

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 18715 of 2009 (H)

PETITIONER(S):

**R.SANTHOSH KUMAR
WATCHER, PANAKKATHODI DEVASWOM, KOLLAM GROUP
CHAVARA SOUTH PO, KOLLAM DISTRICT.**

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S):

- 1. THE TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, NANTHANCODE
THIRUVANANTHAPURAM.**
 - 2. THE COMMISSIONER, TRAVANCORE
DEVASWOM BOARD, NANTHANCODE, THIRUVANANTHAPURAM.**
 - 3. THE ASSISTANT COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, KOLLAM.**
- R,R1-3 BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
R,R1-3 BY ADV. SRI.P.GOPAL
R1 TO 3 BY ADV. SRI.A.N.RAJAN BABU, SC, TRAVANCORE DEVASWOM
BOARD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE DISABILITY CERTIFICATE NO. 1871/2003 DTD. 28.10.03 ISSUED BY MEDICAL BOARD, DISTRICT HOSPITAL, KOLLAM TO THE PETITIONER.
- EXT.P2 COPY OF THE ROC NO.13846/1997/MIS. DTD. 10.3.98 ISSUED BY THE RESPONDENTS.
- EXT.P3 COPY OF THE REMINDER APPLICATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 30.12.03.
- EXT.P4 COPY OF THE JUDGMENT DTD. 3.3.05 IN W.P.(C) NO.7247/05 OF THIS HON'BLE COURT.
- EXT.P5 COPY OF THE ORDER ROC NO. 90/2006/ESTT. DTD. 11.01.07 ISSUED BY THE 1ST RESPONDENT.
- EXT.P6 COPY OF THE ORDER ROC NO. 3242/05/MIS.1 DTD. 08.03.07 ISSUED BY THE 1ST RESPONDENT.
- EXT.P7 COPY OF THE ORDER ROC NO. 15502/06/PIO DTD. 24.3.07.
- EXT.P8 COPY OF THE ORDER OF SMT. JAYASREE AND INDIRA NO. ROC 600/2008/CA DT D. 24.1.09.
- EXT.P9 COPY OF THE APPLICATION DTD. 24.1.09 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P10 COPY OF THE COUNTER AFFIDAVIT AND THE ORDER ROC NO.7579/2005/MIS.1/ DTD. 20.11.06
- EXT.P11 COPY OF THE JUDGMENT IN W.P.(C) NO.22533/08 DTD. 11.12.08 OF THIS HON'BLE COURT.
- EXT.P12 COPY OF THE ORDER ROC NO. 1310/86/EST. DTD. 5.6.12 ISSUED BY THE 2ND RESPONDENT.
- EXT.P13 COPY OF THE ORDER ROC NO. 1310/86/EST. DTD. 8.5.12 ISSUED BY THE 2ND RESPONDENT.
- EXT.P14 COPY OF THE REPLY ROC NO.3321/13/PIO/EST.1 DTD. 6.4.13 ISSUED BY THE 1ST RESPONDENT.

CONTD. 2.

WP(C).No. 18715 of 2009 (H)

RESPONDENTS EXHIBITS:

- EXT.R1(A) COPY OF THE RELEVANT PORTION OF THE MINUTES OF MEETING
DTD. 3.12.91 CONVENED BY THE BOARD WITH THE EMPLOYEES
UNION.
- EXT.R1(B) COPY OF THE DECISION OF THE BOARD, ROC NO.7984/03/EST.
DTD. 27.10.04.
- EXT.R1(C) COPY OF THE REPORT OF THE DEVASWOM COMMISSIONER DTD.
18.3.10

// TRUE COPY //

PA TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.18715 of 2009 - H

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Dated this the 18th day of December, 2015

J U D G M E N T

The petitioner claims category change to the post of Peon from that of watcher. The petitioner is at present working as watcher in Mathra Devaswom, Punalur Group under the Travancore Devaswom Board. The petitioner seeks category change to that of the Peon by the Devaswom Board on the strength of Ext.P2. The petitioner's contention is that by Ext.P2, the Board had sanctioned and approved the recommendation of the Devaswom Commissioner, to fix 40% disability, certified by the Medical Board, as the bench mark to permit change of category to the category of Peon on medical grounds. The petitioner produces Ext.P1 certificate to claim that he has 40% disability and he is entitled to such category change. The petitioner also relies on Ext.P11 judgment of this Court.

2. The learned Counsel for the respondent submits that Ext.P2 would not be applicable to the petitioner since he was as a Kazhakam in the temple, again a temple employee who had sought for category change on medical grounds and was granted category change as Watcher. The regular establishment of the Devaswom Board has a system of category change, by which only the persons included in a list of temple employees, that too Watchers alone would be allowed such category change on the basis of the seniority. This is also said to be a system devised on the basis of the agreement between the representative Unions of the Devaswom Board.

3. Ext.P11 was in a circumstance, in which when a category change was sought for on medical grounds, the Board contended before Court that there was a scheme by which invalid pension can be granted and if on medical grounds, an employee is disabled from continuing in a particular post, he could apply for invalid pension under the scheme. This Court on examination of the scheme itself found that it is only an option

available to the employees and the Board cannot coerce the employees into making such an application. It was also found that the Board, on the basis of disability could not coerce an employee into opting for invalid pension and consequent termination from the employment, since, it would offend the provisions contained in Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It was in such circumstance, that the category change was directed to be considered. There is no binding precedent as to whether the category change is permissible or not.

4. In the present case, the Board's Counsel would place before me a new recruitment Rule dated 30.05.2015, wherein, a recruitment Board has been constituted through which alone, the recruitment's could be made to the regular establishment of the Devaswom Board. The constitution of a recruitment Board, that too in 2015, as such, cannot stand against the petitioner or the other employees, who could seek a

category change in accordance with seniority as watcher. However, in the present case, the petitioner, a temple employee seeks category change as a Peon, which category change would make him an employee of the establishment of the Board and in such circumstance, he would gain a march over the other persons, who are waiting for category change to that of Peon.

5. Admittedly, the category change now sought for by the petitioner would give him a better status and a better pay packet also better incidence of service, which cannot be permitted especially in the event of there being more senior hands available in the list seeking category change. None of these persons have been impleaded here. The category change sought would infact change the nature of employment itself, which cannot be permitted on the ground alone of a disability. The petitioner could definitely seek for a category change to some other post available as a temple employee to be accommodated on the basis of his disability. The petitioner had in fact been employed as a kazhakam, from which post he

cannot seek category change on the strength of Ext:P-2, since that benefit is confined to Watchers. The petitioner sought category change on the ground of disability and became a watcher and now he seeks further category change as Peon again on disability grounds. This would result in permitting the petitioner to do something indirectly which he could not have done directly. The petitioner cannot seek a category change to the post of Peon available in the Devaswom Board establishment on the strength of a disability, but could only aspire for it on the basis of the seniority.

The writ petition hence would stand dismissed. No costs.

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

SB/18/12/2015

// true copy //

P.A to Judge.