



GOVERNMENT OF KERALA

Abstract

Local Self Government – Panchayat Department – Order dated 31.10.2018 in OA (EKM) No. 1243/18 filed by Sri. Manoj.K.V before the Hon'ble Kerala Administrative Tribunal - Complied with - Orders issued.

LOCAL SELF GOVERNMENT (EPA) DEPARTMENT

G.O.(Rt)No.2406/2019/LSGD

Dated, Thiruvananthapuram, 29/10/2019

Read : 1. G.O(Ms) No. 186/2006/LSGD, dated 03.08.2006.

2. G.O(P)No. 1/14/P&ARD dated 03.01.2014.

3. Application dated 06.05.2018 by Sri.K.V.Manoj.

4. Order dated 21.06.2018 in OA (EKM) No. 1243/18 filed by Sri. Manoj. K.V before the Hon'ble Kerala Administrative Tribunal.

5. Letter No. E10-20163/18 dated 06.11.2018 of the Director of Panchayats, Thiruvananthapuram.

ORDER

Sri. Manoj. K.V filed OA (EKM) No. 1243/18 before the Hon'ble Kerala Administrative Tribunal with a prayer to promote him as clerk in the Panchayath Department with retrospective effect from 06.03.2006 by invoking the special powers vested with the Government in rule 39 of part II of KS&SSR.

2. As per the order read as 4th paper above, the Hon'ble Kerala Administrative Tribunal has directed the 1st respondent, ie, the Government to take a decision on Annexure A12 representation, after hearing the applicant, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a certified copy of the order, which will be produced by the applicant along with a copy of the Original Application, as such he was heard on 14.09.2018. On the occasion he repeated the same prayer in Annexure A12 application, read as 3rd paper above, to promote him as clerk with retrospective effect from 06.03.2006. As per the letter read as 5th paper above the Director of Panchayats has furnished report.

3. As per the Kerala Panchayath Raj Subordinate Service Rules 1994 there was a provision for promotion of peons and Full Time Contigent employees who entered in service as on 01.01.1990 and had passed SSLC or equivalent to the cadre of clerk. But the peons and Full Time / Part Time contingent Employees who entered service after 16.06.1994 were not eligible for bytransfer promotion as LD clerk.

4. As per the order read as 1st paper above Government issued an executive order amending the Kerala Panchayat Subordinate Service Rules and inserted as Note 2 under Category 3 - Lower Division Clerk, as 5% of the posts in the cadre of LDC shall be filled up by promotion from among peons who have passed SSLC or acquired equivalent qualification on the basis of seniority reckoned on Revenue District basis and

5% of the posts in the cadre of LDC shall be filled up by promotion from among Full Time/ Part Time Contingent employees who have passed SSLC or acquired equivalent qualification on the basis of seniority reckoned on Revenue district basis. It was also classified therein that amendment in the Kerala Panchayath Subordinate Rules will be made in the due course.

5. In the light of the Government Order read as 1st paper above, promotion to the cadre of clerk from among peons/contingent employees were ordered in various districts including Kasaragode. Sri. Manoj.K.V was the 4th person to be considered for such bytransfer appointment from the final seniority list of peons in Kasaragode district. Cadre strength of the clerks in Kasaragode was 128. As such 6 peons were eligible for promotion to the post of clerk. The SI.No. 1 and 3 in the seniority list were promoted. The SI No 2 left the Department and SI. No. 4 to 7 were not promoted for want of vacancy. The date of advice of SI. 3 (Smt. Usha) and that of the applicant in the cadre of peon in the Kasaragode district were the same. As per the judgement dated 31.10.2008 in WP(C) 32167/2006 filed by Sri.N Udayakumar and connected cases, the Hon'ble High Court stayed the filling up of vacancies of LDCs by persons from peons and contingent staff until amendment of the Kerala Panchayath Subordinate Service Rules. Consequent to the stay order further promotions were not effected. But meanwhile 141 such persons were promoted. Later on Government have decided not to amend the Kerala Panchayath Subordinate Service Rules and filed affidavit to the effect before the Hon'ble High Court in WP(c) 21265/2009. Consequent to the issuance of the Government Order read as 2nd paper, the bytransfer appointment of the Office attendants were restored and Sri. Manoj the senior most peon was promoted on 07.01.2015.

6. As per judgment dated 31.10.2008 in WP(c) No 32167/06 & 12903& 10505/07 the Hon'ble High Court ordered not to fill up 10% vacancies of LDCs by persons from any of the categories of peons, part-time and full-time contingent staff until amendment is carried out and directed to decide on the amendment within three months from the date of production of a copy of the judgment. When the contempt of court case No. 366/2009 was filed against the non implementation of the judgment dated 31.10.2008 in 32167/2006 & connected cases, the State submitted that the Government have decided not to amend the rules and thus the Contempt Court Case closed. In the judgment dated 29.07.2009 in WP(c) 21265/2009, the Hon'ble High Court has ordered that in the view of the decision taken by the Government not to amend Special Rules, the Govt should consider whether peons who are continued to enjoy the benefit of promotion given to them based on Government Order. read as 1st paper, which did not have any effect on the special rules. It is also opined therein that, since the Government have decided not to amend the special rules, those employees who had been given the benefit of the order will necessarily have to be reverted.

7. Government have examined the matter in detail. The Government Order read as 1st paper above which was issued as an executive order amending the rule ceased its operation in compliance of the judgment dated 31.10.2008 in WP(c)

32167/2006. It is a well settled principle that administrative instructions, circulars and orders cannot override the statutory rules. Such executive order can only supplement, but it does not alter or modify the special rules. The provisions made in Government Order read as 1st paper above is clearly in conflict with those in the existing Special Rules. Government have ceased the operation of the said Government Order in compliance of Court directions. Hence Sri.Manoj.K.V is not eligible for the benefit of the Government Order read as 1st paper above. Sri.Manoj. K.V was given appointment bytransfer as LDC as per Government Order read as 2nd paper above. As the said Government Order does not provide retrospective effect, his claim for promotion with retrospective effect does not merit any consideration. As to his claim for promotion from the date of promotion of Smt.Usha (Sl.no.3), a wrong order cannot be the basis for a claim to similar order and violation of Article 14 cannot be invoked for the above purpose. Hence Government are pleased to decline the request of the applicant in the Annexure A12 application to promote him as clerk with retrospective effect from 06.03.2006. It is also ordered that the fate of the Government Order issued as per the order read as 1st above will be considered separately.

8. The order of the Hon'ble Kerala Administrative Tribunal read as 4th paper above is thus complied with and issued orders accordingly.

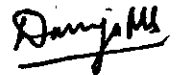
(By Order of the Governor)

SHEEBA B
DEPUTY SECRETARY TO GOVT.

To

1. The Advocate General, Kerala, Thiruvananthapuram Branch (with covering letter).
2. Sri. Manoj..K.V, Clerk, Balal Gramapanchayat, Kasaragode(Through the Director of Panchayats).
3. The Director of Panchayats, Thiruvananthapuram.
4. The Deputy Director of Panchayats, Kasaragode. (Through the Director of Panchayats).
5. The Secretary, Balal Gramapanchayat, Kasaragode (Through the Director of Panchayats)
6. Personnel & Administrative Reforms Department (No.Adv B2/98/19/P&ARD, 23/07/2019)
- 7.Information & Public relations (Web & New Media) Department
- ✓ 8. The Executive Director, Information Kerala Mission, Thiruvananthapuram (for publishing on official Website)
- 9.Stock File/Office Copy(File No. 192/EPA1/18/LSGD)

Forwarded/By Order



Section Officer