

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 14281 of 2015 (R)

PETITIONER:

**JANI A. AGED 41 YEARS
NO.16 DWADASI NAGAR, THEVALLY P.O, KOLLAM**

**BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.PIRAPPANCODE V.S.SUDHIR
SRI.JELSON J.EDAMPADAM**

RESPONDENTS:

- 1. HIGH COURT OF KERALA
REPRESENTED BY ITS REGISTRAR, HIGH COURT OF KERALA
ERNAKULAM 682 031**
- 2. STATE OF KERALA,
REPRESENTED BY THE CHEIF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM 695 001**
- 3. THE REGISTRAR,
RECRUITMENT AND COMPUTERISATION
HIGH COURT OF KERALA, ERNAKULAM 682 031**
- 4. AYOOBKHAN E,
EDATHARA, PATHIRICKAL, PATHANAPURAM
KOLLAM DIST 691 009**

**R4 BY ADV. DR.K.P.SATHEESAN (SR.)
R4 BY ADV. SRI.P.MOHANDAS (ERNAKULAM)
R4 BY ADV. SRI.ANOOP.V.NAIR
R4 BY ADV. SRI.S.VIBHEESHANAN
R2 BY ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
R1 & 3 BY ADV. SRI.ELVIN PETER P.J.
R BY GOVERNMENT PLEADER SRI. T.R. RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- EXHBIIT P1** TRUE COPY OF THE NOTIFICATION NO REC4-6800/2014 DATED 24-2-2014 INVITING APPLICATIONS FOR APPOINTMENT AS DISTRICT & SESSIONS JUDGE,IN THE KERALA STATE HIGHER JUDICIAL SERVICE, BY DIRECT RECERUITMENT FROM THE BAR
- EXHBITI P2** TRUE COPY OF THE NOTIFICATION NO REC4-6801/2014 DATED 24-2-2014 INVITING APPLICATIONS FOR APPOINTMENT AS DISTRICT & SESSIONS JUDGE,IN THE KERALA STATE HIGHER JUDICIAL SERVICE,BY DIRECT RECRUITMENT FROM THE BAR.
- EXHBIIT P3** TRUE COPY OF THE NOTIFICATION NO REC4-6802/2014 DATED 24-2-2014 INVITING APPLICATIONS FOR APPOINTMENT AS DISTRICT & SESSIONS JUDGE,IN THE KERALA STATE HIGHER JUDICIAL SERVICE,BY DIRECT RECRUITMENT FROM THE BAR
- EXHBITI P4** TRUE COPY OF THE NOTIFICATION NO REC4-6803/2014 DATED 24-2-2014 INVITING APPLICATIONS FOR APPOINTMENT AS DISTRICT & SESSIONS JUDGE,IN THE KERALA STATE HIGHER JUDICIAL SERVICE,BY DIRECT RECRUITMENT FROM THE BAR
- EXHBITI P5** TRUE COPY OF THE APPLICATION NO 1314,SUBMITTED BY THE PETITIONER,PURSUANT TO EXT.P4 NOTIFICATION
- EXHIBIT P6** TRUE COPY OF THE SAMPLE APPLICATION FORM COMPRISING OF PART I AND PART II, PUBLISHED BY THE 3RD RESPONDENT, FOR APPOINTMENT TO THE POST OF DISTRICT AND SESSIONS JUDGE
- EXHIBIT P7** TRUE COPY OF THE ADMISSION TICKET WITH ROLL NO.5181 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT FOR APPEARING IN THE WRITTEN EXAMINATION, SCHEDULED ON 12.7.2014 AND 13.7.2014
- EXHIBIT P8** TRUE COPY OF THE LETTER DATED 5.2.2015 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT DIRECTING HIM TO APPEAR FOR THE VIVA VOCE, IN CONNECTION WITH THE RECRUITMENT TO THE POST OF DISTRICT AND SESSIONS JUDGE, SCHEDULED ON 24.2.2015
- EXHIBIT P9** TRUE COPY OF THE NON CREAMY LAYER CERTIFICATE DATED 10.2.2015
- EXHIBIT P10** TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER CLAIMING RESERVATION
- EXHIBIT P11** TRUE COPY OF THE LETTER NO. REC4-6803/2014 DATED 18.4.2015 OF THE 3RD RESPONDENT

- EXHIBIT P12 TRUE COPY OF THE NOTIFICATION NO.REC4-6800/2014 DATED 28.1.2015, SHOWING THAT THE TWO PERSONS I.E., MR. BALAKRISHNAN K.K., ROLL NO.5088 AND MR. K. RAMAKRISHNAN, ROLL NO.5220, WERE QUALIFIED FOR THE VIVA VOCE
- EXHIBIT P13 TRUE COPY OF THE NOTIFICATION NO.REC4-6801/2014 DATED 28.1.2015, PUBLISHED BY THE 3RD RESPONDENT, EVIDENCING THAT NONE OF THE CANDIDATES BELONGING TO SCHEDULED TRIBE, WERE QUALIFIED IN THE KERALA STATE HIGHER JUDICIAL SERVICE (WRITTEN EXAMINATION 2014) PURSUANT TO EXT.P2 NOTIFICATION (RECRUITMENT NO.8/2014)
- EXHIBIT P14 TRUE COPY OF THE NOTIFICATION NO.REC4-6802/2014 DATED 28.1.2015, PUBLISHED BY THE 3RD RESPONDENT
- EXHIBIT P15 TRUE COPY OF THE RELEVANT EXTRACT OF THAT MARK LIST OF THE KERALA STATE HIGHER JUDICIAL SERVICE (WRITTEN AND VIVA VOCE) EXAMINATION 2014
- EXHIBIT P16 TRUE COPY OF THE NOTICE NO.REC4-6803/2014 DATED 10.4.2015 CONTAINING THE LIST OF CANDIDATES, QUALIFIED FOR APPOINTMENT AS DISTRICT & SESSIONS JUDGES
- EXHIBIT P17 TRUE COPY OF THE NON CREAMY LAYER CERTIFICATE NO.K.DIS.22131/11/B3 DATED 26.3.2011 ISSUED BY THE TAHSILDAR, KOLLAM
- EXHIBIT P18 TRUE COPY OF THE NON CREAMY LAYER CERTIFICATE NO.K.DIS NO.10688/2012/B3 DATED 8.1.2013, ISSUED BY THE TAHSILDAR, KOLLAM

RESPONDENT(S)' EXHIBITS

-
- R4(A) TRUE COPY OF THE APPLICATION SUBMITTED BY THE 4TH RESPONDENT DATED 14.03.2014
- R4(B) TRUE COPY OF THE QUESTION ASKED BY THE 4TH RESPONDENT UNDER RIGHT TO INFORMATION ACT
- R4(C) TRUE COPY OF THE REPLY OBTAINED FROM THE HIGH COURT OF KERALA DATED 3.7.2015

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 14281 of 2015 (R)

Dated this the 4th day of November, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner has not been selected to the post of District Judge, on reservation, as per the notification issued at Ext.P4.

2. Admittedly, the petitioner acquired the 8th rank in the examination while the person who was appointed to the reserved category of 'OBC Muslim' was the 4th respondent, who had the 34th rank. One other Muslim candidate figuring in the rank list between 1 and 34 was the 2nd rank holder who was appointed against the 'No Candidate Available' (NCA) vacancy notified as per Ext.P3.

3. The 3rd respondent brought out four notifications simultaneously, wherein N.C.A. vacancies were notified by Exts.P1, P2 and P3. Ext.P3 was with respect to the four anticipated vacancies. The 4th respondent applied under

both Exts.P3 and P4, by Ext.R4(a) application. The petitioner applied only under Ext.P4 but was not considered for reservation, applicable even in Ext.P4, despite his higher rank. The 4th respondent was considered under Ext.P4 notification in the first vacancy, since, as per the roster, the same had to be conceded to 'OBC Muslim'. The petitioner contends that he ought to have been considered for reservation.

4. The dis-entitlement of the petitioner arose only for his own default, of not having indicated the category at Ext.P5. The petitioner contends that there was no option available when an on-line application was made. This cannot be countenanced since the sample application form produced at Ext.P6 indicates all the categories, including SC, ST, OBC and General. Hence, this would be available under all notifications.

5. When on-line applications are made, if the cursor is placed at the space for category and the 'enter' key

pressed, then a window opens with all the alternate options. A candidate has to opt the category he falls under, in the event of which alone the recruiting agency would be aware of the reservation. Admittedly, Ext.P5 indicates the petitioner's category as General. The 4th respondent, who applied under both Exts.P3 and P4, indicated his category as 'OBC Islam' and in Ext.R4(a) the category, religion, caste and community is indicated.

6. The learned Senior Counsel appearing for the petitioner would contend that, that would have been available only under Ext.P3 and not under Ext.P4. The petitioner, hence, claims that he had applied only under the general vacancy and not under the reserved vacancy, since there was no option available to specify the same.

7. The contention of the 3rd respondent specifically noticed in the statement is that if the category was opted as 'OBC' by the petitioner in the on-line application, then, definitely, the question regarding religion and caste or

community would have popped up in the Computer enabling the petitioner to make such option also. The on-line application is same for all the categories and on opting under the General category no details of caste and community would be asked for. However, if any of the categories or reservation viz. SC/ST/OBC is chosen then the question regarding caste and community status would be displayed in the on-line application form, which is a dynamic one. This is because only if reservation is claimed the further details would be required.

8. The petitioner who applied under Ext.P4, even at the time of application, was aware of the fact that he had applied only under that category since he had a copy of the application form evident at Ext.P5. Further, the Admission Ticket at Ext.P7 also indicated that he was being considered only under General category. He had not, at any time before the rank list was published, raised a claim for reservation. The contention that the applications, available

on-line, under Ext.P4 notification did not contain a column to indicate reservation and religion caste and community is only an attempt to cover up the petitioner's default. The petitioner having applied under the General category, claims reservation, only as an afterthought. Further, as per Exts.P1 to P4; the instructions in para 9 (a) provides for access to the application in the very same manner and is also said to be common for all.

9. The contention that Ext.P4 did not disclose that two vacancies were reserved, cannot be accepted. Ext.P4 specially spoke of relaxation of age limit as per notification and also relaxation of cut-off marks for the reserved category in para 5. Even for availing such benefit the reserved category candidate ought to choose the specific category for being so entitled. Para 7 also specifically referred to rules of reservation of appointments for OBC, SC and ST contained in Part II of K.S.S.R. being applicable.

10. In the context of the petitioner having applied as a general category candidate, no reservation could have been applied in his case. The 3rd respondent was unaware of the religion of the petitioner and there could be no fault found on the 3rd respondent in not having considered the petitioner for reservation. The petitioner has only himself to blame for not having indicated the category in his application filed under Ext.P4.

The writ petition, hence, would stand dismissed.

Sd/-
K.VINOD CHANDRAN,
JUDGE