

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 5569 of 2015 (U)

PETITIONER :

**VIJU P.B.,
TURNER-CUM-MECHANIC GR-II
NO.460, KERALA BOOKS AND PUBLICATION SOCIETY,
KAKKANAD, KOCHI, ERNAKULAM -682 030**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF PRINTING AND STATIONARY, SECRETARIAT,
THIRUVANANTHAPURAM -695 001**
- 2. KERALA BOOKS & PUBLICATIONS SOCIETY,
REPRESENTED BY THE MANAGING DIRECTOR,
KERALA BOOKS & PUBLICATION SOCIETY, KAKKANAD,
KOCHI -682 030**
- 3. THE MANAGING DIRECTOR,
KERALA BOOKS & PUBLICATIONS SOCIETY, KAKKANAD,
KOCHI- 682 030**

**R1 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN
R2 & R3 BY SRI.K.ANAND, SENIOR ADVOCATE
ADV. SMT.LATHA KRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-06-2015 , THE COURT ON 03-08-2015 DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE PROMOTION POLICE (MEMORANDUM OF SETTLEMENT 1992)
- P2: TRUE COPY OF THE SUBMISSION DATED 29.10.2011 SUBMITTED BY THE PETITIONER
- P3: TRUE COPY OF THE REPRESENTATION DATED 01.06.2012 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT
- P4: TRUE COPY OF THE REPRESENTATION DATED 01.11.2013 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT
- P5: TRUE COPY OF THE SUBMISSION DATED 02.12.2013
- P6: TRUE COPY OF THE REPLY NOTICE DATED 10.12.2014
- P7: TRUE COPY OF THE REPRESENTATION DATED 17.01.2015 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.5569/2015**  
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Dated this the 3rd Day of August, 2015

J U D G M E N T

This writ petition is filed by an employee working in the Kerala Books and Publication Society, Kochi challenging an action of the respondents 2 and 3 in not promoting him to the post of Turner-cum-Mechanic Grade-I.

2. The case of the petitioner is that he is currently holding the post of Turner-cum-Mechanic Grade-II. According to him, he is entitled to be promoted to the higher category post of Turner-cum-Mechanic Grade-I. The case of the respondents 2 and 3 is that there is no provision for promotion of Turner-cum-Mechanic Grade-II to Turner-cum-Mechanic Grade-I.

3. Ext.P1 is the promotion policy applicable to the establishment. This promotion policy was formulated by way of conciliation settlement arrived at between the Management and the recognised Trade Unions.

4. The learned counsel for the petitioner would argue that in respect of promotion to the post of Chief Mechanic, the feeder category is mentioned as Fitter Mechanic Grade-I, Turner-Mechanic Grade-I,

Mechanic-cum-Plumber Grade and Mechanic-cum-Knife Grinder Grade-I in Ext.P1 policy. However, there is an omission in the promotion policy to mention the category of Turner-cum-Mechanic Grade-I as higher promotion post of Turner-cum-Mechanic Grade-II and therefore, the petitioner is denied promotion. The learned counsel submits that in view of categorical inclusion of the post of Turner Mechanic Grade-I as feeder category of Chief Mechanic, there is no justification in withholding promotion.

5. On the other hand, the learned Standing Counsel for respondents 2 and 3 would submit that inclusion of Turner-cum-Mechanic Grade-I in the promotion policy is by mistake and therefore, based on a mistake, the petitioner cannot claim promotion to a post which is non-existent.

6. It is to be noted that promotion policy is evolved based on settlement arrived at between the Management and the Unions. The promotion policy clearly indicate that the post of Turner-cum-Mechanic Grade-I exists as a feeder category to Chief Mechanic. However, on the other hand, there is vacuum in mentioning Turner-cum-Mechanic Grade-I as a promotion post of Turner-cum-Mechanic Grade-II. Whether inclusion is by a mistake or an omission is a mistake cannot be decided by this Court under Article 226 of the Constitution. The bilateral nature of settlement

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evolving promotion policy is structured on negotiation and contract. Therefore, the parties who are signatories to the promotion policy have to come out with a solution on the issue now cropped up in this writ petition.

7. On the backdrop of the facts as above, this Court is of the view that the Management shall take initiative to thrash out these issues after convening a meeting with the Trade Union leaders. This shall be done within three months. The right of the petitioner for promotion would depend upon the outcome of such meeting.

The writ petition is disposed of with the above directions. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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