

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WA.No. 48 of 2015 () IN WP(C).32792/2011

AGAINST THE JUDGMENT IN WP(C) 32792/2011 of HIGH COURT OF KERALA
DATED 26-06-2014

APPELLANTS/RESPONDENTS 3 AND 4:

1. THE RUBBER BOARD
REPRESENTED BY ITS SECRETARY, P.B.NO. 1122
SUB JAIL ROAD, KOTTAYAM -686002.
2. THE CHAIRMAN
RUBBER BOARD, P.B.NO. 1122, SUB JAIL ROAD
KOTTAYAM- 686 002.

BY ADVS.SRI.JOSEPH KODIANTHARA (SR.)
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)

RESPONDENTS/PETITIONERS 1 - 3 AND RESPONDENTS 1 AND 2:

1. MANJU SUSAN JOHN
QUALITY CONTROL ASSISTANT, RUBBER BOARD
SUB JAIL ROAD, KOTTAYAM- 686 002.
2. BINDHUMOL THOMAS,
QUALITY CONTROL ASSISTANT, RUBBER BOARD
SUB JAIL ROAD, KOTTAYAM- 686 002.
3. HELEN ANNIE VARGHESE
QUALITY CONTROL ASSISTANT, RUBBER BOARD
SUB JAIL ROAD, KOTTAYAM- 686 002.
4. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
(DEPARTMENT OF COMMERCE), UDYOG BHAVAN
NEW DELHI-110001.
5. MINISTRY OF FINANCE,
REPRESENTED BY ITS SECRETARY, NORTH BLOCK
NEW DELHI - 110 001.

R1-R3 BY ADV. SRI.P.C.SASIDHARAN
R4-R5 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX TO W.A.NO.48 OF 2015

APPELLANT'S EXHIBITS:

NIL

RESPONDENT'S EXHIBITS:

ANNEXURE R1(a):TRUE COPY OF THE COMMUNICATION DATED 08/10/2014

ANNEXURE R1(b): TRUE COPY OF THE CLARIFICATION MADE BY THE BOARD TO
THE UNION OF INDIA DATED 15/10/2014.

// True Copy// PA to Judge

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.No.48 of 2015

Dated this the 15th day of September 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard learned counsel for the appellants and Sri.P.C.Sasidharan, the learned counsel appearing for respondents/writ petitioners.

2. This writ appeal has been filed against the judgment dated 26/06/2014 in W.P.C.No.32792 of 2011. The Rubber Board, who was the 3rd respondent in the writ petition, has come up against the judgment of the learned Single Judge by which judgment, the writ petition was allowed.

3. Petitioners, who were holding the post of Quality Control Assistant, filed the writ petition praying for quashing Ext.P9, by which order, Government of India has refused revision of scale of pay of Quality Control Assistants of the Rubber Board as recommended by the Rubber Board and directed for consideration by this Court vide judgment dated 16/11/2010 in W.P.C.No.32926/2010. In the writ petition, following prayers were

made by the petitioners:

“i) Issue a writ of certiorari or any other writ, order or direction to quash Ext.P9;

ii) declare that the petitioners are entitled for upgradation of their scale of pay as recommended by the Rubber Board and the 1st respondent as is evident from Exhibits-P6 and PS and for all other consequential service benefits from 01/12/2004, the date on which they were absorbed in the service of the Rubber Board;

iii) issue a writ of mandamus or any other writ, order or direction commanding and compelling the respondents to upgrade the scale of pay of the petitioners in the post of Quality Control Assistant as recommended by the Rubber Board;”

4. Rubber Board, vide its letter dated 29/06/2010, had sent recommendation in response to the Ministry's letter dated 21/04/2010 recommending the revision of pay scale of Quality Control Assistant from Rs.5200-20200/- with grade pay Rs.1900/- to Rs.5200-20200 with grade pay Rs.2800/-. The Rubber Board in its recommendation, has mentioned that Scientific Assistant, Technical Assistant (Training) and Shift Supervisor, whose qualification is lesser than the qualification of Quality Control

Assistants are drawing higher pay scale. Hence the pay of the petitioners, who have an additional three years experience, should also be revised equivalent to the pay of the aforesaid two officials. It is useful to refer to the recommendation of the Rubber Board which was to the following effect.

“In this context, it may be noted that as per the Recruitment Rules for the post of Scientific Assistant (earlier Scientific Assistant Gr.I), the educational qualification prescribed is “Bachelor's Degree in Botany/Chemistry/Zoology from a recognised University or equivalent” and the scale of pay attached to the said post is Rs.5200-20200 (PB-1) with Grade Pay Rs.2800/- (pre-revised scale Rs.4500-125-7000). Though the basic educational qualification and nature of duties of Quality Control Assistant and Scientific Assistant are more or less same, Quality Control Assistants possess 3 years additional experience in their field of study. This experience is essential for applying for the post. However, the scale of pay of the post of Quality Control Assistant is now less than the scale of pay of Scientific Assistant, Technical Assistant (Training) and Shift Supervisor. Similarly, the educational qualification prescribed for the posts of Technical Assistant (Training) and Shift Supervisor are “Diploma in Polymer Technology from a recognised

institution and Diploma in Engineering (Chemical / Electrical / Mechanical / Polymer / Rubber Technology)” respectively and scale of pay attached to these posts is also Rs.5200-20200 (PB1) with Grade Pay Rs.2800/- (pre-revised scale of Rs.4500-125-7000) which is more than the scale of pay of Quality Control Assistant (copies of RR enclosed). Hence, the 156th meeting of the Board held on 05/08/2006 decided to revise the scale of pay of Quality Control Assistant as Rs.4500-7000 (pre-revised) subject to Government approval.

It is clear from the above facts that there is an anomaly with respect to the pay of Quality Control Assistants considering qualification, experience and nature of work and they deserve the scale of pay of Rs.5200-20200 (PB1) with G.P Rs.2800 (i.e. revised scale of Rs.4500-7000). The financial implication involved in the revision of scale of pay of Quality Control Assistant is nominal as the Pay Band is the same and the change is only in the Grade Pay. A statement containing the details of financial involvement is enclosed for kind reference.

In the light of the above, it is requested that orders may kindly be passed to revise the scale of pay of Quality Control Assistants from Rs.5200-20200 (PB1) with Grade Pay Rs.1900/- to Rs.5200-20200 (PB1) with Grade Pay Rs.2800/- at par with the scale of

pay of similar posts with similar educational qualifications in the Board.”

5. The recommendations were not being implemented. Hence W.P.C.No.32926 of 2010 was filed by the petitioners wherein this Court directed the Central Government to take a decision on the proposal submitted by the Rubber Board. Government of India, vide its letter dated 15/03/2011 has rejected the recommendations. With regard to the post of Shift Supervisor, it was observed that the higher scale absorption/upgradation granted to the post of Shift Supervisor was done without the approval of Internal Finance Division of Ministry of Commerce as well as the Ministry of Finance. Hence such absorption/upgradation may not be regularised. Citing reasons in paragraph 2, the upgradation recommended was refused. In the writ petition filed by the petitioner, the learned Single Judge vide its judgment, after adverting to the reasons given by the Government, has allowed the writ petition. In the judgment, the learned Single Judge has noted that the Quality Control Assistants do not have any promotional avenue except their grade pay on completion of 10, 20 and 30 years of

continuous regular service. The learned Single Judge further noticed that in the recommendation of the Rubber Board, it was stated that there being only three sanctioned posts, financial burden should be minimal. The learned counsel for the respondent has pointed out that although it was observed in the impugned order of the Central Government that the post of Shift Supervisor will not be regularised, by subsequent order of the Government of India dated 01/11/2013, the post of Shift Supervisor was absorbed in the regular establishment with effect from 01/12/2014 in the pay scale, as recommended in the letter.

6. The learned counsel for the appellants submits that although the Rubber Board has recommended, but the Government having not approved such recommendation, Rubber Board is free to challenge the order of the learned Single Judge. It is submitted that valid reasons were given by the Central Government for refusing approval of the recommendation of the Rubber Board.

7. Learned counsel appearing for the writ petitioners, refuting the submission, contended that the pay scale which was sanctioned with effect from 01/12/2014 was equivalent to the pay

scale to the posts held by Drivers and Cooks and looking at the qualifications, petitioners were entitled to have the pay scale of Scientific Assistants and Shift Supervisor and the recommendation made by the Rubber Board was based on valid reasons and it does not lie in the mouth of the Rubber Board now to contend that petitioners were not entitled.

8. We have considered the submission of the learned counsel for the parties and perused the records.

9. The learned Single Judge has given valid reasons for setting aside the order of the Central Government. Petitioners, who do not have any avenue of promotion and their upgradation of only three posts involve a minimal financial burden and recommendation of the Rubber Board as extracted above were based on relevant facts and data, the rejection of the recommendation of the Rubber Board by the Central Government cannot be justified for the reasons as given by the learned Single Judge. More so, the Shift Supervisors were subsequently absorbed in the regular establishment by order dated 01/11/2013. The qualification of the Scientific Assistants who are drawing a higher revised pay scale was less than the qualification as was

required to be possessed by the Quality Control Assistants.

Looking to the over all facts and circumstances, we are of the view that no good grounds have been made out to interfere with the judgment of the learned Single Judge in the appeal filed by the Rubber Board. Consequently, the writ appeal is dismissed.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

