

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WP(C).No. 13988 of 2004 (M)

PETITIONER(S):

**A.O. XAVIER, U.D. STOREKEEPER,
CHRIST COLLEGE, IRINJALAKUDA, THRISSUR DISTRICT.**

**BY ADVS.SRI.ISSAC M.PERUMPILLIL
SRI.A.C.DEVY
SRI.LIJO GEORGE**

RESPONDENT(S):

- 1. M.L. JACOB, L.D. CLERK,
CHRIST COLLEGE, IRINJALAKUDA.**
- 2. THE MANAGER, CHRIST COLLEGE,
IRINJALAKUDA.**
- 3. THE DIRECTOR OF COLLEGIATE EDUCATION
VIKAS BHAVAN, THIRUVANANTHAPURAM.**
- 4. STATE OF KERALA, REP. BY THE SECRETARY
TO THE GOVERNMENT, HIGHER EDUCATION, DEPARTMENT
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**

**ADDL.R5 SHAJU VARGHESE
 S/O M.D.VARGHESE
 MANJALY (H), VHERUVALOOR P.O
 KAUKUTTY VILLAGE
 MUKUNDAPURAM TALUK**

**(ADDL.R5 IMPEADED AS PER ORDER DTD. 23.01.08 IN I.A NO.807/2008 IN
W.P.(C) NO.13988/04)**

**R, BY ADV. GOVERNMENT PLEADER SRI. S. JAMAL
R,R1 BY ADV. SRI.KRB.KAIMAL (SR.)
R,R5 BY ADV. SRI.FRANCO T.J.
SRI. B. UNNIKRISHNA KAIMAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-12-2015, ALONG WITH W.P.(C) NO. 23527/2008 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

K. VINOD CHANDRAN, J.

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**W.P.(C) No.13988 of 2004 - M and
23527 of 2008 - A**

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Dated this the 21st day of December, 2015

J U D G M E N T

The petitioners in both the above writ petitions claim that they were senior to one M.L.Jacob, U.D.Clerk of the Christ College, Irinjalakkuda, in the post of L.D.Clerk.

2. The challenge raised is to the promotion of one M.L. Jacob as U.D.Clerk on 05.06.2002 with retrospective effect from 21.03.2002. At the out set, it is to be noticed that none appears for the petitioner in W.P.(C) No.13988 of 2004 and it is submitted by the 1st respondent therein that the petitioner has already retired. In such circumstance, W.P.(C) No.13988 of 2004 would stand dismissed as infructuous.

3. The petitioners in W.P.(C) No.23527 of 2008 challenge Ext.P18 order of promotion of the 2nd respondent made on 31.12.2007 with retrospective effect from 21.03.2002. The same is said to have been made on the basis of a direction in W.P.(C) No.13988 of 2004, the petitioner in which, is the 1st respondent here. The 2nd respondent herein submitted that as of now, there is no dispute between respondents 1 and 2 and that the petitioners challenge only the promotion of the 2nd respondent as per Ext.P18.

4. Admittedly, the 2nd respondent obtained test qualification for enabling promotion to the post of U.D. Clerk by Ext.P16 dated 29.07.2002. The 1st petitioner obtained such test qualification on December 1999, evidenced by Ext.P4 and the 2nd petitioner on June 2000 evidenced by Ext.P19. Hence both the petitioners had test qualification

prior to that of the 2nd respondent.

5. A vacancy arose in the cadre of U.D. Clerk by retirement of one K.A Jose. The 5th respondent informed the 4th respondent by Ext.P9 dated 1.10.2000, that there are no qualified hands and requested down grading of the said post to accommodate the 1st petitioner. This was also given effect to and the 1st petitioner accepted it without demur.

6. Similarly another vacancy arose on 01.03.2000 in the post of U.D Store Keeper, when one K.I.Chackochan, who was the incumbent was promoted as Head Accountant. By Ext.P7 dated 29.12.2000, the 5th respondent informed the 4th respondent that since there is no qualified hand for promotion, the vacancy of U.D. Clerk may be down graded as L.D. Store keeper and the 2nd petitioner accommodated thereat. As indicated above the 2nd

petitioner too accepted it without demur.

7. The petitioners contend that they ought to have been promoted to the higher post of UDC and not the post down graded. Admittedly they were qualified and eligible at that point of time. However, it is to be noticed that the petitioners did not challenge either Ext.P7 or P9 or their accommodation as L.D. Clerk, in the respective post of U.D. Clerk when such vacancy arose. Hence there could be no interference caused to Exts.P7 and P9, of the year 2000, in the present writ petition of 2008.

8. The 2nd respondent was promoted by Ext.P18 order dated 31.12.2007, for which retrospective effect was given from 21.03.2002. The petitioners contend that they were promoted to the post of U.D. Clerk only much later that too recently. However, it is to be noticed that at the

time of Ext.P18 promotion all the persons ie., the petitioners and the 2nd respondent were test qualified. The petitioners are admitted juniors of the 2nd respondent. The petitioners cannot ask for revival of their claims, of the year 2000, since Exts.P7 and P9,became final long back and they failed to challenge it for long. The down grading effected was in the year 2000 and the petitioners challenge is only when the 2nd respondent was promoted by Ext.P18. By the time Ext.P18 was passed in 2007, all the claimants are test qualified, in which context, seniority alone is the relevant factor.

9. The seniority alone being the significant criteria,even the retrospective effect from 21.03.2002 would be proper, since by then the 2nd respondent had obtained the test qualification. The petitioners in effect seek interference to

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Exts.P7 and P9, which was in the year 2000. The petitioners cannot be granted the same since the petitioners had sat over their down grading for long, going by the binding precedent of the decision reported in ***K.R.Mudgal v. R.P.Singh [(1986) 4 SCC 531]***. In the context of promotion having been effected from the date on which petitioners 1 and 2 and the 2nd respondent were test qualified, nothing survives in the writ petition and the same is dismissed.

In the result, W.P.(C) No. 13988 of 2004 would stand dismissed as infructuous. W.P.(C) No.23527 of 2008 would stand dismissed as devoid of merit. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/22/12/2015

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P.A to Judge.