

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE P. V. KUNHIKRISHNAN

MONDAY, THE 09TH DAY OF MARCH 2020 / 19TH PHALGUNA, 1941

OP (KAT) .No.286 OF 2015 (Z)

AGAINST THE ORDER IN O.A. NO.343 OF 2015 DATED 27.02.2015 OF THE
KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/APPELLANT:

LEESAMMA JOSEPH
AGED 51 YEARS
CASHIER, DISTRICT POLICE OFFICE, IDUKKI, RESIDING AT
QUARTER NO.E6B, PAINAVU P.O.IDUKKI DISTRICT -
685 603.

BY ADVS.
GIRIJA K.GOPAL
SMT.K.N.VIGY

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF HOME
AFFAIRS, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 2 STATE POLICE CHIEF, KERALA
THIRUVANANTHAPURAM - 695 010.
- 3 DISTRICT POLICE CHIEF, IDUKKI
KUYILIMALA, PAINAVU P.O., IDUKKI, DISTRICT - 685 603.
- 4 KERALA ADMINISTRATIVE TRIBUNAL
REPRESENTED BY ITS REGISTRAR, THIRUVANANTHAPURAM.

FOR R1 TO R4 BY SRI.P.N.SANTHOSH, SR.GOVERNMENT
PLEADER

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY
HEARD ON 09.03.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

Vinod Chandran, J.

The only issue arising in the above case is as to whether the persons having physical disability could be granted reservation in promotion also. The decision in **Rajeev Kumar Gupta and Others v. Union of India and Others** [(2016) 13 SCC 153] held that such reservation would be applicable for promotions also. Later, another Division Bench referred the matter to a Larger Bench expressing an opinion that this could go against the Larger Bench decision in **Indra Sawhney and Others v. Union of India and Others** [1992 Supp (3) SCC 217]. A three Judge Bench in **Siddaraju v. State of Karnataka and Others** [2020 (1) KHC 609] affirmed that such reservation is applicable to promotions. We hence set aside the order of the Kerala Administrative Tribunal (for short 'the Tribunal') and as a consequence allow the Original Application. The applicant should be considered for her promotion based on the disability at the time when her claim originally arose; subject to her seniority with reference to the other physically

challenged candidates entitled to such reservation. She also should be given the notional benefits of her promotion from the date she is found entitled. If the petitioner has not superannuated then she shall be given promotion within one month from today and all her monetary benefits shall also be given to her from that date and even if not promoted, from the date of expiry of one month from today. If the petitioner has already retired, on the basis of the notional pay, her last pay drawn shall be reckoned and her pension fixed in accordance with that. Original Petition is allowed leaving the parties to suffer their respective costs throughout.

Sd/-

K.VINOD CHANDRAN

JUDGE

Sd/-

P.V.KUNHIKRISHNAN

JUDGE

pkk xxx

APPENDIXPETITIONER'S EXHIBITS & ANNEXURES:

- EXHIBIT P1 EXT.P-1: TRUE COPY OF THE O.A.
NO.343/2015 FILED BY THE PETITIONER
- EXHIBIT P2 EXT.P-2: TRUE COPY OF THE JUDGEMENT
OF THE HON'BLE HIGH COURT OF
JUDICATURE AT BOMBAY AT PIL
NO.106/2010
- EXHIBIT P3 EXT.P-3: TRUE COPY OF THE COMPUTER
PRINT OUT OF THE ORDER OF THE HON'BLE
SUPREME COURT IN CC NO.13344/2014
DATED 12.9.2014
- EXHIBIT P4 EXT.P-4: TRUE COPY OF THE ORDER DATED
27.2.2015 IN SPECIAL LEAVE TO APPEAL
NO.5914/2015 IN NOML NO.690/2014 IN
RPL NO.85/2014 IN PIL NO.106/2010 OF
THE HON'BLE SUPREME COURT.
- EXHIBIT P5 EXT.P-5: TRUE COPY OF THE JUDGEMENT
IN WP NO.1630/2013 DATED 24.9.2014 OF
THE HON'BLE ALLAHABAD HIGH COURT.
- EXHIBIT P6 EXT.P-6: TRUE COPY OF ORDER DATED
20.3.2015 IN SLP NO.4641/2015 OF THE
HON'BLE SUPREME COURT OF INDIA.
- EXHIBIT P7 EXT.P-7: TRUE COPY OF THE COMMON
ORDER IN OA (EKM) NOS. 2 AND 3 OF
2015 DATED 15.1.2015 OF THE KERALA
ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.
- EXHIBIT P8 EXT.P-8: TRUE COPY OF THE ORDER IN OA
NO.343/2015 DATED 27.2.2015 OF THE
KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.
- ANNEXURE A1 TRUE COPY OF MEDICAL CERTIFICATE
DATED 20.09.1991 ISSUED TO THE
APPLICANT BY ORTHOPEADIC SURGEON.
- ANNEXURE A2 TRUE COPY OF ORDER
NO.GO(MS)100/96/HOME DATED 10.06.1996
OF THE 1ST RESPONDENT.

- ANNEXURE A3** TRUE EXTRACT OF FINALIZED SENIORITY LIST OF TEST QUALIFIED LDCS IN POLICE DEPARTMENT AS ON 27.10.2001.
- ANNEXURE A4** TRUE EXTRACT OF COPY OF THE FINALIZED SENIORITY LIST OF TEST QUALIFIED LDCS IN POLICE DEPARTMENT AS ON 16.10.2003.
- ANNEXURE A5** TRUE EXTRACT OF COPY OF THE FINALIZED SENIORITY LIST OF SENIOR CLERKS (UDCS) IN THE POLICE DEPARTMENT.
- ANNEXURE A6** TRUE COPY OF THE REPRESENTATION DATED 18.10.2014 SUBMITTED BY THE APPLICANT TO THE 2ND RESPONDENT.
- ANNEXURE A7** TRUE COPY OF LETTER NO.A1-105/2014/ID DATED 25.10.2014 OF THE 3RD RESPONDENT.
- ANNEXURE A8** TRUE COPY OF THE LETTER NO.A1-105/2014/ID DATED 01.12.2014 OF THE 3RD RESPONDENT.
- EXHIBIT P9** TRUE COPY OF THE JUDGMENT IN WP(C)NO.2821/2010 DATED 04.08.2010 OF THE HON'BLE HIGH COURT OF DELHI.
- EXHIBIT P10** TRUE COPY OF THE CIRCULAR NO.7/18/1/2008/A-2/2015 DATED 28.07.2015 OF THE CHIEF SECRETARY, GOVERNMENT OF UTTAR PRADESH ALONG WITH ITS TRUE ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS:

- EXHIBIT R2 A** TRUE COPY OF THE RELEVANT PAGES OF THE FINALISED SENIORITY LIST OF TEST QUALIFIED LD CLERKS AS ON 16.10.2003.
- EXHIBIT R2 B** TRUE COPY OF THE DGO NO.810/2015 DATED 05.05.2015.
- EXHIBIT R2 C** TRUE COPY OF THE RELEVANT PAGES OF PROVISIONAL SENIORITY LIST OF SENIOR CLERKS (UDCS) AS ON 25.03.2011.
- EXHIBIT R2 D** TRUE COPY OF THE PERSONS WITH DISABILITIES ACT, 1995.