

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR  
&  
THE HONOURABLE MR. JUSTICE M.L.JOSEPH FRANCIS**

**WEDNESDAY, THE 1ST APRIL 2009 / 11TH CHAITHRA 1931**

**WA.No. 3188 of 2000(D)**

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AGAINST THE JUDGEMENT/ORDER IN OP.4574/1998 DT.11.10.2000  
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**APPELLANTS/RESPONDENTS):**  
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- 1. UNION OF INDIA REPRESENTED BY SECRETARY,  
HOME AFFAIRS, NEW DELHI -1.**
- 2. THE DIRECTOR GENERAL OF INFANTRY,  
INF -6 (PERSONNEL), GENERAL STAFF BRANCH,  
ARMY HEADQUARTERS DHQ P.O.  
NEW DELHI - 110 011.**
- 3. COMMANDING OFFICER, 3RD BATTALION,  
THE MADRAS REGIMENT, C/O. 99 A.P.O.**
- 4. DEPUTY COMMANDANT,  
THE MADRAS REGIMENT CENTRE,  
WELLINGTON-NILGIRS - 643 231.**

**BY ADV. SRI.P.PARAMESWARAN NAIR, CGC  
SRI.P.S.SREEDHARAN PILLAI, SCGSC  
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR**

**RESPONDENTS/PETITIONERS:**  
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- 1. SMT. KARTHIAYANI AMMA,  
THANKKANDY HOUSE, PANTHLAYANI P.O.  
QUILANDY, KOZHIKODE DISTRICT.**
- 2. K.PUSHPALATHA, THANKKANDY HOUSE,  
PANTHLAYANI P.O.  
QUILANDY, KOZHIKODE DISTRICT.**

**ADV. SRI.T.KARUNAKARAN NAMBIAR**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01/04/2009, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ASHOK BHUSHAN, C.J.**

**&**

**A.M. SHAFFIQUE, J.**

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**&**

R.P.No.244 of 2010

in

WA No.3188 of 2000

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Dated this, the 26<sup>th</sup> day of November, 2015

## **J U D G M E N T**

### **Ashok Bhushan, C.J.**

Review Petition No.244/2010 has been filed by the Union of India, the appellants in the writ appeal, praying for review of the judgment dated 1<sup>st</sup> April, 2009 in WA No.3188/2000. Writ appeal was filed against judgment of the learned Single Judge dated 11/10/2000 by which judgment learned Single Judge directed for giving appointment to the 2<sup>nd</sup> respondent under the dying in harness scheme. Union of India aggrieved by the said judgment filed the appeal. The appeal was disposed of on 22<sup>nd</sup> July, 2002 directing the appellants to appoint the 2<sup>nd</sup> respondent in the available vacancy. The review petition was filed being RP No.159/2003 praying for review of the judgment dated 22<sup>nd</sup> July, 2002 on the ground that judgment was delivered without notice

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to the respondents and secondly, the 2<sup>nd</sup> respondent vide her letter dated 30<sup>th</sup> June, 2001 has relinquished her claim for appointment in dying in harness. Noticing the aforesaid fact, Division Bench of this Court vide order dated 11<sup>th</sup> March, 2003 allowed the review petition. However, since no final orders were passed in WA No.3188/2000, the writ appeal came up for hearing before a Division Bench on 1<sup>st</sup> April, 2009. The Division Bench although noted the fact of RP No.159/2003, but held that the earlier order passed in the writ appeal on 22<sup>nd</sup> July, 2002 was just and proper. The Court observed that if the 2<sup>nd</sup> respondent was not appointed so far, the same shall be done within one month. Union of India aggrieved by the judgment of 1<sup>st</sup> April, 2009 has come up in this review petition. It is contended by the learned counsel for the applicant that the 2<sup>nd</sup> respondent having relinquished her claim vide letter dated 30<sup>th</sup> June, 2001, which has been brought on the record as Annexure 1, there was no occasion for issuing a direction to give appointment to the 2<sup>nd</sup> respondent. Annexure 1 is letter dated 30<sup>th</sup> June, 2001 sent by the 2<sup>nd</sup> respondent to the

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Chief Record Officer. It is useful to refer to the said letter, which is to the following effect;

*"As per the judgment of the High court of Kerala, cited under reference, the respondents have been directed to appoint me in a suitable post within six months. Having waited for a long span of 9 years anticipating a job, I got married on 9/12/1999 and I am now settled down with my husband and family far away at Kashmir. In the present conditions, I shall not be able to be of any help to my mother and sisters even if I get employment, since I am bound to be with my husband and his family. I therefore hereby express my consent that the job may please be provided to my brother Shri.K.Mohan, who is one of the legal heirs of Late Sepoy M.Prasannan T."*

2. The Division Bench while deciding WA No.3188/2000 on 1<sup>st</sup> April, 2009 did not consider the letter relinquishing the claim by the 2<sup>nd</sup> respondent. It appears that attention of the Court was not invited by any of the parties and the writ appeal was disposed of without referring to the said letter. We are of the view that sufficient grounds have been made out for review of judgment dated 1<sup>st</sup> April, 2009. Review petition is, therefore,

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allowed and the judgment dated 1<sup>st</sup> April, 2009 is recalled.

3. We have also proceeded to hear the writ appeal and in view of the fact as noted above, as the 2<sup>nd</sup> respondent has relinquished her claim by letter dated 30<sup>th</sup> June, 2001, it is not necessary to consider the writ appeal on merits.

Therefore, the writ appeal is disposed of modifying the judgment of the learned Single Judge dated 11/10/2000 to the extent it issued direction to the Union of India to give appointment to the 2<sup>nd</sup> respondent in dying in harness scheme for the reasons as noted above.

Sd/-  
**ASHOK BHUSHAN, CHIEF JUSTICE**

Sd/-  
**A.M. SHAFFIQUE, JUDGE**

Rp26/11/2015

*//True Copy//*

*PS to Judge*