

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 11TH DAY OF AUGUST 2022 / 20TH SRAVANA, 1944

WP(C) NO. 11021 OF 2016

PETITIONERS:

- 1 SUDHEER RAM S., S/O.M.SIVARAMAKRISHNAN, SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, MANANTHAVADY.
- 2 SUJA T.K., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, THIRUVALLA - 689 101.
- 3 JAYASREE K.R., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, THIRUVALLA - 689 101.
- 4 PRAMEELA KUMARI A., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, PALA.
- 5 PRAMEELA KURUP V., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, KARUNAGAPALLY - 690 518.
- 6 NEENA T.M., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, THODUPUZHA - 685 584.
- 7 BINDU E.P., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, PAPPANAMCODE - 695 018.
- 8 KALA S., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, THIRUVANANTHAPURAM CITY.
- 9 LATHA S., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, KANIYAMPURAM - 695 301.
- 10 SUNIL KUMAR V., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM - 691 001.
- 11 RAJAKSHI P.P., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, THAMARASSERY - 673 573.
- 12 MINI VARGHESE, SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, ALUVA - 683 101.
- 13 MAHESWARI M., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, THIRUVANANTHAPURAM CENTRAL - 695 001.
- 14 GEORGE K.JOSE, SUPERINTENDENT, KERALA STATE ROAD TRANSPORT CORPORATION, REGIONAL WORKSHOP, EDAPPAL - 679 571.

- 15 PREMAKUMARI K.G., SUPERINTENDENT, KERALA STATE ROAD
 TRANSPORT CORPORATION, PATHANAPURAM.
- 16 THULASI T, SUPERINTENDENT, KERALA STATE ROAD TRANSPORT
 CORPORATION, NEDUMANGAD - 695 541.
- 17 NIMSY MATHEW, SUPERINTENDENT, KERALA STATE ROAD
 TRANSPORT CORPORATION, KOTHAMANGALAM - 686 691.
- 18 SUNITHA KURIAN, SUPERINTENDENT, KERALA STATE ROAD
 TRANSPORT CORPORATION, CHENGANNUR - 689 121.
- 19 BINDU K.G., SUPERINTENDENT, KERALA STATE ROAD TRANSPORT
 CORPORATION, PALAKKAD - 678 001.

BY ADVS.SRI.KALEESWARAM RAJ
SRI.VARUN C.VIJAY
KUM.THULASI K. RAJ

RESPONDENTS:

- 1 THE KERALA STATE ROAD TRANSPORT CORPORATION,
 REPRESENTED BY ITS MANAGING DIRECTOR, TRANSPORT BHAVAN,
 FORT P.O., THIRUVANANTHAPURAM - 695 023.
- 2 THE EXECUTIVE DIRECTOR (ADMINISTRATION) - IN - CHARGE,
 KERALA STATE ROAD TRANSPORT CORPORATION, TRANSPORT
 BHAVAN, FORT P.O., THIRUVANANTHAPURAM, PIN - 695 023.
- 3 DEEPA N. NAIR, SUPERINTENDENT, KERALA STATE ROAD
 TRANSPORT CORPORATION, THODUPUZHA - 685 584.

BY ADVS.DEEPU THANKAN, SC
K.V.ANIL KUMAR, R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners impugn Ext.P28 proceedings of the Kerala State Road Transport Corporation (KSRTC), which has rejected the request for stepping up of their Pay Scale on par with that of the immediate junior, namely, the party respondent herein.

2. The petitioners contend that though they admittedly are seniors to the party respondent, she is now drawing a Higher Scale of Pay, solely because she had been given the increment applicable to the post of Special Assistant/Senior Assistant, which she occupied before she had been promoted to the post of Superintendent. They then explain that they were, however, promoted directly from the post of Upper Division Clerk (Selection Grade) [hereinafter referred to as 'UDC (SG)', for short], to the post of Superintendents under the provisions of the Pay Revision Agreement, 2012, because there were no

qualified employee in the Grades of Special Assistant/Senior Assistant at that time; but that the KSRTC has now taken the stand that they will not be entitled to the Pay Scale, which they would have been entitled to had they been first promoted as Special Assistants/Senior Assistants.

3. The petitioners allege that Ext.P28 is egregiously contrary to law and in blatant violation of Rule 28A of Part I of the Kerala Service Rules ('KSR', for short); and thus pray that it be set aside and the competent Authority of the KSRTC be directed to accede to the request for stepping up of their Pay Scale on par with that of the 3rd respondent, who is their junior.

4. I have heard Smt.Thulasi K.Raj - learned counsel for the petitioners and Sri.Deepu Thankan - learned Standing Counsel for the KSRTC.

5. Sri.Deepu Thankan justified Ext.P28, arguing that, normally, in the KSRTC, a direct

promotion of a UDC (SG) to the post of Superintendent is not possible and that the former will have to be first promoted as a Special Assistant/Senior Assistant. He conceded that, at the time when the petitioners were granted promotion to the post of Superintendents, there was no qualified persons available in the category of Special Assistant/Senior Assistant and that they were, therefore, offered such promotions under Clause XLII of the Pay Revision Agreement, 2012.

6. The learned Standing Counsel explained that, however, the 3rd respondent became Superintendent, after having worked as a Special Assistant/Senior Assistant; and therefore, was entitled to have the pay fixed, taking note of both such posts. He thus prayed that Ext.P28 may not be interdicted and that this writ petition be dismissed.

7. In reply, Smt.Thulasi K.Raj - learned

counsel for the petitioners, submitted that the reasoning in Ext.P28 order of the KSRTC is flawed, because it is not on account of her clients' request that they had been promoted as Superintendents directly from the post of UDC (SG). She asserted that, as has been admitted by the KSRTC themselves, her clients were given promotion to the post of Superintendents directly from the post of UDC (SG) only because there were no other persons available in the category of Special Assistant/Senior Assistant. She thus predicated that, therefore, the provisions of Rule 28A of Part I KSR should have been applied, since it mandates that when an Officer holding a post is promoted to a higher post, carrying Higher Time Scale of Pay, his initial pay in the Higher Time Scale shall be fixed at the stage next above the pay notionally arrived at in the Lower Time Scale of Pay, by increasing the actual pay drawn by him in the Lower Time Scale, by one

increment.

8. The learned counsel for the petitioners then pointed out that Ruling No.1 under the aforesaid Rule ineluctably stipulates that if there is any anomaly with respect to the Scales of Pay drawn by a senior and junior, then it shall be removed by fixing the pay of the former Officer at the stage equal to that fixed for the latter in the higher post. She submitted that, therefore, Ext.P28 can never find favour in law; and thus reiteratingly prayed that this writ petition be allowed.

9. Even though summons from this Court has been validly served on the 3rd respondent, she has chosen not to be present in person or to be represented through counsel; thus inferentially guiding me to the impression that she has nothing to offer in answer to the controversy projected by the petitioner in this writ petition.

10. When I analyze and assess the afore rival

contentions, I must say that I find favour with the case of the petitioners, because when all the conditions encompassed in Ruling No.1, under Rule 28A of Part I KSR are satisfied, then the Scales of Pay of the petitioners ought to have been fixed in the manner mandated therein.

11. There is little doubt, going by the conceded pleadings and submissions, that petitioners were directly promoted from UDC (SG) as Superintendents solely because there was no other person available in the category of Special Assistant/Senior Assistant at the relevant time. It was not on account of any request which they had made for such purpose, that they were given the promotion; and obviously, therefore, their pay ought to have been protected, at least qua their junior.

12. That being said, in the case of the 3rd respondent, she was promoted as the Superintendent, after having served as a Special Assistant/Senior

Assistant and the stand of the KSRTC is that, therefore, she is entitled to the Pay Scale fixed for such category also, while reckoning her promotion to the post of Superintendent, since she worked in the said post also.

13. I must say, I cannot find favour with the afore stand of the KSRTC, which is also reflected in Ext.P8, on account of Rule 28A of Part I KSR and in particular Ruling No.1 thereunder.

14. I do not think it will require to further expatiate that in a case as presented in this writ petition, the impact of Rule 28A, and in particular Ruling No.1 therein, ought to have engaged the mind of the competent Authority; and an order like Ext.P28 could not have been issued without doing so.

15. I am, therefore, firm in mind that Ext.P28 cannot find my favour and that the matter will have to be reconsidered by the competent Authority of the KSRTC, adverting to the afore contentions of the

petitioners, particularly within the ambit of the aforementioned Rule and the Ruling thereunder.

Resultantly, I order this writ petition and set aside Ext.P28; with a consequential direction to the competent Authority of the KSRTC to reconsider the matter, after affording the petitioners, as also the 3rd respondent, an opportunity of being heard, adverting to the impact of Rule 28A of Part I KSR - especially Ruling No.1 thereunder; thus culminating in an appropriate new order and necessary action, as expeditiously as is possible, but not later than three months from the date of receipt of a copy of this judgment.

Needless to say, depending upon the result of the afore exercise, and if the KSRTC is to find that petitioners are entitled to higher Scale of Pay, then necessary action shall be taken to fix it, at least on par with the 3rd respondent and to disburse the eligible amounts to them, as expeditiously as is

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possible, but not later than two months thereafter.

sd/-

DEVAN RAMACHANDRAN
JUDGE

akv

APPENDIX OF WP(C) 11021/2016

PETITIONER EXHIBITS

EXHIBIT P1. TRUE COPY OF RELEVANT PAGES OF FINAL GRADATION LIST OF MINISTERIAL AS ON 01.04.2010.

EXHIBIT P2(A). TRUE COPY OF MEMORANDUM NO.PL1/004847/2014 DATED 10.06.2014.

EXHIBIT P2(B). TRUE COPY OF MEMORANDUM NO.PL1/03907/2013 DATED 30.11.2013.

EXHIBIT P2(C). TRUE COPY OF MEMORANDUM NO.PL1/03907/2013 DATED 10.02.2014.

EXHIBIT P2(D). TRUE COPY OF MEMORANDUM NO.PL1/03907/2013 DATED 30.04.2014.

EXHIBIT P2(E). TRUE COPY OF MEMORANDUM NO.PL1/004847/2014 DATED 09.07.2014.

EXHIBIT P2(F). TRUE COPY OF MEMORANDUM NO.PL1/004847/2014 DATED 12.09.2014.

EXHIBIT P3. TRUE COPY OF MEMORANDUM NO.PL1/004847/2014 DATED 10.10.2014.

EXHIBIT P4. TRUE COPY OF G.O.(P)NO.968/87/FIN DATED 17.11.1987.

EXHIBIT P5. TRUE COPY OF PAY SLIP OF SUDHEER RAM S., THE 1ST PETITIONER FOR THE MONTH OF 10/2014.

EXHIBIT P6. TRUE COPY OF PAY SLIP OF DEEPA N.NAIR, THE 3RD RESPONDENT FOR THE MONTH OF 11/2014.

EXHIBIT P7. SALARY DETAILS OF DEEPA N.NAIR, THE 3RD RESPONDENT FURNISHED BY THE ASST. TRANSPORT OFFICER, K.S.R.T.C., NILAMBUR AS PER NO.E1/16/14/NBR/DATED 13.11.2014.

EXHIBIT P8. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 1ST PETITIONER.

EXHIBIT P9. TRUE COPY OF REPRESENTATION DATED 12.12.2014 FILED BY THE 2ND PETITIONER.

EXHIBIT P10. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 3RD PETITIONER.

EXHIBIT P11. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 4TH PETITIONER.

EXHIBIT P12. TRUE COPY OF REPRESENTATION DATED 16.03.2015 FILED BY THE 5TH PETITIONER.

EXHIBIT P13. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 6TH PETITIONER.

EXHIBIT P14. TRUE COPY OF REPRESENTATION DATED 29.11.2014 FILED BY THE 7TH PETITIONER.

EXHIBIT P15. TRUE COPY OF REPRESENTATION DATED 24.12.2014 FILED BY THE 8TH PETITIONER.

EXHIBIT P16. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 9TH PETITIONER.

EXHIBIT P17. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 10TH PETITIONER.

EXHIBIT P18. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 11TH PETITIONER.

EXHIBIT P19. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 12TH PETITIONER.

EXHIBIT P20. TRUE COPY OF REPRESENTATION DATED 27.11.2014 FILED BY THE 13TH PETITIONER.

EXHIBIT P21. TRUE COPY OF REPRESENTATION DATED 28.11.2014 FILED BY THE 14TH PETITIONER.

EXHIBIT P22. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 15TH PETITIONER.

EXHIBIT P23. TRUE COPY OF REPRESENTATION DATED 25.11.2014 FILED BY THE 16TH PETITIONER.

EXHIBIT P24. TRUE COPY OF REPRESENTATION DATED 24.11.2014 FILED BY THE 17TH PETITIONER.

EXHIBIT P25. TRUE COPY OF REPRESENTATION FILED BY THE 18TH PETITIONER.

EXHIBIT P26. TRUE COPY OF REPRESENTATION FILED BY THE 19TH PETITIONER.

EXHIBIT P27. TRUE COPY OF JUDGMENT DATED 13.07.2015 IN W.P.(C) NO.20529/2015 OF THE HON'BLE HIGH COURT OF KERALA.

EXHIBIT P28. TRUE COPY OF ORDER NO.PL1/013481/15 DATED 19.10.2015 OF THE 1ST RESPONDENT.

EXHIBIT P29. TRUE COPY OF RELEVANT PAGES (PAGES 1, 2, 3, 4, 12, 14, AND 15) OF THE PAY REVISION AGREEMENT - 2012.

EXHIBIT P30. TRUE COPY OF RELEVANT PAGES OF SERVICE BOOK OF P.C.RADHAKRISHNAN, VEHICLE SUPERVISOR, THAMARASSERY DEPOT. INCLUDING PAY FIXATION STATEMENT IN THE REVISED SCALE 2006.

EXHIBIT P31. TRUE ENGLISH TRANSLATION OF EXT.P29

RESPONDENT'S/S EXHIBITS :

EXHIBIT R1(A) TRUE COPY OF THE GRADE PROMOTION RULES OF THE CORPORATION VIDE REF.NO.PFC-40301/87 DATED 9.10.87.

EXHIBIT R1(B) TRUE COPY OF THE RELEVANT PAGES OF THE LONG

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TERM SETTLEMENT OF 1987 CONTAINING THE
PROVISIONS OF GRADE PROMOTION RULES.