

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WA.No. 2700 of 2015 ()

WP(C) 18666/2015 of THIS HON'BLE COURT

APPELLANT/PETITIONER :

**DR.C. THANGARAJ
25/71, ESK NAGAR, RAJAPALAYAM,
VIRUTHANAGAR DISTRICT, TAMIL NADU-626 117.**

**BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH**

RESPONDENTS/RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
SCIENCE TECHNOLOGY & ENVIRONMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE CENTRE FOR WATER RESOURCES DEVELOPMENT &
MANAGEMENT KUNNAMANGALAM, KOZHIKODE-673 571.**
- 3. THE KERALA STATE COUNCIL FOR SCIENCE TECHNOLOGY &
ENVIRONMENT REPRESENTED BY ITS EXECUTIVE VICE PRESIDENT,
SASTHRA BHAVAN, PATTOM P.O., THIRUVANANTHAPURAM-695 004.**
- 4. DR. SURESH DAS,
AGE AND FATHER'S NAME NOT KNOWN TO THE APPELLANT
EXECUTIVE VICE PRESIDENT
THE KERALA STATE COUNCIL FOR SCIENCE TECHNOLOGY
AND ENVIRONMENT SASHTRA BHAVAN,
PATTOM PO, THIRUVANANTHAPURAM-695 004.**

**R1 BY SPL. GOVERNMENT PLEADER SMT. GIRIJA GOPAL
R2 & R3 BY ADV. SRI.GEORGE ZACHARIA, SC, CWRDM
BY SRI.V.ABRAHAM MARKOS**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 16-12-2015,THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

WA.No. 2700 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE 1: COPY OF ORDER NO. 2324/A1/2013/S&TD DT 24/2/2014 ISSUED BY THE R1.

ANNEXURE A2: COPY OF COUNTER AFFIDAVIT FILED BY THE R2 IN WPC NO. 24214/2013 BEFORE THIS HON'BLE COURT.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

C.R.

ASHOK BHUSHAN, C.J. & K.RAMAKRISHNAN, J.

W.A. No. 2700 OF 2015

Dated this the 16th day of December, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard both the sides. This writ appeal has been filed against the judgment dated 02.11.2015 in W.P.(C) No. 18666 of 2015. The writ petition was filed by the appellant praying for the following reliefs :

“(i) To issue a writ of certiorari or any other appropriate writ, order or direction, calling for the records leading to Ext.P8 and to quash the same;

(i) (a) To issue a writ of certiorari or any other appropriate writ, order or direction, calling for the records leading to Ext.P10 notification and quash the same;

(ii) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to appoint the petitioner to the post of Executive Director in C.W.R.D.M. Forthwith;

(iii) To issue an injunction against the respondents restraining them from taking any steps to notify the vacancy of the post of Executive Director of C.W.R.D.M and to proceed further in the matter of appointment to the post of Executive Director of C.W.R.D.M; and

(v) To grant such other and further reliefs as are just, proper and necessary in the facts and circumstances of the case.”

2. A Search-cum-Selection Committee was approved by the President of the Kerala State Council for Science, Technology & Environment (for short KSCSTE) for making appointment to the post of Executive Director in the Centre for Water Resources Development & Management (2nd respondent herein). The process of selection was initiated by the Search-cum-Selection Committee by issuing Ext.P1 notification on 01.12.2011, 11 candidates responded to the notification. Search-cum-Selection Committee interviewed three candidates who turned up for the interview and out of the said three candidates the petitioner was found to be the 'best suited' for the post. However, when no further steps were taken, W.P.(C) No.24214 of 2013 was filed by the petitioner, wherein Ext.P6 interim order was passed. Meanwhile, a fresh notification, Ext.P5, was issued by the Search-cum-Selection Committee on the decision of the Government which was challenged by the petitioner. The learned Single Judge disposed of the writ petition by judgment dated 19.02.2015 taking the view that petitioner having been found as the best suitable candidate, the petitioner's

name has to be forwarded. It was also observed that the President is free to dissent with the findings of the Search-cum-Selection Committee for any reason, legally sustainable. After the aforesaid direction, the matter was again taken for consideration by the 3rd respondent and Ext.P8 order dated 14.05.2015 was passed. The President giving certain reasons in the order decided to re-notify the vacancy to find out the most eligible person from the panel consisting of more than one eligible person. The said order (Ext.P8) was challenged in W.P. (C) No.18666 of 2015. By amending the writ petition which was permitted by this Court, the petitioner has challenged Ext.P10 notification dated 24.06.2015 also. Consequent to Ext.P8 order the re-notification was issued on 24.06.2015. Learned Single Judge heard the writ petition and by judgment dated 02.11.2015 dismissed the writ petition. Aggrieved by the said judgment, the petitioner has come up in the appeal.

3. Learned counsel for the appellant challenging the judgment submitted that the appellant having been found the best suitable candidate and the learned Single Judge by Ext.P7

judgment having already directed to forward the name of the appellant for consideration for the post of Executive Director, on the same reasons, the President could not have rejected the claim of petitioner which was earlier taken by him. It is submitted that the learned Single Judge though by Ext.P7 order had observed that the President is free to dissent with the finding of the Committee for any reason legally sustainable, there is no legally sustainable reason and the order, Ext.P8, was unsustainable. It is submitted that the learned Single Judge by Ext.P7 order has already held that even the name of one person can be sent for consideration. Hence it was not necessary to send a panel, as has been now decided under Ext.P8 order. Learned counsel for the appellant submits that Ext.P8 does not contain any reason on what basis the recommendation made in favour of the petitioner could have been turned down.

4. The submission made by learned counsel for the appellant has been opposed by learned counsel for respondents 2 and 3. It is submitted that the President was well within his power to take a decision not to appoint the petitioner, being

satisfied that for such post, names of some other eligible candidates have also to be considered. It is submitted that even Ext.P7 judgment held that President is free to take his decision on valid reasons. It is submitted that the order Ext.P8 indicates valid reasons on the basis of which the decision to re-notify the post has been taken and learned Single Judge did not commit any error in dismissing the writ petition. It is submitted that the learned Single Judge has rightly held that when a panel is contemplated to be sent, there should be at least two names in the panel.

5. Learned Special Government Pleader appearing for the State contends that the recommendation has been made by the Search-cum-Selection Committee, which is not a normal selection committee and an onerous duty is imposed on the Search-cum-Selection Committee to find out the suitable candidates for the job and the President has taken a view that the Search-cum-Selection Committee could have found out more names of eligible persons for consideration. No error has been committed by the President in taking the decision to re-notify for fresh panel.

6. We have considered the submission of learned counsel for the parties and perused the records. Ext.P8 by which the decision has been taken by the President to direct for re-notification contains the following:

"As per the notification read above, KSCSTE have invited applications for filling up the post of Executive Director, Centre for Water Resources Development and Management. Dr.C.Thankaraj was one of the applicant for this post. The Selection Committee selected Dr.C.Thankaraj for the post of Executive Director, CWRDM but no formal orders were issued.

Meanwhile Dr.C.Thankaraj filed a Writ Petition WP(C) No.24214 of 2013 before the Hon'ble High Court with a prayer to directing the respondents viz., State of Kerala represented by Chief Secretary, Principal Secretary, Science & Technology Department, CWRDM and Executive Vice President, Kerala State Council for Science Technology and Environment to issue orders appointing him as the Executive Director of CWRDM immediately.

The Hon'ble High Court in its judgment dated 19.02.2015 ordered that *"In view of the fact that President has to take independent decision for appointment, this Writ Petition is disposed of directing the President to take decision within a period of one month from the date of receipt of a copy of this judgment in the light of discussions as above."*

In the light of the judgment, the KSCSTE examined the case in detail. A candidate having Research and Development experience on water resources in Kerala will be highly

advantageous for the growth of the Institution and to address the development needs of the state.

When one person alone is found to be eligible, then the President, whose concern is to appoint the best suitable person as Director for the welfare of the Institution, is not getting an opportunity to opt the most eligible person for appointment. The petitioner lacks sufficient administrative experience in the relevant field for which the selection committee seems to have ignored. More eligible persons, than the petitioner, to head C.W.R.D.M. Are available outside and C.W.R.D.M, being the expert agency under the State to focus on the works for the development and Management of water resources of the State, the President is of the opinion to re-notify for the vacancy; and thus to find out the most eligible person from the panel consisting of more than one eligible persons. It will give fresh opportunity for more eligible persons to apply for the post. This is in consideration of the broader interests of the State regarding its water resources."

7. This Court by Ext.P7 judgment dated 19.02.2015 has directed to send the name of petitioner for consideration by the President and the name was forwarded in obedience of the judgment for consideration by the President. Learned Single Judge while disposing the writ petition has made following observations :

"That does not mean, there should be three candidates for consideration by the President for appointment. The only

requirement is that the panel prepared by the Committee shall not exceed more than three candidates. The process of such selection committee is to find out best suitable candidates. Having found that petitioner is the best suitable candidate, petitioner's name has to be forwarded to the post. Of course, President is free to dissent with the findings of the Committee for any reason legally sustainable."

8. Thus in view of the judgment dated 19.02.2015, which is binding inter parties, it was left open for the President to dissent with the findings of the Committee for any reason legally sustainable.

9. The only question to be answered by us is as to whether the reasons given by the President for not appointing the petitioner and directing for re-notification of the vacancy is legally sustainable or not ? As noted above, the President in Ext.P8 has given the following reasons :

- (a) When one person alone is found to be eligible, then the President, whose concern is to appoint the best suitable person as Director for the welfare of the Institution, is not getting an opportunity to opt the most eligible person for appointment.
- (b) The petitioner lacks sufficient administrative experience in the relevant field for which the selection committee seems to have ignored.
- (c) More eligible persons, than the petitioner, to head C.W.R.D.M. are available outside and

C.W.R.D.M, being the expert agency under the State to focus on the works for the development and Management of water resources of the State, the President is of the opinion to re-notify for the vacancy; and thus to find out the most eligible person from the panel consisting of more than one eligible persons. It will give fresh opportunity for more eligible persons to apply for the post. This is in consideration of the broader interests of the State regarding its water resources.”

10. In so far as the observations made by the President that the petitioner lacks sufficient experience, the learned counsel for the appellant submits that the said reason has not been upheld by the learned Single Judge. By referring to Ext.P9 learned Single Judge has observed in paragraph 10 as follows :

“10. It is to be emphasised that the preference to the administrative experience is not a necessary condition, qualification or experience prescribed, but is only a preference conferred on any candidate, when all other requirements are equally satisfied. In this context, the decisions of the Hon'ble Supreme Court placed reliance upon by the learned counsel for the petitioner are of relevance.

Bihudatta Mohanty v. Union of India and others
[(2002) 4 SCC 16]

Secretary, A.P. Public Service Commission v. Y.V.V.R Srinivasulu and others [(2003) 5 SCC 341]

State of U.P. v. Om Prakash [2006 (4) KLT 537 (SC)]

G. Jayalal v. Union of India and others [(2013) 7 SCC 150]

Going by the binding precedents, it has to be held that the administrative experience in R & D is only to have weightage, when equally situated candidates, as to qualification and experience are found suitable for selection. In the event of a tie alone, the preference can be granted to a person who has such administrative experience. One cannot be preferred, if he/she doesn't have the essential qualification and experience. Such administration experience assumes significance only when a candidate who has the essential qualification and experience also has administration experience in R & D. Then he would have to be preferred. There is no such contention raised herein by the respondents."

11. Now coming to the first reason, there cannot be any dispute that it is the concern of the President to appoint the best suitable person as Director for the welfare of the institution and if only one name has been recommended, the President will not get an opportunity to opt the most eligible person for appointment. The observation made was that the selection committee seems to have ignored more eligible persons to head the C.W.R.D.M who may have outside the C.W.R.D.M and the selection committee being an expert agency had to take more

efforts. It is relevant to note that the Committee which has recommended the petitioner's name is not an ordinary selection committee. When Search-cum-Selection Committee is constituted for recommending suitable candidates, the more onerous duty is imposed on the Committee to search for sufficiently able candidates for recommendation. If the President having expressed an opinion that more eligible persons are available outside the C.W.R.D.M who are entitled to be considered for appointment to the post of Executive Director, we do not see any substance in the submission of learned counsel for the appellant that the re-notification to the post is illegal and there were no legally sustainable reason in the order of President.

In view of the above we are of the view that the order passed by directing for re-notification to the post of Executive Director cannot be said to be not having a valid reason. A decision taken by an administrative authority can be interfered by this Court in exercise of jurisdiction of judicial review when the decision is arbitrary or based no material. The decision of President cannot be said to be arbitrary or based on no material.

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We do not find any good ground to interfere with the judgment of learned Single Judge. The Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**K. Ramakrishnan,
Judge.**

ttb/17/12