

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

OP (CAT).No. 3147 of 2011 (Z)

AGAINST THE ORDER IN OA 777/2009 of CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH DATED 19-07-2011

PETITIONER/APPLICANT

C.P.MULLAKOYA,
S/O.AKKARE , MUTHUKOYA, AGED 57 YEARS
SUBJECT MATTER SPECIALIST, KRISHI VIGYAN KENDRA
FARM SCIENCE CENTRE, KILTAN ISLAND, UT OF LAKSHADWEEP.

BY ADVS. SRI.M.P.KRISHNAN NAIR
SMT.RAJESWARI KRISHNAN
SRI.ANIYANKUNJU VARGHESE
SRI.K.K.VIVEKANANDAN
SRI.MATHAI M PAIKADAY(SR.)

RESPONDENTS/RESPONDENTS:

1. ADMINISTRATOR, UT OF LAKSHADWEEP
KAVARATHI 682 555.
2. THE SECRETARY,SERVICES,
LAKSHADWEEP ADMN, SECRETARIAT, KAVARATHI 682 555.
3. THE DIRECTOR OF AGRICULTURE,
DIRECTORATE OF AGRICULTURE, UT OF LAKSHADWEEP
KAVARATHI 682 555.
4. SRI.THIRUNAVUKKARASU,DEPUTY CONSERVATOR
OF FOREST, LAKSHADWEEP, KAVARATHI
NOW HOLDING THE CHARGE OF DIRECTOR OF AGRICULTURE
LAKSHADWEEP 682 555.
- * 5. SRI.LAL SINGH,
SECRETARY, SERVICES, LAKSHADWEEP ADMINISTRATION
KAVARATHI 682 555. [DELETED]
6. SRI.R.P.PAUL,
SECRETARY, AGRICULTURE DEPT, LAKSHADWEEP ADKN
KAVARATHI 682 555.

** ADDL. R7 IMPEADED

P. MOHAMMED FERAZ KHAN,
AGED 41 YEARS,
S/O K.C.P. MUSTHAFI,
AGRICULTURAL DEMONSTRATOR,
DEPARTMENT OF AGRICULTURE,
ANDROTH ISLAND,
UT OF LAKSHADWEEP,
R/A "PERUMPILLY HOUSE,"
ANDROTH ISLAND, UT OF LAKSHADWEEP - 682 551.

* [RESPONDENT NO.5 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER AS PER ORDER DATED 12/03/2012 IN IA 3490/12]

** [ADDL. R7 IS IMPEADED AS PER ORDER DATED 02/12/2013 IN I.A. 16031/2013]

R1 TO R3 BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN
ADDL. R7 BY ADV. SRI.M.A.SHAFIK
ADDL. R7 BY ADV. SRI.B.UNNIKRISHNA KAIMAL

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 12-3-2015, THE COURT ON 20-05-2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	TRUE COPY OF THE CIRCULAR F NO.1/1/98 KVK DATED 25-09-1998
EXT.P2	TRUE COPY OF THE ORDER F NO.56/1/2001 AGRI.DATED 3-2-2001.
EXT.P3	TRUE COPY OF THE OFFICE MEMORANDUM DATED 11-11-1998.
EXT.P4	TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER F.NO.1/1/98-KV(3) DATED 1.1.1999
EXT.P5	TRUE COPY OF THE ORDER F NO.1/1/98-KVK (3) DATED 18-1-2000.
EXT.P6	TRUE COPY OF THE ORDER F NO.1/1/98-KVK(3) DATED 8-8-2000
EXT.P7	TRUE COPY OF THE LETTER F NO.23/4/2001 KVK DATED 6-6-2003
EXT.P8	TRUE COPY OF THE ORDER DATED 20-03-2007 IN OA NO.79/06 06 OF THE HON'BLE TRIBUNAL.
EXT.P9	TRUE COPY OF THE ORDER DATED 20-7-2010 IN IA NO.9984/10, IA NO/.9985/10 AND C.M. APPL.NO.3159/10 IN WPC 12983/07
EXT.P10	TRUE COPY OF THE CIRCULAR F.NO.24/1/2002 DATED 22-09-2008.
EXT.P11	TRUE COPY OF THE APPLICATION DATED 22-10-2008 SUBMITTED BY THE PETITIONER.
EXT.P12	TRUE COPY OF THE LETTER DATED 14-01-2009 ISSUED BY THE 3RD RESPONDENT.
EXT.P13	TRUE COPY OF THE LETTER DATED 22-01-2009 ISSUED BY THE 3RD RESPONDENT.
EXT.P14	TRUE COPY OF THE ORDER DATED 8-6-09 IN OA NO.362/09
EXT.P15	TRUE COPY OF THE REPRESENTATION DATED 16-07-2009 SUBMITTED BY THE PETITIONER.
EXT.P16	TRUE COPY OF THE EMPLOYMENT NOTICE DATED 7-09-2009 ISSUED BY THE RESPONDENT.
EXT.P17	TRUE COPY OF THE REPRESENTATION DATED 30-09-09 SUBMITTED BY THE PETITIONER.
EXT.P18	TRUE COPY OF THE REPRESENTATION DATED 30-09-2009 SUBMITTED BY THE PETITIONER.
EXT.P19	TRUE COPY OF THE LETTER F.NO.2/2/98-AGRI (KVK) DATED 23-3-05
EXT.P20	TRUE COPY OF THE LETTER F.NO.1/1/98- KVK DATED 1-1-99
EXT.P21	TRUE COPY OF THE COMMON ORDER DATED 19-07-2011 IN OA NO.777/09 AND OA NO.731/09.

EXT.P22:- TRUE COPY OF THE LETTER F. NO.37/4/98-AGRI (KVK) DATED 17-7-1998 ISSUED BY THE 1ST RESPONDENT.

EXT.P23:- TRUE COPY OF THE OA NO.777/09 WITH ANNEXURS FILED BEFORE THE HON'BLE CAT ERNAKULAM BENCH.

EXT.P24:- TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN OA 777/09 BEFORE THE HON'BLE CAT ERNAKULAM BENCH.

EXT.P25:- TRUE COPY OF THE REJOINDER FILED BY THE APPLICANTS TO THE REPLY STATEMENT FILED BY THE RESPONDENTS IN THE ABOVE OA.

EXT.P26:- TRUE COPY OF THE MA FILED BY THE APPLICANTS IN OA NO.777/09.

EXT.P27:- TRUE COPY OF THE OA NO.731/09 FILED BY M.C. MUTHUKOYA BEFORE THE HON'BLE CAT ERNAKULAM BENCH.

EXT.P28:- TRUE COPY OF THE REPLY STATEMENT FILED BY THE ADDL. 6TH RESPONDENT IN OA NO.731/09 BEFORE THE HON'BLE CAT.

EXT.P29:- TRUE COPY OF THE REPLY STATEMENT DATED APRIL 2006 ALONG WITH ANNEXURES FILED BY RESPONDENTS NO.2 AND 3 IN OA NO.79/2006.

EXT.P30:- TRUE COPY OF THE REJOINDER, DATED 8-8-2006 ALONG WITH ANNEXURES IN OA NO.79/06.

EXT.P31:- TRUE COPY OF THE ADDITIONAL REPLY STATEMENT DATED 12-2-2007 IN OA NO.79/2006 FILED BY RESPONDENT NOS.2 AND 3 THEREIN.

EXT.P32:- TRUE COPY OF THE REPLY STATEMENT DATED 4-7-2006 IN OA NO.79/2006 FILED BY 5TH RESPONDENT C.P.HAMZA KOYA (THEREIN).

EXT.P33:- TRUE COPY OF THE ADDITIONAL REPLY STATEMENT DATED 19-2-2007 IN O.A. NO.79/2006 FILED BY 5TH RESPONDENT THEREIN.

EXT.P34:- TRUE COPY OF THE OA NO.684/2011 (ALONG WITH ANNEXURES) FILED BY THE PETITIONER BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P35:- TRUE COPY OF THE INTERIM ORDER DATED 2-8-2011 IN OA. NO.684/2011.

RESPONDENTS' EXHIBITS

EXT.R1(a):- A TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN O.A. NO.777/2009 DATED 16/03/2010.

EXT.R7(a):-TRUE COPY OF THE RELEVANT PORTION OF THE NOTIFICATION NO.22017/1/90-SL&UT DATED 23-5-1991 ISSUED BY THE DEPARTMENT OF AGRICULTURE & CO-OPERATION, GOVERNMENT OF INDIA.

EXT.R7(b):-TRUE COPY OF THE ORDER F. NO.24/1/2002- SERVICES DATED 7-12-2009 ISSUED BY THE 1ST RESPONDENT.

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**THOTTATHIL B. RADHAKRISHNAN
&
BABU MATHEW P. JOSEPH, JJ.**

O. P. (CAT) No.3147 of 2011

Dated this the 20th day of May, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The question that arises for consideration is as to whether the post of Subject Matter Specialist in the Krishi Vigyan Kendra (for short, the KVK) under the Lakshadweep Administration is analogous to the post of Coconut Development Officer (for short, CDO) in the Department of Agriculture of Lakshadweep Administration and, if so, whether the petitioner who is holding the post of Subject Matter Specialist is eligible to be considered for appointment to the post of CDO.

2. The petitioner is a native of Lakshadweep. He belongs to a Scheduled Tribe. He possesses (1) B.Sc. (Agriculture) and (2) M.Sc. (Agriculture) with specialisation in Soil Science and Agriculture Chemistry.

3. The petitioner was appointed as an Agriculture Demonstrator in 1981 in the Department of Agriculture under the Lakshadweep Administration. While the petitioner was continuing as Agriculture Demonstrator, the Lakshadweep Administration issued Ext.P1 Circular dated 25-09-1998 for filling up various posts including the post of Training Associate (Soil Conservation) in the scale of pay of ₹ 8000-13500 in the KVK by transfer from the Departments of Fisheries, Agriculture and PWD for a period of one year initially. It was made clear in that circular that the service conditions of the staff selected for the KVK will be like transfer from one department to another, but with the KVK scale without fixation benefits. Masters Degree in Agriculture with specialisation in Soil Science with minimum ten years working experience in Horticulture Crops were fixed as eligibility criteria for appointment to the post of Training Associate (Soil Conservation). The petitioner applied for the post of Training Associate (Soil Conservation) under the KVK and, as per Ext.P3 Office Memorandum, he was called for the

interview. He was selected by the Selection Committee for appointment to the post of Training Associate (Soil Conservation). Accordingly, the first respondent, namely, the Administrator, Union Territory of Lakshadweep, appointed him as Training Associate (Soil Conservation) in the KVK in the scale of pay of ₹ 8000-275-13500 as per Ext.P4 order dated 01-01-1999. It was made clear in Ext.P4 that the appointment would be initially for a period of one year with effect from the date of joining the post and further continuation would be allowed based on the satisfactory performance of the incumbent in the post. The Director of Agriculture was directed to relieve the petitioner with a direction to join the new post forthwith. Accordingly, the petitioner had joined the post of Training Associate (Soil Conservation) in the KVK. Subsequently, as per Ext.P5 order dated 18-01-2000, the petitioner was allowed to continue in the post of Training Associate (Soil Conservation) in the KVK up to 31-03-2000. Thereafter, by Ext.P6 order dated 08-08-2000, the appointment of the petitioner as Training

Associate (Soil Conservation) was extended beyond 31-03-2000. The post of Training Associate was subsequently re-designated as Subject Matter Specialist. The petitioner has been functioning in the post of Training Associate/Subject Matter Specialist ever since his appointment as per Ext.P4 order dated 01-01-1999 of the first respondent.

4. CDO is a post in the hierarchy of the Department of Agriculture under the Lakshadweep Administration. That post also carries a pay scale of ₹ 8000-13500 as that of the Subject Matter Specialist in the KVK. The post of CDO has to be filled up in consultation with the Union Public Service Commission (for short, the UPSC). As per the Recruitment Rules, 1991, the post of CDO has to be filled up by promotion/transfer on deputation (including short term contract) failing which by direct recruitment. A vacancy of CDO arose with effect from 01-01-1999 due to the appointment of the then CDO as the Training Organizer in the scale of pay of ₹ 12000-16500 in the KVK. As per letter

dated 07-02-2003, applications were invited for appointment to the post of CDO. Dr. C.P. Hamsakoya who was then working as Training Associate in the KVK, the petitioner and others applied for that post. After selection by the UPSC, Dr. C.P.Hamsakoya was ranked No.1 and the petitioner was ranked No.2 in the select list. Accordingly, Dr. C.P.Hamsakoya was appointed as CDO. The appointment of Dr. C.P.Hamsakoya as CDO was challenged by four persons in O.A. No.79 of 2006 before the Central Administrative Tribunal, Ernakulam Bench (for short, the CAT). That O.A. was allowed by quashing the appointment of Dr. C.P.Hamsakoya as per Ext.P8 order of the CAT.

5. Dr. C.P.Hamsakoya had challenged the said order in O.A. No.79 of 2006 before this Court by filing W.P.(C) No.12983 of 2007. This Court, by an interim order, allowed Dr. C.P.Hamsakoya to continue on deputation in the post of CDO until further orders. During the pendency of that writ petition, Dr. C.P.Hamsakoya expired on 21-05-2008. Therefore, that writ petition was dismissed as abated. Even

though the petitioner was ranked No.2 in the select list prepared for the post of CDO and that remained not cancelled, he was not appointed as CDO after the death of Dr. C.P.Hamsakoya.

6. The Lakshadweep Administration, subsequently, issued Ext.P10 Circular dated 22-09-2008 inviting applications for appointment to the post of CDO on deputation basis from the officers of the Central/State Government/Union Territories/Agricultural Universities or Research Institutions/Councils. Accordingly, the petitioner submitted his Ext.P11 application dated 22-10-2008 for that purpose. The establishment did not forward that application to the UPSC. But, the third respondent has issued Ext.P12 letter in respect of the matter which reads as follows:-

“The file No. 3/1/2006-Agri regarding appointment of Coconut Development Officer which was processed and submitted to the Director of Agriculture on 02.01.2009 is presently not seen available in the Chamber of Director of Agriculture or in the seats of Stenographer, Superintendent and Establishment Clerk. Therefore, all the dealing hands (Ministerial and non ministerial) working in this Directorate are directed to search their shelf

and file racks in order to find out the said file if it has happened to be misplaced unexpectedly, and reports the facts to the undersigned immediately by 15.01.2009.”

Thereafter, the third respondent issued Ext.P13 O.M. dated 22-01-2009 requesting the petitioner and another to submit fresh applications along with relevant documents. Accordingly, the petitioner has submitted his fresh application. But, the establishment did not forward the same to the UPSC. The petitioner preferred a representation dated 16-03-2009 before the first respondent requesting for his intervention in the matter. Since that was not considered and the application of the petitioner was not forwarded to the UPSC, he has preferred O.A. No.362 of 2009 before the CAT. That O.A. was disposed of with a direction to the respondents therein to consider the representation of the petitioner and inform the petitioner of the decision taken in that regard. Even after that the establishment has not forwarded the application of the petitioner to the UPSC.

7. The Lakshadweep Administration, subsequently,

issued Ext.P16 Employment Notice dated 07-09-2009 inviting applications for appointment to the post of CDO by way of direct recruitment. Aggrieved by the same, the petitioner preferred Ext.P17 representation dated 30-09-2009 before the first respondent requesting him to intervene in the matter and to order to withdraw Ext.P16 and for a direction to forward his application to the UPSC. Since that was not responded to, the petitioner preferred O.A. No.777 of 2009 before the CAT challenging Ext.P16 Employment Notice and for directing the Administration to send his application for the post of CDO to the UPSC. The Administration took a stand in that case that the CAT has already decided the matter in detail as per its order in O.A. No.79 of 2006 and on that basis prayed for dismissing O.A. No.777 of 2009. In such a situation, the petitioner filed three applications, I.A. Nos.9984 and 9985 of 2010 and C.M. Application No.3159 of 2010 in W.P.(C) No.12983 of 2007, before this Court for impleading him as a party in that writ petition and for other purposes. Disposing of them, a

Division Bench of this Court passed Ext.P9 order on 20-07-2010 in which it is observed as follows:-

“5. We do not think it necessary to express any final opinion on the question raised. Suffice it to say that this Court in W.P.(C) No.12983/07 has not rendered any decision on merits on the controversy raised in W.P.(C) No.12983/07 or in O.A. No.79/06 before the CAT, Ernakulam. This Court has not concluded any question of law or facts by the said judgment dated 4/11/08 in W.P. (C) No.12983/07. This Court had only dismissed the writ petition as abated consequent to the death of the petitioner therein and the omission/failure on the part of any one to get impleaded in that proceedings as the legal representatives of the deceased petitioner. In these circumstances, we need only observe that this Court had not upheld the decision in O.A. No.79/06 while dismissing W.P.(C) No.12983/07 as abated.

6. Consequently, we observe that the petitioner, who was not a party to O.A. No.79/06 and W.P.(C) No.12983/07, shall have the option to raise all his contentions which are legally available to him in O.A. No.777/09 filed by him which is pending before the CAT. Appropriate decision shall be taken by the CAT untrammelled by any observations made in the judgment dated 4/11/08 dismissing W.P.(C) No.12983/07 as abated.”

The petitioner filed detailed pleadings in O.A. No.777 of 2009 challenging the order passed by the CAT in O.A. No.79 of

2006. The CAT considered O.A. No.777 of 2009 along with O.A. No.731 of 2009 and dismissed both of them by Ext.P21 order dated 19-07-2011. Aggrieved by the dismissal of O.A. No.777 of 2009, the petitioner has preferred this original petition.

8. Heard the learned counsel appearing on both the sides.

9. The CAT observed as follows while dismissing O.A. No.777 of 2009 filed by the petitioner:-

“15. The applicant in O.A. No.777/09 was one of the officers interviewed by the UPSC for appointment to the post of CDO. He was in the same boat as Shri C.P. Hamzakoya. If Shri C.P. Hamzakoya was not eligible for consideration for promotion as CDO then he also is not eligible. Therefore, the respondents were justified in not forwarding his application pursuant to a later notification to the UPSC, he being ineligible for consideration as per the decision of this Tribunal in O.A. No.79/06. It is not the contention of the applicant in O.A. No.777/09 that the duties and responsibilities of the post of Subject Matter Specialist is comparable to those of the post of the CDO. Following the decision of this Tribunal in O.A. No.79/06, we hold that service of the applicant in O.A. No.777/09 in the KVK as Subject Matter Specialist cannot be taken as service in analogous post of CDO and as such ineligible for

consideration for promotion to the post of CDO.”

Therefore, it can be seen that the CAT relied on the decision rendered by it earlier in O.A. No.79 of 2006 for dismissing O.A. No.777 of 2009 filed by the petitioner. In O.A. No.79 of 2006, the challenge was against the appointment of Dr. C.P.Hamsakoya to the post of CDO while he was working as Training Associate in the KVK. Dr. C.P.Hamsakoya challenged the order passed by the CAT in O.A. No.79 of 2006 by way of filing W.P.(C) No.12983 of 2007 in this Court. This Court, by an interim order passed by a Division Bench, allowed Dr. C.P.Hamsakoya to continue in the post of CDO. But, during the pendency of that writ petition Dr. C.P. Hamsakoya expired on 21-05-2008 and hence, that writ petition was dismissed as abated. Subsequently, after the establishment issued Ext.P16 Employment Notice for filling up the post of CDO by direct recruitment, the petitioner filed O.A. No.777 of 2009. During the pendency of that O.A., the establishment raised a contention that the questions involved in that O.A. were covered by the decision of the

CAT in O.A. No.79 of 2006. Therefore, the petitioner was compelled to prefer applications before this Court in W.P.(C) No.12983 of 2007 which culminated in Ext.P9 order dated 20-07-2010 of this Court. In that order, a Division Bench of this Court observed that this Court had not upheld the decision in O.A. No.79 of 2006 while dismissing W.P.(C) No.12983 of 2007 as abated. Also observed that the petitioner, who was not a party to O.A. No.79 of 2006 and W.P.(C) No.12983 of 2007, shall have the option to raise all his contentions which are legally available to him in O.A. No.777 of 2009 filed by him which was pending before the CAT. Therefore, in the light of Ext.P9 order passed by this Court on 20-07-2010 on the applications filed by the petitioner in W.P.(C) No.12983 of 2007, the order passed by the CAT in O.A. No.79 of 2006 has not become final as far as the petitioner is concerned. In the light of Ext.P9 order, the petitioner was entitled to raise all his contentions legally available to him in O.A. No.777 of 2009 and, in fact, he had raised such contentions before the CAT. But, without

accepting the contentions raised by the petitioner, the CAT dismissed his O.A. following its order rendered in O.A. No.79 of 2006.

10. The arguments of the establishment against the claims of the petitioner are briefly as follows: The post of Subject Matter Specialist occupied by the petitioner in the KVK is not analogous to the post of CDO. Therefore, he is not eligible to be considered for the post of CDO as per the Rules. The petitioner is still in the regular post of Agriculture Demonstrator in the Department of Agriculture which is a feeder category for promotion to the post of Agricultural Officer. Agricultural Officer is the feeder category for promotion to the post of Plant Protection Officer. Plant Protection Officer is the feeder category for promotion to the post of CDO. Since the petitioner is only an Agriculture Demonstrator in the Department of Agriculture and he is in the direct line of promotion in the Department, he is not eligible to be considered for appointment on deputation as per the Rules. He is occupying the post of Subject Matter

Specialist in the KVK on a deputation basis. A deputationist is not eligible for further deputation as CDO.

11. We shall first consider whether the post of Subject Matter Specialist is analogous to the post of CDO in the Department of Agriculture. Both these posts belong to Group-A. They carry similar scales of pay, namely, ₹ 8000-13500. The qualifications prescribed for direct recruits to the post of CDO are (1) Degree in Agriculture followed by Post Graduate Degree in any field of Agricultural Science or M.Sc. Degree in Botany of a recognized University or equivalent and (2) three years experience in agricultural development or extension or research with particular reference to coconut crops. The petitioner possesses (1) B.Sc. (Agriculture) and (2) M.Sc. (Agriculture) with specialisation in Soil Science and Agriculture Chemistry. The qualification of experience has been narrated in detail in Ext.P11 application submitted by the petitioner which would go to show that he possesses the required and more experience. Therefore, it is quite evident that the petitioner possesses the required educational and

experience qualifications prescribed for direct recruitment to the post of CDO. But, he is not eligible to apply for direct recruitment as he does not satisfy the age limit. The qualifications thus possessed by the petitioner indicate that he is well qualified for occupying the post of CDO.

12. Exhibit P22 issued by the Lakshadweep Administration shows the terms and conditions framed for the establishment of the KVK in Lakshadweep. Clause-2 of Ext.P22 says that the thrust of the KVK programme will be on Horticulture, Fisheries, Soil Conservation and Fresh Water Harvesting/Conservation of Rain Water. The horticultural programme is basically in the areas mainly on coconut and to some extent on banana, papaya, guava and vegetables. In Ext.P11, the petitioner has narrated his experience qualifications. It is stated therein that since his posting as Subject Matter Specialist, he had conducted researches on pests and diseases management in coconut and vegetables, water and nutrients retention in coconut garden, vermi-composting using coconut leaves, suitable intercrops in

coconut gardens, micronutrient deficiencies in coconut, integrated rat management in coconut and integrated eriophyd mite in coconut etc. The experiences so claimed by the petitioner in Ext.P11 have not been disputed. In fact, the details of the researches undertaken by the petitioner and the duties and nature of his work have been narrated by filing statements. Also narrated the nature of work of CDO. After going through these undisputed details, we are of the considered view that the nature of work of the petitioner as Subject Matter Specialist in the KVK is substantially analogous to the nature of work of CDO in the Department of Agriculture. Analogous does not mean similar in all respects. Both the posts should be comparable. Both these posts belong to Group-A. They carry similar scales of pay. The petitioner possesses the required educational as well as experience qualifications for direct recruitment to the post of CDO. Moreover, the petitioner was appointed as Training Associate (Soil Conservation) in the KVK as he could satisfy the eligibility criteria of possessing Masters Degree in

Agriculture with specialisation in Soil Science with minimum ten years working experience in horticulture crops. When all these facts are considered together, we are of the view that the post of CDO in the Department of Agriculture and the post of Subject Matter Specialist in the KVK are analogous in nature. Therefore, the petitioner is holding an analogous post which is a qualification prescribed for appointment to the post of CDO on deputation basis.

13. Whether the appointment of the petitioner to the post of Training Associate (Soil Conservation) was on deputation or not is the next question to be considered. The nominations for appointment to various posts in the KVK were called for by Ext.P1 Circular dated 25-09-1998. It can be seen from this document that those posts in the KVK were proposed to be filled by the eligible officers working in the Departments of Fisheries, Agriculture and PWD by transfer for a period of one year initially. So, the method of appointment prescribed was not deputation but by transfer and the period of appointment was one year initially. It is

also made clear in Ext.P1 that the service conditions of the staff selected for the KVK will be like transfer from one department to another but with KVK scale without fixation benefits. Ext.P22 order dated 17-07-1998 is the basic order issued by the Lakshadweep Administration sanctioning of administrative approval for the establishment and implementation of the KVK. It can be seen from this document that the Indian Council of Agricultural Research, New Delhi (for short, the ICAR) by their letter dated 10-02-1998 had conveyed the approval of a KVK for Lakshadweep with headquarters at Kiltan. The ICAR had allotted the KVK under the administrative control of the Lakshadweep Administration with cent percent fund from the Council. It is specifically made clear in Ext.P22 that the staff to be recruited under the KVK will be on the strength of the Administration of Lakshadweep and they will be entitled to all privileges and facilities prevalent in the administration structure. The administrative control over the staff employed shall vest in the administration. It is further made clear that

since there is no provision for incurring expenditure on pension contribution or leave salary contribution from the ICAR, no appointment will be made on deputation basis. Therefore, it is crystal clear that the appointment that can be made to the KVK shall not be on deputation basis. But, as could be seen from Ext.P1, the appointment shall be by transfer for a period of one year initially and the service conditions of the staff so selected and appointed in the KVK will be like transfer from one department to another. So, going by the provisions in Exts.P1 and P22, the appointment given to the petitioner in the KVK as Training Associate (Soil Conservation) cannot be an appointment on deputation but can only be an appointment by transfer from one department to another department. The Lakshadweep Administration reiterated the conditions so stipulated in Ext.P22 in Ext.P2 dated 03-02-2001 in relation to processing and sanctioning of pensionary claims of the staff working in the KVK. In Exts.P22 and P2, it is further stated that the KVK will be a part and parcel of the Department of Agriculture of

Lakshadweep Administration. It is ordered in Ext.P2 that, as in the case of the staff of the Department of Agriculture, the pensionary claims of the KVK staff, irrespective of technical or ministerial, will be processed and sanctioned from the Department of Agriculture, Lakshadweep Administration. The Director of Agriculture was authorised to sanction all the retirement benefits of the staff in the KVK.

14. The establishment highlighted the fact that in Exts.P2 and P22 it is stated that the KVK will be a part and parcel of the Department of Agriculture of Lakshadweep Administration for contending that the petitioner still belongs to the Department of Agriculture. Since such a statement is made in Exts.P2 and P22, it is possible to raise such a contention. But, we have to analyse Exts.P2 and P22 as also Ext.P1 in their entirety. In none of these documents it is stated that the appointment to various posts in the KVK will be on deputation basis. But, it is specifically said in Exts.P2 and P22 that no appointment will be made on deputation basis. Ext.P2 has been issued in regard to

processing and sanctioning of pensionary claims of the staff in the KVK and ordered that the pensionary claims of the KVK staff will be processed and sanctioned from the Department of Agriculture, Lakshadweep Administration. Going by the provisions contained in Exts.P2 and P22, the staff recruited for the KVK will be on the strength of the Administration of Lakshadweep and they will be entitled to all privileges and facilities prevalent in the administration structure. Since there is no provision for incurring expenditure on pension contribution or leave salary contribution from ICAR, it was made clear that no appointment shall be made on deputation basis. Further ordered that the pensionary claims of the KVK staff will be processed and sanctioned from the Department of Agriculture. For this purpose, the staff of KVK can be treated as part and parcel of the Department of Agriculture of Lakshadweep Administration. Of course, some other statements are also available in Ext.P22 to contend that the staff selected from the Department of Agriculture and

appointed to the KVK will be part of the Department of Agriculture. The paradox, intentionally or unintentionally, so created in the orders of the establishment cannot stand in the way of the staff working in the KVK to claim their legitimate rights. The petitioner could not have been appointed in the KVK on deputation basis and he was not at all appointed on deputation basis. His appointment was by transfer from one department to another.

15. Ext.P4 is the order dated 01-01-1999 appointing the petitioner as Training Associate (Soil Conservation) in the KVK. It can be seen from this document that the petitioner was appointed as Training Associate (Soil Conservation) in the pay scale of ₹ 8000-275-13500 as per the conditions prescribed in Ext.P1 Circular and as recommended by the Selection Committee. It is specified that the appointment would be initially for a period of one year with effect from the date of joining the post and further continuation would be allowed based on the satisfactory performance of the incumbent in the post. The Director of Agriculture was

directed to relieve the petitioner with a direction to join the new post forthwith. Thus, the petitioner joined the KVK in the post of Training Associate (Soil Conservation). By issuing Ext.P5 order dated 18-01-2000, further continuation of the petitioner in the post of Training Associate up to 31-03-2000 was allowed. Thereafter, by issuing Ext.P6 order dated 08-08-2000, the appointment of the petitioner as Training Associate (Soil Conservation) was extended beyond 31st March, 2000. Thus, the petitioner has been continuing in the KVK as Training Associate (Soil Conservation) re-designated as Subject Matter Specialist since his appointment in January, 1999. He has put in, as of now, more than sixteen years of continuous service in the KVK. In such a circumstance, it is too late in the day to contend that the petitioner is still holding the post of Agriculture Demonstrator in the Department of Agriculture. It will only be unconscionable to decide the destiny of the petitioner in his career under the Lakshadweep Administration as an Agriculture Demonstrator. For all practical purposes, he left

the Department of Agriculture and joined the KVK as if he was appointed by transfer from one department to another. His pensionary claims will be processed and sanctioned by the Agriculture Department based on Ext.P2 order. But, that does not mean that he is still holding the post of Agriculture Demonstrator. His appointment to the post of Training Associate (Soil Conservation)/Subject Matter Specialist cannot be treated as one on deputation. It was a regular appointment by transfer on the strength of Exts.P22 and P1 orders. The petitioner has been given pay revisional benefits and annual increments in the KVK as usual in any Government department. For the reasons stated, the nature of appointment of the petitioner to the post of Training Associate (Soil Conservation)/Subject Matter Specialist will not stand in the way of considering him for appointment to the post of CDO in the Department of Agriculture.

16. On an earlier occasion, as per letter dated 07-02-2003, applications were invited for appointment to the post of CDO. Dr. C.P.Hamsakoya, who was then working as

Training Associate in the KVK, the petitioner and others applied for that post. After selection by the UPSC, Dr. C.P.Hamsakoya was ranked No.1 and the petitioner was ranked No.2 in the select list. Accordingly, Dr. C.P.Hamsakoya was appointed as CDO. On that occasion, the establishment found Dr. C.P.Hamsakoya and the petitioner as eligible for appointment to the post of CDO by transfer on deputation. That was the reason why they have forwarded the applications of the petitioner and Dr. C.P.Hamsakoya to the UPSC. The UPSC considered their case and found them suitable for appointment to the post of CDO and ranked them in the select list.

17. Dr. C.P.Hamsakoya was appointed as Training Associate in the pay scale of ₹ 8,000-13500 in the KVK while he was working as Soil Conservation Assistant in the pay scale of ₹ 4500-7000 in the Department of Agriculture. His case is also similar to that of the petitioner. The appointment of Dr. C.P.Hamsakoya was challenged in O.A. No.79 of 2006 before the CAT. In that case, the

establishment has filed a reply statement refuting the contentions of the petitioners therein. It is specifically pleaded in the reply statement that the appointment of Dr. C.P.Hamsakoya in the KVK was on transfer and not on deputation. It was also stated in the reply statement that the KVK was allotted to the administration of the Union Territory of Lakshadweep for implementing the programmes with the financial support of the ICAR. Such was the stand taken by the establishment at the time when the appointment of Dr. C.P.Hamsakoya was challenged in O.A. No.79 of 2006. The establishment defended Dr. C.P.Hamsakoya in that case refuting the contentions raised in the application. But, in the case on hand, they take a different stand for reasons best known to them even though it is untenable in nature.

18. Learned counsel for the establishment contended that disposing of the petitioner's representation dated 16-03-2009 as directed by the CAT in the order in O.A. No.362 of 2009, an Office Memorandum dated 07-12-2009 was issued in which it was found that the applicant did not

have the merit to be considered for the post of CDO. That order was produced as Annexure-R1(c) along with the reply statement filed by the establishment in O.A. No.777 of 2009. But, the petitioner has not challenged that order. Therefore, the learned counsel submitted that the petitioner is not entitled to the reliefs prayed for. This argument is far-fetched. The O.M. mentioned by the learned counsel for the establishment was issued on 07-12-2009. The petitioner has filed O.A. No.777 of 2009 before that. Learned counsel for the petitioner submitted that the O.M. dated 07-12-2009 issued by the establishment was not served on the petitioner so far. Moreover, he submitted that the O.M. so issued by the establishment as mentioned in their reply statement has been properly dealt with in paragraph 18 of the rejoinder filed by the petitioner before the CAT. It is specifically stated therein that, that O.M. was unsustainable and liable to be set aside.

19. The petitioner has been agitating his claim for appointment by transfer on deputation to the post of CDO

quite a long time by repeatedly approaching the CAT as well as this Court. He has raised various contentions in order to substantiate his claim. He has prayed for sending his application to the UPSC forthwith. He has challenged the direct recruitment to the post of CDO. He has also prayed for a declaration that he is entitled to be appointed as CDO in the existing vacancy that occurred due to the death of Dr. C.P.Hamsakoya. On considering all these aspects of the matter, this Court is of the view that a technical contention raised by the learned counsel for the establishment that the petitioner has not challenged the O.M. dated 07-12-2009 is not at all a good ground for resisting the claim for considering the petitioner for appointment to the post of CDO. Therefore, that contention is rejected.

20. Learned CAT has failed to consider the questions and the claim raised by the petitioner in their right perspective. In the light of the Rules to be followed for appointment to the post of CDO, the petitioner is fully qualified and he is entitled to be considered for appointment

to that post. The establishment is legally liable to send his application for appointment to the post of CDO on deputation pursuant to Ext.P10 Circular dated 22-09-2008 to the UPSC for their consideration forthwith. The petitioner is attaining the age of superannuation on 15-07-2015. Therefore, unless the application submitted by the petitioner is not forwarded by the establishment to the UPSC and, in turn, it is not considered by the UPSC without delay, a legitimate right of the petitioner will be lost for no fault of him. Therefore, the concerned authorities shall perform their parts without incurring any delay.

21. For the foregoing reasons, the petitioner is entitled to succeed in this Original Petition. Ext.P16 Employment Notice dated 07-09-2009 is liable to be quashed. Ext.P21 order passed by the learned CAT in O.A. No.777 of 2009 is liable to be set aside.

In the result :

- (i) Ext.P16 Employment Notice dated 07-09-2009 is quashed.

- (ii) Ext.P21 order dated 19-07-2011 in O.A. No.777 of 2009 of the CAT is set aside.
- (iii) It is declared that the petitioner is entitled to be considered for appointment to the post of Coconut Development Officer in the Department of Agriculture in the existing vacancy that arose due to the death of Dr. C.P.Hamsakoya.
- (iv) The concerned respondent in the establishment shall forward the application submitted by the petitioner for appointment to the post of Coconut Development Officer in the Department of Agriculture to the Union Public Service Commission forthwith. If the application of the petitioner is not forwarded to the Union Public Service Commission within a period of 7 days after the receipt of a copy of this judgment, the petitioner shall be given appointment to the post of Coconut Development Officer in the Department of Agriculture forthwith.
- (v) The petitioner shall produce a copy of this

judgment before the concerned respondent in the establishment for compliance.

This O.P.(CAT) is allowed as above.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE