

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

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

WP(C).No. 3262 of 2013 (G)

PETITIONER(S):

**SHANTI K.GEORGE,
ASSISTANT, LIFE INSURANCE CORPORATION OF INDIA,
TRIPUNITHURA BRANCH, TRIPUNITHURA P.O.
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI**

RESPONDENT(S):

- 1. LIFE INSURANCE COPORATION OF INDIA,
CENTRAL OFFICE, 5TH FLOOR, (WEST WING),
YOGAKSHEMA, JEEVAN BIMA MARG, P O BOX NO.19953,
MUMBAI - 400 021, REPRESENTED BY ITS MANAGING DIRECTOR.**
- 2. THE SENIOR DIVISIONAL MANAGER,
LIFE INSURANCE CORPORATION OF INDIA,
DIVISIONAL OFFICE, M.G.ROAD, (MAHATMA GANDHI ROAD),
ERNAKULAM - 682 011.**
- 3. THE LIASON OFFICER FOR PERSONS WITH DISABILITIES,
AND SECRETARY (ESTATES),
LIFE INSURANCECORPORATION OF INDIA,
SOUTHERN ZONAL OFFICE, LIC BUILDING, ANNA SALAI,
CHENNAI - 600 002.**
- 4. UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSION,
DEPARTMENT OF PERSONNEL AND TRAINING,
CENTRAL SECRETARIAT, NEW DELHI - 110 001.**

**R1 TO 3 BY ADV. SRI.S.EASWARAN
R4 BY ADV. SRI.NAGARESH, ASG OF INDIA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/1/2015
THE COURT ON 20-05-2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF ORDER NO.36035/3/2004 - ESTT (RES) DATED 29/12/2005 ISSUED BY MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS, DEPARTMENT OF PERSONNEL & TRAINING, NEW DELHI
- P2: COPY OF THE DIRECTIVE C.D.NO.SER/06/7834 DATED 29/6/2006 BY THE SERVICES DEPARTMENT BRANCH IV OF CENTRAL GOVERNMENT, NEW DELHI
- P3: COPY OF THE NOTIFICATION NO.ZD/1185/ASP/2011 DATED 8/4/11 ISSUED BY THE R1
- P4: COPY OF THE CIRCULAR ZD/1197/ASP/2012 DATED 7/2/12 ISSUED BY THE R1
- P5: COPY OF THE NOTIFICATION DATED 14/2/12 ISSUED BY THE ZONAL OFFICE OF THE R1 AT CHENNAI
- P6: COPY OF THE REPRESENTATION DATED 12/4/12 SUBMITTED BY THE PETITIONER TO THE R2
- P7: COPY OF THE JUDGMENT DATED 8/10/12 IN WPC.22659/12 OF THIS HONOURABLE COURT.
- P8: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 24/1/11 IN WPC.33333/2008
- P9: COPY OF THE ORDER DATED 13/12/12 ISSUED BY THE R2

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 3262 of 2013

Dated this the 20th day of May, 2015

J U D G M E N T

Aggrieved by the denial of promotion to the petitioner, who is physically challenged, by the respondent corporation, the petitioner has come up before this Court.

2. The petitioner is a physically handicapped person having loco motor disability of 40%. She alleges that she is denied regular promotion as well as promotion to vacancies reserved under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, "the Act"). According to her, as per the provisions in the Act and Exts.P1 & P2, vacancies are to be reserved for persons with disability, in the case of recruitment as well as promotion, from 01.01.1996. The petitioner alleges that she became eligible for promotion as Higher Grade Assistant in 2001.

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The 1st respondent corporation issued Exts.P3 to P5 to implement the said reservation only on 08.04.2011, which, according to the petitioner, is illegal. The petitioner alleges that still she is denied promotion towards 3% vacancies earmarked notwithstanding Ext.P6. She further alleges that the benefits of Exts.P1, P2 as well as Ext.P8 judgment of this Court are denied to her as per Ext.P9. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the respondent corporation, they would contend that the claim of the petitioner that she is entitled to be promoted to the post of Higher Grade Assistant to one of the vacancies starting from the 1996 under the category, does not hold good because of the fact that the applicability of the provisions of the Act came into effect from 08.04.2011 only, as far as LIC is concerned as their central office has issued orders in this connection as per Ext.P3 dated 08.04.2011 and Ext.P4. It is pointed out that the Exts.P3 & P4 circulars

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are not put to challenge in the writ petition. It was further stated that in Ext.P9, it is specifically noted by the 2nd respondent that in terms of Exts.P3 and P4 circulars, for the year 2011-12, only 31 vacancies were notified for promotion to the cadre of Higher Grade Assistant. However, taking note of the fact that the number of vacancies, which arose after 08.04.2011 was less than 34, it was not possible for the LIC to confer promotion on the petitioner to the post of Higher Grade Assistant during the promotion round 2011-12. It was also contended that after the implementation of reservation to persons with disabilities for the promotion to the post of Higher Grade Assistants as per the circular dated 08.04.2011, the petitioner has been promoted as Higher Grade Assistant under the reservation quota during the current round of promotion and she has accepted promotion since 2013.

4. I have heard Mr.K.Jaju Babu, the learned senior counsel for the petitioner; Mr.S.Easwaran, the learned counsel for the respondent corporation; and

Mr.Nagaresh, the learned Assistant Solicitor General.

5. The respondent corporation does not say that the petitioner is not entitled for promotion under the provisions of the Act. Admittedly, after the implementation of the reservation as per Ext.P3 circular dated 08.04.2014, the petitioner has been promoted as Higher Grade Assistant under the reservation quota and she accepted the promotion on 01.03.2013.

6. Now, the remaining question is only regarding the date, on which the petitioner should have been promoted. The main challenge put forward by the respondent corporation is that the petitioner has not challenged Exts.P3 and P4 circulars. In Ext.P9, it was noted that no reservation could be provided for persons with disability during promotion round 2011-12 for the post of Higher Grade Assistant since no entitlement arose as the number of vacancies arose after 08.04.2011 was less than 34. It was observed that 3% of 31 vacancies works out to only 0.93, whereas the entitlement to at

least one reserved category for persons with disability would arise only when the total number of vacancies that arose after 08.04.2011 is not less than 34. The entire complication arose only on account of the notification dated 08.04.2011.

7. The apex court in **Government of India through Secretary & Another** v. **Ravi Prakash Gupta & Another** [2010 (7) SCC 626] has laid down the law that the Act came into force in 1996; and hence, reservation has to be effected from that date. Therefore, the delay in issuing circular or notification of the posts cannot be a reason to postpone the right of the petitioner. The case of the petitioner is that she was entitled for promotion in 2001. However, the respondent corporation issued Exts.P3 to P5 to implement reservation only on 08.04.2011 thereby postponing the eligibility of the petitioner. The same cannot be countenanced on the basis of the decision of the apex court; and therefore, the matter requires a reconsideration.

In the result, the writ petition is disposed of making it clear that the respondent corporation was bound to prepare the reservation roster registers starting from the year 1996 and earmark the reservation for persons with disabilities to be filled by the petitioner and carry forward the same to subsequent recruitment years. The respondent corporation shall prepare the reservation roster registers as above and the petitioner shall be accommodated in the vacancy, which arose on the date when she became eligible for promotion as Higher Grade Assistant.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-