

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

OP (KAT) .No. 237 of 2015 (Z)

(AGAINST THE ORDER/JUDGMENT IN OA 512/2015 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 26-03-2015

PETITIONER(S) /APPLICANTS 2-4:

1. T.P MADHUSOODHANAN AGED 54 YEARS
JOINT BLOCK DEVELOPMENT OFFICER
BLOCK PANCHAYATH OFFICE, IRITTY, KANNUR-670703.

2. P.RAMACHANDRAN
JOINT BLOCK DEVELOPMENT OFFICER
BLOCK PANCHAYATH OFFICE, IRIKKUR, KANNUR-670593.

3. B.LAKSHMANAN
JOINT BLOCK DEVELOPMENT OFFICER
BLOCK PANCHAYATH OFFICE, KASARAGOD-671121.

BY ADVS.SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA

RESPONDENT(S) /RESPONDENTS

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.

2. THE COMMISSIONER FOR RURAL DEVELOPMENT
RURAL DEVELOPMENT COMMISSIONERATE, SECRETARIAT
THIRUVANANTHAPURAM-695001.

BY SR. GOVERNMENT PLEADER MR. JOSEPH GEORGE

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : TRUE COPY OF THE ORIGINAL APPLICATION FILED BY THE PETITIONER.

EXT.P2 : TRUE COPY OF THE ORDER DT.26-3-2015 AND MADE IN OA 512/2015.

EXT.P3 : TRUE COPY OF THE ORDER GOP 18/2010/SC/SC DT.20-2-2010.

EXT.P4 : TRUE COPY OF THE NOTIFICATION NO.AD.B2/2701/HSC/2008 DT.30-9-2008

EXT.P5 : TRUE COPY OF THE ORDER NO.G.O.P NO.10/2009/PLG.DT.20-2-1990.

EXT.P6 : TRUE COPY OF THE GOP 142/2014/CO-OP.DT.25-11-2014.

EXT.P7 : TRUE COPY OF THE ORDER DT.20-8-2014 AND MADE IN OA 234/2014.

RESPONDENT(S) ' EXHIBITS

/TRUE COPY//

P.S. TO JUDGE.

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

.....
O.P.(KAT)No.237 OF 2015
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Dated this the 23rd July, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Stipulation of 'Graduation' as an essential qualification for promotion to the post of Secretary, Block Panchayath (which is the re-designated post of erstwhile Block Development Officer), by virtue of amendment of the Special Rules in the year 2011, is the root cause of action for the litigation that is being pursued by the petitioners by way of the present Original Petition.

2. Petitioners joined service of the Rural Development Department as Village Extension Officers. They came to be promoted as Joint Block Development Officers in the year 2008. The next post of promotion, which could aspire, is to the post of Block Development Officer (now re-designated as Secretary, Block Panchayat). While so, the Special Rules came to be amended as per Annexure- A1, whereby the minimum qualification of Graduation has been prescribed for promotion to

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the post of Secretary, Block Panchayat. Many of the petitioners, it is contended, were not aware of the said amendment and were waiting for promotion to the next post of Secretary, Block Panchayat, on the basis of their turn. When they came to know that there was no chance for promotion, by virtue of amendment, they submitted various representations (copies of which are produced as Annexures A2, A2(b) and A2(c)] before the Government for redressal of the grievance.

3. The main point projected by them was that, in several other Departments, the Government had taken much care and caution to see that the amendment brought out in the year 2011 should not affect the rights and interests of persons, who were already in service and who were not in a position to acquire graduation within a short time so as to have vertical elevation. In the said circumstance, exemption was provided under similar Rules whereby the inservice candidates were saved to the requisite extent, to have promotion based on their qualification and experience stipulated. Since there was no response from the concerned authorities, the petitioners were constrained to

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move the Tribunal by filing O.A..234 OF 2014, which was disposed of by directing the Government to consider the representation and pass appropriate orders in accordance with law.

4. Based on the above direction, the matter was considered by the Government, who issued Ext.P7 order , whereby it was held that 'three years' were already over after commencement of the rules and as such, it was not at all necessary to have the matter considered with reference to the grievance projected by the petitioners, as there was sufficient time to have acquired graduation so as to have obtained promotion. This was sought to be challenged by filing O.A.No.234 of 2014, wherein interference was declined as per Ext.P2 judgment dated 20.08.2014, holding that prescription of qualification is a matter of policy depending upon various facts and circumstances, which could not be substituted based on the opinion of the Court or Tribunal. The petitioners are before this Court challenging the correctness and sustainability of Ext.P2.

5. Heard the learned Counsel for the petitioners and the

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learned Government Pleader appearing for the respondents .

6. During the course of hearing , the learned Counsel for the petitioners pointed out that the main grievance projected by the petitioners was with reference to existence of relevant clauses providing 'exemption' in respect of various other departments. Reference is made to Ext.P3, which is in respect of Scheduled Castes/Scheduled Tribes Development Department, where promotion to the post of Development Officer Gr.II has been stipulated **by way of transfer** and the qualification prescribed was Degree. However, exemption is stipulated in the form of a **Note** in the case of inservice candidates, whose qualification in the feeder category stands saved, so as as to make them eligible to be promoted to the post in question. The learned Counsel also places reliance on Exts. P4 to P6 in relation to various other departments.

7. We find it difficult to accept the proposition with reference to Exts.P4 and P5. But, with regard to Ext.P6, in relation to Co-operative Department, the recently introduced Rule 64A prescribes various qualifications, however, there is an

'exemption' provided in the case of inservice candidates, who are already working as 'Auditors', so as to make them eligible for promotion.

8. With regard to the scope of prescription of qualification and the nature of reliefs sought for, this Court finds that the prayers raised by the petitioners before the Tribunal and before this Court are not with reference to any challenge against the Special Rules stipulating graduation as qualification. It is more in relation to the necessity to provide 'exemption', at least to some extent, to the inservice candidates. Considering the fate of the persons, who are shortly to vacate the Chair, by virtue of proximity of the date of retirement on attaining the age of superannuation, lack of sufficient time to acquire graduation was also stated as a ground to persuade the Government to provide exemption by way of representation, which was directed to be considered as per the verdict in O.A.No.234 of 2014. However, while passing Annexure A7, the Government although referred to both the limbs of grievance, the relief was declined only with reference to the 'time gap', holding that three years were

already over after commencement of the Rules, which were formulated and finalised after much deliberation and as such, it was not necessary to provide any change.

9. Coming to the prescription of qualification, this Court finds that there cannot be any doubt as to the power and competence of the employer to stipulate the relevant qualifications and experience, depending upon the nature of the duty to be performed. The necessity to have graduation as the minimum qualification was stipulated by the Government, in turn giving shape to Special Rules, based on the duties to be performed by the officers who are to occupy the said post. We cannot find any fault with the Government in this regard at all. There is no challenge against the rules as well.

10. The only remaining point is whether the policy of the Government could be considered as a 'uniform policy' in all respects. This Court is aware of the fact that the stand of the Government may differ among various departments and the posts concerned. The yardsticks /norms in respect of one post/department may not be same in respect of other

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posts/departments. An analysis in this regard has to be done by the law makers, who is the employer (i.e. the Government) and by nobody else. There is a case for the petitioners that the hard realities were in fact pointed out and projected by the Commissioner as referred to in the forwarding letter (which is referred to in Annexure -A7). It also remains a fact that exemptions provided by the Government to inservice candidates like Ext.P3 have not been dealt with by the Government while passing Annexure-A7 order, though reference was made to the case projected by the petitioners in this regard as well. When we find that there is absolutely nothing wrong on the part of the Tribunal in having declined the interference, with regard to the prayers sought for to declare that the petitioners were eligible to be appointed by way of promotion and also for a positive direction in this regard, this Court finds that the point projected by the petitioners with reference to exemptions granted in other similar departments has not been properly and fully adverted to by the Government while passing Annexure A7.

11. In the above circumstance, we find it fit and proper to

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give one more chance to the petitioners herein (some of them are already retired) to project these aspects by filing a further representation before the first respondent/State within 'two weeks' from the date of receipt of a copy of the judgment, upon which the same shall be considered and appropriate orders shall be passed by the first respondent , after hearing, as expeditiously as possible, at any rate, within three months thereafter. The petitioners shall produce a copy of this judgment , along with a copy of the Original petition before the first respondent for further steps.

The Original Petition is disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**BABU MATHEW P. JOSEPH,
JUDGE.**

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