

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

&

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

TUESDAY, THE 2ND DAY OF APRIL 2019 / 12TH CHAITHRA, 1941

W.A.No. 2242 of 2018

AGAINST THE JUDGMENT DATED 15.10.2018 IN W.P(C).NO.26691/2018 OF  
THE HIGH COURT

APPELLANTS/3RD PARTIES:

- 1 K.K. ASHOK,  
FILING SCRUTINY OFFICER  
(FORMER SECTION OFFICER H.G/COURT OFFICER H.G) ,  
HIGH COURT OF KERALA, ERNAKULAM.
- 2 ANIL KUMAR T.S,  
SECTION OFFICER/COURT OFFICER,  
HIGH COURT OF KERALA, ERNAKULAM.
- 3 HARI KUMAR P.G,  
SECTION OFFICER/COURT OFFICER,  
HIGH COURT OF KERALA, ERNAKULAM.
- 4 ABDUL JALEEL P.M,  
ASSISTANT PUBLIC PROSECUTOR GR-1,  
JUDICIAL FIRST CLASS MAGISTRATE COURT-I,  
MUVATTUPUZHA.
- 5 BISWAJITH B,  
SECTION OFFICER/COURT OFFICER,  
HIGH COURT OF KERALA, ERNAKULAM.
- 6 RAJESH C.B,  
SECTION OFFICER/COURT OFFICER,  
HIGH COURT OF KERALA, ERNAKULAM.
- 7 LENIN DAS K.K,  
SECTION OFFICER/COURT OFFICER,  
HIGH COURT OF KERALA, ERNAKULAM.

- 8 SOMAN P. MAMKUTTATHIL, ASSISTANT PROFESSOR,  
GOVERNMENT LAW COLLEGE, THRISSUR.

BY ADVS.

SRI.C.UNNIKRISHNAN (KOLLAM)

SMT.A.V.INDIRA

SRI.JOHNSON GOMEZ

SRI.SANJAY JOHNSON

SRI.S.BIJU (KIZHAKKANELA)

RESPONDENTS/PETITIONERS & RESPONDENTS IN W.P.:

- 1 THE KERALA CIVIL JUDICIAL STAFF ORGANISATION,  
REG.NO.226/82, STATE COMMITTEE,  
REPRESENTED BY ITS GENERAL SECRETARY  
K.SUDARSANAN, SUB COURT, VANCHIYOOR P.O.,  
THIRUVANANTHAPURAM - 695 035.
- 2 K.SUDARSANAN, AGED 53 YEARS,  
GENERAL SECRETARY,  
THE KERALA CIVIL JUDICIAL STAFF ORGANISATION,  
REG.NO.226/82, STATE COMMITTEE,  
SUB COURT, VANCHIYOOR P.O.,  
THIRUVANANTHAPURAM-695 035.
- 3 STATE OF KERALA,  
REPRESENTED BY ITS PRINCIPAL SECRETARY,  
HOME (C) DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 4 HIGH COURT OF KERALA,  
REPRESENTED BY ITS REGISTRAR GENERAL,  
HIGH COURT COMPLEX, ERNAKULAM-682 031.
- 5 REGISTRAR,  
SUBORDINATE JUDICIARY,  
HIGH COURT OF KERALA,  
ERNAKULAM-682 031.

R1 & R2 BY ADV.SRI.K.P.PRADEEP (B/O)

R3 BY SRI.T.RAJASEKHARAN NAIR,  
SR.GOV.T.PLEADER

R4 & R5 BY ADV.SRI.N.N.SUGUNAPALAN (SR.)  
ADV. SRI.ELVIN PETER (B/O)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27.3.2019,  
ALONG WITH W.A.NO.2459/2018, THE COURT ON 2.4.2019  
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

&

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

TUESDAY, THE 2ND DAY OF APRIL 2019 / 6TH CHAITHRA, 1941

W.A.No. 2459 of 2018

AGAINST THE JUDGMENT DATED 15.10.2018 IN  
W.P(C).NO.26691/2018 OF THE HIGH COURT

APPELLANTS/APPELLANTS :

- 1 HIGH COURT OF KERALA -  
REPRESENTED BY ITS REGISTRAR GENERAL,  
HIGH COURT, KOCHI, ERNAULAM-682 031.
- 2 REGISTRAR (SUBORDINATE JUDICIARY),  
HIGH COURT OF KERALA,  
HIGH COURT, KOCHI-682 031.

BY ADVS.

SRI.N.N.SUGUNAPALAN (SR.)  
SRI.ELVIN PETER P.J.

RESPONDENTS/PETITIONERS AND RESPONDENT NO.1 IN THE WRIT  
PETITION:

- 1 THE KERALA CIVIL JUDICIAL STAFF ORGANIZATION,  
REG.NO.226/82, STATE COMMITTEE,  
REPRESENTED BY ITS GENERAL SECRETARY  
K.SUDARSANAN, SUB COURT, VANCHIYOOR COURT  
COMPLEX,  
VANCHIYOOR P.O., THIRUVANANTHAPURAM-695 035.
- 2 K.SUDARSANAN, AGED 53 YEARS,  
(GENERAL SECRETARY,  
THE KERALA CIVIL JUDICIAL ORGANIZATION,  
REG NO.226/82, STATE COMMITTEE),  
SUB COURT, VANCHIYOOR COURT COMPLEX,  
VANCHIYOOR P.O., THIRUVANANTHAPURAM-695 035.

3 STATE OF KERALA -  
REPRESENTED BY ITS PRINCIPAL SECRETARY,  
HOME (C) DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.

R1 & R2 BY ADVS.  
DR.K.P.PRADEEP  
SMT.NEENA ARIMBOOR  
SMT.T.THASMI  
SRI.SANAND RAMAKRISHNAN  
SRI.T.T.BIJU  
R3 BY SRI.T.RAJASEKHARAN NAIR, SR. GOVT.  
PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27.3.2019,  
ALONG WITH W.A.NO.2242/2018, THE COURT ON 2.4.2019  
DELIVERED THE FOLLOWING:

“CR”

## Judgment

### Chitambaresh, J.

**'The High Court can afford to be arbitrary on the judicial side but certainly not on the administrative side'**

remarked a learned Judge of this Court in a lighter vein in the midst of hearing of a case challenging the selection of District Judges two decades ago. The above observation continues to be relevant even as on today evident by the facts unfolded in the present case relating to the appointment of Temporary Munsiff–Magistrates by this Court.

2. Willingness was called for from eligible candidates for appointment as Temporary Munsiff–Magistrate by Ext.P3 Official Memorandum dated 18.6.2018 and Ext.P4 Guidelines issued by the High Court. Ext.P3 Official Memorandum verbatim reproduced Rule 5(3) of the Kerala Judicial Service Rules, 1991 ('the Rules' for short) as

regards eligibility though Rule 5(3)(viii) thereof was omitted. Officers working in the High Court, Subordinate Courts, Advocate General's Office and Law Department in the Government Secretariat were hence excluded from consideration. Ext.P3 Official Memorandum also prescribed an age limit of 52 years as on 1.6.2018 in order to be eligible to apply though the Rules did not impose any such restriction. The writ petition was filed by the Judicial Staff Organisation and another to quash Ext.P3 Official Memorandum and Ext.P4 Guidelines and for a direction to issue notification anew in tune with the Rules.

3. The High Court and the Registrar who are respondents 2 and 3 contended that they had addressed the Government to amend the Rules by deleting Rule 5(3)(viii) therefrom which is complained of. It is their further case that Rule 9 of the Rules empowers them to appoint a person otherwise than in accordance with the Rules temporarily in public interest owing to an emergency. Special norms were formulated by the Administrative Committee in view of the past experience compelling the withdrawal of a previous

batch of Temporary Munsiff–Magistrates. The *locus standi* of the writ petitioners who are the Kerala Civil Judicial Staff Organisation and its Secretary to question the eligibility criteria fixed was also doubted. The learned single Judge allowed the writ petition and two sets of writ appeals – one by the High Court and the Registrar and another by the appointees – have accordingly been filed.

4. We heard Mr N.N.Suganapalan, Senior Advocate on behalf of the High Court and its Registrar as well as Mr C.Unnikrishnan, Advocate on behalf of the third party appellants besides Dr.K.P.Pradeep, Advocate on behalf of the contesting respondents.

5. The method of appointment to the post of Munsiff–Magistrate is by direct recruitment and transfer in accordance with Rule 5(3) of the Rules and clauses (i) to (viii) thereof specified the different categories. The categories from which recruitment by transfer could be made included Officers working in the High Court, Subordinate Courts, Advocate General's Office and Law Department. Rule 5(3)(viii) of the Rules before amendment

reads as follows:

“(viii). Officers working in the High Court, Subordinate Courts, Advocate General's Office and Law Department in the Government Secretariat not covered by categories (i) to (vii) and having not less than ten years of total service in any of the four offices or in the four offices taken together.”

Rule 5(3)(viii) of the Rules after amendment reads as follows:

“(viii)Principal counselors of the Family Courts in the State of Kerala.”

The amendment to the Rules was prospective by notification in the Kerala Gazette dated 14.1.2019 whereas the unamended Rules covered the field when the recruitment was in process to the post of Temporary Munsiff-Magistrate.

6. Both Ext.P3 Official Memorandum and Ext.P4 Guidelines issued by the High Court omitted the category specified in Rule 5(3)(viii) of the unamended Rules which was in vogue at the time of its issue. Ext.P3 Official Memorandum dated 18.6.2018 also stipulated that the



applicant should not have completed 52 years of age as on 1.6.2018 which is totally absent in the Rules. It is the Governor of Kerala who is the appointing authority for Munsiff-Magistrate and who in consultation with the High Court has made the Rules which need to be scrupulously followed. Any deviation therefrom attracts the vice of arbitrariness rendering the entire selection process invalid as has been rightly noticed by the learned single Judge in the judgment impugned.

7. Our attention was invited to Rule 9(1) of the Rules dealing with temporary appointments which reads as follows:

“(1) Where it is necessary in the public interest, owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of the service and there would be undue delay in making such appointments in accordance with these Rules, the appointing authority may appoint a person otherwise than in accordance with these rules temporarily until a person is appointed in accordance with these rules.” (emphasis supplied)

It is the case of the appellants that the very Rule permits the appointing authority to appoint a person otherwise than in accordance with the Rules temporarily until a person is appointed in accordance with the Rules. The files of the then Administrative Committee were therefore directed to be produced to discern as to whether there was any application of mind as regards public interest or emergency.

8. Firstly, the exceptional power to appoint a person otherwise than in accordance with the Rules temporarily can be exercised in the case of one or two candidates and not for a mass recruitment of 16 in number. Secondly, the files of the Administrative Committee did not reveal any decision having been taken to indicate that it is necessary to depart from the Rules in public interest owing to an emergency. The Statement filed by the High Court and the Registrar in the writ petition only stated that the Government has been addressed to amend the Rules to maintain the dignity of the post. The High Court as any other institution was bound to follow the Rules and the Administrative Committee shall not sit in appeal over the decisions taken on the judicial side.

9. Much was argued to contend that one of the writ petitioners is a civil judicial staff organisation who cannot maintain a writ petition claiming relief to its members in matters relating to service. But it should be borne in mind that the other writ petitioner is very much a staff of the Court who has *locus standi* and it matters little as to whether he is qualified or an applicant to the post. The writ petitioners have not sought any relief to the members of the organisation and have only alerted the constitutional Court about the infringement of the Rules by this Court. The contention that the members individually are apprehensive of transfer to remote places if they figure as parties in the litigation against the High Court cannot be brushed aside. The Government Servants' Conduct Rules, 1960 itself enables the organisation and association to make representations and we are not inclined to non-suit the petitioners on that score.

10. A category of officers eligible under Rule 5(3)(viii) of the Rules as it then stood was excluded from the zone of consideration in Ext.P3 Official Memorandum and Ext.P4

Guidelines without assigning any reason. The fact that the High Court had addressed the Government to amend the Rules by deleting Rule 5(3)(viii) thereof is not an excuse to make a departure from the same. The prescription of the age limit of 52 years as on 1.6.2018 is also a condition imported in Ext.P3 Official Memorandum though not sanctioned by the Rules for appointment as Munsiff-Magistrate. The written test, viva-voce and the appointment of Temporary Munsiff-Magistrates were subject to the result of the writ petition in view of the interim order dated 7.8.2018. The learned single Judge was justified in invalidating the same after finding that the process of selection of the Temporary Munsiff-Magistrates was not in accordance with the Rules and hence arbitrary.

The writ appeals are dismissed. No costs.

Sd/-

**V. CHITAMBARESH, JUDGE**

Sd/-

**T.V. ANILKUMAR, JUDGE**

**APPENDIX OF W.A.No.2242/2018**

**PETITIONERS' EXHIBITS/ANNEXURES:**

**ANNEXURE A1      TRUE COPY OF THE SELECT LIST PUBLISHED BY THE  
REGISTRAR (SUBORDINATE JUDICIARY ) VIDE  
NOTIFICATION NO.REC 4-49818/2018 DATED 11.10.2018**

**RESPONDENTS' EXHIBITS/ANNEXURES: NIL**