

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 18389 of 2006 (L)

PETITIONER(S):

**SREELATHA S
COMPUTER ASISTANT, SPICES BOARD, ICRI
KAILASANADU P.O., MILADUMPARA, IDUKKI.**

BY ADV. SRI.S.RADHAKRISHNAN

RESPONDENT(S):

**1. SPICES BOARD, REPRESENTED BY
THE SECRETARY, SPICES BOARD, SUGANDHA BHAVAN
NH BYPASS, P.B.NO.2277, PALARIVATTAM P.O.
COCHIN-25.**

**2. THE CHAIRMAN, SPICES BOARD,
SUGANDHA BHAVAN, NH BYPASS, P.B.NO.2277
PALARIVATTAM P.O., COCHIN-25**

**3. R.ANIL KUMAR, COMPUTER ASSISTANT,
SPICES BOARD, COCHIN-25.**

R,R3 BY ADV. SRI.P.B.SAHASRANAMAN

R,R3 BY ADV. SRI.K.JAGADEESH

R,R3 BY ADV. SRI.T.S.HARIKUMAR

R1 & 2 BY ADV. SMT.K.RADHAMANI AMMA, SC, SPICES BOARD

R1 & 2 BY ADV. SRI.ANTONY MUKKATH, SC, SPICES BOARD

R BY SRI.JOSEPH MARKOSE SC FOR R1

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE JUDGMENT PASSED BY THIS HONOURABLE COURT IN W.A.720/00 DATED 24.10.02
- EXT.P2 COPY OF THE ORDER NO.ADM/APP (05) DATED 20.12.02.
- EXT.P3 COPY OF THE ORDER NO.ADM/PRO-ACP/15-02/1782 DATED 14.6.05
- EXT.P4 COPY OF THE ORDER NO.A3/8(13)88/99 DATED 4.4.88
- EXT.P5 COPY OF THE MEMORANDUM NO.A3/2(1)88/1912 DATED 4.5.88
- EXT.P6 COPY OF THE ORDER NO.ADM/O&M/01/90/6437 DATED 7.6.95.
- EXT.P7 COPY OF THE MEMORANDUM NO,ADM/PRO/2/97 DATED 27.4.98
- EXT.P8 COPY OF THE RELEVANT EXTRACT OF THE SENIORITY LIST PUBLISHED BY THE SPICES BOARD AS ON 30.09.99
- EXT.P9 COPY OF THE COUNTER AFFIDAVIT FILED BY THE SPICES BOARD.
- EXT.P10 COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT IN O.PNO.12061 OF 2003 DATED 15.3.06.
- EXT.P11 COPY OF THE ORDER NO.ADM/ST/(O1) 02 DATED 30.5.06.
- EXT.P12 COPY OF THE RELEVANT EXTRACT OF THE RECRUITMENT RULES.
- EXT.P13 COPY OF THE REVIEW APPLICATION DATED 9.6.06 AND THE CORRESPONDING ORDER DATED 28.6.06.
- EXT.P14 COPY OF THE RELEVANT PAGE OF LIST OF STAFF OF THE SPICES BOARD WITH LOCATION AND DEPARTMENT ALONG WITH LIST OF STAFF WITH PAY SCALE EXTRACTED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT 2005.
- EXT.P15 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 29.08.06.
- EXT.P16 COPY OF THE MEMORANDUM NO.ADM/TRA/01/06 DATED 9.10.06.

RESPONDENTS EXHIBITS: NIL

// TRUE COPY //

PA TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.18389 of 2006 - L

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Dated this the 14th day of September, 2015

J U D G M E N T

The writ petition raises the seniority dispute between the petitioner and the 3rd respondent. The petitioner was directly appointed as a Computer Assistant on 07.05.1992 while the 3rd respondent was promoted to that post and the dispute is with respect to the seniority in the cadre of Computer Assistant; whether the petitioner is the senior or the 3rd respondent.

2. The 3rd respondent was appointed initially as a Lower Division Clerk on 08.09.1983. On 04.05.1988 he was promoted as Auditor. The post of Auditor was re-designated as Computer Assistant on 07.06.1995 and the petitioner was also promoted to the post of Computer Assistant on 27.04.1998. The contention of the petitioner is that whether it be at the point of re-designation, or the promotion as Computer Assistant; of the

3rd respondent, the petitioner is senior, since the petitioner's appointment as Computer Assistant occurred prior to both the said instances.

3. The learned Counsel for the petitioner would rely on the binding precedent of the Hon'ble Supreme Court reported in **Ramakant Shripad Sinai Advalpalkar v. Union of India and others [AIR 1991 SCC 1145]**, wherein it was held that even if an employee is asked to discharge duties in a higher post, the same would not amount to a promotion and the employee cannot be considered to be continuing in the said post from the date of such work arrangement.

4. However, the learned Counsel for the respondent as also the learned Counsel for the Spices Board would contend that on re-designation of the post, there is no more post of Auditor and the re-designation has to be found to be from the date on which, the petitioner is promoted to the post of Auditor.

5. The petitioner was directly appointed as a Computer Assistant on 07.05.1992. In the year 1999, taking up a

contention that the petitioners appointment was to a project and not regularly to the services of the Spices Board, the petitioner was terminated. The petitioner challenged the above termination before this Court and by Ext.P1, a Division Bench of this Court found that the petitioner had been appointed regularly to a post in the Board and that the petitioner ought to be continued therein. The petitioner was asked to be taken back to the service granting all service benefits including continuance of service during the period spent out of employment. But however without enabling the payment of any salary during the period spent out of employment. The petitioner had been taken back into service by Ext.P2, in compliance of Ext.P1 judgment, however with the period spent out of service, being counted only for service benefits like seniority, gratuity etc. making it notional without any payment of salary.

6. As to the 3rd respondent's services, the 3rd respondent had been continuing in the post of L.D.C, when the 3rd respondent along with three others were transferred to the

Statistics Section, which work involved computer operations. The 3rd respondent as also the others who were posted, to the Statistics Section as per Ext.P4 was so posted, on retention of their seniority in the respective cadres; with respect to the 3rd respondent, in the cadre of L.D.C. The petitioner was promoted to the post of Auditor in the scale of pay of Rs.1200-2040, on 04.05.1988 as per Ext.P5. The petitioner is then said to have been re-designated as per Ext.P6 on 07.06.1995 as a Computer Assistant.

7. However, the 3rd respondent's promotion to the post of Computer Assistant occurred only as per Ext.P7 on 27.04.1998. The seniority list in the Board as on 30.09.1999 is produced at Ext.P8, wherein the 3rd respondent figures; but not the petitioner as she was, at that point of time, out of employment. The 3rd respondent is seen to have been selected to the post on 23.04.1998 and appointed in the post on 27.04.1998 as specified in Ext.P8. On the petitioner being re-appointed, the 3rd respondent raised a dispute with respect to

the seniority inter se, which was directed to be considered by Ext.P10. Such consideration made at Ext.P11 by the Chairman of the Board is impugned herein.

8. The Chairman in Ext.P11 has changed the stance of the Board, as revealed from the counter affidavit at Ext.P9. When the 3rd respondent raised a seniority dispute before this Court, the Board specifically contended that on 06.10.1995, the pay scale of Computer Assistants in the Board was upgraded as Rs.1350-2200, and the recruitment rules were also amended to that effect; to enable filling up of the post by way of promotion. It is to be noticed that it is prior to such upgradation, that the 3rd respondent was re-designated as a Computer Assistant by Ext.P6 on 07.06.1995.

9. The specific contention of the Board in the 5th paragraph of the counter affidavit produced at Ext.P9 was that the 3rd respondent having been re-designated on 07.06.1995 as a Computer Assistant, was directed to be given additional financial benefits at the higher scale, by way of personal pay, but however

retaining his seniority in the clerical cadre till a fresh selection is made. It is also categorically submitted by the Board in its counter affidavit, that the up-gradation of the pay scale of Computer Assistant; consequently made it a promotion post, selection to which was to be considered from among all the eligible candidates in the feeder category of Senior Clerks, Auditors and the Junior Clerks. Hence the specific stand taken by the Board before this Court was that the 3rd respondent was re-designated as a Computer Assistant, merely on a working arrangement and was also given additional financial benefits by way of personal pay. Hence it cannot be said that the post of Auditor were re-designated as Computer Assistant. The post of Computer Assistant was also asserted to be a promotion post, so created after the 3rd respondent's re-designation.

10. Further, the feeder category to the promotion post of Computer Assistant included Auditors also. There was hence no abolition of the cadre of Auditors and the re-designation of the 3rd respondent was only a work arrangement. Ext.P6 can only

be said to be a work arrangement and not necessarily a re-designation of the post as such, in consonance with which the counter affidavit was filed at Ext.P9.

11. The Chairman at Ext.P11 took a totally different stand, while holding that on upgradation of the scale of pay of the post of Computer Assistant, which post, 3rd respondent had occupied, the case was reviewed and the 3rd respondent was selected to the post of Computer Assistant with a higher pay scale. It is contrary to the specific averment taken in the counter affidavit filed at the earlier instance before this Court. No documents are produced herein to substitute such a contention. Ext.P6 re-designated and the promotion effected as per Ext.P7 and the seniority list at Ext.P8, has not been controverted.

12. It cannot at all be said that the 3rd respondent on re-designation acquired a right to be promoted, since even going by the earlier counter affidavit of the Board, there was a selection conducted and the promotion was made as per Ext.P7. If the 3rd respondent was earlier selected to the post of Computer

Assistant, then there was absolutely no necessity for a further selection, which culminated in Ext.P7 order being passed. The seniority list of officers/staff of the Board produced at Ext.P8 also showed the 3rd respondent to be selected to the post of Computer Assistant on 23.04.1998 and his having joined in the said post on 27.04.1998. In such circumstance, the 3rd respondent's promotion can be said to be only from that date.

13. With respect to the petitioner herein, the petitioner as per Ext.P3 was continuing on the scale of Rs.1350-2200, when the post was upgraded and had also been continued in the revised pay scale of Rs.4500-7000 as is evident from Ext.P3. With respect to the petitioner, who was appointed as Computer Assistant, the upgradation made, resulted only in the revision of pay. The 3rd respondent, at that point of time who was only a member of the feeder category. The work arrangement, to the promotion post was made by giving an additional financial benefit as personal pay, which cannot be said to be one wherein, a proper selection was made and a promotion effected to the

upgraded post.

14. It is submitted that the 3rd respondent has already been promoted to a higher post on the basis of the seniority and if any reversion is necessitated, it is made clear that the 3rd respondent shall not be asked to refund any amounts paid in the higher post. It is also made clear that the petitioner's seniority shall be fixed only notionally and the petitioner shall not be entitled to any salary for the period during which the 3rd respondent continued in the higher post. In such circumstance, definitely the seniority decided at Ext.P11 would have to be set aside and the seniority would have to refix in accordance with the directions above. Ext.P11 is set aside and the seniority is to be refixed, considering the petitioner to be appointed as Computer Assistant from 07.05.1992 onwards and continued thereat, while the 3rd respondent is promoted as on 23.04.1998; as is evident from Ext.P8 seniority list.

15. Seniority shall be so refixed and the promotion to the higher post on the basis of the seniority, if at all made during

the pendency of the petition shall also be revamped in accordance with the above directions. The petitioner if entitled shall be promoted with retrospective effect, but with notional benefits. The said directions shall be complied with, within three months from the date of receipt of the certified copy of the judgment.

The writ petition is allowed. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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P.A to Judge.