



2025:KER:7101

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

WEDNESDAY, THE 29TH DAY OF JANUARY 2025 / 9TH MAGHA, 1946

WA NO.77 OF 2025

AGAINST THE ORDER DATED 12.12.2024 IN WP(C) NO.29931
OF 2023 OF THE HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 3 IN W.P(C) :

- 1 STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY
GOVT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 2 THE ADDITIONAL CHIEF SECRETARY, HOME (C)
DEPARTMENT GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 3 THE ADDITIONAL CHIEF SECRETARY FINANCE (PRC-C)
DEPARTMENT GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.

GOVERNMENT PLEADER

K.R.RANJITH, GOVERNMENT PLEADER WITH STATE
ATTORNEY

PUBLIC PROSECUTOR

SHRI.N.MANOJ KUMAR, STATE ATTORNEY

RESPONDENTS/PETITIONER AND RESPONDENT NO.4 IN WPC:

- 1 PRADEEPKUMAR A.V., AGED 50 YEARS
REGISTRAR (ADMINISTRATION) HIGH COURT OF KERALA,
KOCHI, PIN - 682031
- 2 THE HIGH COURT OF KERALA, REPRESENTED BY ITS
REGISTRAR GENERAL
ERNAKULAM, KOCHI, PIN - 682031



BY ADVS.
AMITH KRISHNAN H
B.G.HARINDRANATH (SR.) (K/378/1984)

OTHER PRESENT:

SMT. VINITHA B, SR. GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
29.01.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

Anil K. Narendran, J.

This appeal filed by the State and the official respondents, who are respondents 1 to 3 in W.P.(C)No.29931 of 2023, arises out of the interim order of the learned Single Judge dated 12.12.2024 in that writ petition. The said interim order reads thus;

"Post this matter on 10.01.2025. If the recommendation of the Honourable Chief Justice dated 16.02.2021 is not implemented before the next date of posting of this writ petition, the Chief Secretary of the State shall remain present before this Court on that day itself."

2. On 08.01.2025, when this writ appeal came up for admission, the 1st respondent-writ petitioner entered appearance through counsel. Having considered the pleadings and materials on record and also the submissions made at the Bar, this Court granted an interim stay of the operation of interim order dated 12.12.2024 of the learned Single Judge in W.P.(C)No.29931 of 2023, for a period of one month.

3. Heard the learned Senior Government Pleader for the appellants-respondents 1 to 3, the learned counsel for the 1st respondent-writ petitioner and the learned Senior Counsel for the



2nd respondent-4th respondent.

4. The learned Senior Government Pleader would contend that the learned Single Judge went wrong in directing the appellants, by way of an interim order, to implement before 10.01.2025 the recommendation made by the Hon'ble the Chief Justice in Ext.P9 letter dated 16.02.2021, failing which the Chief Secretary shall remain present before the Court on 10.01.2025 itself.

5. The writ petition is one filed by the 1st respondent-writ petitioner seeking a declaration that the senior-most Registrar of the High Court appointed by promotion from the High Court Service is entitled to a higher grade in the scale of pay Rs.129300-166800 (Special Secretary's scale), with effect from 01.04.2021, as recommended by the Hon'ble the Chief Justice in Ext.P9 letter dated 16.02.2021 and by the 11th Pay Revision Commission in Exhibit P8 report [Part II, February, 2021]; and a writ of mandamus commanding the 2nd respondent-2nd appellant to accept the proposal made by the Hon'ble the Chief Justice as per Ext.P9 letter dated 16.02.2021 and to issue orders sanctioning a higher grade in the scale of pay Rs.129300-166800 with effect from 01.04.2021 to the senior-most Registrar



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appointed by promotion from the High Court service, on a par with the scale of pay of Special Secretary to the Government.

The interim relief sought for in the writ petition reads thus;

“For the reason stated in the writ petition as well as in the affidavit accompanied to the writ petition, it is prayed that this Hon’ble Court may be pleased to direct the 2nd respondent to issue orders sanctioning a higher grade with effect from 01.04.2021, in the scale of pay Rs.129300-166800 as recommended by the Hon’ble the Chief Justice in Exhibit P9 and by the 11th Pay Revision Commission in Ext.P8, to the senior-most Registrar appointed by promotion from the High Court Service, pending disposal of the writ petition.”

6. In the writ petition, which was filed on 11.09.2023, a counter affidavit dated 07.11.2024 has been filed on behalf of the 2nd respondent-the 2nd appellant herein, opposing the reliefs sought for, producing therewith Ext.R2(a) Government order dated 09.06.2021. The writ petitioner-the 1st respondent herein has filed a reply affidavit dated 26.11.2024 to the counter affidavit filed on behalf of the 2nd respondent. A counter affidavit dated 03.01.2024 has been filed on behalf of the 4th respondent-the 2nd respondent herein. Therefore, the pleadings in the writ petition are complete, and the writ petition is ripe for hearing.

7. In the instant case, the interim relief sought for in the



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writ petition is nothing but the final relief. Therefore, instead of passing the impugned interim order dated 12.12.2024, the learned Single Judge ought to have considered the rival contentions and decided the question as to whether the writ petitioner is entitled to a writ of mandamus, as sought for in that writ petition. At any rate, by way of an interim order, the appellants-respondents 1 to 3 in the writ petition cannot be directed to implement before the next posting of the writ petition, the recommendation made by the Hon'ble the Chief Justice in Ext.P9 letter dated 16.02.2021, failing which the Chief Secretary shall remain present before the Court on 10.01.2025 itself.

8. On the question of maintainability of a writ appeal under Section 5(i) of the Kerala High Court Act, 1958, against an interim order passed by a learned Single Judge during the pendency of the writ petition, the Larger Bench in **K.S. Das v. State of Kerala [1992 (2) KLT 358]** held that the word 'order' in Section 5(i) of the Act includes, apart from other orders, orders passed by the High Court in miscellaneous petitions filed in the writ petitions provided the orders are to be in force pending the writ petition. An appeal would lie against such



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orders only if the orders substantially affect or touch upon the substantial rights or liabilities of the parties or are matters of moment and cause substantial prejudice to the parties. The nature of the 'order' appealable belongs to the category of 'intermediate orders' referred to by the Apex Court in **Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551]**. The word 'order' is not confined to 'final order' which disposes of the writ petition. The 'orders' should not however, be ad-interim orders in force pending the miscellaneous petition or orders merely of a procedural nature.

9. In **Thomas P.T. and another v. Bijo Thomas and others [2021 (6) KLT 196]**, a Division Bench of this Court noticed that the view that was upheld by the Larger Bench in **K.S. Das [1992 (2) KLT 358]** was that even though an appeal could be filed against an interlocutory order passed in a writ petition, in order to be qualified for challenge in an appeal, the order shall be either substantially affecting or touching upon the substantial rights or liabilities of the parties or which are matters of moment and cause substantial prejudice to the parties. According to the Larger Bench, the nature of the order appealable belongs to the category of intermediate orders



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referred to by the Apex Court in **Madhu Limaye [(1977) 4 SCC 551]**. It was, however, clarified by the Larger Bench that such orders should not, however, be ad interim orders or orders merely of a procedural nature.

10. As already noticed hereinbefore, in the instant case, the interim relief sought for in the writ petition is nothing but the final relief. By way of an interim order, the appellants-respondents 1 to 3 in the writ petition cannot be directed to implement before the next posting of the writ petition, the recommendation made by the Hon'ble the Chief Justice in Ext.P9 letter dated 16.02.2021, failing which the Chief Secretary shall remain present before the Court on 10.01.2025 itself.

11. The impugned interim order of the learned Single Judge is not an order merely procedural in nature. Such an order, touching upon the substantial rights and liabilities of the parties and causing substantial prejudice to the appellants, is an interim order qualified for challenge in an appeal filed under Section 5(i) of the Kerala High Court Act.

12. In such circumstances, we find no reason to sustain the impugned interim order dated 12.12.2024 of the learned Single Judge in W.P.(C)No.29931 of 2023 and the same is



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accordingly set aside. The writ appeal is allowed as above.

Since the pleadings in the writ petition are complete and the writ petition is ripe for hearing, it is for the 1st respondent-writ petitioner to bring up the matter before the learned Single Judge for final disposal.

**Sd/-
ANIL K. NARENDRAN, JUDGE**

**Sd/-
MURALEE KRISHNA S., JUDGE**

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