

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 5173 of 2012 (V)

PETITIONER:

PE. PRAKASAN
ASSISTANT MANAGER, POTHUMALA SUB UNIT, PADAGIRI POST
NELLIYAMPATHI, PALAKKAD.

BY ADVS.SRI.S.PARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND

RESPONDENTS:

1. KERALA STATE FOREST DEVELOPMENT CORPORATION
REPRESENTED BY MANAGING DIRECTOR, KARAPUZHA
KOTTAYAM-686 631.
2. THE GENERAL MANAGER,
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD. KARAPUZHA
KOTTAYAM-686 631.
3. S.R.SREEKUMAR, MANAGER
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD.
MUNNAR DIVISION, SILENT VALLEY ROAD
MUNNAR P.O.-685 618.
4. A PETER DONATUS FERNADEZ, MANAGER
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD.
ACHANKOVIL SUB UNIT, PUNALUR DIVISION, THOLICODE POST
PUNALUR-691 333.
5. P.B.REGHUNATHAN, MANAGER
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD.
GAVI DIVISION, GAVI POST VIA, VANDIPERIYAR-685 533.
6. P.V.NARAYANAN, MANAGER
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD.
DPI JUNCTION, JAGADI POST, VAZHUTHACAUD
THIRUVANANTHAPURAM-695014.
7. P.NMOHANAN, MANAGER
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD.
TRICHUR DIVISION, KANIMANGALAM P.O, TRICHUR
PIN-680 027.

8. K.MANOCHARAN, MANAGER
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD.
GAVI DIVISION, GAVI POST VIA, VANDIPERIYAR-685533.
9. T.K.RADHAKRISHNAN, MANAGER
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD.
TRICHUR DIVISION, KANIMANGALAM P.O, TRICHUR
PIN-680 027.
10. V.V.JAYARAJAN, MANAGER
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD.
TRICHUR DIVISION, KANIMANGALAM P.O, TRICHUR
PIN-680 027.
11. K.JAYARAJ, MANAGER
KERALA STATE FOREST DEVELOPMENT CORPORATION LTD.
MANANTHAVADI, KAMPAMALA UNIT, THALAPPUZHA P.O.
MANANTHAVADI, PIN-670 644.

R6, R7 & 10, R3, R8 BY ADV. SRI.P.RAMAKRISHNAN
R1 AND 2 BY ADV. SRI.V.G.ARUN
R1 AND 2 BY ADV. SRI.T.R.HARIKUMAR
R BY SR. GOVERNMENT PLEADER SRI.SHYSON P MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE JUDGMENT DATED 1-2-2011 IN WPC 2222/08 BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.

EXHIBIT P2: TRUE COPY OF THE PROCEEDING DATED 19-3-2008 FROM THE DIRECTOR, VACB.

EXHIBIT P3: TRUE COPY OF THE STATEMENT FILED BY THE INSPECTOR OF POLICE, VACB IN WPC 35360/07 BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.

EXHIBIT P4: TRUE COPY OF THE EXTRACT OF THE REGISTER OF THE MAINTENANCE REGISTER.

EXHIBIT P5: TRUE COPY OF THE APPLICATION UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT P6: TRUE COPY OF THE SELECT LIST DATED 22-12-2011 PREPARED BY R1.

EXHIBIT P7: TRUE COPY OF THE ORDER DATED 28-12-2011 PASSED BY R1.

EXHIBIT P8: TRUE COPY OF THE RELEVANT PORTION OF THE MEASUREMENT BOOK.

EXHIBIT P9: TRUE COPY OF THE RELEVANT PORTION OF THE MEASUREMENT BOOK.

EXHIBIT P10: TRUE COPY OF THE PETITION DATED 6.10.2012 IN CC NO.9/2009 BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE KOTTAYAM.

EXHIBIT P11: TRUE COPY OF THE CERTIFICATE DATED 27.2.2013 OF THE PETITIONER'S COUNSEL AT KOTTAYAM.

EXHIBIT P12: TRUE COPY OF THE ORDER NO.DM/TCR/EST./315/12-13 DATED 12.3.2013 OF THE DIVISIONAL MANAGER OF FOREST DEVELOPMENT CORPORATION LTD. THRISSUR DIVISION.

RESPONDENTS' EXHIBITS:

ANNEXURE R1(a): COPY OF GOVERNMENT ORDER (MANUSCRIPT) 188/89/FOREST DATED 21.12.1989.

ANNEXURE R1(b): COPY OF THE JUDGMENT IN WP(C)35360 OF 2007 DATED 28.1.2008.

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ANNEXURE R1(c): COPY OF MINUTES OF THE PROMOTION COMMITTEE MEETING HELD ON 14.12.2011 AT DIVISIONAL OFFICE, TRIVANDRUM.

ANNEXURE R1(d): COPY OF MINUTES OF THE COMPANY PROMOTION COMMITTEE MEETING HELD ON 14.12.2011 AT DIVISIONAL OFFICE, TRIVANDRUM.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

W.P.(C)No.5173 of 2012

Dated this the 6th day of August, 2015

JUDGMENT

Antony Dominic, J.

The petitioner in the writ petition is an Assistant Manager in the service of the first respondent. The post to which he can aspire for promotion is that of Manager. In the Departmental Promotion Committee that was held on 14.12.2011, having regard to the fact that petitioner is accused No.3 in C.C.9/2009 in the Court of Enquiry Commissioner and Special Judge, Kottayam, sealed cover procedure as provided in Note (i) to Rule 28(b)7 of Part II K.S. and S.S.R. was adopted.

2. It was thereupon, he filed the writ petition contending that in the matter of his promotion to the post of Assistant Manager when his claims were overlooked for this very reason, he approached this Court by filing W.P.(C)2222/08 and that pursuant to directions contained in Ext.P1 judgment he was promoted. On this basis, he contended that applying the principle laid down in Ext.P1 judgment, his claim for promotion to the post of Manager should also be considered.

3. In the writ petition, a counter affidavit was filed on behalf of respondents 1 and 2, in which they inter alia produced Ext.R1(c), a

judgment rendered by this Court in W.P.(C)35360/07. That was a case filed by 6th accused in C.C.9/09 mentioned above. In that judgment, the learned Single Judge had upheld the entitlement of the respondents to adopt sealed cover procedure in the matter of promotion to the post of Manager. Therefore, according to the respondents, the petitioner was not entitled to the reliefs prayed for.

4. When the writ petition came up for consideration before the learned Single Judge of this Court, considering Exts.P1 and R1(c) judgments mentioned above, the learned Single Judge passed order dated 21st August 2012, doubting the correctness of Ext.P1 judgment in Writ Petition 2222/08. It was accordingly that the writ petition is listed before this bench.

5. We heard the counsel for the petitioner, learned Standing Counsel appearing for respondents 1 and 2 and the learned counsel appearing for the party respondents.

6. Insofar as the correctness of Ext.P1 judgment in W.P.(C) 2222/08 is concerned, Ext.P1 judgment, as already stated, dealt with the claim of the petitioner therein for promotion to the post of Assistant

Manager. It is the admitted case of the parties that unlike the post of Manager, the post of Assistant Manager is filled up merely on the basis of seniority without subjecting the candidates to a process of selection by a Departmental Promotion Committee. Therefore, the Rules that are applied for promotion to the post of Assistant Manager is different from the Rules which govern the promotion to the post of the Manager. Therefore, the principles laid down in Ext.P1 judgment in W.P.(C) 2222/08 cannot have any relevance insofar as promotion to the post of Manager is concerned. On the other hand, the promotion to the post of Manager being selection post, the provisions of Rule 28(b)(i)(7) and the Note attached thereto are applicable and it is taking note of this Rule that Ext.R1(c) judgment was rendered. Therefore, since the Ext.P1 judgment and R1(c) judgment operate in different fields governing promotions to the posts of Assistant Manager and Manager, we do not think there is any need to doubt the correctness of Ext.P1 judgment rendered in the context of promotion to the post of Assistant Manager.

7. Turning to the merits of the claim raised in the writ petition, as already stated by us claim of the petitioner is for promotion to the post

of Manager. Admittedly, the post is a selection post and the provisions of Rule 28(b)(i)(7) and the Note attached thereto are applicable. Note (i), insofar as it relevant, reads thus:

“Officers against whom vigilance or departmental proceedings are taken after the charges have prima facie been established in a preliminary enquiry should not be included in the select list. But, the cases of such Officers should also be assessed. The question of including them in the select list shall be considered when the result of the enquiry is known. However, Officers against whom departmental proceedings are taken for the imposition of a minor penalty may be included in the select list provisionally if they are found suitable but for the pendency of disciplinary proceedings initiated against them.”

8. Reading of the note, therefore, shows that the officers against whom vigilance case is taken after the charges have prima facie been established in a preliminary enquiry should not be included in the select list and in their case sealed cover procedure is required to be adopted. Insofar as this case is concerned, after a preliminary enquiry charge was laid before the Court of Enquiry Commissioner and Special Judge, Kottayam, which registered the case as C.C.9/09. The report obtained from that Court shows that the petitioner was enlarged on bail

on 13.3.2009 and copies of the final report (charge sheet) was also served on him on that day itself.

9. These facts therefore shows that this is a case to which undoubtedly the provisions of Note (i) of Rule 28(b)(i)(7), extracted above, are attracted. Consequently, respondents 1 and 2 were perfectly justified in adopting sealed cover procedure in the Departmental Promotion Committee that was held on 14.12.2011. We, therefore, do not find any reason to issue any of the directions sought for.

Writ petition fails and it is accordingly dismissed.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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