

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

W.P.(C).No.26291 of 2015 (R)

PETITIONER(S):-

JANU.K., AGED 47 YEARS, W/O SANKARAN. A,  
UPPER DIVISION CLERK,  
ADDITIONAL DISTRICT SESSIONS COURT-II, MANJERI,  
RESIDING AT PADAPPAKKUNNU HOUSE, CHENNATH  
MUNDUPARAMBA PO, MALAPPURAM DISTRICT, PIN-676 509.

BY ADVS.SRI.K.M.SATHYANATHA MENON  
SRI.A.SANTHOSHKUMAR  
SMT.KAVERY S THAMPI  
SRI. SEBASTIAN P.J  
SMT.ANJANA KANNATH.

RESPONDENT(S):-

1. STATE OF KERALA,  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
PERSONAL AND ADMINISTRATIVE REFORMS DEPARTMENT,  
GOVERNMENT SECRETARIAT, THIRUVANANTAPURAM, PIN-695 001
2. HIGH COURT OF KERALA,  
REPRESENTED BY THE REGISTRAR (SUBORDINATE JUDICIARY),  
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031
3. THE DISTRICT COURT,  
MANJERI, MALAPPURAM DISTRICT, PIN-676 121

R1 BY GOVERNMENT PLEADER SMT.ALOWSY.  
R2 & R3 BY ADVS. SMT.V.P.SEEMANDINI (SENIOR ADVOCATE) &  
SRI.M.R.ANISON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX**

PETITIONER(S)' EXHIBITS:-  
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- EXT.P1: TRUE COPY OF THE CIRCULAR NO. 1830/ADV.C3/2010/P&ARD  
DT. 24/2/12.
- EXT.P2: TRUE COPY OF THE ADMISSION TICKET OF DEPARTMENTAL  
TEST JULY 2015 ISSUED BY THE KERALA PUBLIC SERVICE  
COMMISSION.
- EXT.P3: TRUE COPY OF THE REPRESENTATION DT. 17/6/15 SUBMITTED  
BY THE PETITIONER BEFORE THE GOVERNMENT.
- EXT.P4: TRUE COPY OF THE OFFICIAL MEMORANDUM NO.C1-58096/15  
DT. 8/7/15 OF THE ASSISTANT REGISTRAR, HIGH COURT OF  
KERALA.

RESPONDENT(S)' EXHIBITS:-  
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NIL.

Vku/-

[ true copy ]

K. Vinod Chandran, J

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W.P.(C).No.26291 of 2015-R  
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Dated this the 28<sup>th</sup> day of September, 2015

**JUDGMENT**

The petitioner is aggrieved by the fact that the petitioner's application at Exhibit P3, filed under Rule 39 Part II of Kerala State and Subordinate Services Rules, 1958 [for brevity "KS & SSR"], is refused to be forwarded to the Government and rejected by Exhibit P4.

2. The issue relates to exemption from departmental test available to a member of a service belonging to Scheduled Castes and Scheduled Tribes [for brevity "SC/ST"]. Admittedly the petitioner has to pass the departmental test for being promoted to the post of Upper Division Clerk. However, by virtue of Rule 13A(1) (a) of Part II KS & SSR, a member of a service belonging to SC/ST may be appointed to the promotion post temporarily and as per sub-clause (c), such member can be continued in the service in the promoted post for a period of three years. The petitioner was so promoted on 01.10.2012 and the three year period ends on 30.09.2015.

3. The petitioner is said to have made the application at Exhibit P3 on 17.06.2015 and had also appeared for the departmental test on 06.08.2015, in which she has failed for one paper. The Assistant Registrar, however, by Exhibit P4 had refused to forward the application, since the rule provides for reversion on the test qualification having not been acquired within the three year period. However, it is not for the Assistant Registrar to decide on the representation; when by Rule 39 of Part II KS & SSR a specific *non obstante* clause confers absolute power on the Government to grant exemptions. In such circumstances, Exhibit P4 would stand set aside. The petitioner, however, on the expiry of the period would stand reverted, subject, however, to the orders passed by the Government on Exhibit P3. The 2<sup>nd</sup> respondent is directed to forward the application, Exhibit P3, to the Government within a period of one week from today and the Government shall take a decision on it at any rate on or before 30.11.2015.

The writ petition is disposed of as above.

**Sd/-**

K.Vinod Chandran  
Judge.

vku/-

[true copy]