

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).NO. 12043 OF 2015 (R)

PETITIONER(S) :

SUBIR T AGED 39 YEARS
S/O.IBRAHIM N.P, AMIN, FAMILY COURT
NEW BUS STAND COMPLEX, KASARAGOD-671 121.

BY ADV. SRI.S.JIJI

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 003.

2. THE HOME SECRETARY
DEPARTMENT OF HOME AFFAIRS, SECRETARIAT
THIRUVANANTHAPURAM-695 003.

3. THE REGISTRAR
SUBORDINATE JUDICIARY, HIGH COURT OF KERALA
ERNAKULAM-682 031.

4. THE DISTRICT JUDGE
DISTRICT COURT COMPLEX, VIDYANAGAR POST
KASARAGOD-671 123.

R3-R4 BY ADV. SRI.B.UNNIKRISHNA KAIMAL
R1,R2,R4 BY ADV. GOVERNMENT PLEADER SMT.LOWSY.A

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 12043 OF 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1- TRUE COPY OF THE ORDER NO.A1-4154/2013 DATED 2.12.2014 OF THE
DISTRICT JUDGE KASARAGOD

EXT.P2- TRUE COPY OF THE STATEMENT SHOWING FIXATION OF PAY UNDER RULE
28A

EXT.P3- TRUE COPY OF THE GO(P)NO.968/87/FIN

EXT.P4- TRUE COPY OF THE LETTER DATED 11.4.2005 ISSUED BY THE 2ND
RESPONDENT

EXT.P5- TRUE COPY OF THE LETTER DATED 24.3.2008 ISSUED BY THE 2ND
RESPONDENT

EXT.P6- TRUE COPY OF THE OFFICIAL MEMORANDUM DATED 26.8.2014 ISSUED BY
THE 3RD RESPONDENT

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.12043 of 2015

.....
Dated this the 21st day of July, 2015

J U D G M E N T

The petitioner is working as an Amin in the Family Court, Kasaragod with effect from 06.12.2014. The averments in the writ petition would disclose that the petitioner joined service as a Police Constable on 29.06.2004 and continued as such till 13.04.2005. He, thereafter, joined service as a Process Server in which post he continued from 15.04.2005 to 31.03.2011. He was thereafter promoted as Process Server Grade-I in which post he continued from 01.04.2011 to 28.11.2013. Thereafter, he was an Attender Grade-II between 29.11.2013 and 01.12.2014 and, as already noted, he was appointed as Amin with effect from 02.12.2014. By Ext.P2 order, the pay of the petitioner was fixed at Rs.12,220/-. The case of the petitioner in the writ petition is that, insofar as he was promoted from the post of Attender Grade-II directly as Amin, without first being promoted as Attender Grade-I, he should have been given the notional increment in the intermediary post of Attender Grade-I while fixing his pay in the post of Amin. He places reliance on Ext.P3 Government order, and Ext.P5 clarification of the 2nd respondent, both of which indicate that the notional increment in the intermediary post of Attender Grade-I can be sanctioned to the petitioner. When he

preferred a request for extending the benefit of the said Government order and clarification, the 3rd respondent by Ext.P6 order took the stand that the benefit of Exts.P3 and P5 Government Order/Circular can be granted only if there is a vacancy that existed in the intermediary post, and further, the promotion to the intermediary post and the higher post was given on the same date. It is this order that is impugned by the petitioner in the writ petition.

2. I have heard the learned counsel for the petitioner, learned Government Pleader for respondents 1 and 2 and the learned Standing counsel for the respondents and 3 and 4.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that, the writ petition in its challenge against Ext.P6 order must necessary succeed. Ext.P3 Government order, and Ext.P5 clarification by the 2nd respondent, indicate in unambiguous terms that when a person has been promoted from a lower post to a higher post without being first promoted in an intermediary post, he would be entitled to the benefit of an increment that he would have obtained in the intermediate post, at the time of fixing of pay in the higher post. Neither in Ext.P3 nor in Ext.P5 is there a stipulation that the promotion to both the posts must

be on the same date or that there should be a vacancy existing in the intermediate post before which the promotee would be sanctioned an increment applicable to the intermediate post. In the absence of anything to suggest a contrary intention, I am of the view that, Ext.P6 order, to the extent it denies the benefit of Exts.P3 and P5 order/Circular to the petitioner on the ground that, the petitioner could have obtained the benefit only if there was a vacancy that existed in the intermediate post, and if the promotion to the intermediate post and the next higher post was effected on the same date, cannot be legally sustained.

Resultantly, I quash Ext.P6 order and direct that the petitioner be given notional increment in the intermediary post while fixing pay in the post of Amin. The 4th respondent shall pass consequential orders based on this judgment within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

