

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WA.No. 1733 of 2015 () IN WP(C).28127/2007

AGAINST THE ORDER/JUDGMENT IN WP(C) 28127/2007 of HIGH COURT OF
KERALA DATED 23-03-2015

APPELLANT/RESPONDENT IN WPC:

MARINE PRODUCTS EXPORTS DEVELOPMENT AUTHORITY
REPRESENTED BY ITS SECRETARY, MPEDA HOUSE
PANAMPILLY NAGAR, KOCHI-682036.

BY ADVS.SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA, SC, MARINE PRODUCTS EXPORTS
DEV.P.AUTHORITY
SRI.ANTONY MUKKATH, SC, MARINE PRODUCTS EXPORTS
DEV.P.AUTHORITY

RESPONDENTS/PETITIONER IN WPC:

C.A..KOCHU MOHAMMED
S/O.LATE ANTHU PILLAI, CHAKKANAM PARAMPIL HOUSE
HOUSE NO.23/2455-A, PALLURUTY PO, KOCHI-682006.

R1 BY ADV. SRI.K.C.ELDHO
R1 BY ADV. SRI.JIJO THOMAS
R1 BY ADV. SRI.ANEESH JAMES

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 14-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX TO W.A.No.1733 of 2015

APPELLANT'S EXHIBITS:

ANNEXURE I: PHOTOCOPY OF THE MINUTES OF THE 112TH MEETING HELD ON 27/03/2007.

ANNEXURE II: PHOTOCOPY OF THE LETTER DATED 24/04/2007 OF THE APPELLANT.

ANNEXURE III: PHOTOCOPY OF THE JOINING REPORT OF THE RESPONDENT.

RESPONDENT'S EXHIBITS:

NIL

// True Copy// PA to Judge

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

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W.A.No.1733 of 2015

Dated this the 14th day of September 2015

J U D G M E N T

Shaffique, J

This writ appeal is filed by the respondent challenging the judgment dated 23/03/2015 of the learned Single Judge in W.P.C.No.28127 of 2007 by which the learned Single Judge had set aside Ext.P7 order by which the date of promotion of the petitioner as Senior Foreman was fixed on 01/04/1998 and as Selection Grade Foreman on 22/12/2004 and thereafter the respondent was directed to consider the eligibility of the petitioner for promotion to the said post from the date on which he acquired the qualification as per Exts.R1(l) and R1(m).

2. The short facts involved in the above writ petition would disclose that the respondent herein, who is hereinafter referred to as the petitioner, was appointed as Foreman in the appellant organisation in the year 1980 and he was regularised on 09/03/1981. His appointment as Foreman was in the Frozen Storage Department. The petitioner was a Diploma Holder in

Mechanical Engineering and since there was no channel for promotion in the Frozen Storage Department, he had approached this Court by filing O.P.No.4244/1994. By judgment dated 14/02/2003, direction was issued by this Court to consider the case of the petitioner. Petitioner challenged the said judgment by filing W.A.No.902/2003. However, the same came to be dismissed. Petitioner again filed Contempt Case No.944/2005 alleging that the matter was not disposed of in spite of the directions issued in the judgment in O.P.No.4244/1994. The matter was thereafter considered and the claim of the petitioner was rejected.

3. Petitioner again challenged Ext.P4 order dated 01/09/2006 by which his claim was rejected by filing W.P.C.No.32200/2006. This Court, by judgment dated 14/12/2006, allowed the writ petition setting aside the impugned order and directed the matter to be reconsidered in the light of the directions contained in the judgment. Petitioner submitted a fresh representation as Ext.P6 which resulted in Ext.P7 order by which petitioner's post as Foreman was upgraded to that of Senior Foreman and Selection Grade Foreman and he was given notional

promotions. Petitioner accepted the same and joined duty after submitting Ext.P8 letter. Petitioner has now retired and thereafter he challenged Ext.P7 inter alia contending that by virtue of the directions issued by this Court, the appellant ought to have appointed him as Senior Foreman in the year 1990 and as Selection Grade Foreman in 1996.

4. Counter affidavit was filed by the appellant disputing the claim made by the petitioner. It is inter alia contended that the recruitment rules have been framed for the post of Senior Foreman and Selection Grade Foreman. The posts were created with effect from 01/04/1998 and 22/12/2004 respectively and accordingly Ext.P7 order had been issued giving promotion to the petitioner on the said dates. It is also contended that the petitioner having accepted the promotion with retrospective effect from 01/04/1998 and 22/12/2004, he was not entitled to seek any further directions.

5. The claim of the petitioner was that he was entitled to be promoted as Senior Foreman after 10 years on being qualified to the said post in the year 1990 and thereafter as per the Recruitment Rules he was eligible to be promoted to the post of

Selection Grade Foreman in the year 1996. No such steps had been taken by the Department. Petitioner also had a claim that he should have been promoted to the post of Deputy Director, Frozen Storage Department, Channel IV which was due to him from September 1990 onwards.

6. The learned Single Judge, after elaborately considering the issues involved in the writ petition, observed that the appellant proceeded to extend the same treatment that was given to one P.S.Nair, an Artist-cum-Photographer, who was facing stagnation on an earlier occasion. It is, after deciding the controversy in respect of P.S.Nair, that Ext.P7 order had been passed. The learned Single Judge, however, observed that as far as Ext.P7 order was issued to upgrade the post of Foreman in which petitioner was working, successively to that of a Senior Foreman and Selection Grade Foreman, such upgradation cannot be found fault with. Reference is made to Exts.R1(l) and R1(m). Ext.R1(l) is with reference to the qualification to the post of Senior Foreman with 10 years experience as Foreman. Qualification prescribed is either Diploma or Degree in Mechanical Engineering. Similarly, as far as qualification to the post of Selection Grade

Foreman is concerned, six years experience in the post of Senior Foreman with the same qualification. The learned Single Judge observed that since the petitioner had acquired the qualification for eligibility for promotion in terms of Exts.R1(l) and R1(m) during 1990 and 1996 respectively, the appellant ought to have considered the claim of the petitioner for promotion to the said post with effect from the date on which they have completed 10 years service as Foreman and six years as senior Foreman.

7. Having regard to the aforesaid factual situation arising in the case, we have heard Sri.O.V.Radhakrishnan, the learned senior counsel appearing on behalf of the appellant as well as Sri.K.C.Eldho, learned counsel appearing for the respondent. It was argued on behalf of the appellant that the post of Foreman did not have any opportunity for any promotion and therefore, based on the judgment delivered by this Court as aforesaid, rules had to be amended for providing a facility to promote the petitioner. Accordingly, the Recruitment Rules had been amended and a post of Senior Foreman was created with effect from 01/04/1998 and the post of Selection Grade Foreman w.e.f 22/12/2004. Annexure 1 produced along with the application is

the decision taken by the Authority with respect to the amendment of the recruitment rules. It is, based on the aforesaid recruitment rules, that promotion had been effected during the aforesaid dates. It is also argued that merely because the petitioner was qualified to be promoted does not mean that he is entitled for promotion as promotion depends upon the availability of vacancies.

8. On the other hand, learned counsel appearing on behalf of the respondent submits that when the rules clearly indicate that the petitioner was eligible to be promoted in the year 1990 and 1996 respectively, same benefit ought to have been granted to him, who has been fighting the case since 1980 and even according to the petitioner, it was wrong on the part of the appellant authorities to have relied upon the benefit given to P.S.Nair while Ext.P7 order was issued.

9. Having regard to the aforesaid submission, we are of the view that when the posts of Senior Foreman and Selection Grade Foreman have been created in terms with the recruitment rules, the existence of the post can arise only from the respective dates in terms with the recruitment rules. It is not in dispute that

the post to which the petitioner was appointed did not have any promotional chances and he would have stagnated in the said post. It is to avoid such stagnation that the petitioner has been shifted to Channel II in the year 2000. Accordingly, necessary steps had been taken by the Authority in terms with the judgment of this Court to create a post which is equivalent to Channel II post. It is, in the light of the aforesaid factual situation, that the promotion posts of Senior Foreman as well as Selection Grade Foreman have been created and the petitioner was given certain benefits.

10. Having regard to the fact that posts were created by amending the recruitment rules and the appellant had complied with the rules, we do not think that the learned Single Judge was justified in directing consideration of the petitioner's claim after he had become eligible to be promoted. It is trite law that eligibility for promotion will not enable a person to claim promotion to the post unless there is vacancy in the promotion post. As far as petitioner's case is concerned, promotion post had to be created by virtue of a resolution passed by amending the recruitment rules which had effect from the dates on which he

was actually promoted and as reflected in Ext.P7. Hence, we do not think that the learned Single Judge was justified in setting aside Ext.P7.

In the result, we are of the view that the judgment of the learned Single Judge has to be set aside. Accordingly, we allow the writ appeal setting aside the judgment of the learned Single Judge and dismissing the writ petition.

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

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

jsr/15/09/2015

