

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

WP(C).No. 14044 of 2009 (A)

PETITIONER:

**BABY PHILIP JACOB, EX-DRIVER,
KERALA STATE SOCIAL WELFARE BOARD
THIRUVANANTHAPURAM, RESIDING AT NARIMATTATHIL HOUSE
PARIYARAM P.O., KOTTAYAM.**

**BY ADVS.SRI.KRB.KAIMAL (SR.)
SRI.ANIL K.NAIR
SRI.B.UNNIKRISHNA KAIMAL
SRI.V.MADHUSUDHANAN**

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVT. OF KERALA
SOCIAL WELFARE (C) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. THE KERALA STATE SOCIAL WELFARE BOARD
REPRESENTED BY ITS SECRETARY, SASTHAMANGALAM
THIRUVANANTHAPURAM.**
- 3. THE CHAIRPERSON,
KERALA STATE SOCIAL WELFARE BOARD, SASTHAMANGALAM
THIRUVANANTHAPURAM.**
- 4. THE CENTRAL SOCIAL WELFARE BOARD,
REPRESENTED BY ITS EXECUTIVE DIRECTOR
SAMAJ KALYAN BHAVAN, B-12 QUITAB INDUSTRIAL AREA
NEW DELHI-110 016.**

**BY ADVS.SRI.P.R.LESLIE STEPHEN
SRI.P.NANDAKUMAR,SC,SOCIAL WELFARE BOA
SRI.AJITH KRISHNAN
BY GOVERNMENT PLEADER M.J. RAJASREE
BY SRI.N. NAGARESH,ASST.S.G OF INDIA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :-

- | | | |
|---------|---|---|
| EXT.P1 | - | COPY OF THE RULES GOVERNING COMPOSITION AND FUNCTIONS OF THE STATE SOCIAL WELFARE ADVISORY BOARDS. |
| EXT.P2 | - | COPY OF THE LETTER NO.F9 (GENL) 96-97/SBA DATED 25.02.2005 OF THE 4TH RESPONDENT TO THE 3RD RESPONDENT. |
| EXT.P3 | - | COPY OF THE ORDER G.O.(MS) NO.1/2003/SWD DATED 03.01.2003 ISSUED BY THE 1ST RESPONDENT TOGETHER WITH THE APPENDIX THERETO. |
| EXT.P4 | - | COPY OF THE LETTER NO.B1.ESTT/SB/GENL/VOL.VIII/2005-06/537 DATED 21.05.2005 OF THE 2ND RESPONDENT TO THE DISTRICT EMPLOYMENT OFFICER, THIRUVANANTHAPURAM. |
| EXT.P5 | - | COPY OF THE LETTER NO.B1/ESTT/SB/GENL/VOL.VII/2005-06/817 DATED 17.06.2005 OF THE 2ND RESPONDENT TO THE DISTRICT EMPLOYMENT OFFICER, THIRUVANANTHAPURAM. |
| EXT.P6 | - | COPY OF THE LETTER NO.B1/ESTT/SB/GENL/VOL.VII/2005-06/821 DATED 17.06.2005 OF THE 3RD RESPONDENT TO THE 4TH RESPONDENT. |
| EXT.P7 | - | COPY OF THE LETTER NO.F.3(1)9/93/SBA DATED 12.07.2005 OF THE 4TH RESPONDENT TO THE 3RD RESPONDENT. |
| EXT.P8 | - | COPY OF THE NOTIFICATION PUBLISHED IN MATHRUBHOOMI DAILY DATED 10.08.2005 BY THE 2ND RESPONDENT. |
| EXT.P9 | - | COPY OF THE LETTER NO.B1/ESTT.SB/GENL.VOL.VIII DATED 23.09.2005 OF THE 2ND RESPONDENT TO THE 1ST RESPONDENT. |
| EXT.P10 | - | COPY OF THE ORDER G.O.(RT) NO.509/2005/SWD DATED 15.10.2005 ISSUED BY THE 1ST RESPONDENT. |
| EXT.P11 | - | COPY OF THE ORDER NO.B1/ESTT/3B/GEN/VOL.8/2005/06/5/50 DATED 19.11.2005 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER. |
| EXT.P12 | - | COPY OF THE MINUTES OF THE BOARD MEETING OF THE 2ND RESPONDENT HELD ON 21.02.2006. |
| EXT.P13 | - | COPY OF THE ORDER OF THIS COURT IN WP(C) NO.32201/05 DATED 04.04.2007. |

[CONTD....]

- EXT.P14 - COPY OF THE SHOW CAUSE NOTICE DATED 27.04.2007 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXT.P15 - COPY OF THE REPLY DATED 02.05.2007 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.
- EXT.P16 - COPY OF THE ORDER DATED 05.05.2007 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXT.P17 - COPY OF THE JUDGMENT OF THIS COURT IN WP(C) NO.14914/07 DATED 08.01.2009.
- EXT.P18 - COPY OF THE ORDER OF THIS COURT IN W.A. NO.168/09 DATED 24.02.2009.
- EXT.P19 - COPY OF THE ORDER NO.B1/ESTT/SB/GENL/VOL.VIII/2008-09 DATED 28.02.2009 ISSUED BY THE 2ND RESPONDENT.
- EXT.P20 - COPY OF THE REPRESENTATION DATED 26.03.2009 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.
- EXT.P21 - COPY OF THE ORDER NO.2060/ESTT/2009/KSSWB/33 DATED 31.03.2009 ISSUED BY THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.14044 of 2009-A

Dated this the 26th day of November, 2015.

JUDGMENT

The petitioner is aggrieved with Ext.P14 order of termination dated 27.04.2007. The learned counsel for the petitioner places reliance on a decision of a Division Bench of this Court, holding the said termination order to be illegal and ultra vires, for reason of the same having been passed under the dictation of the Government and no valid grounds having been stated therein; in a proceeding initiated by five other employees.

2. The learned counsel for the respondent Board however opposes the same, on the ground that the petitioner's claim is stale and is hit by delay and latches. The termination of 2007 was challenged only in the year 2009. The Division Bench decision arose from the judgment of a learned Single Judge in a writ petition filed immediately after the termination order was passed.

3. The learned counsel for the petitioner would rely on **K.T.**

Veerappa and Others v. State of Karnataka and Others [(2006) 9 SCC 406] to buttress the contention that delay in challenging an adverse order or even not challenging such an adverse order would not disentitle a person similarly situated, when others are granted a relief by the Court. The learned counsel for the respondent Board refutes the same with yet another decision of the Hon'ble Supreme Court in ***Ghulam Rasool Lone v. State of J & K and Another [(2009) 15 SCC 321]***.

4. The brief facts to be noticed are that the petitioner was appointed to the 2nd respondent Board as a Driver pursuant to Ext.P8 notification dated 10.08.2005. The appointment is said to have been approved by the Full Board of the 2nd respondent, as per Ext.P11. In fact, the sanction of posts, including that of two Drivers, were effected by Ext.P2, an order issued by the 4th respondent. There was considerable communication between respondents 2 and 4 as to how the appointments are to be made and there was also a proposal for entrusting the recruitment to the Public Service Commission or calling for candidates from the Employment Exchange. None of these modes fructified, and

eventually the 2nd respondent Board decided to appoint persons from the open market, through Ext.P8 notification. The appointments of the petitioner herein as also the petitioners in WP(C) No.14914 of 2007 were pursuant to such notification.

5. It is also brought on record that a Clerk/Typist, who was in the service of the Board, challenged the selection on the ground of entitlement for promotion. The Board had filed a Counter Affidavit initially, in the said writ petition, supporting the selection made. On the change in the constitution of the Board, a Counter Affidavit was filed, contending that the selection itself was bad. By Ext.P13 judgment, a learned Single Judge of this Court refused to accept the second version of the Board and upheld the selection made. It was later to that, the show-cause notice at Ext.P14 was issued, and consequently all the direct recruits terminated.

6. The termination was challenged by five such recruitees appointed as UD Clerks, Driver and Peon in the respondent Board, which resulted in a judgment in their favour in WP(C) No.14914 of 2007 dated 08.01.2009 and eventually resulted in judgment dated 01.02.2010 in W.A. No.168 of 2009.

7. True, the petitioner's appointment was also in accordance with Ext.P8 notification and the facts are similar and identical, on a perusal of the Division Bench judgment. The reasons stated in the termination order are also identical to that of the other persons. The learned Government Pleader, however, on the basis of the averments in the Counter Affidavit, would contend that the question is not identical for reason of the petitioner having been the personal driver of the Chairperson. A reading of Ext.P14 would indicate that nepotism of the Chairperson and the members, was alleged against all the persons including the petitioner.

8. Be that as it may, the question now to be considered is as to whether the petitioner is entitled to the very same reliefs granted to the others by the judgment of 01.02.2010. Two decisions of the Hon'ble Supreme Court are placed reliance upon, by the parties to buttress the conflicting contentions. A reading of **K.T. Veerappa** [supra] would indicate that, it was a case in which the revision of pay was denied to certain employees, some of whom challenged the same and got favourable orders from the Court. The other persons, who did not challenge it at the

appropriate time, was also held to be entitled to such benefit. The Hon'ble Supreme Court found that when 23 employees were granted such benefit, it was only expected that the others would also be granted the same benefit. On a reading it is also disclosed that the Division Bench of the High Court, in the appeal filed by the University against the judgment granting the prayers of 23 persons who filed the writ petition; directed the Vice Chancellor to appoint a Committee to consider the claim of pay revision. The Committee opined in favour of the employees and in a contempt filed the Court was informed that the benefit was extended to those 23 employees who were the petitioners before the High Court. An amendment to the statute was also proposed by the University, as directed by the Division Bench, which was not acted upon by the State. Subsequently, in the appeal in which the other similarly situated employees claimed the same relief the Vice Chancellor filed an affidavit stating that, the University has decided to extend the benefit to all identically placed employees. The University was found to be unjustified in denying the claim to the others. The said declaration was on the facts of the case.

9. **Ghulam Rasool Lone** [supra] was a case, in which a particular person was granted promotion, by relaxation of rules and some other employees claiming the very same benefit was also granted similar promotion. Still later another writ petition was allowed, but an appeal by the State resulted in the rejection of the writ petition on grounds of delay and latches. The Hon'ble Supreme Court upheld the decision on two counts. One the relaxation of rules was found to be illegal and it was held that there could be no claim of equality on the face of illegality. Further, it was held that the delay and latches were sufficient grounds to refuse discretion under Article 226. Reference would be apposite to paragraphs 14 and 17, which are extracted hereunder:

"14. The discretionary jurisdiction under Article 226 of the Constitution may, however, be denied on the ground of delay and latches. It is now well settled that who claims equity must enforce his claim within a reasonable time.

17. It is beyond any cavil of doubt that the remedy under Article 226 of the Constitution of India is a discretionary one. For sufficient or cogent reasons a Court may in a given case refuse to exercise its jurisdiction; delay and latches being one of them."

10. In the present case, it is to be noticed that on

24.05.1999, a termination order was passed against the petitioner and some others. The others challenged the same, but the petitioner slept over the termination order and did not challenge the same and stood terminated by Ext.P16 dated 05.05.2007. The others, who were terminated along with the petitioner, challenged the said termination before this Court. The writ petition of the others were allowed on 08.01.2009 and the petitioner filed the above writ petition on 21.05.2009, after the other writ petition was allowed. The petitioner obviously slept over his rights. The petitioner's claim for similar treatment is hit by the delay and latches occasioned. It is also to be noticed that, now another six years have elapsed and the Board would have made further appointments to the post. The learned counsel for the petitioner would emphasise on the delay in **Ghulam Rasool Lone** [supra] to be more than 20 years whereas here, it is only 2 years. It is not the exact number of years that matter. The petitioner never challenged his termination. It was noticed in **Ghulam Rasool Lone** [supra] only when the writ petition of the others were allowed, he approached this Court. There was a writ appeal pending at that time. He neither chose to get himself

impleaded there, nor chose to urge speedy disposal of his writ petition. The writ appeal confined the backwages to 50%; and after five years identical relief is sought for.

In such circumstance, considering the long delay of about 8 years, this Court is not inclined to exercise the discretionary remedy to grant appointment to the petitioner, as one identically situated with that of the case at W.A. No.168/2009. The respondents in the appeal had challenged the termination at the appropriate time and they were also appointed long back, with 50% backwages.

The writ petition is hence devoid of merit and would stand dismissed, declining exercise of jurisdiction under Article 226 of the Constitution of India. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

sp/26/11/15