistant has to be considered in the inter-se seniority.

3. According to the first respondent/petitioner, she was appointed by way of direct recruitment as Computer Assistant on

7.5.1992, whereas, the appellant was appointed in the said post only on 27.4.1998.

4. The respondent Board in the writ petition and in the counter affidavit filed by them, supported the stand taken in Ext.P11.

5. The learned Single Judge, after elaborately considering the inter-se seniority, observed that in the year 1999, the petitioner was terminated from service, which was challenged and a Division Bench of this Court by judgment dated 24.10.2002 in W.A.No.720 of 2000 allowed the claim made by the petitioner and directed her to be reinstated in service with continuity of service. It was also observed that she will not be entitled to salary for the period she was out of service, but the period she was out of service due to illegal termination will be counted for other service benefits like seniority, gratuity etc. On the basis of the aforesaid finding, the learned Single Judge observed that as far as the 3rd respondent/appellant had been continuing in the post of Lower Division Clerk for quite a long time and his promotion to the post of Computer Assistant was only on 27.4.1998, which was evident from the seniority list in the Board as on 30.9.1999, the first

respondent/petitioner was senior to that of the appellant. Further, it was observed that the feeder category to the promotion post of Computer Assistant included Auditors also. Hence, there was no abolition of the cadre of Auditors and the re-designation of the 3rd respondent was only a work arrangement.

6. The learned Single Judge therefore, placing reliance on the materials available on record and found that the petitioner was senior to that of the 3rd respondent and accordingly, direction had been issued that the seniority shall be refixed and the promotion to the higher post on the basis of the seniority shall be made with retrospective effect, but with notional benefits to the petitioner.

7. It is argued by the learned counsel for the appellant based on Annexure A1 produced in the case that the appellant was permitted to work in the post of Auditor, but thereafter he was re-designated as Computer Assistant, which could not be made available before the learned Single Judge for consideration. If viewed in that fashion, the Spices Board was justified in issuing Ext.P11 by treating the appellant as senior to that of the first respondent. But a reference to Exts.P4, P5 and P6 clearly indicate that the appellant was appointed as Lower Division Clerk and he

was appointed to the post of Auditor, which was re-designated as Computer Assistant by Ext.P6. Ext.P7 clearly indicated that the appellant is provisionally promoted to the post of Computer Assistant from the date of Ext.P7, that is, 27.4.1998. That apart, it is evident from the seniority list produced as Ext.P8 that the date of appointment of the appellant in the post of Computer Assistant was shown as 27.4.1998. Such being the facts read along with the judgment in the writ appeal, there cannot be any doubt regarding the seniority of the petitioner in the said post. Under such circumstances, we do not find any error in the judgment of the learned Single Judge.

8. Learned counsel for the appellant submits that the appellant is entitled for promotion in the other post, which he was holding, though he is not entitled for seniority with reference to that of the first respondent.

9. If the appellant has any other claim for promotion, it is for the appellant to take up the matter before the Spices Board and seek necessary relief since the learned Single Judge had not considered the claim of the appellant for promotion to any other post.

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Under such circumstances, reserving the right of the appellant to approach the Spices Board for promotion to any other post, this writ appeal is dismissed.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**

//TRUE COPY//

P.A. TO JUDGE

Jvt/20.11.2015.