

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 4635 of 2005 (B)

PETITIONER:

**R. RAJU, FOREMAN ENGINEER,
INSTRUMENTATION DEPARTMENT
FERTILISERS & CHEMICALS TRAVANCORE LTD.
UDYOGAMANDAL.**

**BY ADVS.SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.P.N.SANTHOSH
SRI.NAVEEN.T
SRI.T.G.SUNIL
SRI.C.X.ANTONY BENEDICT**

RESPONDENTS:

**1. THE FERTILISERS & CHEMICALS TRAVANCORE LTD.
REPRESENTED BY ITS CHAIRMAN
UDYOGAMANDAL-683 501.**

**2. THE CHIEF MANAGER (PERSONNEL),
F.A.C.T. LTD., UDYOGAMANDAL-683 501.**

**BY ADVS. SRI.ANTONY DOMINIC
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN
SRI.ANTONY DOMINIC, SC FACT**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P1 - COPY OF THE ORDER NO.CM-PER-UD-2497 DATED 16.02.2001
ISSUED BY RESPONDENT NO.2 TO THE PETITIONER.
- EXT.P2 - COPY OF THE JUDGMENT DATED 12.10.2004 IN O.P.NO.15323
OF 2000.
- EXT.P3 - COPY OF THE ORDER NO.CM-PER-EST-42 DATED 06.01.2005
ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P4 - COPY OF THE ORDER NO.O(FIN)-PAYROLL-UDL-011 DATED
27.01.2005.

RESPONDENTS' EXHIBITS:-

- EXT.R2(A) - COPY OF THE PROCEEDINGS OF THE INTERVIEW HELD ON
08.01.1992.
- EXT.R2(B) - COPY OF THE CAREER DETAILS OF LAYER-I OFFICERS IN
INSTRUMENTATION DATED NIL.

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.4635 of 2005

Dated this the 16th day of October, 2015.

JUDGMENT

The petitioner is concerned with the recovery effected against him, for reason of a folly committed by the Management. The recovery arises from the directions in Ext.P2 judgment. Hence at the first instance, the facts leading to Ext.P2 and the result thereof has to be examined.

2. The petitioner herein was working as a Chargeman, Instrumentation Department in the respondent Company. When there was a consideration for promotion to the category of Foreman/Engineer, two other Chargemen claimed seniority over the petitioner. The petitioner had joined the service of the Company as Instrumentation Mechanic only on 01.11.1989, while the other persons, who challenged the petitioner's seniority, joined the Company on 23.01.1989, prior to the petitioner. While the writ petition was pending, the petitioner was promoted as Foreman/Engineer with retrospective effect from 01.02.2000 and

the petitioners in Ext.P2 respectively with effect from 27.03.2000 and 23.01.2001.

3. Despite the promotion effected, this Court, while disposing of the writ petition, noticed that the question raised would have to be answered for determining the *inter se* seniority between the parties in the category of Foreman/Engineer. The Court found that the experience provided for, the post of Foreman/Engineer was 12 years' experience in the Instrumentation Engineering Department itself. The respondent Company had taken it as experience in any Instrumentation Department and hence considered the experience of the Chargemen in an Instrumentation Department, even prior to their joining in the respondent Company. The respective seniority assigned in the post of Foreman/Engineer was also based on the computation of such experience, taking into account the period spent outside the Company also. This Court by Ext.P2 found that the outside experience could not be reckoned for promotion, since the experience provided for was in the Instrumentation Engineering Department of the Company itself. Hence, it was declared that the acquisition of the 12 years' experience has to

be computed from the date of joining in the respondent Company. Notwithstanding the promotions already granted, the date of promotions were directed to be re-fixed in the light of the above declaration.

4. As a consequence of this, the petitioner's promotion had to be re-fixed and it was on such re-fixation that the instant recovery was attempted. As a consequence of the judgment in Ext.P2 in fact the seniority of one of the petitioners in Ext.P2 had also to be re-fixed, since with respect to him also outside experience was determined for assigning a date of promotion.

5. The learned counsel appearing for the respondent Company refers to the judgment of this Court in WP(C) No.9506 of 2006 dated 03.08.2011, wherein one of the petitioners in Ext.P2 was proceeded for recovery of amounts drawn in excess, on fixation of a different date of promotion. The learned counsel would contend that the very same rationale would apply herein also. This Court is unable to countenance such a contention. A reading of the aforecited judgment would indicate that this Court had specifically noticed that the petitioner therein had challenged the seniority assigned to a third party. In deciding the said

challenge and declaring the third party liable to be considered junior to the petitioner therein; the reasoning of outside service not being determined for promotion, stood against the said person also. Hence, considering the fact that a litigant cannot opt to take only the beneficial portion of a judgment, it was held that he had to take the consequences of the favourable part and the unfavourable part. The beneficial consequences visited on the petitioner was assignment of seniority above the third party, but however re-fixation of his own seniority, to his detriment, LEAD to an adverse result of recovery of excess salary drawn.

6. The present case however stands on a different footing. It was not the petitioner, who initiated the earlier litigation. It was also not the petitioner, who claimed the seniority earlier to that which he was entitled. While the seniority issue was pending consideration before this Court, the Company on its own policy, promoted the parties to the litigation, assigning seniority taking into account periods spent outside the Company also. This was found to be bad by this Court in Ext.P2 judgment. The respondent Company was quite aware of the pending writ petition and the challenge raised therein. It was despite that, the parties

to the litigation were promoted. The petitioner at any rate cannot be held responsible for such fixation of seniority nor can be held responsible for the litigation.

7. The first petitioner in Ext.P2 had invited the consequence of the challenge made. Such consequence cannot be mulcted in the case of the petitioner herein. This Court is further fortified in taking such a view from the decision of the Hon'ble Supreme Court reported in ***State of Punjab v. Rafiq Masih [2015 (1) KLT 429]***, wherein laying down the instances where recovery could not be made, *inter alia* it was so laid down:

"12. iv. Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post".

The case of the petitioner is squarely covered by the same. The impugned orders are set aside. No recovery can be effected.

The writ petition is disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE.
//True Copy//

P.A. to Judge.

sp