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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WA.No. 85 of 2015 () IN WP(C).642/2012

AGAINST THE JUDGMENT IN WP(C) 642/2012 of HIGH COURT OF KERALA
DATED 13-11-2014

APPELLANT(S)/PETITIONERS :-

1. PADMAKSHAN
THALASTHIL HOUSE, P.O.KUNNAMANGALAM, KOZHIKODE.
2. VIJAYAN
THAROL PURAYIL, KARANTHUR, KUNNAMANGALAM
KOZHIKODE.
3. K.K. PAVITHRAN
KINARULLAKANDIYIL HOUSE, P.O, KUNNAMANGALAM
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/RESPONDENTS :-

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LABOUR DEPARTMENT, THIRUVANATHAPURAM -695001.
2. KERALA STATE FOR SCIENCE,
TECHNOLOGY AND ENVIRONMENT REPRESENTED BY ITS
CONTROLLER OF ADMINISTRATION
THIRUVANANTHAPURAM-695004
3. EXECUTIVE DIRECTOR
CENTRE FOR WATER RESOURCES DEVELOPMENT AND MANAGEMENT
KOZHIKODE-673571.

R2 BY SRI.GEORGE ZACHARIAH ERUTHICKEL,SC

R1 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

[CR]

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.A. No.85 of 2015

Dated this the 3rd day of February 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

Heard the learned counsel for the appellants and the learned counsel appearing for respondent Nos.2 and 3.

2. This writ appeal has been filed against the judgment dated 13.11.2014, by which, W.P.(C) No.642 of 2012 filed by the appellants was dismissed. Appellants are persons/legal representatives of persons whose land was acquired in the year 1970 and was handed over to the Calicut University. Thereafter, a portion of the land was handed over to autonomous institute namely, Centre for Water Resources Development and Management (CWRDM). In the institute, certain persons, whose land was acquired were engaged as casual/daily wage workers. The State Government issued a Government Order, Ext.P1 dated 26.2.1983, which provided that the local people whose land has been acquired for the establishment of the Centre should be given preference in the matter of appointment to lower grade posts as a special case. Certain persons were engaged on lower posts giving the

benefit of the said Government Order. Writ Petition No.37307 of 2004 was filed by the petitioners praying for a direction on the basis of Government Order dated 26.2.1983 to make their appointment. The said writ petition was disposed of by this Court observing that as and when any recruitment is made from outside, the petitioners can make a claim. Subsequently, Ext.P6 letter dated 29.12.2011 was issued, by which, the Controller of Administration wrote to the Executive Director informing that there is recommendation from the Management Committee to consider the General Workers for being re-designated as Helpers in the existing vacancies without any change in their pay scales as well as in their current duties and responsibilities. Petitioners aggrieved by the said letter has filed writ petition in this Court, which writ petition has been dismissed.

3. Learned Single Judge after noticing the Government Order as well as the decision at Ext.P6 observed that petitioners can raise their claim only when advertisement for recruitment is issued for appointment to the vacancy on the said post. The learned Single Judge refused to interfere with Ext.P6.

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4. Learned counsel for the appellants in support of the writ appeal contended that as per the relevant rules governing the recruitment and conditions of service, namely, “Rules for Recruitment and Promotion of Administrative Staff”, there was a 'Note' to Rule 3(18), which is being violated by the said Ext.P6 letter, which is extracted as below :-

“Note : Item 1 is direct recruitment. Items 2 - 6 are selection posts. The categories of staff not included under **Rule 3** but are existing in the various Centres will continue until superannuation of the incumbent.”

Rule 3 contains the details of categories of staff. It is useful to refer to Rule 3, which is extracted as below :-

“3. Administrative Staff

Administrative Staff of the Council shall consist of the following categories of staff.

1. Controller of Administration/Registrar
- 2.a. Deputy Controller of Administration/Deputy Registrar
- 2.b. Deputy Controller of Finance
- 3.a. Assistant Controller of Administration
- 3.b. Assistant Controller of Finance
4. Section Officer
5. Personal Assistant to the Director
6. Internal Auditor
7. Personal Assistant to Controller of Administration/ Registrar
8. Security Officer
9. Office Assistant

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10. Typist cum stenographer
11. Clerical Assistant
12. Driver
13. Gardener
14. Cook-cum-Housekeeper
15. Helper
- 16.a. Operator
- 16.b. Operator Audio-visual Aids
17. Security Guard
18. Any other category ordered to be included as Administrative Staff by the Executive Committee."

5. We have considered the submissions made by the learned counsel for the appellants and perused the records.

6. The petitioners' earlier writ petition, W.P.(C) No.37307 of 2004 was disposed of by judgment dated 7.6.2010, where this Court observed as follows :-

"As far as the claim of the land acquisition evictees/dependents against the 3rd respondent is concerned, the petitioners can claim preference in appointment against 3rd respondent only when the 3rd respondent resorts recruitment from outside. On the other hand, as in this case, if the 3rd respondent resorts to category change or deployment for accommodating excess staff, it is always open to the 3rd respondent to do so and since it does not involve any recruitment from outside, petitioners cannot have any grievance against such action of the 3rd respondent. In the instant case, the 3rd respondent has not resorted to any recruitment from

outside to overlook the claim of the petitioners and therefore action of the 3rd respondent in accommodating the persons by category change cannot be challenged. Therefore clarifying that the petitioners can make claims against the 3rd respondent only as and when recruitment is made from outside, this writ petition is disposed of."

7. The petitioners right to raise the claim was eventually confined to when any steps are taken for recruitment from outside. Present is not a case where any steps were being taken by the respondents for recruitment from outside so as to give right to the petitioners to lay any claim on the basis of Government Order dated 26.2.1983. The judgment of this Court dated 7.6.2010 as noted above was final between the parties and since no steps were taken to make any recruitment from outside, petitioners' claim on the basis of the Government Order was not liable to be considered.

8. More so, the 'Note' on the basis of which the claim was made also in no manner help the appellants. What 'Note' directed is that the categories of the staff not included under Rule 3, but are existing in the various centres will continue until superannuation of the incumbents. The idea was to continue those categories which were not included in the Rule

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and were still in service of the institute. In any event, any decision taken to re-designate or to adjust any other categories on any existing posts, no exemption can be taken. It is for the employer to adjust and take appropriate steps in the exigencies of service and to make arrangement for bearing the financial burden. The respondents were not intending to employ anyone from outside and were taking effort to utilise the vacancies by re-designating in the existing categories, on which, no exemption can be taken by the petitioners, who were claiming right of preference only on the basis of the Government Order dated 26.2.1983.

With this observation, this Writ Appeal is dismissed.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE

Jvt