

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 18678 of 2004 (W)

PETITIONER(S):

P.VENU
AGED 48 YEARS, JUNIOR SUPERINTENDENT, KERALA
STATE HOUSING BOARD, HEAD OFFICE, SANTHI NAGAR
THIRUVANANTHAPURAM - 1.

BY ADVS.SRI.GOPAKUMAR R.THALIYAL
SRI.CHANDRA BABU.A

RESPONDENT(S):

1. STATE OF KERALA
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE KERALA STATE HOUSING REP. BY
SECRETARY, HEAD OFFICE, THIRUVANANTHAPURAM - 1.
3. THE CHAIRMAN, KERALA STATE HOUSING BOARD
THIRUVANANTHAPURAM.
4. P.S.SASANKAN, ACCOUNTS OFFICER,
KERALA STATE HOUSING BOARD DIVISION OFFICE
ALAPPUZHA.
5. K.SUSEELA, ACCOUNTS OFFICER,
KERALA STATE HOUSING BOARD DIVISIONAL OFFICE
KANNUR.
6. ADDL. R6- KERALA STATE HOUSING BOARD
EMPLOYEES FEDERATION (CITU), THIRUVANANTHAPURAM
REPRESENTED BY GENERAL, SECRETARY P.S. MANOJ
S/O P.K.SHANKAR, AGED 48 YRS., ASSISTANT GRADE-1
KERALA STATE HOUSING BOARD, PATHANAMTHITTA DIVISION

WP(C).No. 18678 of 2004 (W)

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7. ADDL.R7- N.THULASEEDHARAN,
S/O NARAYANAN NAIR, AGED 55 YEARS, ACCOUNTS
OFFICER, KERALA STATE HOUSING BOARD, HEAD OFFICE

THIRUVANANTHAPURAM, RESIDING AT 'NISHADHA'
V.P. NO. 5/1356, PRA-E2, NETTAYAM P.O
THIRUVANANTHAPURAM.

8. ADDL. R8- K.M.SALIM,S/O K.P.MARAKKAR,
AGED 50 YRS. ACCOUNTS OFFICER, KERALA STATE
HOUSING BOARD.KOTHAMANGALAM, RESIDING AT KONNAMKUDI
HOUSE, NEDUMTHODU, MUDICKAL P.O
PERUMBAVOOR-683547.

(ADDL. R6 TO R8 ARE IMPEADED AS PER ORDER DTD3.6.2011 IN I.A 8045/2011

9. ADDL. R9
KERALA STATE HOUSING BOARD EMPLOYEES ASSOCIATION
(INTUC), THIRUVANANTHAPURAM, REPRESENTED BY GENERAL
SECRETARY, E.SANKARAN POTTI, S/O K.S.EASWARAN POTTI
AGED 53 YRS, ASSISTANT SECRETARY, DIVISION NO.1
KERALA STATE HOUSI

10. ADDL. 10 SURESH KUMAR.S, S/O SIVARAMA
KRISHNAN PILLAI, AGED 48 YRS.ACCOUNT OFFICER
KERALA STATE HOUSING BOARD, THIRUVANANTHAPURAM
RESIDING AT GOKAL, TC.5/1930 (2), AMBALAMUKKU
KOU DIR P.O, THIRUVANANTHAPURAM-3

(ADDL. R 9 AND R 10 ARE IMPEADED AS PER ORDER DT 3.6.11 IN I.A. 8044/2011

R,R4 BY ADV. SRL.PIRAPPANCODE V.S.SUDHIR
R,R1 TO 3 BY ADV. SR GOVERNMENT PLEADER SRI VIJU THOMAS
R,R2,3 BY ADV. SRL.P.C.IYPE, SC, KSHB
R,R2,3 BY ADV. SRL.A.JAYASANKAR, SC KSHB, TVM
R,ADDL.R6-8 BY ADV. SRL.M.R.HARIRAJ
R,ADDL.R6-8 BY ADV. SRL.P.A.KUMARAN
R,ADDL.R6-8 BY ADV. SMT.VINEETHA B.
R,ADDL.R6-8 BY ADV. SRL.NIRMAL V NAIR
R,ADDL.R6-8 BY ADV. SRL.K.RAJAGOPAL
R,ADDL.R6-8 BY ADV. SMT.SARITHA NANDANAN
R,ADDL.R6-8 BY ADV. SRL.ANISH JAIN
R,ADDL.R6-8 BY ADV. SRL.SURAJ.S
R2,R3 BY ADV. SRL.GEORGE BOBAN, SC, K.S.H.B.
R BY SC FOR KSHB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-12-
2015, ALONG WITH WPC. 1379/2011, WPC. 7747/2012, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX**PETITIONER'S EXHIBITS**

- EXT.P1 : TRUE COPY OF THE ORDER NO.HBO 556/99/SPL.CELL/13226/99 DT 1.7.1999 ISSUED BY THE 1ST RESPONDENT
- EXT.P2 : TRUE COPY OF THE RELEVANT EXTRACT OF KERALA STATE HOUSING BOARD ESTABLISHMENT REGULATIONS 1995
- EXT.P3 : TRUE COPY OF THE COMMUNICATION NO.DE II(1)8814/96EW/L.DISDT 29.1.1997
- EXT.P4 : TRUE COPY OF THE JUDGMENT IN OP NO 27600/1999 DT 11.1.2000
- EXT.P5 : TRUE COPY OF THE JUDGMENT DT 12.1.2000 IN OP NO.308/1996
- EXT.P6 : TRUE COPY OF THE REPRESENTATION DATED 30.4.2002 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- EXT.P7 : TRUE COPY OF THE TRUE COPY OF THE REPRESENTATION DT 12.08.2002 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- EXT.P8 : TRUE COPY OF THE TRUE COPY OF THE LETTER NO. ADL(b) 6803/02 DATED 28.08.2002 ISSUED BY THE 1ST RESPONDENT
- EXT.P9 : TRUE COPY OF THE RELEVANT PART OF REPRESENTATION DT 4.7.2003 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- EXT.P10 : TRUE COPY OF THE CIRCULAR NO.AD II© 1664/2002 DATED 12.2.2002 ISSUED BY THE 1ST RESPONDENT
- EXT.P11 : TRUE COPY OF THE JUDGMENT DT 23.10.2003 IN WPC NO.33294/2003
- EXT.P12 : TRUE COPY OF THE ORDER NO. AD(B).6803/2002 DATED 6.12.2003 ISSUED BY THE 2ND RESPONDENT
- EXT.P13 : TRUE COPY OF THE PROCEEDINGS NO.HBO/ NO.132/AD 1(a) 8040/2002 DATED 10.04.2003 ISSUED BY THE 2ND RESPONDENT
- EXT.P14 : TRUE COPY OF THE APPEAL DT 12.12.2003 FILED BY THE PETITIONER BEFORE THE CHARMAN KERALA STATE HOUSING BOARD
- EXT.P15 : TRUE COPY OF THE REPRESENTATION DT 12.12.2003 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- EXT.P16 : TRUE COPY OF THE LETTER FORWARDING COPY OF EXT,P15 TO GOVERNMENT ON 27.1.2005
- EXT.P17 : TRUE COPY OF THE ORDER DT 31.8.2004 BEARING NO. HBO 303/04/ADL.(a) 8040/2002 ISSUED BY THE 2ND RESPONDENT
- EXT.P18 : TRUE COPY OF THE JUDGMENT DT 13.6.2006 IN OP 16483/2001
- EXT.P19 : TRUE COPY OF THE RELEVANT PART OF NOTIFICATION OF KERALA STATE HOUSING BOARD ESTABLISHMENT (QUALIFICATION AND METHOD OF APPOINTMENT)REGULATION 2006

RESPONDENTS EXHIBITS:NIL**TRUE COPY****P.A TO JUDGE****jma**

K. VINOD CHANDRAN, J

W.P(C) Nos. 18678 of 2004, 1379 of 2011 &
7747 of 2012

Dated this the 07th day of December, 2015

J U D G M E N T

The petitioner in all the above writ petitions is one and the same. In WP(C) No.18678/2004 the petitioner claims retrospective promotion on the basis of the Regulations of 1995. The said writ petition was allowed and pursuant to the directions, an order was passed granting him retrospective promotion from 13.10.2000. The Union of employees of the respondent Board, approached this Court with a Review petition in which the judgment passed was recalled and the writ petition kept for fresh consideration. When the judgment was reviewed, the petitioner's promotion was set aside and reversion effected which was challenged in W.P(C) 1379/2011. An interim order was passed in the said writ petition, directing fresh consideration of the petitioner's case. The respondent Board considered the same and

granted promotion to the petitioner with effect from 2009 which is challenged in WPC(C)7747/2012.

2. The brief facts to be noticed are that the petitioner was working as an Upper Division Clerk and respondents 4 and 5 as Junior Superintendents, when the Regulations of 1995, produced as Ext.P2 in W.P. (C) 18678 of 2004, came into effect from 09.10.1995. The qualification for promotion to the post of Senior Superintendent as per the said Regulations was a degree, pass in Account Test (higher)(Part I Paper I), PWD Test, Paper II Accounts Test (lower) and MOP/ Secretarial Manual Test, all conducted by the Public Service Commission. The petitioner is said to have acquired the said qualification, even as on 1996, specifically 29.6.1996. Immediately it is to be noticed that the petitioner at that point of time could not have aspired for promotion to the post of Senior Superintendent, since he was not in the feeder category of Junior Superintendent.

3. Be that as it may, the Regulations of 1995 having provided qualifications, which were not required as per the earlier Regulations of 1978, some employees in the feeder category, approached this Court, with O.P No.308/1996, wherein the Regulations of 1995, were stayed. When the Regulations of 1995 was stayed, there was a stalemate insofar as no promotions could be made. An I.A was moved in which, this Court directed that provisional promotions could be made, subject to the result of the Original Petition. The respondents 4 and 5, admitted seniors of the petitioner and who were in the higher post, of Junior Superintendent were then promoted. It is also to be noticed that the promotion of the petitioner from the post of UDC to that of Junior Superintendent occurred only by reason of the vacancy created by the said promotions. Undoubtedly, the said promotions, including that of the petitioner's were provisional; since it was on the strength of the order issued in the I.A filed in O.P No. 308/1996.

4. The O.P was pending here till 12.01.2000 when Ext.P5 judgment was passed. This Court noticed that there was a new Regulation brought out, in the year 1998 and the said Regulations were pending approval, before the Government. It was also noticed that this Court in O.P 27608/1998, had directed the Government to take a decision on the question of granting approval to the regulations within two months from the date of receipt of a copy of the judgment. Hence it was found that no further orders were necessary and the Original petition was disposed of as above.

5. The contention raised by the learned Counsel for the petitioner is that the writ petition in which, there was an interim stay, having been dismissed as infructuous, the Regulations of 1995 would revive. To urge the same, the learned Counsel for the petitioner relies on B.L Gupta and another v. M.C.D (1998(9) SCC 223). An interim order in a writ petition, which is subsequently

dismissed, will not have any effect as per the dictum of Abhimanyoo Ram v. State of Uttar Pradesh and another (2008(17) SCC 73), argues learned Counsel. The learned Standing Counsel for the respondent as also the learned counsel for the Union of employees contend that the petitioner cannot take such a stand, since the petitioner's promotion as UDC was only due to the provisional promotions permitted by this Court as per the interim order passed in O.P No. 308/1996. The petitioner is also said to have not challenged the alleged denial of promotion at the appropriate time, ie: immediately after Ext.P-5 judgment was passed. It is also contended that the only workable solution, especially in the context of the promotions having been effected, as per the Regulations of 1978, was to await approval of 1998 Regulations, which was directed to be considered by this Court. The 1998 Regulations, were subsequently approved in the year 2006. The respondents rely on the sit back theory to contend that

the petitioner cannot have any claim for retrospective promotion.

6. Admittedly when the Regulations of 1995 came into force, the petitioner did not have any claim for promotion to the post of Senior Superintendent, since he was not in the feeder category and was in the lower category of UDC. The acquisition of test qualification hence is not of any legal import. The respondents 4 and 5 along with others were promoted, though they did not have test qualification as prescribed in the Regulations of 1995, by virtue of the interim order passed by this Court in O.P No.308/1996. While the writ petition was pending, the Regulation of 1998 was brought out. The said regulations did not contain the stipulation of test qualification. The 1998 Regulations were sent for approval to the Government. The delay in approval had prompted certain persons to approach this Court with an original petition numbered as O.P 27600/1999. There was a direction in the said writ petition to consider grant of approval within two months

from the date of receipt of a copy of the judgment. True, the same did not fructify within the time stipulated by this Court, however, it is an admitted fact that, the Regulations were approved; but only with effect from 2006.

7. B L Gupta (supra) was a case in which the statutory rule framed in the year 1978 was amended in the year 1995. The Hon'ble Supreme Court found that the amendment being of the year 1995, the rigor or otherwise of the amended rule would apply, only prospectively and for the promotions in the intervening period, the earlier regulation would have to be resorted to. Job N V v. Kerala State Electricity Board (2004 (2) ILR 119) was a case in which it was found that denial of promotion; by reason of an interim order granted by a Court, cannot be a ground to deny the benefit to the affected party, when the order is vacated. Abhimanyoo Ram (supra) was a case in which the petitioner obtained an interim order which in effect was the

relief sought for, in the writ petition itself. Later the petitioner sought to withdraw the writ petition itself, thus seeking to protect the benefit he derived from the interim order. The Court allowed the prayer for withdrawal of the Writ Petition, but observed that any benefit the petitioner obtained by virtue of the interim order would stand automatically cancelled. The Hon'ble Supreme Court, deprecated such practice and upheld the order of the High Court.

8. It is to be noticed at the outset that the entire arguments are built upon the construction of Ext.P5 judgment. The petitioners contention is that by Ext.P5, this Court had dismissed the writ petition and the interim orders passed would have no effect. If that be so, the petitioner ought to have approached this Court within a reasonable time, claiming promotion. It is trite that an employee having sat over his rights cannot seek to revive the same after a long period. The learned counsel for the petitioner submits that he had made

representations before the authorities. Such representation is only seen made by Ext.P6 in 2002. Even though the petitioner contends that his claim arises from 2000 he admittedly waited for 2 years before a representation was made to the authority. Again he dragged his feet, insofar as approaching this Court only in the year 2004.

9. This Court is unable to find any application of the aforecited decisions, to the facts of the above case. For one it is to be noticed that the disposal of O.P 308/1996, by Ext.P5, was not on a request for withdrawal nor was it dismissed as infructuous. The Court noticed the directions issued in another original petition, that a subsequent regulation was introduced which was pending approval before the government. True, the interim order issued in O.P 308/1996 permitting provisional promotion, led to the promotion of the party respondents.. However, while disposing of the matter, this Court found that there was a Regulation of 1998

which had been framed by the respondent Board, but was awaiting approval by the Government. This Court found that there was a direction issued in OP No. 27600/1999, wherein the approval was directed to be considered within a period of two months. OP 308/1996 was disposed of recording the said directions in the other original petition and holding that no further orders are necessary. In such circumstances, the decision in *Abhimanyoo Ram* (supra) would not apply. The provisional promotions were to be subject to the result of the O.P. The O.P was not dismissed, withdrawn or closed. The O P was disposed of finding no further orders are necessary due to the direction issued in another writ petition to consider the approval of the new regulation of 1998. Hence in effect this Court permitted the status quo to be continued till orders are passed by the Government. The provisional promotions hence could be continued and eventually, though after a number of years, the Regulations of 1996 received approval of the

Government. None challenged the delay and the effect of the judgment at Ext.P5, was to keep the 1995 regulation in abeyance. It would have been quite a different situation, if eventually the Government had not approved the 1998 regulations.

10. Further if it is found that the provisional promotion of the party respondents are to be overturned, then, so would the promotion of the petitioner to the feeder category; which would dis-entitle him for consideration for promotion despite his having all the test qualifications. Even if the 1995 Regulation is said to have overridden the Regulations of 1978, the provisional promotions were made based on the earlier regulation. If the same is set aside, then even the petitioner would have to be reverted. Then the mere fact that the petitioner possessed all qualifications, to be promoted to the post of Senior Superintendent, would not entitle him for even consideration, since then he would be in the post of UDC, and hence, not within the zone of consideration. The

petitioner was not denied a benefit by the interim order but was conferred a benefit of promotion to the post of Junior Superintendent.

11. As already found, it cannot at all be said that the benefit conferred by the interim order, was taken away by Ext.P5 judgment, especially since this Court had merely disposed of the original petition recording the fact that the Government had been directed to consider the approval of the Regulations of 1998. Admittedly, the Regulations of 1998 was approved only in the year 2006. The promotions in the meanwhile were made on the basis of Regulations of 1978, which is almost similar to that of the Regulations of 1998, approved in 2006.

12. Taking all the circumstances into consideration, this Court does not find any reason to grant the petitioner retrospective promotion as prayed for in WPC 18678/20014. In the context of the said writ petition having been found to be devoid of

merit, WPC 1379/2011 cannot be entertained since the reversion was effected only by reason of the review of the earlier judgment passed in WPC 18678/2004.

13. It is also to be noticed that the hands of the respondents were tied, insofar as ExtR2(b) judgment having been passed in O.P. 26931/1999, wherein the denial of a request for category change, was made for the reason of the 1998 Regulations, having been resolved by the Board, but pending approval before the Government. The petitioner cannot be said to have been prejudiced by the interim orders passed by this Court on the contrary he is shown to have derived a benefit. Even if the Regulations of 1995 is deemed to have revived by Ext: P-5 judgment, the petitioner then could not have been considered, since then, petitioner would also have to be reverted and he would never have been entitled to be considered at all. In such circumstance this Court does not find any reason to interfere with

the order impugned in W.P.(C) 7747 of 2012 also. The petitioner as per the regulations of 2006 has been promoted with effect from 2009. That is the valid entitlement of the petitioner.

Writ petitions are devoid of merit and hence would stand dismissed. No Costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

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P.A to Judge