

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 31253 of 2011 (R)

PETITIONER(S):

**KERALA HIGH COURT NON-GRADUATE STAFF
ASSOCIATION, HIGH COURT BUILDING, KOCHI-18
REPRESENTED BY ITS PRESIDENT, MARTIN JOSEPH.**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENT(S):

- 1. THE HIGH COURT OF KERALA,
REPRESENTED BY ITS REGISTRAR GENERAL,
KOCHI 682 031.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY(LAW)
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.**

R1 & R2 BY ADV. GOVERNMENT PLEADER SRI.T.RAMAPRASAD UNNI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

WP(C).No. 31253 of 2011 (R)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXT.P1 : TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NO.2951 OF
1985 OF THE HONOURABLE SUPREME COURT OF INDIA DATED
24.2.1995**

**EXT.P2 : TRUE COPY OF THE NOTIFICATION NO.A5-41071/1999 DATED
17.11.2005**

**EXT.P3 : TRUE COPY OF THE G.O(M.S.) NO.60/2011/HOME DATED
26.2.2011**

**EXT.P4 : TRUE COPY OF THE REPRESENTATION DATED 28.04.2011
SUBMITTED BEFORE THE HONOURABLE CHIEF JUSTICE.**

**EXT.P5 : TRUE COPY OF THE OFFICIAL MEMORANDUM
NO.A5-46344/2011 DATED 8.7.2011.**

RESPONDENT(S)' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

VS

A.M.SHAFFIQUE, J

W.P.(C).No.31253 of 2011

Dated this the 25th day of June, 2015

JUDGMENT

This writ petition has been filed seeking to quash of Ext.P5 to the extend that it is not consider the claims made in Ext.P4 representation.

2. Short facts involved in this writ petition would disclose that the petitioner being a registered Association of Non-Graduate staff, High Court of Kerala, submitted Ext.P4 representation challenging Clause 20(2)(c) of the Kerala High Court Service Rules, 2007(hereinafter referred as the 'Rules' for short), in so far as it reduced the number of promotion post to the post of Court Officers from 10 to 5 and fixed the eligibility criteria for promotion as '50 years of age and 20 years of service' in the feeder category. The petitioners submitted that though by Ext.P1 judgment, the previous Rule 16(d) which was incorporated in the Kerala High Court Service Rules, 1970 was upheld by the Supreme Court which permitted non-law graduates working in the feeder categories to be promoted as Court

Officers in not more than 8 posts, and one of the conditions was that the candidates should have completed '50 years of age or 20 years of service', Rule 16(d) Clause (1) underwent an amendment in the year 1997, by which the eligibility criteria was amended as '50 years of age and 20 years of service'. However, the 8 posts were subsequently enhanced to 10 posts as per notification dated 17.11.2005 by incorporating an amendment to the Rule 16(d). The submission is that when the 2007 Rules came into force, the number of posts was reduced from 10 to 5. It is contended that the total posts of Court Officers in 2007 was 74 as against 40 during 1970, when the 1970 Rules were in force. Therefore, according to the petitioner, there was no rationale to reduce the number of posts allotted to the non law graduates category which according to them was discriminatory and hence they have submitted Ext.P4 representation. Further it was indicated that the eligibility criteria ought to have remained without any amendment as the eligibility should have been either 50 years of age or 20 years of service in

the feeder category rather than '50 years of age and 20 years of service'.

3. The representation of the petitioner was rejected by the High Court, observing that the matter was considered by the Hon'ble Chief Justice in detail and it was decided to reject the same. It is challenging the aforesaid action of the High Court, that this writ petition has been filed.

4. Counter affidavit has been filed by the first respondent, inter alia stating that as per Rule 16(d) of the 1970 Rules, as amended on 17.11.2005 not more than 10 posts of Court Officers were earmarked for promotion from non graduates in 17 categories. It is further submitted that the class of employees belonging to the various categories in the feeder category was 17 and only 10 posts were available for promotion to Section Officers category. As against the same, when 2007 Rules came into force, several feeder categories for promotion in terms of Rule 16(d) of the 1970 Rules were deleted and the feeder categories for promotion as Section

Officer/Court Officer/Court Fee Examiners reserved for promotion of graduates (other than law graduates) are limited to the categories of (i) Translator, (ii) Translator (Kannada), (iii) Selection Grade Typist, (iv) Selection Grade Typist-Copyist or Cataloguer. It is therefore stated that the number of employees in the feeder category is much less than even half of the total employees in the various feeder categories in Rule 16(d) of the 1970 Rules.

5. Having regard to the aforesaid counter affidavit, I am of the view that there is a specific reason for reducing the number of posts from 10 to 5 as the number of feeder categories have reduced considerably. This is despite the fact that the total number of Court Officer posts have increased from 40 to 74. That apart, in the counter affidavit it is stated that the promotional avenues of Typist, Typist-Copyist in addition to Section Officers would come to 18 posts of Office Superintendents.

6. Having regard to the above facts and circumstances of the case, it cannot be contended that there was no specific reason for reducing the number of

posts from 10 to 5.

7. In regard to the other contention that the word 'or' should not have been changed to 'and' in the 2007 Rules, it is relevant to note that the Rule 16(d), 1970 had underwent an amendment even as early as on 27.2.1997, by which both the eligibility conditions were provided by amending 'or' as 'and'. No challenge was made by any person to the said amendment. Under the said circumstances, I am of the view that incorporation of the very same amended clause in the 2007 Rules not being challenged for quite a long time, it is not open for the petitioner to challenge the said clause at this point of time.

Under such circumstances, I do not find any merit in the contentions raised in this writ petition and accordingly, the writ petition is dismissed.

Sd/-
A.M.SHAFIQUE
JUDGE

VS