

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5748-5751 OF 2019  
(@ out of SLP (CIVIL) No.8876-8879/2019)

THE STATE OF KERALA & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

O R D E R

Leave granted.

While issuing notice on 15.4.2019, following order was passed  
by this Court:

"These special leave petitions have been filed by the state being aggrieved insofar as candidature of three persons is concerned.

Excepting candidate, namely, Ms. Aisha P. Jamal, we do not see reason to interfere with the assessment made by the High Court.

Since the entitlement of said Ms. Aisha P. Jamal was questioned in Writ Appeal No. 2385 of 2017, we issue notice only insofar as said Writ Appeal is concerned, returnable in four weeks.

Dasti service, in addition, is permitted.

Pending further consideration, the order passed by the High Court insofar as Ms. Aisha P. Jamal is concerned shall stand stayed.

List this matter for further consideration on 02.07.2019."

According to the office report, the original writ petitioner named Issac Mathew who is presently respondent No.2 was served in the matter and yet no appearance was entered on his behalf. However, in the interest of justice, the matter was adjourned for 2<sup>nd</sup> July, 2019 with following observations:

"In the interest of justice, we give one more opportunity and call this matter on 22.7.2019.

In case no appearance is entered on behalf of the original writ petitioner or on behalf of such of the contesting parties, the matter will be proceeded ex-parte against them."

The challenge to the appointment of Ms. Aisha P. Jamal as Public Prosecutor was dealt with by the High Court as under:

"68. Finally, in the case of Smt. Aisha P. Jamal, as we have already said above, she has a mere seven years and seven months experience, slightly more than the minimum required for appointment as a SPP under the POSCO Act and even the affidavit of the Government does not say how they have found her to be preferentially more suitable to others, with concededly far greater experience, to be appointed as a SPP. The State does not say that she has exemplary achievements or that her competence is greater than the others in the panel. This is pertinent because, we had, by order dated 17.09.2018, clearly asked the State why she was chosen in preference to the others since we see no record of exceptional merit to her credit entitling her to be appointed as SPP.

...

73. As far as Smt. Aisha P. Jamal is concerned, in the absence of information that we had sought for, as to her exceptional merit, we cannot approve her candidature without further assessment."

The above quoted portion from the judgment of the High Court itself shows that said Ms. Aisha P. Jamal had requisite qualifications and also had requisite experience of more than 7 years.

In the circumstances, the High Court ought not to have set aside the appointment of said Ms. Aisha P. Jamal. We, therefore, allow this appeal and set aside the judgment and order under appeal

in so far as said Ms. Aisha P. Jamal is concerned.

The appeals are allowed to the aforesaid extent.

.....J.  
(UDAY UMESH LALIT)

.....J.  
(VINEET SARAN )

New Delhi  
July 22, 2019.

