

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WP(C).No. 1956 of 2012 (T)

PETITIONER(S):

**SANTHOSH KUMAR S.K.
AGED 38 YEARS, S/O.SREEKANDAN NAIR A.
RESIDING AT GEETHA NIVAS, T.C.12/1603
THURAVICKAL P.O., KUMARAPURAM, THIRUVANANTHAPURAM
PIN-695031.**

**BY ADVS.SRI.SANTHAN V.NAIR
SRI.V.GOPIKRISHNA
SRI.V.V.MITHUN**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, STATUE
THIRUVANANTHAPURAM, PIN-695001.**
- 2. THE TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY, NANTHANCOD
THIRUVANANTHAPURAM, PIN-695001.**
- 3. THE CHIEF COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, NANTHANCOD
THIRUVANANTHAPURAM, PIN-695001.**
- 4. SMT.G.S.LEENA NAIR, RESIDING AT "GOKULAM",
MANNANTHALA P.O., THIRUVANANTHAPURAM
WORKING AS RECORD ASSISTANT
TRAVANCORE DEVASWOM BOARD, NANTHANCOD
THIRUVANANTHAPURAM, PIN-695001.**

**R4 BY ADV. SRI.T.C.SURESH MENON
R4 BY ADV. SRI.P.S.APPU
R4 BY ADV. SRI.A.R.NIMOD
R2,R3 BY ADV. SRI.P.GOPAL
R2 & 3 BY ADV. SRI.NAGARAJ NARAYANAN, SC, TDB
R2,R3 BY ADV. SMT.A.SREEKALA, SC, TRAVANCORE DEVASWOM BOARD
R BY SRI.P.GOPAL
R BY GOVERNMENT PLEADER, SRI. RINNY STEPHEN CHAMAPARAMBIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- | | |
|----------------|---|
| EXT.P1 | TRUE COPY OF THE NOTICE DATED ROC NO.316/05/EST-2 DATED 20/1/2010 PUBLISHED IN KERALA KAUMUDI. |
| EXT.P2 | TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 01/02/2010. |
| EXT.P3 | TRUE COPY OF THE APPLICATION DATED 25/1/2010 FILED BY THE 4TH RESPONDENT. |
| EXT.P4 | TRUE COPY OF THE APPLICATION DATED 19/2/2008. |
| EXT.P5 | TRUE COPY OF THE GAZETTE DATED 9/4/1987 NO.RCO.NO.454/87/ MANUAL REVISION. |
| EXT.P6 | TRUE COPY OF THE APPOINTMENT ORDER VIDE PROCEEDINGS DATED 7/12/2010 NO.ROC.22/86/09/ESTABLISHMENT. |
| EXT.P7 | TRUE COPY OF THE JUDGEMENT DATED 3/3/2011 IN WPC.9093/2010. |
| EXT.P8 | TRUE COPY OF THE INFORMATION SOUGHT FOR UNDER THE RTI DATED 25/4/2011. |
| EXT.P9 | TRUE COPY OF THE REPLY DATED 12/5/2011 RECEIVED FOR EXT.P8. |
| EXT.P10 | TRUE COPY OF THE GUIDELINES DATED 15/4/2004. |
| EXT.P11 | TRUE COPY OF THE AFFIDAVIT FILED BY THE 2ND RESPONDENT IN WP(C) No.9093/2010 DATED 14.02.2011. |
| EXT.P12 | TRUE COPY OF THE NOTIFICATION No.ROC No.22128/04/ESTA:. |

RESPONDENTS' EXHIBITS :-

- | | |
|-------------------|--|
| EXT. R2(a) | TRUE COPY OF THE ORDER DATED 22.10.2009 IN DBA No.59/2009 |
| EXT.R2(b) | TRUE COPY OF THE ORDER DATED 05.08.2010 IN WP(C) 9093/2010 |
| EXT.R2(c) | TRUE COPY OF THE COMMON ORDER DATED 27.10.2010 IN WP(C) 9093/2010 |
| EXT.R2(d) | TRUE COPY OF THE JUDGMENT DATED 03.03.2011 IN WP(C) 4582/2010 |
| EXT.R2(e) | TRUE COPY OF THE ORDER IN DBAR No.9 OF 2010 |
| EXT.R2(f) | TRUE COPY OF THE RELEVANT PAGES OF DEVASWOM MANUAL. |

EXT.R2(g)	TRUE COPY OF ORDINANCE No.5/2015
EXT.R2(h)	TRUE COPY OF NOTIFICATION GO(P) No.104/2015/RD DATED 13.03.2015.
EXT.R2(i)	TRUE COPY OF KERALA DEVASWOM RECRUITMENT BOARD RULES SRO No.352/2015 DATED 30.05.2015.
EXT.R4(a)	TRUE COPY OF THE ORDER DATED 19.03.2005.
EXT.R4(b)	TRUE COPY OF THE ORDER IN DBA No.59/2009 DATED 22.10.2009
EXT.R4(c)	TRUE COPY OF THE ORDER IN WP(C) No.9093/2010 DATED 05.08.2010
EXT.R4(d)	TRUE COPY OF THE REPORT ALONG WITH PROCEEDINGS DATED 25.10.2010.
EXT.R(e)	TRUE COPY OF THE ORDER IN WP(C) 9093/2010 DATED 27.10.2010
EXT.R(f)	TRUE COPY OF THE REPORT SUBMITTED BY THE BOARD DATED 14.10.2009.
EXT.R(g)	TRUE COPY OF THE RELEVANT PAGES OF THE DEVASWOM MANUAL DATED - NIL
EXT.R(h)	TRUE COPY OF THE INFORMATION SUPPLIED TO THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT DATED 08.02.2012.

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PA to Judge

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 1956 of 2012

Dated this the 8th day of July, 2015

JUDGMENT

The petitioner, who responded to Ext.P1 notification dated 20.1.2010 issued by the 2nd respondent calling for applications to the post of Record Assistant, challenges Ext.P6 order dated 07.12.2010, by which the 4th respondent was appointed to the post. The case of the petitioner in the writ petition is essentially that, while he had preferred an application pursuant to Ext.P1 notification, the 4th respondent, who does not have any qualification for the post, and was a daily wage employee under the respondent Board, was appointed to the post by regularisation. In the writ petition, the prayer is essentially, to direct the respondent to continue with the selection process, envisaged under Ext.P1 notification, in respect of the two posts of Record Assistants, that were notified, by treating the regularisation of the 4th respondent to the post of Record Assistant as independent of the selection process pursuant to Ext.P1 notification.

It would appear that, by an interim order, this Court had initially stayed the declaration of probation of the 4th respondent. The said order was later modified and the declaration of probation of the 4th respondent was made subject to the result of the writ

petition. Although a counter affidavit has been filed by the 2nd respondent Board, traversing the various averments in the writ petition, when the matter came up for orders on 30.06.2015, the 2nd respondent relied on Ext.R2(g) ordinance promulgated by His Excellency the Governor of Kerala on 01.03.2014, and Ext.R2(h) notification dated 13.03.2015, by which the Government of Kerala constituted the Kerala Devaswom Recruitment Board and nominated members to the said Board. Reliance was also placed on Ext.R2(i) notification dated 30.05.2015, whereby the Kerala Devaswom Recruitment Board Rules, 2015 were brought into force. The reliance by the 2nd respondent on the aforesaid documents is essentially to contend that, whatever may have been the stage at which the selection process pursuant to Ext.P1 notification stood, with the coming into force of the ordinance aforementioned and the rules framed pursuant thereto, it is clear that all further recruitments to the post of Record Assistant under the respondent Board had to be done only in accordance with the aforementioned rules.

On a consideration of submissions on either side, I am of the view that the prayers in the writ petition, to the extent they seek

an appointment pursuant to Ext.P1 notification, cannot now be granted since a selection process pursuant to Ext.P1 notification cannot be pursued by the respondent, in the absence of a saving provision in the Ordinance referred to above. The writ petition is, therefore, closed as infructuous.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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