

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 1149 of 2011 (P)

PETITIONERS:

1. B.RAJKUMAR,
SCIENTIST-'A',
TROPICAL BOTANIC GARDEN & RESERCH INSTITUTE (TBGRI),
PALODE, THIRUVANANTHAPURAM-695562.
2. R.K.RADHA,
SCIENTIST 'A',
TROPICAL BOTANIC GARDEN & RESERCH INSTITUTE (TBGRI),
PALODE, THIRUVANANTHAPURAM-695562.
3. P.S.JOTHISH,
SCIENTIST'A',
TROPICAL BOTANIC GARDEN & RESERCH INSTITUTE (TBGRI),
PALODE, THIRUVANANTHAPURAM-695562

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENT:

KERALA STATE COUNCIL FOR SCIENCE, TECHNOLOGY &
ENVIRONMENT (KSCSTE), SASTHRA BHAVAN,
PATTOM, THIRUVANANTHAPURAM-695004,
REP.BY ITS EXECUTIVE VICE PRESIDENT.

BY ADV. SRI.GEORGE ZACHARIAH,SC, KSCSTE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-03-2015,
ALONG WITH WPC. 1173/2011, WPC. 1174/2011, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE RULES RELATING TO SCIENTISTS RECRUITMENT AND PROMOTION RULES.
- EXT- P2- TRUE COPY OF THE JUDGMENT DATED 19-08-2009 DATED 19-08-2010 WPC No.22874/2010.
- EXT- P3- TRUE COPY OF THE ORDER DATED 17-09-2009 OF THE CONTROLLER OF ADMINISTRATION OF KSCSTE.
- EXT- P4- TRUE COPY OF THE ORDER DATED 27-11-2010.
- EXT- P5- TRUE COPY OF THE ORDER OF THE COUNCIL DATED 01-12-2010.
- EXT- P6- TRUE COPY OF THE ORDER DATED 16-03-2010.
- EXT- P7- TRUE COPY OF THE ORDER DATED 06-12-1987 OF THE GOVT. OF KERALA.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) Nos. 1149, 1173 & 1174 OF 2011

DATED THIS THE 30th DAY OF MARCH, 2015.

J U D G M E N T

The petitioners in all the 3 writ petitions have joined service in the 'Tropical Botanic Garden & Research Institute' (TBGRI) as 'Junior Scientific Assistants', which is a post coming under the category of 'Scientists' in the CSIR scale of pay. When the State Government formed the 'Kerala State Council for Science, Technology & Environment' (KSCSTE) on 19-06-2003, the TBGRI and certain other scientific organisations were brought under control of the KSCSTE. Service Rules were framed by the KSCSTE for regulating the service of employees working in the organisations which were brought under control, and also for the recruitment of staff in future. Exhibit P1 is the Recruitment and Promotion Rules relating to Scientists category, namely the "Kerala State Council for Science, Technology and Environment - Scientist/Recruitment and Promotion Rules". Under Rule 3 of Ext.P1, it is mentioned

that designation and scale of pay of Scientists covered under the said Rules shall be as determined by the council from time. It specifies that recruitment shall normally be made at the entry cadre of Scientist-B. Rule 4 prescribes the minimum qualification, experience and upper age limit for direct recruitment of Scientists at all levels. As per Rule 4 the qualification prescribed for the category of 'Scientist-B' is, MLibSc I Class or I Class in M.Tech/ME or Ph.D(Science). Rule 15 of Ext.P1 provides a saving clause which stipulates that the Scientists appointed prior to issue of Ext. P1 Rules, who do not have the qualification prescribed in the said Rules also will be considered for assessment for promotion under these Rules at par with the employees having qualification prescribed under the said Rules.

2. Case of the petitioners is that, on formation of KSCSTE the post of Junior Scientific Assistant, Senior Scientific Assistant and Scientist-A were abolished and entry cadre of Scientific staff was fixed as 'Scientist-B'.

Therefore it is contended that on the formation of KSCSTE and on formulation of Ext.P1 Rules, they ought to have been placed in the category of Scientist-B. Since various representations submitted by the petitioners in this regard were not considered the petitioners have earlier approached this Court in a writ petition, WP (C) No. 22874/10. This Court in Ext.P2 judgment directed the KSCSTE to take a decision based on the representations submitted by the petitioners, within a time limit. This Court noticed the contention that the petitioners are entitled to be promoted to the post of 'Scientist-B' as done in the case of similarly situated Scientific Staff in other organisations which were brought under KSCSTE. Consequent to the direction contained in Ext.P2 judgment, the KSCSTE have considered the matter and issued Ext.P4 order. Sanction was accorded to the Director of TBGRI to promote the petitioners in Ext.P2 judgment to the cadre of Scientist-B. But the promotions were permitted only subject to the following conditions;

- (i) The petitioners who are given first assessment promotion with effect from the pre-Council period, will be given promotion to the Scientist B category with effect from the date of formation of the Council Rules i.e., 19-06-2003, if they are eligible and qualified for the post of Scientist B as per Council Rules.
- (ii) The petitioners, who are given first assessment promotion with effect from the post-Council period will be promoted to the Scientist B category with effect from the same date, if they are eligible and qualified for the post of Scientist B as per Council Rules.
- (iii) The case of the petitioners, who are not qualified for the post of Scientist B as per Council Rules, will be considered for promotion to the Scientist B category, at the time of assessing their performance for promotion, after their accrual of the required qualification for the post of Scientist B as per Council Rules.

3. Based on Ext.P4 decision, TBGRI had promoted 8 persons to the category of Scientist-B, as evidenced from Ext.P5. With respect to 6 persons, promotions were granted with effect from 19-06-2003, the date on which Ext.P1 Rules were introduced. But with respect to the petitioner in WP (C) No. 1173/2011 the date of effect of promotion was restricted to 16-06-2008, the date on which he had acquired Ph.D qualification. So also with respect to the petitioner in

W.P. (C) No. 1174/2011, the date of effect of promotion was stipulated as 25-10-2008, the date on which he had acquired Ph.D qualification. With respect to the petitioners in W.P.(C) No. 1149/2011, the benefit of promotion was denied presumably on the basis that they do not possess the requisite qualifications prescribed under Ext. P1 Rules with respect to the post of Scientist-B.

4. Contention of the petitioners is that, they were eligible to be absorbed under the KSCSTE in the category of 'Scientist-B', because the post of Junior Scientists and Senior Scientists stood abolished on introduction of Ext.P1 Rules and the entry cadre was fixed as Scientist-B. Hence, it is contended that the petitioners in all these cases ought to have been considered as promoted to the cadre of 'Scientist-B' with effect from 19-06-2000, notwithstanding their acquisition of any of the prescribed qualifications under Ext.P1 Rules. The posts of Junior Scientific Assistant, Senior Scientific Assistant and Scientist-A stood abolished on introduction of Ext.P1 Service Rules and the incumbents

working in those posts should not be put to suffer because of the change introduced in the Service Rules. It is pointed out that in a similarly situated another organisation, namely the Kerala Forest Research Institute (KFRI), promotions were given to those persons who were working in the posts of technical category of officers. Exhibit P3 order issued by the KSCSTE in this regard is produced for reference. Exhibit P3 would indicate that, on the recommendations made by KFRI, 6 persons who were working in the category of technical officers were given promotion/absorption to the level of 'Scientist-B' under the KSCSTE. In the said order it is mentioned that the KFRI had recommended for such promotion/absorption stating that as per the existing Rules of KFRI they were found eligible to be promoted to the post of 'Scientist-B'. It is evident from Ext.P3 that such a decision was taken by the State Council of KSCSTE. Contention of the petitioners is that those who were promoted to the post of 'Scientist-B' from KFRI are similarly situated persons and they do not possess qualification to the

post of 'Scientist-B' prescribed under Ext.P1 Rules. It is pointed out that, despite specific observations contained in Ext.P2 regarding Ext.P3 order, the KSCSTE had adopted a discriminatory stand in stipulating that promotion to the post of 'Scientist-B' can be granted only if the petitioners acquires the requisite qualification as per Ext.P1 Rules. The petitioners have also produced Ext.P6 which is an order passed by the TBGRI on 16-03-2010, wherein 2 persons working in the category of 'Scientist-A' under TBGRI was promoted to the category of 'Scientist-B' coming within the purview of Ext.P1 Rules, with effect from 01-12-2002 and 19-09-2003. Therefore, it is contended that denial of promotion of the petitioners in WP (C) No. 1149/2011 and non-granting of promotion to the petitioners in other two cases with effect from 19-06-2003, need interference by this Court, because the stand taken by the respondent is in violation of the saving clause provided under Rule 15 of Ext.P1 and it is discriminatory because the respondents have already taken a stand in promoting similarly situated

persons in other organisations as evidenced from Ext.P3.

5. In the counter affidavit of the respondent, it is conceded that, the TBGRI along with 5 other research and development institutions were integrated with the KSCSTE in 2003 and the common Rules (Ext.P1) became applicable to those institutions with effect from 19-06-2003. It is further conceded that as per Ext.P1 Rules the post of 'Junior Scientific Assistant', 'Senior Scientific Assistant' and 'Scientist-A' does not exist and the entry cadre is 'Scientist-B'. It is stated that Ext.P1 Rules stipulates Ph.D (Science) as qualification for new recruits or for direct recruits to the cadre of 'Scientist-B'. It is also conceded that as per the then Rules existed at TBGRI prior to 19-06-2003, qualification prescribed for 'Scientist-B' (under the TBGRI Rules) was first class post graduation in science subjects. Since the council Rules (Ext.P1) stipulates Ph.D (Science) as an essential qualification for the post of 'Scientist-B' eligible persons alone were given promotion as per Ext.P4. With respect to Ext.P3 order of promotion

granted to the staff of KFRI, it is stated that the management committee of KFRI had approved the proposal for promotion of those persons into the cadre of 'Scientist-B'. But it is contended that the eligibility criteria as per Ext.P1 Rules is applicable for all the classes. It is stated that those petitioners who have acquired qualification of Ph.D (Science) were subsequently given assessment promotion to the post of 'Scientist-B'. It is specifically contended that those who were not given promotion are still in the group of 'Scientist-A' category which is a post not coming within the Council Rules and they could not be promoted as 'Scientist-B' as per Ext.P1 Rules for which Ph.D(Science) is an essential qualification.

6. Question to be decided is as to whether on the formation of KSCSTE and on the formulation of Ext.P1 Rules, the petitioners were entitled to be absorbed in the category of 'Scientist-B'. Admittedly, on the date of introduction of Ext.P1 Rules, i.e., on 19-06-2003, none of the petitioners were holding the requisite qualification

prescribed for direct recruitment to the category of 'Scientist-B', as stipulated in Ext.P1 Special Rules. On the date of introduction of Ext.P1 Rules all the petitioners were working in the category of Senior Scientific Assistant/Scientist-A. Admittedly, the petitioners were appointed in the scientific category of employees in TBGRI at the CSIR scale of pay. Eventhough, Ext.P1 Rules prescribed the qualification, experience and age limit and the method of selection for direct recruitment in various posts and also the method of assessment promotion, it does not contain any stipulation with respect to absorption of scientific staff working under different organisations which were brought into control of the KSCSTE Rules. When it is categorically mentioned in Ext.P1 that 'Scientist-B' is the entry cadre of scientific staff, it cannot be insisted that for absorption of the scientific staff working in the organisations brought under control of the KSCSTE, the qualification prescribed for direct recruitment shall be insisted upon. From Ext.P4 proceedings, it is evident that

the TBGRI had informed the KSCSTE that the petitioners were qualified to the post of 'Scientist-B' at the time of their entry in service. This may probably be on the basis that they were prescribing requisite qualification to be appointed in the post of 'Scientist-B' as per the then existing Rules in TBGRI. It is also admitted that the promotion posts of Senior Scientific Assistant/Scientist-A which existed under the TBGRI Rules are the posts not existing as per the Council Rules (Ext.P1). Going by Rule 15 of Ext.P1, a specific saving clause is provided with respect to Scientist those who were appointed prior to Ext.P1 Rules, for consideration for their assessment under the said Rules, in par with employees who have the qualifications are prescribed. From Ext.P3 it is evident that in the case of officers in the technical category of KFRI, the KSCSTE had approved recommendations of the KFRI. There also, the technical officers were eligible for the post of 'Scientist-B', as per the then existing Rules of KFRI. On an assessment made by the Director, KFRI they were found eligible to be

promoted to the post of 'Scientist-B' as per the then existing scheme of promotion in the KFRI. The Council of KSCSTE took a decision to approve the proposal made by KFRI to promote the 6 technical officers as 'Scientist-B'. It is not disputed that those 6 technical officers who were proposed for promotion to the post of 'Scientist-B' were not holding any of the qualifications prescribed under Ext.P1 for direct recruitment to the post of 'Scientist-B'. In the cases at hand, it is conceded that all the petitioners were holding the requisite qualifications of first class post graduate degree, making them eligible to be promoted to the post of 'Scientist-B' as existed in the TBGRI Rules. It is also evident that they were promoted by the TBGRI to the post of Senior Scientific Assistant/Scientist-A at the time when Ext.P1 Rules were framed. It can only be presumed that those persons were given promotion to the post of 'Scientist-B', without insisting for acquisition of the qualification prescribed for direct recruits, on the basis of Rule 15 of Ext.P1. Such being the situation the petitioners who are

similarly situated scientific staff of TBGRI could not be denied of similar treatment. Any decision taken otherwise would result in discrimination of the petitioners, which will violate Art. 14 of the Constitution of India. Therefore, this Court of the opinion that the reasoning mentioned in Ext.P4 to insist that promotions will be granted only subject to acquisition of qualifications stipulated in Ext.P1 Rules, is illegal and unjustifiable. It is to be held that the petitioners are entitled for absorption in the cadre of Scientist-B based on the recommendations made by the TBGRI with notional effect from 19-06-2003, the date on which Ext.P1 Rules came into force.

7. Under the above mentioned circumstances, Ext.P4 proceedings issued by the respondent is hereby quashed. The respondent is directed to reconsider the matter and to take an appropriate decision based on the findings contained herein above with respect to absorbing the petitioners in the cadre of Scientist-B with notional effect from 19-06-2003 and to issue necessary orders

granting promotion and consequential benefits to all the petitioners in these 3 writ petitions.

8. Necessary proceedings in this regard shall be issued at the earliest possible, at any rate within a period of 2 months from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

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P.A. to Judge