

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 05TH DAY OF FEBRUARY, 2020 / 16TH MAGHA, 1941

WA.No.107 OF 2020

AGAINST THE JUDGMENT IN WP(C) NO.24839/2019(D) OF THE HIGH COURT
OF KERALA DATED 27.09.2019

APPELLANT/APPELLANT:

JOHN K. ILLIKKADAN,
AGED 59 YEARS
S/O. E.T. KURUVILA, PRINCIPAL DISTRICT JUDGE,
PATHANAMTHITTA, RESIDING AT SOPANAM, VETTIPURAM,
PATHANAMTHITTA -689645.

BY ADVS.
SRI.T.C.GOVINDASWAMY
SMT.KALA T.GOPI
SRI.B.NAMADEVA PRABHU

RESPONDENTS/RESPONDENTS:

1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF
INDIA, MINISTRY OF LAW AND JUSTICE, DEPARTMENT OF
JUSTICE, NEW DELHI-110001.

2 THE SUPREME COURT OF INDIA, (DELETED)
TILAK MARG, NEW DELHI-110021, REPRESENTED BY THE
SECRETARY GENERAL.

R2 DELETED FROM THE PARTY ARRAY AS PER ORDER DATED
27.01.2020 IN I.A. NO.3/2020.

3 THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF KERALA, STATE SECRETARIAT, TRIVANDRUM-695001.

4 THE HIGH COURT OF KERALA,
KOCHI-682031, REPRESENTED BY THE REGISTRAR GENERAL.

5 SRI. K. BABU,
 PRINCIPAL DISTRICT JUDGE, TRIVANDRUM-695035.

6 SRI. KAUSER EDAPPAGATH,
 PRINCIPAL DISTRICT JUDGE, ERNAKULAM, KOCHI-682011.

7 SRI. A. BADHARUDEEN,
 PRINCIPAL DISTRICT JUDGE, ALAPPUZHA-688013.

R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R4 BY ADV. SRI.ELVIN PETER P.J.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-01-2020,
THE COURT ON 05.02.2020 DELIVERED THE FOLLOWING:

JUDGMENT

K. Vinod Chandran, J.

The petitioner, one of the senior most District Judges in the Higher Judicial Service of the State, is aggrieved by his non-consideration for elevation as a Judge of this Court under Article 217 read with Article 224 of the Constitution of India. His claim arose by reason of a revision of seniority carried out, pursuant to a judgment in a batch of writ appeals, one of which filed by him was W.A. No.846 of 2019. The *interse* seniority between the District Judges promoted from the Subordinate Judiciary and directly recruited, was the issue arising therein. The dispute was also as against respondents 5 to 7, who are directly recruited to the Higher Judicial service.

2. The learned Single Judge accepted the contention of the High Court that there was no

recommendation made by the Collegium of the Hon'ble Supreme Court with respect to any Judicial Officer, who completed 58 $\frac{1}{2}$ years as on the date of occurrence of vacancy. The communication issued by the Government of India on 25.04.2009 speaking of the maximum age limit, as proposed by the Chief Justice of India, was also noticed, which is 58 $\frac{1}{2}$ years as on the date of arising of vacancy. Finding that it has been the consistent practice to follow such guidelines, extracted in the judgment, the learned Single Judge rejected the writ petition on the further ground that the position claimed by the appellant is a constitutional post, to which he has no substantive right of appointment nor is there any violation of service conditions.

3. Sri.T.C. Govindaswamy, the learned Counsel appearing for the appellant, raised the very same contentions before us, as raised before the learned Single Judge and specifically referred

to the Collegium recommendations of the Hon'ble Supreme Court, now available in the website of the Hon'ble Supreme Court, wherein there was an exception made by the Collegium in the case of elevation of District Judges to another High Court. It is also argued that even before the learned Single Judge it was pointed out that there was a recommendation made by the Collegium of yet another High Court, which however was not recommended by the Collegium of the Hon'ble Supreme Court. There is no prescription of a maximum age of 58½ years even in the Memorandum of Procedure [MOP] as uploaded in the website, is the further contention.

4. The learned Standing Counsel appearing for the High Court opposes the prayer on the ground that there could be no judicial direction to make an exception in the matter of the appellant. The appellant, admittedly, has crossed the age of 58½ years when a vacancy due to him had

arisen. The learned Standing Counsel also produced before us various recommendations made by the Collegium of the Hon'ble Supreme Court, wherein there is a specific reference to the age limit of 58½ years, insofar as the District Judges are concerned.

5. We perfectly agree with the learned Single Judge that there is a prescription insofar as the age limit of 58½ years. The copy of the letter dated 24.09.2004 of the Ministry for Law and Justice, Government of India received by the Chief Justice of this Court was extracted in the impugned judgment. It specifically speaks of the Chief Justice of India having observed that the recommendations made to fill up the vacancies set apart for Judicial Officers would be considered, only of those Judicial Officers, who have not crossed the age limit of 58½ years. The communication issued was, in keeping with the observations of the Chief Justice of India. The

copies of the resolutions of the Collegium of the Hon'ble Supreme Court produced across the Bar by both Counsel also indicate that the resolutions having specifically noticed the age limit of 58½ years.

6. On facts, it is to be noticed that the petitioner as of now is the 4th in the seniority list in accordance with the judgment of a Division Bench of this Court in W.A. No.846 of 2019. The vacancies to which possibly the elevations can be made are those which arose on 01.11.2018, 18.01.2019, 08.05.2019 and 18.09.2019. The petitioner's date of birth is 25.03.1960 and he crosses 58½ years on 25.09.2018. Hence, if the age limit is applied he could aspire for only the first vacancy, which arose on 01.11.2018 and not even to the second vacancy. We also notice that the rule does not stand against the first in the seniority list, who would obviously be considered for the first vacancy. In such circumstances, we

do not find any reason to entertain the writ appeal.

7. As far as the exceptions made by the Collegium of the High Court or the Hon'ble Supreme Court, it is a discretion exercised, which cannot be directed judicially. We are also not aware of the background facts which led to such exceptions being applied and we need not proceed on that basis alone. We hence reject the appeal *in limine*.

Sd/-

K.VINOD CHANDRAN

JUDGE

Sd/-

V.G.ARUN

JUDGE

sp/31/01/2020

//True Copy//

P.A. To Judge

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A

TRUE COPY OF COLLEGIUM'S RECOMMENDATIONS OF THE HON'BLE APEX COURT DATED 26 SEPTEMBER 2019.

ANNEXURE B

TRUE COPY OF MEMORANDUM BEARING NO.B1(A) - 22917/2019 DATED 17/10/2019 A TRUE COPY OF WHICH, ISSUED FROM THE OFFICE OF THE 4TH RESPONDENT.