



2023/KER/49089

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945

WP (C) NO. 27126 OF 2022

PETITIONER:

SANDESH S., AGED 46 YEARS,
S/O SUDAKARA PAI, WORKING AS HEAD FITTER,
WATER SUPPLY SECTION, K.W.A, THRIKKAKKARA,
AND RESIDING AT SRI HARI, 32/2286,
P.J ANTONY ROAD, PJRA-2, PALARIVATTOM P.O,
ERNAKULAM - 682025.

BY ADVS.J.JULIAN XAVIER
FIROZ K.ROBIN
ANJANA RAM
NIRMAL KURIEN EAPEN

RESPONDENTS:

- 1 THE KERALA WATER AUTHORITY,
REPRESENTED BY ITS MANAGING DIRECTOR,
JALA BHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM, PIN-695033.
- 2 DEPUTY CHIEF ENGINEER (GL),
KERALA WATER AUTHORITY, JALA BHAVAN,
VELLAYAMBALAM, THIRUVANANTHAPURAM, PIN-695033.
- 3 TRANSPORT COMMISSIONER, TRANS TOWERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM - 605036.
- 4 REGIONAL TRANSPORT OFFICER,
REGIONAL TRANSPORT OFFICE,
2ND FLOOR CIVIL STATION, KAKKANAD,
VAZHAKKALA, KOCHI, ERNAKULAM - 682030.

BY ADVS.SMT.K.G.SAROJINI [GP]

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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'C.R.'

JUDGMENT

A rather interesting question is posed, if an employee can choose and be allowed to move back and forth between two services, under the purview of Rule 8 of Part II of the Kerala State and Subordinate Services Rules ('KS & SSR', for short).

2. The petitioner was originally working in the services of the 1st respondent - Kerala Water Authority and then sought to be appointed in the Motor Vehicles Department subsequently, which had been acceded to.

3. However, while working in the Motor Vehicles Department, he says that he came to be aware of the judgment of a Full Bench of this Court in *Jayakumar S. and Others v. State of Kerala and Others* [2021 (5) KHC 157], whereby, it had been declared that persons like him would lose the benefits of their earlier service; and therefore, requested that he be repatriated to his parent department, which was also acceded to, under the



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aforementioned provisions of Rule 8 of Part II of the KS & SSR.

4. The petitioner says that, however, the Hon'ble Supreme Court has now taken a view contrary to that in *Jayakumar* (supra); and therefore, that he preferred Ext.P6 representation before the Kerala Water Authority (KWA), to allow him to move back to the Motor Vehicle Department (MVD). He alleges that, however, this request has been rejected through Ext.P7; and thus that he has been constrained to approach this Court vide this writ petition.

5. I have heard Sri.Julian Xavier J. - learned counsel for the petitioner and Smt.K.G.Sarojini - learned Government Pleader appearing for respondents 3 and 4.

6. The learned Government Pleader vehemently argued that Ext.P7 is irreproachable, because it is clearly recorded therein that the petitioner's parent department was the 'KWA', from which, he had opted to move to the 'MVD'; and to be then brought back to the former, invoking Rule 8 of Part II KS &



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SSR, which is a one time measure. She explained that, therefore, in such circumstances, the petitioner's request, to go back to the 'MVD', is untenable and impermissible.

I must say that there is great force in the afore arguments of the learned Government Pleader, because it is without contest - it being expressly conceded - that the petitioner's parent department is 'KWA' and that he had chosen to initially move to the 'MVD', then to come back to the former Department, invoking his statutory lien, permissible under Rule 8 of Part II KS & SSR. Once this was done, there was no question of the petitioner then opting to go back to 'MVD', as if he had a further lien there; and hence Ext.P7 cannot be found to be in error.

This is incontestable because, even as per the above provision, the employee obtains lien only in his parent department, to be able to return to it if his appointment in the subsequently appointed department had not been confirmed. On this having



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been invoked, there was no statutory lien left for the petitioner in the latter department, so as to then return to it - such being confined only in the parent department.

In the afore circumstances, this writ petition is dismissed.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

akv



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APPENDIX OF WP(C) 27126/2022

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE ADVICE NO. RIC(2)
11596/17/GW DATED 19.11.2019 ISSUED BY
THE SECRETARY, PUBLIC SERVICE
COMMISSION.
- EXHIBIT P2 TRUE COPY OF THE ORDER NO. A3/29/2020-
TC DATED 18.02.2020 ISSUED BY THE 3RD
RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE ORDER NO.
3049/E7/JB/KWA DATED 06.03.2020 ISSUED
BY THE 2ND RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE ORDER NO.A1
(B)/235469/2021/E. DATED 09.08.2021
ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE PROCEEDINGS
NO.3049/E7/JB/KWA DATED 12.08.2021
ISSUED BY THE 2ND RESPONDENT TO THE
PETITIONER.
- EXHIBIT P6 TRUE COPY OF THE REPRESENTATION DATED
29.12.2021 SUBMITTED BY THE PETITIONER
BEFORE THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE LETTER
NO.3049/E7/JB/KWA DATED 15.06.2022
ISSUED BY THE 2ND RESPONDENT TO THE
PETITIONER.