

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE K. BABU

FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942

OP (KAT) .No. 56 OF 2021

AGAINST THE ORDER IN OA 1387/2020 DATED 10-02-2021 OF
KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/APPLICANTS 1 AND 3 IN ORIGINAL APPLICATION:

1 SANDEEP K.G.
AGED 48 YEARS
SON OF GANGADHARAN, SUPERINTENDING ENGINEER,
LSGD NORTH CORCLE, KOZHIKODE-673 001,
RESIDING AT KIZHAKKETHODIKAYIL HOUSE,
MUKKAM P.O.KOZHIKODE, KERALA-673 602.

2 AJITH KUMAR G.S.,
AGED 53 YEARS
SON OF SUKUMARAN, SUPERINTENDING ENGINEER,
KSRRDA, SWARJ BHAVAN,
THIRUVNANTHAPURAM-695 003, RESIDING AT AJITH
BHAVAN, VELLAYANI P.O. THIRUVANANTHAPURAM,
KERALA-695 522.

BY ADVS.
SMT. REKHA VASUDEVAN
SMT. ELIZABETH V. JOSEPH

RESPONDENTS/RESPONDENTS & 2ND APPLICANT IN ORIGINAL
APPLICATION:

1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, KERALA-695 001.

2 THE CHIEF ENGINEER,
LOCAL SELF GOVERNMENT DEPARTMENT,
REVENUE COMPLEX, PUBLIC OFFICE BUILDING,
THIRUVANANTHAPURAM, KERALA-695 033.

3 K. P RAMESH,
EXECUTIVE ENGINEER, KOZHIKODE MUNICIPAL
CORPORATION, KOZHIKODE, KERALA-673 001.

4 **LATHA M.S,**
 AGED 49 YEARS
 WIFE OF KURIAN G, SUPERINTENDING ENGINEER,
 KOLLAM MUNICIPAL CORPORATION, KOLLAM-691 001,
 RESIDING AT THEKKEVEETTIL, PUTHUSSERY
 P.O.THIRUVALLA, PATHANAMTHITTA, ERKALA-689 602.

R3 BY ADV. SRI.FRANCO T.J.
R3 BY ADV. SRI.G.SANTHOSH KUMAR (P) .
R3 BY ADV. SRI.V.R.SASSIDHARAN

BY ADVS.
SRI.B.VINOD, SR.GOVT.PLEADER
SRI.V.R.SASHIDHARAN

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP
FOR ADMISSION ON 26.02.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

ALEXANDER THOMAS & K.BABU, JJ.

O.P(KAT) No.56 of 2021
[Arising out of the order dated 10-02-2021
in O.A No.1387 of 2020]

Dated this the 26th day of February, 2021

JUDGMENT

ALEXANDER THOMAS, J.

The prayers in the afore captioned Original Petition filed under Article 226 & 227 of Constitution of India are as follows (See page No.11 of the paper book of this O.P):

- (i) Set aside Ext.P6 order dated 10-02-2021 of the Honourable Kerala Administrative Tribunal and to stay further promotions of the 3rd respondent as Superintending Engineer and Chief Engineer till the disposal of Ext.P1 original application.
- (ii) Grant such other reliefs as may be prayed for and as the court may deem fit to grant and
- (iii) Grant the cost of the original petition.

2. The prayers in O.A No.1387/2020 filed before the Kerala Administrative Tribunal, Thiruvananthapuram Bench are as follows:

[See page No.22 of the paper book of this O.P.]

- (i) Set aside Anx.A6,A7 & A8 and all further proceedings pursuant to it.
- (ii) Issue an order directing the first respondent to follow Anx.A5 seniority list for the purpose of all promotions to the next higher posts.
- (iii) Declare that the seniority of the third respondent in the cadre of Executive Engineer can be reckoned only with effect from 20-03-2020.
- (iv) Issue an order directing the first respondent to reckon the seniority of the third respondent in the cadre of the Executive Engineer with effect from 20-03-2020 only.
- (v) Issue such other further reliefs as this Honourable Tribunal deem fit and proper to grant in the facts and circumstances of the case.

3. Heard Smt.Rekha Vasudevan, learned counsel appearing for the petitioners in the O.P/original applicants 1 & 3 in the O.A before the Tribunal, Sri.B.Vinod, learned Senior Government Pleader appearing for R1 and R2 herein/R1 & R2 in the O.A and Sri.V.R.Sasidharan, learned counsel appearing for contesting respondent No.3 herein/R3 in the O.A. In the nature of the orders proposed to be passed by this Court in this petition notice to contesting respondent No.4 herein/2nd applicant in the O.A will stand dispensed with, as the said party is co-applicant along the petitioners in the O.A before the Tribunal and she has no conflict or interest with the petitioners herein, on the other hand the said party is sailing together with the petitioners/original applicants.

4. Various grounds have been urged by Smt.Rekha Vasudevan, learned counsel appearing for the petitioners herein to advance their plea that the impugned Ext.P6 interim order dated 10-02-2021 in this O.A, whereby the earlier interim order at Ext.P2 herein dated 09-09-2020 rendered by the Tribunal in this case has been vacated, etc. The impugned Ext.P6 order has been so rendered pending final disposal of the main matter in Ext.P1 O.A.

5. One of the prime contentions urged by the learned counsel

appearing for the petitioners is to the effect that, the impugned Anx.A6 order dated 23-03-2020 ordering the absorption of the 3rd respondent herein to the post of Superintending Engineer in the Local Self Government Department on absorption basis with effect from 01-04-2017 is illegal and ultra vires, for the simple reason that the said executive order at Anx.A6 and the orders referred to in Anx.A6, which are all executive orders, have been so made without amending the statutory special rules governing the service in question. Further it is urged that the 3rd respondent even otherwise not entitled to consider promotion as Superintending Engineer as the recognised Engineering Degree qualification is a minimum qualification and that the 3rd respondent is not having Engineering degree qualification which has been recognised by the competent authority. Further that he has been accommodated in a post retrospectively with effect from 01-04-2017, though the said post has been created only on 20-03-2020, etc. Various other contentions are also made and the respondents have also advanced their contentions.

6. Sri.V.R.Sasidharan, learned counsel appearing for R3 would submit that the impugned Anx.A6 proceedings and the executive orders referred to therein, is on the basis of well-considered policy

decision taken by the State Government and that the State Government is legally empowered to take such decision for absorption of employees from other agencies like the Kozhikode Development Authority and the other authorities mentioned in the said order and that the said order cannot be said to be either illegal, unreasonable or improper, etc.

7. Exhibit P2 interim order dated 09-09-2020 initially granted by the Tribunal in this case reads as follows: [See paragraph Nos. 2 & 3 of Ext.P2 given on internal page No.52 & 53 of this paper book].

“2. Heard the learned counsel for the applicants and the learned Government Pleader. The applicants are challenging the absorption into regular service of the third respondent as Executive Engineer with retrospective effect from 01-04-2017 as per Anx.A6 order dated 20-03-2020 passed by the Government and the subsequent inclusion of the third respondent in the final seniority list, copy of which is produced as Anx.A8. Various contentions have been put forth by the learned counsel for the applicants and it is contended that any such absorption with retrospective effect will affect the vested right of the applicants. It is also submitted that while finalizing the seniority list as per Anx.A8 the applicants were not heard also and their objections were not duly considered. The learned counsel for the applicants in O.A No.1387/2020 submitted that all the applicants are working as Superintending Engineers and it is apprehended that the third respondent will be promoted to the next higher post of Chief Engineer overlooking their seniority.

The respondents will file reply statement. In the meanwhile, if any steps are being taken to promote the third respondent, the same will be implemented only after getting permission from the Tribunal.”

8. Now the said interim order granted in favour of the petitioners as per Ext.P2 on 09-09-2020 has been vacated as per the impugned Ext.P6 order. The impugned Ext.P6 order dated

10-02-2021 rendered by the Tribunal, reads as follows: [See paragraph No.2 thereof onwards given on page Nos.87-89 of this paper book]:

2. The staff of various Development Authorities which were wound up has been taken over as per Anx.A6 order and merged with the LSGD Engineering Branch with effect from 01-04-2017. It is noticed that the third respondent was promoted as Executive Engineer in the Calicut Development Authority on 29-07-2011. The learned counsel for the third respondent points out that the applicants in both the original applications were promoted as Executive Engineers only after 01-04-2017. The third respondent also has a case that he would have been included in the cadre of Executive Engineer with effect from 2011. However this contentions cannot be accepted since his absorption to the LSGD Engineering service is only with effect from 01-04-2017 and it is subject to the condition that he may be the seniormost in that category.

3. It is noticed that the applicants are promoted as Executive Engineers only after 01-04-2017 and it appears that the third respondent is the seniormost in the category of Executive Engineer, having been promoted to the said post in the year 2011 in the Calicut Development Authority. It is also noticed that the applicants in O.A No.1387/2020, though promoted as Executive Engineers only in the year 2017 and thereafter, are now occupying the post of Superintending Engineers. The learned counsel for the third respondent is due to retire shortly and the applicants in these original applications are younger in age. If the interim order continues, the third respondent may lose his chance for further promotions.

4. Having regard to the above facts, I think it is not necessary to continue the interim order restraining the promotion of the third respondent and the same is hereby vacated. However, it is made clear that promotions, if any, ordered will be subject to final orders in the original applications.”

9. Sri.V.R.Sashidharan, learned counsel appearing for the 3rd respondent would also submit that the Engineering Degree qualification possessed by the 3rd respondent is recognised and acceptable qualification and the plea of the petitioners to the contrary are untenable.

10. After hearing both sides, this Court is of the considered view that, taking note of the abovesaid submissions made by the

petitioners, the Tribunal at least for the purpose of interlocutory preservation of the subject matter of *lis* should not have vacated at Ext.P2 order and would have resolved the main controversy, by the final disposal of the O.A, so that the main matter before the Tribunal is given a quietus. This Court need not now consider on merits the rival contentions lest it may prejudice the contentions of both sides, which is now pending before the Tribunal. Suffice to say, that the petitioner has made out a strong *prima facie* case, which justifies the issuance of Ext.P2 order and therefore only for the purpose of consideration of the matter from a interlocutory perspective, we are of the view that vacating Ext.P2 order may not have been so ordered so that the subject matter of *lis* duly is preserved in terms at Ext.P2. Accordingly it is ordered that, both sides may complete the pleadings in the matter without any further delay.

11. The learned counsel for the petitioners submits that the original applicants will be immediately filing the requisite miscellaneous application for amendment of the pleas on certain aspects in order to raise certain additional grounds, etc and that the applicants are so advised though the abovesaid grounds are purely questions of law. This Court need not get into these issues except to

say that all parties concerned will ensure that the pleadings are completed without any further delay. For that purpose parties need not even wait for the issuance of the certified copy of this judgment and may proceed with all expedition to ensure that the pleadings/additional pleadings are made before the Tribunal without any further delay, so that the main controversy can be resolved by the Tribunal by the early final disposal of the main matter in the O.A without much delay. We would only request the Tribunal to bestow all the serious consideration to ensure that all reasonable endeavours are taken to ensure early final disposal of O.A No.1387/2020 preferably before the Tribunal closes for summer vacation by the 2nd week of April, 2021 or at least immediately after the Tribunal reopens after summer vacation and at least before the end of May, 2021 or with any reasonable time limit that may be found fit and appropriate by the tribunal and taking note of the interest of administration of justice.

12. Until the disposal of the O.A, it is ordered that Ext.P2 interim order granted on 09-09-2020 in this case by the Tribunal in O.A No.1387/2020 will stand restored and consequently it is ordered that the Ext.P6 order vacating Ext.P2 order will stand set aside and

rescinded. The abovesaid orders are issued only for the purpose of regulating the interlocutory state of affairs so as to pay way for preservation of the subject matter of *lis*. The said orders passed by us shall not be construed as an expression of opinion on our part regarding the merits of the main controversy which would fall exclusively within the domain and province of the Tribunal.

13. We make it clear that none of the observations and orders passed by this Court in this case shall be even construed as an expression on the merits of the controversy and it is for the Tribunal to take note of the various aspects of the matter and then rendered decision thereon without much delay as afore stated.

14. The Registry will forward a copy of this judgment to the Kerala Administrative Tribunal, Thiruvananthapuram Bench, who is dealing with O.A No.1387/2020 on the file of KAT, Thiruvananthapuram bench for necessary information.

With these observations and directions the above O.P will stand disposed of.

Sd/-
ALEXANDER THOMAS, JUDGE

Sd/-
K.BABU, JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE ORIGINAL APPLICATION ALONG WITH THE ANNEXURES FILED BY THE PETITIONER ON THE FILES OF THE HONOURABLE KERALA ADMINISTRATIVE TRIBUNAL (OA NO 1387 OF 2020)

ANNEXURE A1 COPY OF THE GO (MS) NO 54/2017/LSGD ISSUED BY THE FIRST RESPONDENT DATED 10.3.2017

ANNEXURE A2 COPY OF THE GO (MS) NO 73/2017/LSGD ISSUED BY THE FIRST RESPONDENT DATED 30.3.2017

ANNEXURE A3 COPY OF COMMUNICATION NO E.W.3/847/2018-LSGD ISSUED BY THE FIRST RESPONDENT DATED 4.9.2019

ANNEXURE A4 COPY OF THE COMMUNICATION NO E 1/5115/2017/CE/LSGD ISSUED BY THE SECOND RESPONDENT DATED 8.11.2019

ANNEXURE A5 COPY OF THE GO (MS) NO 180/2018/LSGD ISSUED BY THE FIRST RESPONDENT ALONG WITH THE SENIORITY LIST DATED 4.12.2018

ANNEXURE A6 COPY OF THE GO (MS) NO 54/2020/LSGD ISSUED BY THE FIRST RESPONDENT DATED 20.3.2020

ANNEXURE A7 COPY OF THE NOTICE NO E22-555/2013/CE/LSGD ISSUED BY THE SECOND RESPONDENT ALONG WITH DRAFT SENIORITY LIST DATED 8.6.2020

ANNEXURE A8 COPY OF THE GO (RT) NO 1518/2020/LSGD ISSUED BY THE FIRST RESPONDENT ALONG WITH FINAL SENIORITY LIST DATED 14.8.2020

EXHIBIT P2

TRUE COPY OF THE INTERIM ORDER DATED 9.9.2020 IN OA 1387 OF 2020 OF THE HONOURABLE TRIBUNAL

EXHIBIT P3

TRUE COPY OF THE REPLY STATEMENT FILED BY THE 3RD RESPONDENT ALONG WITH THE ANNEXURES IN OA 1387 OF 2020 OF THE FILES OF THE HONOURABLE TRIBUNAL

ANNEXURE R1 (A)

COPY OF THE GO (MS) NO 98/07/LSGD ISSUED BY THE FIRST RESPONDENT DATED 30.3.2007

ANNEXURE R1 (B)

COPY OF THE RELEVANT PAGES OF GO (P) NO 271/2007/LSGD ISSUED BY THE FIRST RESPONDENT DATED 27.11.2007

ANNEXURE R1 (C)

COPY OF THE RELEVANT PAGES OF THE KERALA TOWN AND COUNTRY PLANNING ACT 2016

ANNEXURE R1 (D)

COPY OF THE ORDER NO DF.W/47828/A1/10 ISSUED BY THE SECRETARY OF KOZHIKODE MUNICIPAL CORPORATION DATED 28.7.2011

ANNEXURE R1 (E)

COPY OF THE GO (RT) NO 2495/2011/LSGD ISSUED BY THE FIRST RESPONDENT DATED 29.10.2011

ANNEXURE R1 (F)

COPY OF THE GO (RT) NO 2721/2011/LSGD ISSUED BY THE FIRST RESPONDENT DATED 19.11.2011

EXHIBIT P4

TRUE COPY OF THE MA NO 1442 OF 2020 FILED BY THE 3RD RESPONDENT IN OA 1387 OF 2020 ON THE FILES OF THE HONOURABLE TRIBUNAL

EXHIBIT P5

TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO THE EXHIBIT P4 MA IN OA 1387 OF 2020 ON THE FILES OF THE HONOURABLE TRIBUNAL

EXHIBIT P6

TRUE COPY OF THE ORDER DATED 10.2.2021 IN OA 1387 OF 2020 OF THE HONOURABLE TRIBUNAL

EXHIBIT P7

TRUE COPY OF THE OG (MS) NO 191/2013/LSGD DATED 21.5.2013 ISSUED BY THE 1ST RESPONDENT

EXHIBIT P8

**TRUE COPY OF THE GO(P) NO 271/2007/LSGD
DATED 27.11.2007 ISSUED BY THE 1ST
RESPONDENT**

RESPONDENT'S/S EXHIBITS: NIL