

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

W.P.(C).No.27918 of 2013 (L)

PETITIONER(S):-

P.S.MOHAMED NAZEER,
WELFARE INSPECTOR, COCHIN PORT TRUST,
WELLINGTYOM ISLAND, KOCHI-682009.

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SRI.K.MURALIKRISHNA.

RESPONDENT(S):-

1. COCHIN PORT TRUST,
REPRESENTED BY ITS SECRETARY, WELLINGTON ISLAND,
KOCHI-682009.
2. THE CHAIRMAN
COCHIN PORT TRUST, WELLINGTON ISLAND, KOCHI-682009.

R1 & R2 BY ADVS. SRI.K.ANAND (SENIOR ADVOCATE)
SMT.LATHA KRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE ORDER NO. 9/790/WO/2003-S
DATED 15-1-2003 OF THE 1ST RESPONDENT.
- EXT.P2. TRUE COPY OF THE ORDER NO. A9/790/WO/2004-S
DATED 15-6-2004 OF THE 1ST RESPONDENT.
- EXT.P3. TRUE COPY OF THE JUDGMENT DATED 14-3-2006 IN
OP NO. 462/2003 OF THE HON'BLE COURT.
- EXT.P4. TRUE COPY OF THE JUDGMENT DT. 10-9-2009 IN
W.A. NO. 1730/2007 OF THIS HON'BLE COURT.
- EXT.P5. TRUE COPY OF THE ORDER NO. A9/WO/MR/2009 S
DATED 28-10-2009 OF THE 1ST RESPONDENT.
- EXT.P6. TRUE COPY OF THE ORDER NO. A9/WO/SM/2010-S
DATED 4-6-2010 OF THE 1ST RESPONDENT.
- EXT.P7. TRUE COPY OF THE JUDGMENT DT. 20-12-2012 IN
WPC NO. 34395/2009 OF THIS HON'BLE COURT.
- EXT.P8. TRUE COPY OF THE JUDGMENT DT. 10-7-2012 IN
WPC NO. 18808/2010 OF THIS HON'BLE COURT.
- EXT.P9. TRUE COPY OF THE ORDER NO. A10/W1/2013/S DATED 4-2-2013
OF THE 1ST RESPONDENT.
- EXT.P10. TRUE COPY OF THE RELEVANT EXTRACT OF THE
PRE-AMENDED RECRUITMENT RULES.
- EXT.P11. TRUE COPY OF THE RELEVANT EXTRACT OF THE AMENDED
RECRUITMENT RULES.
- EXT.P12. TRUE COPY OF THE REPRESENTATION DATED 12-4-2013 OF
THE PETITIONER SUBMITTED BEFORE THE 2ND RESPONDENT.
- EXT.P13. TRUE COPY OF THE LETTER NO. A10/WI/2013/S
DATED 17-10-2013 THE 1ST RESPONDEDNT.

RESPONDENT(S)' EXHIBITS:-

- EXT.R1(a) TRUE COPY OF COMPARATIVE STATEMENT SHOWING THE PAY
DRAWN PRIOR AND AFTER PROMOTION TO THE POST OF
WELFARE INSPECTOR.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.27918 of 2013-L

Dated this the 10th day of September, 2015

JUDGMENT

The controversy in the aforesaid case arises in the context of the promotion to the post of Welfare Inspector. The background facts indicate a number of litigations filed on this aspect by the various aspirants who are referred to by name in this judgment. None of them except the petitioner are in the party array in the above writ petition.

2. When a vacancy arose in the post of Welfare Inspector with effect from 23.01.2003, one Mohandas and the petitioner herein aspired for the same. Mohandas was selected; but the petitioner challenged it, contending that the essential qualification for the post of Welfare Inspector was a Diploma in Social Service [for brevity "DSS"] and Mohandas did not have such a qualification. Mohandas resisted the claim of the petitioner on the ground that he had a LL.B with optional Labour Law, which stands on a better footing. While the writ petition

filed by the petitioner was pending, Mohandas was promoted as Welfare Officer; when again the post of Welfare Inspector fell due. One Mohammed Raphy and the petitioner contested for the same. Mohammed Raphy too had the qualification of LL.B with optional Labour Law.

3. The petitioner challenged the appointment of Mohammed Raphy to the post of Welfare Inspector. All these writ petitions were heard together by Exhibit P3 and the Port Trust was directed to consider the issue afresh. By Exhibit P3, the Port Trust was also directed to take expert opinion. The Port Trust took expert opinion, which expert opined that the qualifications are not comparable and the Welfare Inspector can only be one having DSS. The said decision was unsuccessfully challenged by Mohammed Raphy in a writ petition and against which an appeal was filed, which was disposed of by Exhibit P4 judgment. Mohammed Raphy's claim was rejected by a Division Bench. Subsequent to that, both Mohammed Raphy and Mohandas were reverted by Exhibits P5 and P6 orders.

4. By that time, one another person who was admittedly senior to the petitioner - Dheeratmaja - who had also

DSS, raised a claim for the same. Hence Dheeratmaja was appointed to the post of Welfare Inspector on 07.11.2006. Again a notification was made for the vacancy of Welfare Inspector, which was challenged by the petitioner claiming the same. Mohammed Raphy too filed a writ petition [W.P.(C).No.31007 of 2009]. A third party also challenged the promotion of Dheeratmaja in W.P.(C).No.6894 of 2010. All these writ petitions were disposed of by a common judgment, at Exhibit P7. Mohammed Raphy's claim was rejected finally and no appeal is said to have been filed.

5. However, Mohandas filed a separate writ petition, numbered as W.P.(C).18808 of 2010, which was disposed by Exhibit P8 judgment. Mohandas's reversion was found to be bad in Exhibit P8, against which the respondent-Port Trust is said to have filed an appeal, numbered as W.A.1988 of 2012, and the same is pending before the Division Bench. In such circumstance, Mohandas's promotion cannot be touched at this point of time.

6. Mohammed Raphy, in any way, has been demoted and the petitioner has now been promoted in accordance with

Exhibit P7 judgment, without proceeding with the notification which was challenged by the petitioner. The petitioner in the present writ petition claims that he ought to have been promoted with retrospective effect from 2004, based on paragraphs 15 to 17 of Exhibit P7 judgment.

7. True, this Court, on an examination of the facts, found that the petitioner ought to have been promoted at the time Mohammed Raphy was promoted, since at that point of time Dheeratmaja had not raised any claim for promotion. However, in the operative portion of the judgment at Exhibit P17, it was held so:

“The respondents are directed to pass necessary orders granting promotion to the above petitioner to the post of 'Welfare Inspector' resulted pursuant to Ext.P14, at the earliest, at any rate, within one month from the date of receipt of a copy of the judgment. The writ petition is allowed”.

8. In such circumstance it cannot be said that the petitioner was granted a retrospective promotion, though the Court observed that originally the petitioner ought to have been considered when Mohammed Raphy was considered. It may not

be proper for this Court to sit in judgment over Exhibit P7 and pass an order over and above what has been directed therein. The petitioner, if advised, could definitely seek for impleadment in W.A.No.1988 of 2012, filed by the Port Trust.

Resultantly, the writ petition would stand closed. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vk/-

[true copy]