

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE
&
THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
Thursday, the 15th day of July 2021 / 24th Ashadha, 1943
WP(C) NO. 10706 OF 2021(S)

PETITIONERS:

- 1 THE KERALA ADMINISTRATIVE TRIBUNAL ERNAKULAM
ADVOCATES ASSOCIATION (KATEAA), REPRESENTED BY ITS SECRETARY,
ADVOCATE T.R.RAJESH, 3RD FLOOR, KERALA ADMINISTRATIVE TRIBUNAL,
MERCURY CHAMBERS, SADANAM ROAD, JOSE JUNCTION, KOCHI, KERALA-682 016.
- 2 R.K. MURALIDHARAN, AGED 56, S/O. DAMODARAN NAIR, ADVOCATE,
T/19, EMPIRE BUILDING, KOCHI, KERALA-682 018.

RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF LAW & JUSTICE (DEPARTMENT OF JUSTICE), JAISELMER HOUSE,
26, MANSION ROAD, NEW DELHI-110 011.
- 2 THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF PERSONNEL,
PUBLIC GRIEVANCES AND PENSION, (DEPARTMENT OF PERSONNEL AND
TRAINING) 102, NORTH BLOCK, CENTRAL SECRETARIAT, NEW DELHI - 110 001.
- 3 THE STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
PERSONNEL AND ADMINISTRATIVE REFORMS (RULES) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA-695 001.
- 4 THE SELECTION COMMITTEE, (SELECTION OF MEMBERS FOR THE KERALA
ADMINISTRATIVE TRIBUNAL), HIGH COURT OF KERALA, ERNAKULAM, KOCHI,
KERALA-682 031, REPRESENTED BY ITS CHAIRMAN.

P.T.O.

WRIT PETITION (CIVIL) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceedings pursuant to Exhibit P12, pending disposal of the Writ Petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 23/06/2021 and upon hearing the arguments of SRI.S.RAMESH BABU (SENIOR ADVOCATE) along with M/S.VINOD MADHAVAN, SHARATH S.PUTHENPARAMPAN & P.M.MAZNA MANSOOR Advocates for the petitioners, ASSISTANT SOLICITOR GENERAL OF INDIA for R1 & R2 and of SENIOR GOVERNMENT PLEADER for R3 & R4, the court passed the following:

P.T.O.



A.MUHAMED MUSTAQUE & DR.KAUSER EDAPPAGATH, JJ.

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Dated this the 15<sup>th</sup> day of July, 2021

**O R D E R**

A.Muhamed Mustaque, J.

These public interest litigations are related to the appointment of the Chairman and the Judicial Members of the Kerala Administrative Tribunal (KAT). These matters were heard yesterday for considering the request of the learned Senior Counsel Shri Ranjith Thampan appearing for the petitioners in W.P.(C).No.12707/2021 for an interim order.

2. The urgency for interim order:

The office of the Chairman of KAT is vacant since 15/9/2020 onwards. The recommendation to appoint the Chairman is pending with the Central Government. This Court in W.P.(C).No.10706/2021 by an interim order dated 1/6/2021 directed the Central Government to take appropriate decision on the recommendation within a period of three weeks. Again, a three weeks time was granted based on the request made by the learned Assistant Solicitor General. That period also expired on 14/7/2021. The term of the two judicial members

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appointed, namely, Shri Benny Gervacis and Shri V.Rajendran would expire on 19/7/2021. The process for appointing the judicial members is underway. It is submitted by the learned Government Pleader that the last date for submitting application for appointment as a Member (Judicial) is 23/7/2021. Apprehending that the entire function of KAT would come to a halt on the expiry of the term of the two Judicial Members on 19/7/2021, the learned Senior Counsel Shri Ranjith Thampan pressed for an interim order to permit the present judicial Members to continue to hold their office subject to the upper ceiling age of 65 years as prescribed under section 8(2) of the Administrative Tribunals Act, 1985 (hereinafter referred to as the "Tribunals Act"). The present Judicial Members are the first term appointees. Therefore, it is submitted that there is no legal bar in further extending the term as provided under section 8(2) of the Tribunals Act subject to the upper ceiling age of 65 years.

3. Brief Facts about the petitioners and the case filed by them:

W.P.(C).No.10706/2021 was filed by an Association of Advocates namely, Kerala Administrative Tribunal

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Ernakulam Advocates Association along with a practising lawyer. This was filed seeking a writ of mandamus for the expeditious conclusion of the proceedings for the appointment of the Chairman of KAT. There is also some ancillary challenges in regard to the appointment of the Administrative Member. Prayers have also been sought to take steps to fill the anticipated vacancies of the Judicial Members.

W.P.(C).No.12707/2021 was filed by the Kerala Administrative Tribunal Advocates' Association based in Thiruvananthapuram along with a lawyer seeking a declaration that the present Judicial Members can hold their office for one more term of five years after the expiry of the present term till they attain the age of 65 years. They also seek similar reliefs as sought in W.P.(C).No.10706/2021 for the appointment of the Chairman and the other Judicial Members in the anticipated vacancies.

4. Short history of KAT and brief synopsis leading to the litigation:

The Administrative Tribunal was constituted for the State of Kerala in the year 2010 initially with two members. Thereafter, the strength was enhanced to six.

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Sitting of two Division Benches at Thiruvananthapuram and Ernakulam was also permitted on Government Orders. The first Chairman was appointed on 5/8/2010. The term of the second Chairman expired on 15/9/2020. The term of the present Judicial Members would expire on 19/7/2021. Only one member is available out of the three Administrative Members. On expiry of the term of the present Judicial Members, the Tribunal has to function with a single Administrative Member without any Judicial Members from 20/7/2021 onwards.

5. The submissions on behalf of the petitioner in W.P.(C).No.12707/2021 for interim relief:

The learned Senior Counsel, Shri Ranjith Thampan submits that the process of appointment of the Chairman was forwarded by the State on 27/7/2020. The delay in appointment of the Chairman resulted in the present stalemate in regard to the extension of the appointment of the member of the Tribunal in tune with Rule 10 of the Administrative Tribunals (Procedure for Appointment of Members) Rules, 2011 (hereinafter referred to as the "Rules"). It is pointed out that the Chairman is vested with the power under Rule 10 to seek extension of the term of the present members in accordance with the

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procedures mentioned therein. The learned Senior Counsel also have questioned the present procedure for selection of the Judicial Members in the light of the Amendments to the Finance Act, 2017 read with Section 10B of the Tribunals Act and fairly submitted that the issue need not be considered at this stage and shall be decided at the later stage of the hearing of the matter. It is further submitted that in the light of the statutory provisions, there is no difficulty for this Court to give effect to the intention of the Rule making authority under Rule 10. It is further submitted that the Rule making authority never contemplated a situation of bringing the function of the Tribunal to a grinding halt, denying access of justice to the litigants. In support of this argument, the learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in **Shanker Raju v. Union of India [2011 KHC 4009]** particularly, para.24, the relevant portion of which reads thus:

24) Section 8 was amended by Act 1 of 2007. The amended provision also provides the "Term of Office" of the Chairman and Members of the Tribunal. From the language employed in the Section, what we can decipher is that the Chairman of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office. The proviso appended to the section is couched in the negative language. It states that a person

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appointed as a Chairman cannot hold office as such after he has attained the age of sixty eight years. Sub section (2) of Section 8 of the term of office of a Member of the Tribunal. It only says that a person appointed as a Member of the Tribunal, if he is found eligible for the post in terms of Section 6, shall hold office, for a term of five years. In the normal course, this term of five years is extendable by a term of another five years, giving a person a total term of ten years. Continuation from 5 years to 10 years appears to be as a matter of course subject to exceptions as provided in service law jurisprudence. Further, if such person has attained the age of 65 years, then he will have to retire, irrespective of whether he has completed ten years in office as a Member or not.

6. The learned Assistant Solicitor General submitted that extension of the term of appointment of the Members is possible only when the Chairman is in office. However, he admitted that in the absence of the Chairman and Judicial Members, the litigants may find it difficult to redress their grievances. It is then submitted that the delay in the appointment of Chairman is due to administrative exigencies. The COVID pandemic situation is also a reason for the delay in taking a decision by the Central Government.

7. The learned Government Pleader opposed the prayers for interim relief. It is submitted that in the light of the judgment of the Apex Court in **L.Chandra Kumar v. Union of India [(1997) 3 SCC 261]**, there is no difficulty for the Administrative Member to take up all



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the matters other than the matters related to challenge in regard to the vires of the statutory provisions or rules.

8. Reasons for granting an interim order:

After hearing the parties, we are of the view that an interim order should be granted to permit the Judicial Members to continue, subject to their upper ceiling age under the statutory provisions till the appointment of the Chairman or the Judicial Members. The term of the present Judicial Members expires on 19/7/2021. As per the Government Order, the Tribunal is sitting at Thiruvananthapuram and Ernakulam. The very idea of increasing the member strength of the Tribunal from two to six is on account of the fact that large number of cases are being filed before the Tribunal. The Rule making authority was very conscious that the functioning of the Tribunal should not come to a grinding halt on account of the delay in appointment of the members. Rule 4 of the Rules envisage making appointment in advance, in anticipated vacancies. Rule 10 also empowers the Chairman to seek extension of the term of the present members. The present stalemate could have been avoided, if prompt steps were taken to

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appoint the Chairman and the Tribunal would have continued with the present Judicial Members or with new appointees. It seems that a belated attempt is underway to appoint the Judicial Members and it is in progress. The last date for receiving applications from the prospective applicants for appointment as Member (Judicial) is fixed as 23/7/2021. The present imbroglio and stalemate is on account of administrative apathy in filling the vacancies in accordance with law. This Court notice that considerable delay was involved in appointing the Chairman. This Court also notice delay on the part of the State Government in initiating steps to appoint Judicial Members. It is not clear to conclude on when all the proceedings would be completed to enable the smooth functioning of the Tribunal. It is common knowledge that a Tribunal dealing with service matters cannot function without sufficient number of members. We cannot remain oblivious to the plight of the litigants also. If the present situation is allowed to continue, it will result in collapse of justice delivery system.

9. The extension of the term of the Judicial Members of the Tribunal cannot be said, has no support

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of law. The Tribunal Act and Rule itself provide such measures. Since such extension is in contemplation of the statutory rule itself, this Court only need to endeavour to uphold the very spirit and essence of the statute and not to denounce the same citing that it is powerless to act in such a situation.

10. The Court can also step in to the aid of law that could have been done by public official while discharging the official function. This Court is of the view that failure to act in such a situation would result in failure of justice delivery system. The Court can very well enforce default power to further the statutory provisions. The role of the Court in such a situation is to invoke the most pertinent ideal Rule of law, and to control over uncertainty created. Access to justice is not mere Constitutional ideal, it forms part of the fundamental rights guaranteed under Article 14 and 21 of the Constitution {See Constitution Bench judgment of the Hon'ble Supreme Court in **Anita Kushwah v. Pushap Sadan [(2016) 8 SCC 509]**}. This Court cannot lose sight the dimension of Articles 14 and 21 while issuing such directions in these cases. The present dilemma arises on account of the failure

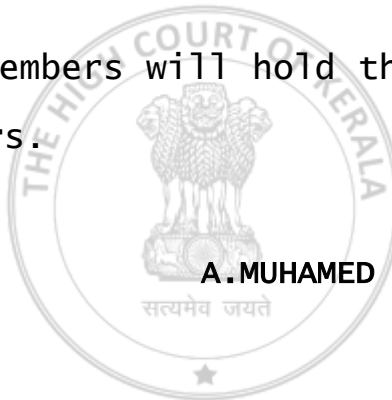
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on the part of the Executive to complete the formalities relating to the appointment of the Chairman and the Judicial Members as contemplated under the statutory provisions. Therefore, this Court can very well issue directions to make good the default to ensure that the functions of the Tribunal do not come to a halt. Accordingly, we direct the present Judicial Members of KAT to continue on the following conditions:

i. The continuation of the further term of the present Judicial Members is till the appointment of the Chairman or till replacement of them by new members, whichever is earlier.

ii. The present members will hold the office only upto the age of 65 years.



Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

DR. KAUSER EDAPPAGATH, JUDGE

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