



GOVERNMENT OF KERALA

Abstract

Local Self Government Department – Establishment –O.A(EKM)-698/2016 filed by Shri. N. Raghunath, Senior Clerk, Kozhikkode Corporation– Order dated 09.06.2016 of the Hon. Kerala Administrative Tribunal- Complied with - Orders issued.

LOCAL SELF GOVERNMENT (EU) DEPARTMENT

GO(Rt)No. 437/2017/LSGD. Dated, Thiruvananthapuram, 16.02.2017

Read:-

1. Order No. E3-14206/15 dated. 12.02.2016 of the Director of Urban Affairs, Thiruvananthapuram.
2. Representation dated 17.03.2016 submitted by Shri. N.Raghunath, Senior Clerk, Kozhikkode Corporation before Government (Annexure A3)
3. Order dated 09.06.2016 of the Hon. Kerala Administrative Tribunal in O.A(EKM)-698/2016 filed by Shri. N. Raghunath, Senior Clerk, Kozhikkode Corporation.
4. Letter No. E3-20791/2016 dated 01.12.2016 and 28.01.2017 of the Director of Urban Affairs, Thiruvananthapuram.

ORDER

As per Order read as 1st paper above, the Director of Urban Affairs re assigned:the seniority of Smt. T.P Sindhu and Sri. N. Reghunath, Senior Clerks of Municipal Common Service.

2. In the representation read as 2nd paper above submitted before the Government, Sri. N. Reghunath, Senior Clerk, Kozhikkode Corporation complained that his seniority has been overlooked in the seniority list issued by the Director of Urban Affairs and therefore requested to recast the earlier seniority list dated 24/4/2014 and place him in between the persons in the Sl. No. 192 and 193 and promote him to the post of Head Clerk/ Revenue Inspector. He further requested to modify or set aside the final gradation list of Senior Clerks issued as per Order read as 1st paper above of the Director of Urban Affairs and place him in between

Sl. No. 323 and 324. He submitted that his juniors, namely;

- (1). Sri. A.M. Noushad,
- (2). Smt. Elsamma Sebastian,
- (3) Sri. Anwar Hussain,

were promoted to the post of Head Clerk/ Revenue Inspector, overlooking his claim. He further complained that as per Gradation list No. E3-14206/2015 dated. 12/2/2016, he has been placed in Sl No. 324 A wherein one Smt. T.P. Sindhu, who is a similarly placed person, has given seniority and placement as Sl No. 178. A

3. Sri. N. Reghunath also filed O.A (EKM) No. 698/2016 before the Kerala Administrative Tribunal. The Hon. Tribunal in the Order read as 3rd paper above directed the Government to take a decision on Annexure A7 representation within a period of 2 months from the date of receipt of a certified copy of the order, after affording an opportunity of being heard to the applicant and the persons who are likely to be affected.

4. In accordance with the direction of the Hon. Kerala Administrative Tribunal, the Under Secretary to Government, Local Self Government Department heard Sri. Reghunath on 4/10/2016. In the hearing, the applicant submitted that Sri. A.M Noushad, Smt. Elsamma Sebastian and Sri. Anwar Hussain, who are in Sl Nos 334,344 and 383 in the gradation list were promoted to the post of Head Clerk/ Revenue Inspector overlooking his claim and advice seniority and he ought to have been promoted to the post of H.C/ RI over and above them.

5. Hearing was also given to Sri. A.M Noushad, Smt. Elsamma Sebastian and Sri. Anwar Hussain, Revenue Inspectors.

6. In the hearing, Sri. Anwar Hussain, Revenue Inspector, has submitted that he was advised to the post of LDC/Bill Collector as per advise dated 17/12/2002 of the Regional Officer, Kerala PSC, Ernakulam and he jointed in that post on 31.1.2003. In that rank list he was in the 5th position and Sri. N.

Raghunath was in 607th position. Within the prescribed time, he passed all departmental tests. He therefore submitted that he is indisputably senior to Sri. N. Reghunath.

7. In the hearing Sri. A.M Noushad, Revenue Inspector, submitted that he was appointed as LDC/BC under Compassionate Employment Scheme as per appointment Order No.B6/ 7524/1989 dated. 30/9/1989 of the Director of Urban Affairs and joined duty on 6/10/1989. Promotion to the posts of UD Clerks was granted as per Order dated. 13/5/2005. Before that time he was test qualified. Sri. N. Reghunath joined only on 10/2/2003 on the basis of the advice dated. 17/12/2002 of Kerala PSC. Sri. Noushad opposed the argument of Sri. N. Reghunath that he is junior to Reghunath.

8. In the hearing, Smt. Elsamma Sebastian, Revenue Inspector, submitted that she was appointed under Compassionate Employment Scheme. As per GO (Ms) No. 197/2002/LSGD dated. 19/11/2002, Government accorded sanction to the Director of Urban Affairs to appoint her as LDC/B.C. The Director of Urban Affairs issued appointment Order No. A5-28255/2001 dated. 4/1/2003 and she joined duty on 22/1/2003. She therefore requested not to alter her seniority or promotion.

9. Government have examined the matter in detail with connected advice list of Kerala PSC (Advice Letter No. RE III (3) 760/97 dated 17/12/2002 of the Regional Officer, Kerala PSC, Ernakulam) and relevant appointment orders and the reports of the Director of Urban Affairs read as 4th paper above. As per Rule 27(c) of Part II, KS&SSRs the seniority of persons appointed on the advice of Kerala PSC shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice. In this case there is no argument/report from anywhere that there is punishment against anybody for reduction in rank. There is also no report that anybody has availed joining time beyond 3 months and lost their effective advice date or lost seniority in any other

means. There is also no complaint about test qualified date with reference to the date of occurrence of vacancy.

10. In this case, Sri. Anwar Hussain was advised to the post of LDC/Bill Collector as per advice dated 17/12/2002 of the Regional Officer, Kerala PSC, Ernakulam and he joined in that post on 31.1.2003. In that advice list he was in the 5th position and Sri. N. Raghunath was in 607th position. So the argument of Sri. N. Regunath that Sri. Anwar Hussain is junior to him is totally incorrect.

11. In this case Sri. Noushad was appointed as LDC/BC through compassionate employment scheme as per appointment Order No.B6/7524/1989 dated. 30/9/1989 of the Director of Urban Affairs and he joined duty in 6/10/1989. The seniority of a person appointed under Compassionate Employment Scheme shall be determined with effect from the date of appointment Order of the Appointing Authority vide GO (P)No.19/91/P&ARD dated 28/6/1991. In this case the date of effective advice of Sri. Reghunath is 17/12/2002 and date of appointment order of Sri. Noushad is 30/9/1989. As such Sri. Noushad is far senior to Sri. Reghunath and the argument of Sri. Reghunath that Sri. Noushad is junior to him is incorrect.

12. In the Proceedings read as 1st paper above, the Director of Urban Affairs gave placement to Sri. Reghunath, the applicant in Sl No. 324 A and Smt. T.P Sindhu, in Sl No. 178-A. In the introductory Paragraph of the said order, it is clearly mentioned that Smt. T.P Sindhu entered service on 11/10/1999. The date of effective advice of Sri. Reghunath is only 17/12/2002. As such he cannot be regarded as similarly placed person to that of Smt. T.P Sindhu and the argument of Sri. Reghunath that he is similarly placed person to that of Smt. T.P Sindhu is incorrect.

13. Appointment under Compassionate Employment is primarily governed by the Government Order GO(P) No.12/99/P&ARD dated 24/5/1999. The Para 23(a) of GO(P) No.12/99/P&ARD dated 24/5/1999 Government have specified

that the Appointing Authority has to issue formal appointment order in the case of appointment under Compassionate Employment Scheme and Administrative Department in the Government Secretariat is issuing only sanction for appointment. The seniority of a person appointed under Compassionate Employment Scheme shall be determined with effect from the date of appointment order of the Appointing Authority vide GO (P)No.19/91/P&ARD dated 28/6/1991. In this case, Smt. Elsamma Sebastian was appointed as per appointment Order No. A5-28255/2001 dated. 4/1/2003 of the Director of Urban Affairs and she joined duty on 22/1/2003. Even though she joined duty before Sri. Reghunath, Sri. Reghunath is a PSC hand and his date of effective advice is 17/12/2002. From the seniority list and the records of the Director of Urban Affairs it is seen that Smt. Elsamma Sebastian has given seniority above Sri. Reghunath. Actually she deserves only the seniority with effect from the date of appointment Order No. A5-28255/2001 dated. 4/1/2003 of the Director of Urban Affairs. Therefore Smt. Elsamma Sebastian is junior to Sri. Reghunath. The contention of Sri. Reghunath in Annexure A7 that Smt. Elsamma Sebastian is junior to him is therefore correct.

14. As per advice letter dated 17/12/2002 of the Regional Officer, Kerala PSC, Ernakulam, 632 persons were advised and in that advice letter Sri. N. Raghunath is only in 607th position. His request to place him in between the persons in the Sl. No. 192 and 193 in the gradation list and promote him to the post of Head Clerk/ Revenue Inspector cannot be allowed.

15. Government have also noted that Directorate of Urban Affairs did not publish seniority list in the Gazette. Employees are submitting representations against seniority list before publishing the same in the Gazette and Government are compelled to entertain such representations without publishing the same in the Gazette. The Rule 27B Part II KS&SSRs insists as follows;

“In case of disputes regarding seniority and matter connected with it by reason of any order of Government or any order of an authority subordinate to Government, representations for reconsideration of such order shall be submitted to Government by the aggrieved person within a period of six months from the date of receipt of the order, or the date of publication of the order in the Kerala Gazette, which ever is later.”

In the Government Circular No. 9076/Adv.C3/2010/P&ARD dated 1.11.2010 it is instructed that the seniority list should be published in the Departmental Website also.

16. In the above circumstances, the Director of Urban Affairs will take action to assign seniority to Smt. Elsamma Sebastian below Sri. N. Raghunath and publish the relevant list in the Gazette as well as web-site.

17. The Annexure- A7 representation read as 2nd paper above is disposed as noted above and the direction contained in the Order read as 3rd paper above of the Hon. Kerala Administrative Tribunal is complied with accordingly.

(By Order of the Governor)

Abul Kalam. M
Under Secretary

To

The Advocate General, Kerala, Thiruvananthapuram(With C/L)
The Director of Urban Affairs, Thiruvananthapuram
The Director, Kerala State Audit Department, Thiruvananthapuram
Shri. N. Raghunath, Senior Clerk, Kozhikkode Corporation
Shri. A. M Noushad, Revenue Inspector, Palakkad Municipality
Smt. Elsamma Sebastian, Revenue Inspector, Alappuzha Municipality
Shri. Anwar Hussain, Revenue Inspector, Paravur Municipality, Kollam District.

✓ The Executive Director, Information Kerala Mission,
Thiruvananthapuram(For publishing this order in the web-site).
Stock file/Office Copy.

Forwarded/By Order


Section Officer