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**A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ.**

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**O.P.(KAT) Nos.56 and 71 of 2017**

**“C.R.”**

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**Dated this the 20<sup>th</sup> day of October, 2023**

**J U D G M E N T**

**A.Muhamed Mustaque, J.**

The point that arises for consideration is whether long after integration of service could an employee claim promotion in his former service for the purpose of reckoning seniority in the integrated service.

2. The petitioners in these original petitions entered into the service of the Kerala Municipal Common Service (Engineering and Town Planning Service) as Third Grade Overseers through direct recruitment. They entered into service during 2001 and 2003.

3. The party respondents also entered the service as third grade overseer in Public Department during 1991-93 except the 5<sup>th</sup> respondent who got a compassionate appointment in the year 2000.



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4. While the petitioners and the party respondents were continuing in their respective Department, the Government formed a new Department called the Local Self Government Department in the year 2003. Accordingly, a new service formed called Kerala Local Self Government Engineering Subordinate Services. Special Rules were framed in the year 2007 for the new service. Special Rules provide for integration of members working in the category of Overseer Grade and similar categories in the Kerala Municipal Common Service (Engineering and Town Planning Service) into the Kerala Local Self Government Engineering Subordinate Services. It is specifically stipulated in the Special Rules that seniority of persons absorbed into the Kerala Local Self Government Engineering Subordinate Service shall be determined on the basis of date of the appointment and seniority in the respective category in the former service; and if he is a direct recruit, based on the advice of the Public Service Commission for appointment to that category.

5. The seniority list was prepared pursuant to the Special Rules on 31/12/2009. This was modified on 17/3/2011. Admittedly, the petitioners herein were juniors in the seniority list published as above.



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6. Some of the employees in the Municipal Common Service on 19/1/2011 raised a claim for promotion as Second Grade Overseer on the basis of their seniority in their parent department. Pursuant to the direction of this Court in W.P.(C).No.527/2011, dated 25/1/2011, their claim was considered by the Director of Urban Affairs and an order was passed on 20/11/2013, notionally promoting Third Grade Overseer as Second Grade Overseer with effect from 31/12/2007 in the Municipal Common Service. There are intervening events which we are not referring to here to avoid repetition. The point that arises here is whether the promotion effected in the former service after integration is legally valid or not. Two grounds were raised to challenge the promotion. One based on the seniority list prepared pursuant to the Special Rules contending that after publishing the seniority list based on the integration process, the parties therein cannot claim promotion in their former service. Second essentially is on the factual ground of non-availability of the post in former service to be promoted as Second Grade Overseer. The Tribunal sustained the challenge against such promotion. This is how the petitioners who were originally recruited in the Municipal Common Service approached this Court in these original petitions.



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7. Integration is the policy of the Government. *Inter se* seniority of persons in different services is a complicated issue. Any right or claim of a person in a different service will have to be settled at the time of integration. The Apex Court in **State of Sikkim v. Adup Tshering Bhutia [2014 (3) KLT Suppl. 124 (SC)]** succinctly referred to the process of integration as follows:

(i) Decide the principles on the basis of which integration of services has to be effected;

(ii) Examine the facts relating to each category and class of post with reference to the principle of equivalence;

(iii) Fix the equitable basis for the preparation of common seniority list of personnel holding posts which are merged into one category.

The State is bound to ensure a fair and equitable treatment to officers in various categories/cadres of services while preparing the common seniority list. Being a complicated process, integration is likely to result in individual bruises which are required to be minimised and if not possible, to be ignored. These first principles on integration are to be borne in mind whenever a dispute on integration is addressed.

8. The Seniority list prepared in integrated service will have to be followed for determining *inter se* seniority. Without questioning the seniority list prepared in integrated service, an employee cannot indirectly overturn the seniority list by claiming promotion in the former service. The claim for any promotion in the former service ought to have been raised at the time of



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integration. If the process of integration did not provide any room for raising such a claim, the employee cannot sleep over the right to claim and thereafter wake up from the sleep to raise such claim indirectly through another door of his former service. Whatever the claim the employee had at the time of integration ought to have been raised when he entered into the new integrated service. Baggage left in the former service cannot be retrieved through a backdoor entry to open a new door in integrated service. If the claim is not made at the time of integration in relation to any right available in the former service, that right is forgone and foreclosed. It is to be noted that the petitioners never raised any question on the seniority lists 2009 and 2011 of Third Grade Overseer. Once the petitioners entered into integrated service and if no claim is made at the time of integration, they cannot raise any claim in the former service to have an impact in the integrated service.

9. Coming to the factual claim for promotion in the former service or Municipal Common Service, the Tribunal found that there were no vacancies of Second Grade Overseer in the Municipal Common Service. It is true that the Tribunal entered into such a finding after adverting to the communications of the Chief Engineer of the



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Local Self Government Department which points out that no vacancies were available. This factual enquiry is actually unwarranted, as the applicants before the Tribunal have no right to question the availability and the non-availability of vacancies in another service for promotion. Anyway, on the legal ground we found that the petitioners are not entitled to claim for promotion in the former service after integration and preparation of the seniority list in the integrated service. Thus, the original petitions fail, and are accordingly dismissed.

**Sd/-**

**A.MUHAMED MUSTAQUE**

**JUDGE**

**Sd/-**

**SHOBA ANNAMMA EAPEN**

**JUDGE**

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**APPENDIX OF OP(KAT) 56/2017**

PETITIONER ANNEXURES

- ANNEXURE A1 TRUE COPY OF THE ADVISE MEMO ISSUED TO THE 6TH RESPONDENT.
- ANNEXURE A2 TRUE COPY OF THE SPECIAL RULES GOVERNING THE SERVICE OF THE EMPLOYEES OF THE LOCAL SELF GOVERNMENT ENGINEERING DEPARTMENT (SUBORDINATE SERVICE).
- ANNEXURE A3 TRUE COPY OF THE RELEVANT EXTRACT OF THE SENIORITY LIST DATED 31.12.2009.
- ANNEXURE A4 TRUE COPY OF THE RELEVANT EXTRACT OF THE SENIORITY LIST DATED 17.03.2011.
- ANNEXURE A5 TRUE COPY OF THE ORDER DATED 23.09.2011 PROMOTING 29 PERSONS RETROSPECTIVELY WITH EFFECT FROM 31.12.2007 TO THE POST OF SECOND GRADE OVERSEERS.
- ANNEXURE A6 TRUE COPY OF THE JUDGMENT IN O.A.NO.2054/2012 DATED 21.01.2013.
- ANNEXURE A7 TRUE COPY OF THE JUDGMENT DATED 09.09.2013 IN O.P. (KAT)NO.1150/2013.
- ANNEXURE A8 TRUE COPY OF THE ORDER DATED 18.08.2014 ORDERING PROMOTION OF 23 PERSONS RETROSPECTIVELY WITH EFFECT FROM 31.12.2007.
- ANNEXURE A9 TRUE COPY OF THE ORDER DATED 11.11.2014 O.A.NO.1764/2014.
- ANNEXURE A10 TRUE COPY OF THE ORDER DATED 24.02.2015.
- ANNEXURE A11 TRUE COPY OF THE ORDER DATED 16.04.2015.
- ANNEXURE A12 TRUE COPY OF THE ORDER DATED 18.12.2015 ALONG WITH THE RELEVANT EXTRACT OF THE PROVISIONAL SENIORITY LIST.
- ANNEXURE A13 TRUE COPY OF THE OBJECTION FILED BY THE 2ND APPLICANT.
- ANNEXURE A14 TRUE COPY OF THE CIRCULAR DATED 22.12.2015.



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APPENDIX OF OP (KAT)

56/2017

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| ANNEXURE A15    | TRUE COPY OF THE COMMUNICATION DATED 18.10.2011 ISSUED BY THE 2ND RESPONDENT TO THE PRINCIPAL SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT. |
| ANNEXURE A16    | TRUE COPY OF THE COMMUNICATION DATED 25.10.2011 ISSUED BY THE 2ND RESPONDENT TO THE ADVOCATE GENERAL, HIGH COURT OF KERALA, ERNAKULAM.                   |
| ANNEXURE A17    | TRUE COPY OF THE COMMUNICATION DATED 14.08.2012 ISSUED BY THE CHIEF ENGINEER TO THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT.           |
| ANNEXURE A18    | TRUE COPY OF THE COMMUNICATION 22.08.2012 ISSUED BY THE 2ND RESPONDENT TO THE ADVOCATE GENERAL, HIGH COURT OF KERALA.                                    |
| ANNEXURE A19    | TRUE COPY OF THE JUDGMENT REPORTED IN 2000 KHC 856 (KUTTIKRISHNAN & ANOTHER VS. THE STATE OF KERALA & OTHERS).   |
| ANNEXURE A20    | TRUE COPY OF THE JUDGMENT DATED 27.09.2011 IN W.P. (C)NO.7711/2009.  |
| ANNEXURE A21    | TRUE COPY OF THE JUDGMENT DATED 12.06.2014 IN W.A.NO.1675/2011.  |
| ANNEXURE A22    | TRUE COPY OF THE ORDER DATED 29.02.2016 ALONG WITH RELEVANT EXTRACT OF THE SENIORITY LIST.   |
| ANNEXURE R7 (A) | TRUE COPY OF THE JUDGMENT DATED 05.02.2016 IN W.A.NO.200/1996.   |
| ANNEXURE R7 (B) | TRUE COPY OF THE MUNICIPAL COMMON SERVICE RULES.   |





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**APPENDIX OF OP (KAT) 56/2017**

- ANNEXURE R7 (C) TRUE COPY OF THE LETTER NO.E4-3646/11 DATED 20.11.2013 OF THE DIRECTOR OF URBAN AFFAIRS.
- ANNEXURE R7 (D) TRUE COPY OF THE LETTER NO.E11-1130/2011/CE/LSGD DATED 25.03.2011 ISSUED BY THE 2ND RESPONDENT.
- ANNEXURE R7 (E) TRUE COPY OF THE JUDGMENT DATED 25.01.2011 IN W.P. (c)NO.527/2011.
- ANNEXURE R7 (F) TRUE COPY OF THE LETTER NO.3646/11 DATED 22.05.2014 ISSUED BY THE 3RD RESPONDENT.
- ANNEXURE R7 (G) TRUE COPY OF THE LETTER NO.3646/11 DATED 22.05.2014 ISSUED BY THE 3RD RESPONDENT.
- ANNEXURE R7 (H) TRUE COPY OF THE ORDER G.O. (MS)NO.94/08/LSGD DATED 27.03.2008.
- ANNEXURE R7 (I) TRUE COPY OF THE ORDER G.O. (MS)NO.96/09/LSGD DATED 04.06.2009.
- ANNEXURE R7 (J) TRUE COPY OF THE ORDER ALONG WITH THE RELEVANT EXTRACT OF THE APPENDED SENIORITY LIST NO.E5-202/2009/CE/LSGD DATED 30.12.2009 OF THE 2ND RESPONDENT.
- ANNEXURE R31 (A) TRUE COPY OF THE APPLICATION SUBMITTED BY SRI.DILEEP L., BEFORE THE CHIEF ENGINEER, L.S.G.D.
- ANNEXURE R31 (B) TRUE COPY OF THE LETTER NO.E2/6974/2016/RTI/CE/LSGD DATED 26.07.2016 OF THE STATE PUBLIC INFORMATION OFFICER IN THE OFFICE OF THE CHIEF ENGINEER.
- EXHIBIT P1 TRUE COPY OF THE LETTER WRITTEN BY THE DIRECTOR OF URBAN AFFAIRS TO THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION DATED 16-11-2011.



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**APPENDIX OF OP (KAT) 56/2017**

EXHIBIT P2 TRUE COPY OF THE ORDER DATED 30-01-2017 IN  
OA (EKM) NO.100/2016.

EXHIBIT P3 TRUE COPY OF THE OA (EKM) NO.100/2016.

EXHIBIT P4 TRUE COPY OF THE REPLY STATEMENT FILED BY  
THE 2ND RESPONDENT IN OA (EKM) NO.100/2016.

EXHIBIT P5 TRUE COPY OF THE REPLY STATEMENT FILED BY  
THE RESPONDENTS 7 TO 11 AND 13 TO 23 IN OA  
(EKM) NO.100/2016.

EXHIBIT P6 TRUE COPY OF THE ADDITIONAL REPLY STATEMENT  
FILED BY THE RESPONDENTS 7 TO 11 AND 13 TO  
23 IN OA (EKM) NO.100/2016.

EXHIBIT P7 TRUE COPY OF THE MISCELLANEOUS APPLICATION  
(EKM) NO.2511/2016 IN OA (EKM) NO.100/2016.

RESPONDENT EXHIBITS

Exhibit R28(a) TRUE COPY OF THE RANKED LIST  
NO.402/2011/ROE DATED 02.09.2011 PUBLISHED  
BY PUBLIC SERVICE COMMISSION.

Exhibit R28(b) TRUE COPY OF THE ORDER NO.E4/3646/2011  
PASSED BY DIRECTOR OF URBAN AFFAIRS ON 23-  
9-2011

Exhibit R28(c) TRUE COPY OF THE ORDER NO.E5-  
6160/2012/CE/LSGD DATED 23.08.2014 OF CHIEF  
ENGINEER-LSGD.

Exhibit R28(d) TRUE COPY OF THE JUDGEMENT IN WP(C) NO: 527  
OF 2011 DATED 25.01.2011.

Exhibit R28(e) TRUE COPY OF LETTER NO.E11-  
1130/2011/CE/LSGD DATED 18.10.2011 OF CHIEF  
ENGINEER LSGD.

Exhibit R28(f) TRUE COPY OF LETTER NO.E11-  
1130/2011/CE/LSGD DATED 25.10.2011 OF CHIEF  
ENGINEER LSGD.



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- Exhibit R28(g) TRUE COPY OF LETTER NO.E11-  
1130/2011/CE/LSGD DATED 14.08.2012 OF CHIEF  
ENGINEER LSGD.
- Exhibit R28(h) TRUE COPY OF LETTER NO.E11-  
1130/2011/CE/LSGD DATED 22.08.2012 OF CHIEF  
ENGINEER LSGD.
- Exhibit R28(i) TRUE COPY OF THE RELEVANT EXTRACT OF  
SENIORITY LIST NO.E22-  
101/2013/CE/LSGD(VOL.1) DATED 30.11.2022  
PUBLISHED BY THE CHIEF ENGINEER LSGD
- RESPONDENT EXHIBITS
- Exhibit P28(j) TRUE A COPY OF THE GAZETTE NOTIFICATION  
NO.E22-123/13/CE/LSGD DATED 18.09.2023  
ISSUED BY THE CHIEF ENGINEER
- Exhibit R28(k) TRUE COPY OF THE GAZETTE NOTIFICATION  
NO.E22-123/13/CE/LSGD DATED 18.09.2023  
ISSUED BY THE CHIEF ENGINEER



**APPENDIX OF OP(KAT) 71/2017**

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- ANNEXURE A19 TRUE COPY OF THE JUDGMENT OF THE DIVISION BENCH OF THE HON'BLE HIGH COURT REPORTED IN ILR 2000(3) KER 1 (KUTTIKRISHNAN AD OTHERS VS. STATE OF KERALA AND OTHERS) AND REPORT AS 2000 (KHC) 856.
- ANNEXURE A20 TRUE COPY OF THE JUDGMENT IN WP(C) NO. 7711/2009 DATED 27/09/2011.
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ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM
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THE 2ND RESPONDENT IN IA (EKM) NO. 100/2016  
BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL,  
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- RESPONDENT EXHIBITS
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ENGINEER DATED 29/09/2016.