

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 7TH DAY OF NOVEMBER 2023 / 16TH KARTHIKA, 1945

WA NO.1808 OF 2023

ORDER IN WP(C) 33285/2023 OF HIGH COURT OF KERALA

DATED 12.10.2023

APPELLANT/PETITIONER :-

SMT.LILLY KRISHNAN, AGED 39 YEARS



BY SRI.S.SREEKUMAR (SR.)

SRI.HARIKRISHNAN S.

RESPONDENTS/RESPONDENT Nos.1 TO 4 :-

- 1 STATE OF KERALA
REPRESENTED BY GOVERNMENT PLEADER,
HIGH COURT OF KERALA, PIN - 682 031.
- 2 THE HIGH COURT OF KERALA,
REPRESENTED BY REGISTRAR (DISTRICT JUDICIARY),
ERNAKULAM, PIN - 682 031.
- 3 THE REGISTRAR (DISTRICT JUDICIARY),
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.
- 4 THE REGISTRAR GENERAL,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.

BY ADVS.

SRI.B.G.HARINDRANATH(K/378/1984)

SRI.N.MANOJ KUMAR, STATE ATTORNEY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.11.2023, ALONG WITH WP(C).33285/2023, THE COURT ON 07.11.2023 DELIVERED THE FOLLOWING:

W.A. No.1808/2023 and
W.P.(C) No.33285/2023

-: 2 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 7TH DAY OF NOVEMBER 2023 / 16TH KARTHIKA, 1945

WP(C) NO.33285 OF 2023

PETITIONER :-

SMT.LILLY KRISHNAN, AGED 39 YEARS

BY SRI.S.SREEKUMAR (SR.)
SRI.HARIKRISHNAN S.

RESPONDENTS :-

- 1 THE STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY,
HOME (C) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
- 2 THE HIGH COURT OF KERALA,
REPRESENTED BY REGISTRAR (DISTRICT JUDICIARY),
ERNAKULAM, PIN - 682 031.
- 3 THE REGISTRAR (DISTRICT JUDICIARY),
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.
- 4 THE REGISTRAR GENERAL,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.

BY ADVS.
SRI.B.G.HARINDRANATH
SRI.AMITH KRISHNAN H.(K/000666/2015)
SRI.N.MANOJ KUMAR, STATE ATTORNEY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02.11.2023, ALONG WITH WA.1808/2023, THE COURT ON
07.11.2023 DELIVERED THE FOLLOWING:

W.A. No.1808/2023 and
W.P.(C) No.33285/2023

-: 3 :-

ANU SIVARAMAN, J. & C. PRATHEEP KUMAR, J.

**W.A. No.1808 of 2023
and
W.P.(C) No.33285 of 2023**

Dated this the 7th day of November, 2023

JUDGMENT

Anu Sivaraman, J.

The appeal was preferred against an interim order dated 12.10.2023 in the writ petition rejecting the prayer made by the appellant for participating in the viva-voce conducted for appointment as District and Sessions Judge. Pursuant to an interim order granted by this Court in W.A. No.1808/2023 dated 13.10.2023, the appellant participated in the interview.

2. The learned counsel appearing for respondents 2 to 4 contends that the appellant would be entitled to be included in the ranked list on the basis of her performance in the written test and the interview and the question as to whether she is eligible for such inclusion has, therefore, to be decided at the earliest.

3. On agreement of the counsel appearing on both sides, we called for the writ petition as well and heard the parties on the writ petition on its merits.

4. The facts necessary for considering the questions raised are as follows :- The appellant was a practising advocate

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having enrolled as such on 20.7.2008. While so, she had applied for appointment to the post of Munsiff-Magistrate and having been successful in the selection, she was appointed as Munsiff-Magistrate trainee by Ext.P4 notification dated 2.2.2023. She had commenced the pre-induction training at the Kerala Judicial Academy as evident from Ext.P5. While so, Ext.P1 notification was issued for appointment to the post of District and Sessions Judge in the Kerala State Higher Judicial Service by direct recruitment from the Bar. The date of Ext.P1 is 13.4.2023. One of the qualifications provided at Clause 3(f) of the notification was that “the applicant should be a practising advocate having a standing of not less than 7 years of practice as on the first day of January, 2023”. Clause 3(g) states that “the candidate shall be an Advocate continuing in practice at the time of appointment (as per judgment of the Hon'ble Supreme Court dated 19.02.2020 in Dheeraj Mor v. High Court of Delhi)”. Clause 3(h) further states that “he shall not be a person already in the service of the Union or of any State in India”.

5. The appellant submitted an application on 23.4.2023 and participated in the written examination. However, on 4.10.2023, by Ext.P3, she was informed that she was excluded

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from the list of candidates qualified for the viva-voce considering the decision in **Dheeraj Mor v. High Court of Delhi** [(2020) 7 SCC 401].

6. The writ petition was thereafter filed contending that the appointment as per Ext.P4 was only as a trainee as part of the pre-induction training and that the appellant could not be said to be a Judicial Officer or in the service of the State as a Judicial Officer as on the date of application or even thereafter and that she is, therefore, entitled and eligible to participate in the selection initiated by Ext.P1 as a practising advocate. It is contended that the Apex Court in **Dheeraj Mor's case** had only held that a person who is actually in service as a Judicial Officer cannot participate in the selection for appointment of District Judge in the quota set apart for direct appointments from the Bar and that the said restriction will not apply to the appellant.

7. Relying on a decision of a Single Judge of this Court rendered by one of us (Anu Sivaraman, J.) in **Unnikrishnan v. State of Kerala** [2023 (2) KLT 11], it is contended that this Court has already considered the question in the preceding selection for District and Sessions Judge and had held that an incumbent who was appointed as a Munsiff-Magistrate trainee

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was not a Judicial Officer since the training provided under the Kerala Judicial Service Rules is a pre-induction training and a further order of appointment is contemplated by the said Rules after completion of the training. It is, therefore, contended that it is only on appointment as a Judicial Officer after the completion of training that the disability would apply to the appellant and till such date, she would be eligible to apply. Reliance is also placed on a decision of the Apex Court in **Sunil Kumar Verma v. State of Bihar and others** [(2022) 9 SCC 686]. The learned counsel also brought to our notice of the decision of a Division Bench of this Court in **Rejanish v. Deepa** [2020 KHC 5612] as also of a learned Single Judge in **Deepa v. State of Kerala** [ILR 2020 (3) Ker. 437]. It is submitted that pursuant to the leave granted by the Division Bench of this Court, a Civil Appeal is pending before the Apex Court and an order of *status quo* has been granted by the court in the said case.

8. The learned counsel appearing for respondents 2 to 4 has made available written submissions since the question to be decided is purely a question of law and there is no dispute on the facts. It is contended that the decision in **Dheeraj Mor's case** is perfectly clear on the point that the candidate for selection to the

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post of District and Sessions Judge by direct recruitment from the Bar should be a “practising advocate” as on the date and only a person entitled to “practice as an advocate” on the date of application or the last date fixed for submitting the application, would be eligible for appointment as District and Sessions Judge in the quota set apart for direct recruitment from the Bar. It is further contended that in the instant case, the appellant was a Munsiff-Magistrate trainee even as on the date when she submitted her application pursuant to Ext.P1 notification and she was not a practising advocate as on the date of the application and had lost her right for being considered as a practising advocate for direct appointment.

9. It is contended that the distinction in **Unnikrishnan's case** was that the petitioner who had challenged the selection as well as the candidate whose selection was being challenged were Assistant Public Prosecutors as on the date of the application. The 3rd respondent was selected and appointed as Munsiff-Magistrate by transfer. While he was undergoing training as such, the notification for appointment to the post of District and Sessions Judge was issued and he had participated in the selection with the permission of the High Court. On being

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selected, he had discontinued his training and had been repatriated as an Assistant Public Prosecutor since he retained his lien in the said post and it was while working as such that he had been appointed as District Judge. It is contended that the facts are completely different in the instant case and that the situation at hand is squarely covered by the decision of the Apex Court in **Dheeraj Mor's case**.

10. The learned counsel appearing for the High Court has also brought to our notice all the decisions on the point starting from **Rameshwar Dayal v. State of Punjab** [AIR 1961 SC 816], **Chandra Mohan v. State of Uttar Pradesh** [AIR 1966 SC 1987], **Satya Narain Singh v. High Court of Judicature Allahabad** [AIR 1985 SC 308], **Sushma Suri v. State (NCT of Delhi)** [(1999) 1 SCC 330], **Deepak Aggarwal v. Keshav Kaushik** [(2013) 5 SCC 277], **Vijay Kumar Mishra v. High Court of Patna** [(2016) 9 SCC 313], **Dheeraj Mor v. High Court of Delhi** [(2020) 7 SCC 401]. The learned counsel also places reliance on the decision of a Division Bench of this Court in **Saumya v. State of Kerala** [2022 (3) KLT 97], where the Division Bench held that a person who secured enrollment as an advocate in the State Bar Council and later takes a full time

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government employment and voluntarily suspends legal practice cannot have a legal right to practice as an advocate and cannot be treated as a member of the Bar.

11. It is contended that an 'Advocate' is a person whose name is entered in the roll maintained by the Bar Council. It is stated that when Article 233(2) makes reference to a person who has been an Advocate or Pleader for not less than seven years, it refers to a member of the Bar with a professional standing of not less than seven years. Therefore, the phrase has been an Advocate or a Pleader should be construed to mean an individual who immediately prior to their appointment was a member of the Bar. The directions in **Dheeraj Mor's case** being clear and unequivocal, this Court cannot dilute the same and direct appointment of a person who was a Munsiff-Magistrate trainee at the time of submission of the application and continues to be so, as against the quota of persons to be appointed direct from the Bar. It is submitted that the only option available, if any, to the appellant would be to approach the Supreme Court and get a clarification on this issue.

12. It is contended that since the appellant was appointed as a Munsiff-Magistrate trainee on 2.2.2023 and it was while she

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was undergoing such training that Ext.P1 notification was issued on 13.4.2023 and she had uploaded her application online on 23.4.2023, she would not be a practising advocate even on the date of submission of her application. It is further contended that once the appellant was appointed as a Munsiff-Magistrate trainee she was required in terms of Rule 5(1) of Chapter III of the Bar Council of India Rules to suspend her practice was required to intimate the same by registered post to the State Bar Council which has entered her name in the rolls together with a certificate of enrollment in original. It is contended that as on the date when she applied for appointment to the post of District and Sessions Judge pursuant to Ext.P1 notification, she was not acting or pleading on behalf of her employer in any court of law and was not entitled to so act or plea and had resultantly ceased to be an advocate.

13. Having considered the contentions advanced, we notice that the finding of the Apex Court in **Dheeraj Mor's case** is specifically that an advocate or a pleader with seven years of practice can be appointed as District Judge by way of direct recruitment from the Bar only in case he is not already in the judicial service of the Union or State. It was further held that for

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the purpose of Article 233(2), an advocate has to be continuing in practice for not less than seven years as on the cut off date and at the time of appointment as District Judge. It is specifically held that the right to participate in a selection is guaranteed only if the candidate fulfills the requisite eligibility criteria on the stipulated date. The ratio being that only a practising advocate can apply to the post and that the eligibility should be continuing even as on the date of the appointment, we are of the opinion that the factual situation available in the instant case would not permit the consideration of the application of the appellant herein for appointment as District and Sessions Judge under the quota set apart for direct recruitment from the Bar. We are, therefore, of the opinion that the prayers as sought for in the writ petition cannot be granted. The Writ Appeal as well as the Writ Petition fail and the same are, accordingly, dismissed.

**Sd/-
ANU SIVARAMAN
JUDGE**

**Sd/-
C. PRATHEEP KUMAR
JUDGE**

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After the judgment was pronounced, the learned counsel appearing for the appellant made a request that since the question whether a person undergoing pre-induction training as Munsiff-Magistrate is eligible to participate in the selection conducted to the post of District and Sessions Judge in the quota set apart for direct appointment from the Bar in terms of Article 233(2) of the Constitution requires an authoritative pronouncement, this Court may issue a certificate under Article 132(1) read with Article 134A of the Constitution. In view of the fact that the decision of a Division Bench of this Court in **Rejanish v. Deepa** [2020 KHC 5612] is pending in appeal before the Apex Court and the same and allied questions of law arise for consideration in this appeal as well, we are of the opinion that such a certificate is to be granted. We, therefore, grant certificate to the appellant under Article 134A of the Constitution for filing of an appeal before the Apex Court against this judgment as well.

**Sd/-
ANU SIVARAMAN
JUDGE**

**Sd/-
C. PRATHEEP KUMAR
JUDGE**

Jvt/6.11.2023

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APPENDIX OF WP (C) 33285/2023

PETITIONER EXHIBITS :-

- Exhibit P1 TRUE COPY OF NOTIFICATION DATED 13-04-2023
PUBLISHED BY THE RESPONDENTS 2 AND 3
- Exhibit P2 TRUE COPY OF ADMISSION TICKET (PROVISIONAL) FOR
THE KERALA STATE HIGHER JUDICIAL SERVICE MAIN
(WRITTEN) EXAMINATION, 2023 ISSUED WITH
PETITIONER
- Exhibit P3 TRUE COPY OF EMAIL DATED 04-10-2023 RECEIVED BY
THE PETITIONER FROM THE 3RD RESPONDENT
- Exhibit P4 TRUE COPY OF NOTIFICATION DATED 02-02-2023 ISSUED
BY THE 1ST RESPONDENT
- Exhibit P5 TRUE COPY OF COMMUNICATION DATED 31-01-2023
ISSUED BY THE 4TH RESPONDENT, REGISTRAR GENERAL
- Exhibit P6 TRUE COPY OF NOTICE DATED 22-09-2022 ISSUED BY
THE 3RD RESPONDENT
- Exhibit P7 TRUE COPY OF NOTIFICATION DATED 26-09-2023 ISSUED
BY THE 2ND RESPONDENT