

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 2775 of 2015 (S)

PETITIONER(S) :

SUDHAKARAN.N., AGED 54 YEARS,
S/O.NEELAKANDAN, MANNALAYIL VEETIL,
MUKKOOTTOOTHARA, P.O.ERUMELI THEKKU VILLAGE,
KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT.

BY ADVS.SRI.V.SETHUNATH
SRI.V.R.MANORANJAN (MUVATTUPUZHA)

RESPONDENT(S) :

1. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.
2. THE PRINCIPAL SECRETARY, VIGILANCE DEPARTMENT,
GOVT. OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
3. THE VIGILANCE & ANTI-CORRUPTION BUREAU PMG
THIRUVANANTHAPURAM, REPRESENTED BY ITS DIRECTOR,
THIRUVANANTHAPURAM, PIN - 695 033.
4. SUPERINTENDENT OF POLICE,
VIGILANCE & ANTI-CORRUPTION BUREAU,
SPECIAL CELL, KOWDIAR, THIRUVANANTHAPURAM RANGE,
PIN - 695 033.
5. THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE & ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM RANGE, PIN - 695 033.
6. THE UNION OF INDIA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO
DEPARTMENT OF PERSONNEL & TRAINING,
MINISTRY OF PERSONNEL,
PUBLIC GRIEVANCES AND PENSIONS,
NEW DELHI, PIN - 110 001.

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7. THE CENTRAL BUREAU OF INVESTIGATION (CBI),
REPRESENTED BY ITS DIRECTOR,
NEW DELHI, PIN - 110 001.
8. THE CENTRAL VIGILANCE COMMISSION,
SATARKTA BHAWAN, G.P.O. COMPLEX,
BLOCK A, INA, NEW DELHI, PIN - 110 023.
9. JIJI THOMSON I.A.S., (KL : 1980),
ADDL. CHIEF SECRETARY (GENERAL ADMINISTRATION),
GOVT. OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.

R6&R8 BY ADV. SRI.N.NAGARESH,
ASSISTANT SOLICITOR GENERAL
R1 TO R5 BY SRI.K.P.DANDAPANI, ADVOCATE GENERAL
R1 TO R5 BY SMT.GIRIJA GOPAL, SPL. GOVERNMENT PLEADER
R8 BY SRI.P.CHANDRASEKHARA PILLAI, C.B.I.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : COPY OF THE RELEVAT EXTRACT OF THE REPORT DATED 2ND
FEBRUARY,1994 FOR THE YEAR ENDED 31ST MARCH,1993 OF THE
COMPTROLLER AND AUDITOR GENERAL

EXT.P2 : COPY OF THE F.I.R.IN CRIME NO.1/97/SCT OF THE
VIGILANCE SPECIAL CELL POLICE STATION,THIRUVANANTHAPURAM.

EXT.P3 : COPY OF THE CHARGE SUBMITTED BY THE 4TH RESPONDENT
ALONG WITH DOCUMENTS

EXT.P4 : COPY OF THE FURTHER INVESTIGATION REPORT DATED
13-5-2011

EXT.P5 : COPY OF THE FURTHER INVESTIGATION REPORT DATAED
13-5-2011

EXT.P6 : COPY OF THE SERIES OF EVENTS AS PER THE CHARGE AND
ANNEXED DOCUMENTS, ARRANGED SEPARATARY AS PER CHRONOLOGICAL
EVENTS

EXT.P7 : COPY OF THE ORDER IN CR.M.P.NO.188/2011 DTAED 7-5-
2013 AND 7-5-2013 ON THE FILE OF THE ENQUIRY COMMISSIONER &
SPECIAL JUDGE,THRISSUR

EXT.P8 : COPY OF THE ORDER DATED 2-1-2015 NO.36/2/2015-EO
(SMI) (1) PASSED BY THE SECRETARY TO CABINET APPOINTMENT
COMMITTEE

EXT.P9 : COPY OF THE ORDER OF THE GOVT. OF KERALA IN GO(RT)
NO.185/2015/GAD DATED 8.1.2015.

EXT.P10 : COPY OF THE ORGANIZATIONAL CHART OF THE GOVT OF
KERALA IN THE SECRETARIAT

EXT.P11 : COPY OF THE ORDER NO.104/33/2005-AVD-1 DATED
29-12-2007 ISSUED BY THE GOVT OF INDIA, MINISTRY OF PERSONNEL
& PUBLIC GRIEVANCES & TRAINING, DEPARTMENT OF PERSONNEL &
TRAINING.

EXT.P12 : COPY OF THE ORDER NO.372/4/2008-AVD-III DATED
24-6-2008 ISSUED BY THE GOVT OF INDIA, MINISTRY OF PERSONNEL &
PUBLIC GRIEVANCES & TRAINING, DEPARTMENT OF PERSONNEL &
TRAINING.

EXT.P13 : COPY OF THE F.NO.142/16/2013-AVD-I,DATED 13-2-2014
ISSUED BY THE GOVT OF INDIA, MINISTRY OF PERSONNEL & PUBLIC
GRIEVANCES & TRAINING, DEPARTMENT OF PERSONNEL & TRAINING.

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EXT.P14 : COPY OF THE ORDER NO.142/4/2012-AVD-I DATED 28-7-2014 ISSUED BY THE GOVT OF INDIA, MINISTRY OF PERSONNEL & PUBLIC GRIEVANCES & TRAINING, DEPARTMENT OF PERSONNEL & TRAINING

EXT.P15 : COPY OF THE RELEVANT EXTRACT OF THE ORDER NO.399/33/2006-AVD-III DATED 6-11-2006 ISSUED BY THE GOVT. OF INDIA, MINISTRY OF PERSONNEL & PUBLIC GRIEVANCES & TRAINING, DEPARTMENT OF PERSONNEL & TRAINING.

EXT.P16 : COPY OF THE ORDERS IN DOPT'S O.M.NO.142/10/97 DATED 14-1-1998 AND NO.005/VGL/11 OF THE CENTRAL VIGILANCE COMMISSION DATED 31-5-2005.

EXT.P17 : COPY OF THE LETTER ISSUED BY THE CABINET SECRETARY DATED 3-3-2010.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE.

jg

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

.....
WP(C) No.2775 of 2015
.....

Dated this the 10th day of March, 2015.

'C.R.'

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.We have heard the learned counsel for the petitioner and the learned Advocate General assisted by the learned Special Government Pleader, quite in extenso.
- 2.This writ petition is filed seeking different reliefs. The learned single Judge, by order dated 29.01.2014 (sic) (2015), held that the first among the reliefs sought for by the petitioner stands concluded at the hands of the Central Government and this writ petition is not the proper course to challenge that decision. The second relief sought for was to incorporate a further charge in CC No.108 of 2011 pending on the file of the Court of Enquiry Commissioner and Special Judge, Thrissur. The learned single Judge found that such a relief cannot be entertained by this Court and the matter was entirely within the domain of the trial court in

terms of Section 216 of the Code of Criminal Procedure. In that view of the matter, may be, as expressed by the learned single Judge, the writ petitioner deleted those reliefs along with prayer Nos.6 and 7 in the writ petition. All that now survives is the expression of the learned single Judge that it would be within the domain of the Division Bench to consider as to whether the relief sought for by way of interference with the Government's decision to appoint the ninth respondent as the Chief Secretary is to be granted or not.

3.As rightly opined by the learned single Judge in the aforementioned order, appointment of Chief Secretary is the prerogative of the Government. We affirm that.

4.The learned counsel for the petitioner says that his client is interested in ensuring that ends of justice prevails matters relating to the prosecution of CC No.108 of 2011 and that he has filed this writ petition with all bona fides seeking the reliefs, fundamentally because appointment of the ninth respondent as

Additional Chief Secretary and then, as Chief Secretary, are not made with the requisite vigilance clearance, in terms of Ext.P11 office memorandum dated 29.10.2007 issued by the Department of Personnel & Training, Government of India. The learned counsel for the petitioner also referred to the decision of the Honourable Supreme Court of India in Allahabad Bank and Another v. Deepak Kumar Bhola [1997 KHC 1349] to say that long pendency of prosecution proceedings is not a ground to permit a person to go back to a sensitive post.

- 5.The plethora of judgments governing grant of sanction for prosecution; procedures to be adopted in cases relating to offences punishable under the Prevention of Corruption Act, 1988; procedures relating to consideration of disciplinary proceedings qua such criminal prosecutions; and also consideration of service matters during the pendency of prosecutions or disciplinary proceedings, tend to indicate that; fundamentally; the matter is entirely within the domain of governance and issues in relation to such matters could,

primarily, be raised only by a rival candidate.

6. Notwithstanding the aforementioned position in law, it is well settled that public interest litigations in relation to service matters are not to be entertained except in exceptionally exceptional situations, as discernible from the ratio decidendi of the different precedents laid down by the Honourable Supreme Court of India in Dr Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others [(1998) 7 SCC 273], Dattaraj Nathuji Thaware v. State of Maharashtra and Others [(2005) 1 SCC 590], Hari Bansh Lal v. Sahodar Prasad Mahto and Others [(2010) 9 SCC 655] and Girjesh Shrivastava and Others v. State of Madhya Pradesh and Others [(2010) 10 SCC 707]. Those principles are law laid by the Apex Court in terms of Article 141 of the Constitution of India, unless reviewed by a larger quorum.

7. The aforesaid being the settled position of law, we notice that the allegations which are the subject matter of CC No.108 of 2011 relate to acts and omissions as regards transactions for purchase

of Palmolein by the Kerala State Civil Supplies Corporation with the involvement of the State Government. The nature of allegations and the quality of charges levelled against different accused persons in that case are of such nature that they do not really spill over to their continued conduct as government servants or public servants. We take note of this fact particularly because, the ninth respondent has, indisputably, been working in different other capacities, including away from his parent cadre and had been with the Sports Authority of India until he was repatriated with the consent of Union Government to his parent cadre, namely, Kerala. Once he is available exclusively within the domain of the Kerala Cadre, his utility as an IAS Officer is a matter for consideration of the State Government. Unless such consideration of the State Government is shown to be palpably perverse; against the interest of the State; in explicit infraction of the constitutional provisions, or, is inexcusably against public interest in terms of the Constitution of India, it will not be within the domain of public interest litigation, for the High Court to step in and interfere with the decision of the Government to appoint

the ninth respondent as the Additional Chief Secretary or in having further considered him for the post of Chief Secretary, with the passage of time.

8. In the aforesaid view of the matter, we see no issue arising for decision in this case, as if it is one on a public interest issue, where persons, who are aggrieved, would be unable to reach out for relief or where larger public interest requires extraordinary visitorial exercise of jurisdiction by the High Court.

9. For the aforesaid reasons, we see no ground to entertain this writ petition. Hence, it fails.

In the result, this writ petition is dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)