

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 12TH DAY OF JANUARY 2023 / 22ND POUSHA, 1944

WP(C) NO.31295 OF 2022

PETITIONER :-

MR.UNNIKRISHNAN V V, AGED 42 YEARS
S/O.V.P.VANAJA, VALIAPARAMBIL HOUSE,
NORTH OF MARY MATHA COLLEGE,
NJARAKKAL, ERNAKULAM, PIN - 682 505

BY ADVS.
P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
R.GITESH
AJAY BEN JOSE
MANJUNATH MENON
SACHIN JACOB AMBAT
ANNA LINDA V.J
HARIKRISHNAN S.
S.SREEKUMAR (SR.)

RESPONDENTS :-

- 1 STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, DEPARTMENT OF HOME AFFAIRS
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001
- 2 THE HIGH COURT OF KERALA, KOCHI - 682 031
REPRESENTED BY REGISTRAR - GENERAL
- 3 MR.A.V.TELLES, AGED 50 YEARS
FATHER'S NAME NOT KNOWN TO PETITIONER,
AREETHADATHIL HOUSE, KOTTAYAM-686 556
PRESENTLY WORKING AS ASSISTANT PUBLIC PROSECUTOR,
GRAMA NYAYALAYA, KATTAPPANA, PIN - 685 508

BY ADVS.
B.G.HARINDRANATH
K.P.SATHEESAN (SR.)
P.MOHANDAS (ERNAKULAM)
K.SUDHINKUMAR
SABU PULLAN
GOKUL D. SUDHAKARAN

WP(C) NO.31295 OF 2022

-: 2 :-

**R.BHASKARA KRISHNAN
SRI.M.RAJEEV, GP**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 25.11.2022, THE COURT ON 12.01.2023 DELIVERED THE FOLLOWING:**

'CR'

JUDGMENT

Dated this the 12th day of January, 2023

The prayers in this writ petition are as follows :-

- i. To declare that appearance of 3rd respondent for written main examination on 20-05-2022 and 21-05-2022 and permitting participation of 3rd respondent for the interview conducted on 22-08-2022 for the appointment to the post of District and Sessions Judge in Kerala Higher Judicial Service in pursuance of Exhibit P1 notification while he was in judicial service is illegal, arbitrary and void *ab-initio* and contrary to the law laid down in Dheeraj Mor Vs High Court of Delhi 2020 (7) SCC 401.
- ii. declare that 3rd respondent is ineligible and incompetent to be appointed as District and Sessions Judge in Kerala Higher Judicial Service in pursuance of Exhibits P1 and P7 as he ceased to be a practising lawyer during the selection process.
- iii. To call for the record leading to Exhibit P7 select list in pursuance of Exhibit P1 notification and quash the same to the extent of including the name of the 3rd respondent therein.
- iv. To issue a writ of mandamus or any other appropriate writ order or direction, directing the respondents 1 and 2 to not to appoint 3rd respondent as District and Sessions Judge in pursuance of Exhibit P7 select list.
- v. To issue a writ of mandamus or any other appropriate writ order or direction, directing the respondents 1 and 2 to appoint petitioner as District and Sessions Judge as he is eligible and included in Exhibit P7 select list in pursuance of Exhibit P1 notification.”

2. Heard the learned Senior Counsel for the petitioner, the learned counsel appearing for the 2nd respondent and the learned Senior Counsel appearing for the 3rd respondent.

3. The petitioner and the 3rd respondent were applicants for appointment to the post of District and Sessions Judge which was notified by Ext.P1. The petitioner had applied in respect of category No.4 (NCA vacancy of Scheduled Tribe) as well as category No.6 (regular vacancies), while the 3rd respondent had applied only under category No.4. Both the petitioner as well as the 3rd respondent were working as Additional Public Prosecutors at the time of submission of the applications. It is submitted that thereafter, the 3rd respondent was appointed as Munsiff-Magistrate pursuant to an application submitted by him in response to Ext.P4 notification by Ext.P6 proceedings dated 9.3.2022. It is submitted that in Ext.P6, the 3rd respondent's name figured as serial No.9 and he was undergoing training in the Kerala Judicial Academy with effect from 4.4.2022. It is contended that the 3rd respondent ceased to be a practising lawyer on his appointment as Munsiff-Magistrate by Ext.P6 dated 9.3.2022.

4. The 3rd respondent had appeared in the preliminary examinations for appointment to the post of District and Sessions Judge on 20.2.2022 and thereafter, in the main examinations held in May, 2022 and the interview conducted in August, 2022. Thereafter, Ext.P7 selection notice was issued on 22.9.2022 in which, the name of the 3rd respondent is included as serial No.1 in category No.4/2021 (NCA vacancy, Scheduled Tribe) and the name of the petitioner is included as serial No.2. It is submitted that going by the decision of the Apex Court in **Dheeraj Mor v. High Court of Delhi** [(2020) 7 SCC 401], the 3rd respondent who was not a practising advocate as on the date of his appointment as District and Sessions Judge is not entitled to such appointment and therefore, the petitioner is liable to be appointed instead. It is contended that by the issuance of Ext.P6 order of appointment dated 9.3.2022, the 3rd respondent ceased to be a practising advocate and as such, he cannot aspire for appointment as District and Sessions Judge. It is submitted that the inclusion of the 3rd respondent's name in Ext.P7 list, as also the order passed by the Government as Ext.P8 are against the dictum laid down by the Apex Court in **Dheeraj Mor's case** and are liable to be set

aside. The learned Senior Counsel for the petitioner also places reliance on a decision of a Division Bench of this Court in **Rejanish K.V. v. K. Deepa and others** [2020 KHC 5612] and of a Single Judge of this Court in **Deepa v. State of Kerala** [2020 (4) KLT 1107].

5. A counter affidavit has been filed on behalf of the 2nd respondent wherein it is submitted that the petitioner as well as the 3rd respondent were applicants to the post of District and Sessions Judge which is notified by Ext.P1. It is stated that clauses 4(f) and 4(g) of the notification stipulated the qualifications as follows :-

“4(f) He shall be a practising Advocate having a standing of not less than 7 (seven) years of practice, as on the first day of January, 2021.

4(g) He 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.*)”

It is submitted that the petitioner and the 3rd respondent were Assistant Public Prosecutors while applying for the post and they were both included in the select list for appointment to the post of District and Sessions Judge under recruitment No.4/21 (NCA vacancy - ST). It is submitted that the 3rd respondent was

included in the select list for appointment as Munsiff-Magistrate in the category of recruitment by transfer as evidenced by Ext.P5. It is submitted that since the appointment was by transfer, the candidate retains a lien over the post in the parent cadre under Rule 8 of Part II KS & SSR. It further submitted that the 3rd respondent was never appointed as Munsiff-Magistrate and that he was only appointed as a Munsiff-Magistrate Trainee for the pre-induction training as provided in the Kerala Judicial Service Rules. It is submitted that the provisions of the Kerala Judicial Service Rules are perfectly clear that the training offered is pre-induction training and that only on successful completion of training can a person be appointed as a Judicial Magistrate in the Kerala Judicial Service. It is submitted that the 3rd respondent had sought the permission of the High Court for being relieved from the training for Munsiff-Magistrate and to allow him to rejoin the post of Assistant Public Prosecutor Grade I. The administrative committee had considered the request and had permitted the 3rd respondent to be relieved from the training and to report the matter to the Government. Thereafter, Ext.P8 order was also passed by the Government permitting the 3rd

respondent to rejoin duty as Assistant Public Prosecutor. It was while so that he had been appointed as District and Sessions Judge. It is, therefore, contended that as on the date of submitting his application as also on the date of his appointment, the 3rd respondent was a practising lawyer and that there is absolutely no irregularity in his appointment.

6. The learned counsel for the 2nd respondent places reliance on the decisions of the Apex Court in **Malik Mazhar Sultan v. U.P. Public Service Commission** [2007 (2) KLT Online 1137 (SC)], **High Court of Kerala v. Reshma** [2021 (1) KLT online 1057 (SC)] by which the judgment of the Division Bench of this Court in **High Court of Kerala v. Reshma** [2020 (4) KLT Online 1025] was overruled.

7. The 3rd respondent has also placed a detailed counter affidavit on record stating that it was after Ext.P1 notification that the notification for selection to the post of Munsiff-Magistrate had been issued and that the 3rd respondent had been deputed for training as Munsiff-Magistrate trainee as per Exts.P5 and P6 as a by transfer appointee. He had participated in the selection for the post of District Judge after obtaining permission

from the High Court. It is submitted that he had thereafter submitted a request for being relieved from the training which had been duly granted by the High Court and Ext.P7 order was issued by the Government permitting him to rejoin duty as Assistant Public Prosecutor Grade I. The learned Senior Counsel has also placed reliance on a decision of the Apex Court in **Sunil Kumar Verma v. The State of Bihar and others** [MANU/SC/1187/2022].

8. I have heard the learned counsel appearing on all sides at considerable length. I have also gone through the judgments which have been placed before me. The question raised is with regard to the eligibility of the 3rd respondent for appointment as District and Sessions Judge. The petitioner and the 3rd respondent were both Assistant Public Prosecutors. The 2nd respondent has stated that the petitioner as well as the 3rd respondent were eligible for appointment. The question, therefore, is only whether the 3rd respondent had any ineligibility for appointment. The post of Munsiff-Magistrate is borne on the Kerala Judicial Service and is governed by the Kerala Judicial Service Rules, 1991. The method of appointment of Munsiff-

Magistrate is by direct recruitment and transfer. Sub rule (3) of Rule 5 of the Kerala Judicial Service Rules provides that out of every four vacancies arising in the category of Munsiff-Magistrates, the first, second and third shall be filled or reserved to be filled by direct recruitment and the fourth by recruitment by transfer from the categories mentioned therein. Assistant Public Prosecutors Grade I and Grade II are included in the categories from which by transfer appointment of Munsiff-Magistrates is contemplated. Rule 6 of Rules provides that all first appointments by direct recruitment or transfer to category 2 (Munsiff-Magistrates) shall be made from the list of approved candidates in the order shown therein. Rule 7 of the Rules reads as follows :-

"7. Preparation of lists of approved candidates and reservation of appointments.-(1) The High Court of Kerala shall, from time to time, hold examinations, written and oral, after notifying the probable number of vacancies likely to be filled up and prepare a list of candidates considered suitable for appointment to category 2. The list shall be prepared after following such procedure as the High Court deems fit and by following the rules relating to reservation of appointments contained in rules 14 to 17 of Part II of the Kerala State and Subordinate Service Rules, 1958.

(2) The list consisting of not more than double the number of probable vacancies notified shall be forwarded for the approval

of the Governor. The list approved by the Governor shall come into force from the date of the approval and shall remain in force for a period of two years or until a fresh approved list is prepared, whichever, is earlier.”

Rule 8 provides that every person selected for appointment to category 2 shall undergo such training as may be prescribed in this behalf by the High Court. It is, therefore, clear from a reading of the provisions that appointment by transfer to the post of Munsiff-Magistrates is also to be made from a list prepared by the High Court in accordance with Rule 7. Thereafter, a training is prescribed by Rule 8. It is evident from the provisions of the Rules that what is contemplated is a pre-induction training. The Rules also provided that all first appointments by direct recruitment or transfer shall be made from the list prepared in accordance with Rule 7.

9. In the instant case, the 3rd respondent was admittedly selected for appointment as Munsiff-Magistrate by transfer. He was deputed for training by Ext.P6 notification. Ext.P6 specifically provides that the Governor has approved the select list for appointment of Munsiff-Magistrate trainees from the open selection, 2020 for subsequent appointment as Munsiff-Magistrate in the Kerala Judicial Service. Thereafter, the 3rd

respondent, with the prior permission of the High Court had participated in the selection process for the post of District Judge and was successful in the same. Thereafter, he had submitted his resignation and the resignation was accepted by the High Court as well as the Government. It was thereafter that he was appointed as District Judge.

10. Having considered the contentions advanced on all sides, I notice that the embargo contained in **Dheeraj Mor's case** is specifically with regard to the selection of persons who have been appointed as Judicial Officers as District and Sessions Judges in the quota set apart for direct appointment from the Bar. After a detailed discussion on the facts and law, the Apex Court specifically held as follows :-

“90. In the light of the foregoing discussion, it is held that under Article 233, a judicial officer, regardless of her or his previous experience as an Advocate with seven years' practice cannot apply, and compete for appointment to any vacancy in the post of District Judge; her or his chance to occupy that post would be through promotion, in accordance with the Rules framed under Article 234 and proviso to Article 309 of the Constitution of India.”

In the instant case, a reading of the provisions of the Kerala Judicial Service Rules would make it amply clear that the initial

induction in the post of Munsiff-Magistrate is as pre-induction trainees and that Ext.P6 is an order deputing the incumbents whose names are contained in Ext.P5 list for the pre-induction training. Since the Special Rules specifically provide for a pre-induction training and a later appointment as Munsiff-Magistrate after completion of the period of training, the contention of the petitioner that the 3rd respondent stood appointed as Munsiff-Magistrate and was therefore a judicial officer cannot be accepted. The 3rd respondent had sought the permission of the High Court to be relieved from the training and such request was also granted by the High Court and informed to the Government. The Government had passed Ext.P7 order re-appointing the 3rd respondent who had a lien in the post of Assistant Public Prosecutor Grade I, as such.

11. The Apex Court in **Sunil Kumar Verma v. The State of Bihar and others** had considered a case where the petitioner was an applicant for the post of Additional District Judge and Sessions Judge in the Bihar judicial service. He submitted an application in September, 2016, but the selection did not proceed further. In the meanwhile, he had applied for the post of Civil Judge (Junior

Division) in the State of Uttar Pradesh and he was selected and appointed as such on 16.1.2017. The Apex Court had considered the issue and found as follows :-

“9. The present appeal arises out of peculiar facts and circumstances. Undisputedly, the Appellant had applied in response to the advertisement issued by the High Court of Judicature at Patna. As on the date of his application, he was a lawyer having practiced for more than 7 years and was, therefore, very much eligible to apply for the direct recruitment category.

10. However, in the meantime, an advertisement was issued by the State of Uttar Pradesh, in response to which he applied and went through the selection process successfully and was appointed as Civil Judge (Junior Division).

11. In the meantime, the selection process conducted by the High Court of Judicature at Patna which had come to a standstill, proceeded further in the year of 2018. The Appellant, therefore, after obtaining the requisite permission from the High Court of Judicature at Allahabad participated in the selection process, in which he was found to be meritorious. After being selected, he applied to the High Court of Judicature at Allahabad for grant of permission to resign so as to join in the State of Bihar as an Additional District and Sessions Judge.

12. It could thus be seen that firstly, the Appellant was neither in services of the Bihar Subordinate Judicial Services Cadre on the date on which he applied and secondly, nor was he in the services of the Bihar Subordinate Judicial Officer Cadre on the date on which he was selected.

13. In that view of the matter, we find that the law laid down in the case of Dheeraj Mor (supra) is not applicable in the peculiar facts and circumstances of the present case.”

The appellant was directed to be reinstated within two weeks and held to be entitled to continuity in service for all purposes including seniority.

The facts of the instance case would also disclose that the 3rd respondent was a judicial officer neither on the date of submission of his application for appointment as District Judge nor on the date of his appointment as such. Moreover, he was only a trainee Munsiff-Magistrate from 4.4.2022. In the above factual situation, I am of the opinion that the prayers as sought for are not liable to be granted. The writ petition fails and the same is, accordingly, dismissed.

**Sd/-
ANU SIVARAMAN
JUDGE**

APPENDIX OF WP(C) 31295/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTIFICATION DATED 01-10-2021
ISSUED BY THE 2ND RESPONDENT
- Exhibit P2 TRUE COPY OF ADMISSION TICKET OF THE PETITIONER
FOR THE MAIN EXAMINATION ISSUED BY THE 2ND
RESPONDENT
- Exhibit P3 TRUE COPY OF INTERVIEW CARD DATED 04-08-2022
ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER
- Exhibit P4 TRUE COPY OF NOTIFICATION DATED 30-06-2020
ISSUED BY THE 2ND RESPONDENT
- Exhibit P5 TRUE COPY OF NOTICE DATED 27-01-2022 PUBLISHED
BY THE 2ND RESPONDENT OF THE LIST OF CANDIDATES
QUALIFIED FOR SELECTION TO THE POST OF MUNSIF
MAGISTRATE
- Exhibit P6 TRUE COPY OF GAZETTE NOTIFICATION DATED 09-03-
2022 PUBLISHED BY 1ST RESPONDENT
- Exhibit P7 TRUE COPY OF SELECT LIST NOTICE DATED 22-09-2022
PUBLISHED BY THE 2ND RESPONDENT
- Exhibit P8 TRUE COPY OF ORDER DATED 12-09-2022 ISSUED BY
THE 1ST RESPONDENT, RELIEVING 3RD RESPONDENT AND
REAPPOINTED AS ASSISTANT PUBLIC PROSECUTOR IN
GRAMA NYAYALAYA, KATTAPPANA

RESPONDENT EXHIBITS

- Exhibit-R3(a) TRUE COPY OF THE MARK LIST PUBLISHED BY THE HIGH
COURT OF KERALA OF KERALA STATE HIGHER JUDICIAL
SERVICE MAIN (WRITTEN) EXAMINATION 2021
- Exhibit-R3(b) TRUE COPY OF THE KERALA STATE HIGHER JUDICIAL
SERVICE PRELIMINARY EXAMINATION 2021 MARK LIST
PUBLISHED BY THE HIGH COURT OF KERALA

Exhibit-R3(c) TRUE COPY OF THE PERMISSION GIVEN BY THE
REGISTRAR GENERAL, HIGH COURT OF KERALA
ADDRESSED TO THE ADDITIONAL CHIEF SECRETARY TO
GOVERNMENT DATED 30-08-2022

Exhibit-R3(d) TRUE COPY OF THE GOVERNMENT ORDER G.O. (RT)NO.
2505/2022/HOME DATED 12-09-2022