

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

FRIDAY, THE 4TH DAY OF AUGUST 2023 / 13TH SRAVANA, 1945

OP (KAT) NO. 330 OF 2023

AGAINST THE ORDER/JUDGMENT OF A 1358/2023 OF KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/APPLICANT:

RADHAKRISHNAN K
SPECIAL GRADE AUDITOR, OFFICE OF ASSISTANT
DIRECTOR (AUDIT), NEDUMNAGAD REVENUE TOWER,
NEDUMANGAD, THIRUVANANTHAPURAM - 695 541
(RESIDING AT NANDHANAM, NAGACHERY, ANAD,
NEDUMANGAD.P.O, THIRUVANANTHAPURAM, PIN - 695541)
BY ADVS.
LINDONS C.DAVIS
E.U.DHANYA
N.S.SHAMILA
CHINJU P. JOYIES

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF CO-OPERATION, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 REGISTRAR OF CO-OPERATIVE SOCIETIES
OFFICE OF THE REGISTRAR OF CO-OPERATIVE
SOCIETIES, JAWAHAR SAHAKARANA BHAVAN,
THIRUVANANTHAPURAM, PIN - 695014
- 3 DEPARTMENTAL PROMOTION COMMITTEE (DPC)
FOR PROMOTION TO THE POST OF ASSISTANT REGISTRAR
OF THE CO-OPERATIVE SOCIETIES,
REPRESENTED BY ITS CONVENER REGISTRAR OF CO-
OPERATIVE SOCIETIES, OFFICE OF THE REGISTRAR OF
CO-OPERATIVE SOCIETIES, JAWAHAR SAHAKARANA
BHAVAN, THIRUVANANTHAPURAM, PIN - 695014

OTHER PRESENT:

SRI. K.P.HARISH-SR. GP

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP
FOR ADMISSION ON 04.08.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



(CR)

ALEXANDER THOMAS & C. JAYACHANDRAN, JJ.

O.P.(KAT) No. 330 of 2023

[arising out of the order in OANo. 1358/2023 dated 24.07.2023 on the files of the KAT,
Thiruvananthapuram Bench]

Dated this the 4th day of August, 2023

J U D G M E N T

Alexander Thomas, J.

The instant Original Petition is directed against the impugned Ext.P2 interim order dated 24.07.2023, rendered by the Kerala Administrative Tribunal in O.A.No. 1358/2023. The petitioner herein is the sole applicant in the O.A. The respondents herein are the respondents in the O.A.

2. The prayers in the instant Original Petition, O.P(KAT)No.330/2023, filed by the petitioner before this Court, are as follows (see page 13 of this paperbook):

- i) To modify Exhibit. P2 interim order passed by the Hon'ble Kerala Administrative Tribunal, Thiruvananthapuram, by directing the 3rd respondent to consider the claim of the petitioner for further promotion to the post of Assistant Registrar of Cooperative Societies, by providing reservation for Persons with Disabilities.
- ii) Grant such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.
- iii) To dispense with the production of translation of vernacular documents;



3. The prayers in the instant Ext.P1 original application, O.A.No.1358/2023, filed by the petitioner before the Kerala Administrative Tribunal, Thiruvananthapuram Bench, are as follows (see pages 29 & 30 of this paperbook):

- i)** to issue a direction to respondents to promote the applicant to the post of Assistant Registrar to the existing vacancies by considering his reservation for promotion for persons with disabilities towards 3% of backlog vacancies as per Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 or in the 4% of existing vacancies as per Right of Persons with Disabilities Act, 2016;
- ii)** to Issue a direction to 1st respondent to consider and pass orders on Annexure A5 representation by promoting the applicant to the post of Assistant Registrar in the existing vacancies by considering his reservation for promotion for persons with disabilities.;
- iii)** to issue a direction to 2nd respondent to consider and pass orders on Annexure A4 and A5 representations by promoting the applicant to the post of Assistant Registrar in the existing vacancies by considering his reservation for promotion for persons with disabilities;
- iv)** and grant such other and further reliefs as this hon'ble Tribunal may deem fit and proper in the circumstances of the case including costs.

4. The interim prayer sought for by the petitioner in Ext.P1 O.A., is as follows (see page 30 of this paperbook):

“For the reasons stated in the statement of facts and grounds mentioned in paras above, it is humbly prayed that this Hon'ble Tribunal may be pleased to direct the 3rd respondent to consider the claim of the applicant for further promotion to the post of Assistant Registrar of Cooperative Societies, by providing reservation for persons with disabilities, pending disposal of the



original application.”

5. The Tribunal has now passed the impugned Ext.P2 interim order dated 24.07.2023 in the above O.A., which reads as follows (see page 47 of this paperbook):

Admit.

Learned Government Pleader takes notice for respondents. Learned Government Pleader submits that on the basis of Annexure A6 in order to make promotion against the post identified in Annexure A6 order Special Rules have to be amended and the proceedings for the same have already started. Thereafter a seniority list of differently abled candidates, who are eligible for promotions has to be prepared and therefore some more time is required for the same. As the post of Assistant Registrar is notified there shall be a direction to the second respondent to place Annexure A4 before the DPC and to take decision in the light of Annexure A6.

Post after three weeks.

6. According to the petitioner/applicant, he was earlier working as Special Grade Cooperative Inspector in the Office of the Registrar of Co-operative Societies, at the time of institution of the above O.A. Later, he was transferred and posted as Special Grade Auditor (which is stated to be equivalent to the post of Special Grade Co-operative Inspector), in the office of the Assistant Director (Audit), Nedumangad, Thiruvananthapuram, from 01.08.2023 onwards. The petitioner would aver that, he is suffering from 40%



disability of Post-Polio weakness for both limbs and that he would fulfill the definition of “person with disability”, as understood in the Rights of Persons with Disabilities Act, 2016, (for short 'the Act, 2016') framed by the Parliament. Accordingly, the petitioner would contend that, he is eligible and entitled for reservation of persons with disability for promotion in the post 4% quota, as envisaged in Section 34 of the 2016, Act. Further, the next promotion post of the applicant is the post of Assistant Registrar, which has already been identified and notified as suitable for appointment of persons with disabilities, as per the abovesaid Act, as can be seen from Annexure-A3 Government Order, GO(P)No.61/2012/SWD dated 17.10.2012, in terms of the 1995 Act, and subsequently, as per Annexure-A6 Government Order, GO(P)No.7/2022/SJD dated 28.10.2022, as per the present 2016 Act. The post of the Assistant Registrar is notified as Serial No.143 of the Annexure/Appendix appended to Annexure-A6 GO dated 28.10.2022. Further that, the State Government had earlier taken the stand that there is no mandatory requirement for observing reservation in promotions,



inspite of the verdicts of the Apex Court in cases as in **Rajeev Kumar Gupta v. Union of India [2016 (13) SCC 153 = AIR 2016 SC 3228]**, the petitioner would urge that, in **Rajeev Kumar Gupta's** case (supra), the Apex Court has held that, irrespective of the mode of filling up of vacancies, 3% reservation shall be provided to persons with disabilities. That, the same was not implemented in the State of Kerala. The petitioner would aver that promotions of persons with disabilities, including that of the applicant herein, have thus, been inordinately delayed, as the reservation, which is mandated by the Central Act, has not been provided by the State Government. That, all the promotions secured by the applicant till date is only on the basis of the over all seniority and not on the basis of lateral reservation, as envisaged in the above said enactment framed by the Parliament. Further that, in **Siddaraju v. State of Karnataka & others [(2020) 19 SCC 572 = 2020 (1) KLT 698 = 2020(1) KHC 609]**, it has been held that the Rule of no reservation in promotions, laid down in the celebrated decision of the Apex Court in **Indra Sawhney's** Case/Mandal verdict, [1992



Suppl.(3) SCC 215], has no applications to persons with disabilities, since, what is involved in the former is vertical reservation and whereas what is mandated, as per the 1995 & 2016 Acts framed by the Parliament, is lateral reservation. But that, inspite of these verdicts of the Apex Court, the State of Kerala has not implemented lateral reservation for persons with disabilities. Further that, later, in a verdict of this Court, it was directed for the implementation of lateral reservation for promotion as to the above said Central Act. The State of Kerala had challenged the above said verdict of this Court by approaching the Apex Court. Therein the Apex Court in the judgment in **State of Kerala and others v. Leesamma Joseph [(2021) 9 SCC 208 = 2021 (4) KLT 191 = 2021 (4) KHC 318]** has directed that the State of Kerala shall implement the above said verdicts of the Apex Court, in cases as in **Rajeev Kumar Gupta's** case (supra) and **Siddaraju's** case (supra). The petitioner would invite the attention of this Court, to para 31 of the above said verdict of the Apex Court in **Leesamma Joseph's** case (supra) which reads as follows:.



"31. CONCLUSION

We are of the view that the course of action followed by the High Court in the impugned order is salutary and does not call for any interference. We have also answered various questions which have arisen in the present proceedings assisted by learned Amicus Curiae. In fact, what seems to emerge is that the appellant - State has not implemented the judgment of this Court in Rajeev Kumar Gupta's and Siddaraju's cases (sura). Thus, we consider it appropriate to issue directions to the State of Kerala to implement these judgments and provide for reservation in promotion in all posts after identifying said posts. This exercise should be completed within a period of three months. We are making it time bound so that the mandate of the Act is not again frustrated by making S.32 as an excuse for not having identified the post."

7. Further that, the petitioner could reliably learn that, the State authorities are still delaying the matter on the hypothetical ground that the statutory special rules and other norms, framed by the Government, will have to be amended, to provide for lateral reservation, for persons with disabilities, inspite of orders as in Annexure-A3 & A6 already admitting the post as suitable and inspite of the verdict of the Supreme Court in cases as in **Rajeev Kumar** Case (supra), **Siddaraju's** case (supra) and **Leesamma Joseph's** case (supra). In the light of these aspects, the petitioner would contend that the Tribunal should have issued a positive direction for consideration of the claim of the petitioner for lateral reservation.



Further, we also note the specific admonition made by the Apex Court in para 31 of **Leesamma Joseph's** case (supra), wherein their lordships of the Apex Court has made it abundantly clear that the necessary exercise for implementing lateral reservation in promotions, should be duly complied by the State authorities, within three months and that matters should not be unnecessarily delayed and prolonged any further and that the State should ensure not to again frustrate the objectives and purposes of the above said affirmative action, mandated by the Parliament in the above said Acts.

8. The learned Government Pleader would submit and invites our attention that the State has already submitted, through the Senior Government Pleader concerned, before the Tribunal that, to effectuate further proceedings, in pursuance of Annexure-A6 order, to make the promotion against the post identified in Annexure-A6, the special Rules will have to be amended and the proceedings of the same have already been completed. Then, thereafter, a seniority list of differently abled candidates eligible for



promotion, has to be prepared and therefore, more time is required, which the Tribunal has also recorded. After noting these submissions of the State authorities, made through the Government Pleader, that as the post of Assistant Registrar has already been notified as per Annexure-A6, there will be a direction to the 2nd respondent Registrar of Co-operative Societies to place Annexure-A4 representation dated 03.08.2022, before the 3rd respondent Department Promotion Committee and to take decision, in the light of Annexure-A6. Accordingly, we make it clear that the Union legislation, as per the Rights of Persons with Disabilities Act, 2016, will have to be complied with by the State authorities, especially in view of the various rulings of the Apex Court governing the field and even if there are no specific provisions in that regard, in the Statutory Special Rules and other executive orders, if any, in the matter of Rules of recruitment and methods of appointment, once the post is identified, there cannot be any further delay in the matter. The process for amendment of the Special Rules etc., may go on, but that cannot be the reason for delaying and frustrating the objectives



of the parliamentary legislation as well as the specific directives and admonitions issued by the Apex Court, which, in the case of **Leesamma's** case (supra) has been specifically directed against the State of Kerala. The petitioner has averred that, as of now, altogether, about 63 vacancies are available in the cadre of Assistant Registrar of Co-operative Societies and going by the mandatory requirement of 4% lateral reservation, for persons with disabilities, at least a minimum number of two vacancies will be available, even on the basis of the computation of the Differently abled quota, on the basis of the available vacancies. Hence, the respondents 1 & 2 will ensure that the consideration of the matter by the DPC is completed, without any further delay and the DPC will consider the claim of the petitioner for promotion to the post of Assistant Registrar, on the basis of lateral reservation, as envisaged in the Rights of Persons with Disabilities Act, 2016, without any further delay and in that regard, the 2nd respondent will also forward Annexure-A4 representation dated 03.08.2022, as well as Annexure-A5 representation dated 23.08.2022, filed by the petitioner, for the

O.P.(KAT).No.330/2023



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consideration of the 3rd respondent DPC. The DPC may complete the due process within two months. The impugned interim order of the Tribunal, at Ext.P2, will stand modified to the extend as above. No other orders and directions are called for.

With these observations and directions the above Original Petition will stand disposed of.

Sd/-

**ALEXANDER THOMAS,
JUDGE**

Sd/-

**C. JAYACHANDRAN,
JUDGE**

TR

THE HIGH COURT OF KERALA
HIGH COURT OF KERALA
CERTIFIED COPY



APPENDIX OF OP(KAT) 330/2023

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF THE STANDING DISABILITY ASSESSMENT BOARD CERTIFICATE NO.C3-2736/08 DATED 11.04.2018 DATED 18.01.2008 ISSUED FROM THE GENERAL HOSPITAL, THIRUVANANTHAPURAM
- Annexure A2 A COPY OF THE JOB ORIENTED PHYSICAL AND FUNCTIONALITY CERTIFICATE NO.C2-13187/2019/GHT DATED 09.11.2019 ISSUED TO THE APPLICANT FROM GOVT. GENERAL HOSPITAL, THIRUVANANTHAPURAM
- Annexure A3 A COPY OF THE GO(P) NO.61/2012/SWD DATED 17.10.2012
- Annexure A4 A TRUE COPY OF THE REPRESENTATION OF THE APPLICANT DATED 03.08.2022 BEFORE THE 2ND RESPONDENT
- Annexure A5 A COPY OF THE REPRESENTATION SUBMITTED BY THE APPLICANT BEFORE THE 1ST AND 2ND RESPONDENT DATED 23-08-2022
- Annexure A6 A COPY OF THE G.O(P)NO.7/2022/SJD, DATED 28.10.2022 ALONG WITH THE RELEVANT PAGE OF THE EXPERT COMMITTEE APPROVED PHYSICAL & FUNCTIONAL REQUIREMENTS OF VARIOUS GOVERNMENT POSTS
- Exhibit P1 A COPY OF OA NO.1358/2023 BEFORE THIS HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM
- Exhibit P2 A COPY OF THE INTERIM ORDER DATED 24.07.2023 IN OA NO.1358/2023 OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL; THIRUVANANTHAPURAM
- Exhibit P3 A COPY OF THE REQUEST DATED 29.07.2023 FILED BY THE PETITIONER