

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 6TH DAY OF OCTOBER, 2015/14TH ASWINA, 1937

WP(C).No. 5798 of 2015 (Y)

PETITIONER(S):

**PRABODH.S.S, AGED 28 YEARS
S/O.P.K.SANKARANKUTTY, SAKALYA
OPPOSITE POLICE STATION, KAZHAKKUTTOM P.O.
TRIVANDRUM 695582**

**BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.AJAY BEN JOSE**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF AGRICULTURE, SECRETARIAT, TRIVANDRUM
PIN 695001**
- 2. KERALA STATE WAREHOUSE CORPORATION
REPRESENTED BY ITS CHAIRMAN, P.B.NO.1727
WAREHOUSING CORPORATION ROAD, KOCHI 682016**
- 3. ADDL. R3
THE MANAGING DIRECTOR
KERALA STATE WAREHOUSE CORPORATION
P.B NO.1727, WARHOUSING CORPORATION ROAD
KOCHI – 682 016.**

(IMPLEADED AS PER ORDER DATED 21.5.15 IN I.A NO.4143 IN THE W.P(C))

**R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R2 BY ADV. SRI.P.GOPINATH
R2 BY ADV. SRI.P.BENNY THOMAS
R2 BY ADV. SRI.K.JOHN MATHAI
R2 BY ADV. SRI.JOSON MANAVALAN
R2 BY ADV. SRI.KURYAN THOMAS
R BY GOVERNMENT PLEADER SMT. M.J. RAJASREE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-01-2015, ALONG WITH WPC. 7949/2015, WPC. 8373/2015, AND
12091/2015 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE NOTIFICATION DATED 04.04.2013
PUBLISHED IN MATHRUBHOOMI DAILY TRIVANDRUM EDITION
DATED 05.04.2013**
- EXT.P2: TRUE COPY OF THE HALLTICKET DATED 04.10.2013**
- EXT.P3: TRUE COPY OF THE PUBLISHED RANK LIST DATED 18.05.2014**
- EXT.P4: TRUE COPY OF FRESH NOTIFICATION DATED 10.02.2015
PUBLISHED IN MATHRUBHOOMI DAILY TRIVANDRUM EDITION
DATED 14.02.2015**
- EXT.P5: TRUE COPY OF THE GOVERNMENT ORDER DATED 17.06.2013**
- EXT.P6: TRUE COPY OF THE 2013 REPRESENTATION DATED 21.02.2015**
- EXT.P6(A): TRUE COPY OF THE POSTAL RECEIPTS**
- EXT.P7: TRUE COPY OF THE VACANCY POSITION AS AVAILABLE IN THE
WEBSITE OF THE 2ND RESPONDENT**

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

PA TO JUDGE

SB

K. VINOD CHANDRAN, J.

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**W.P.(C) Nos.5798 of 2015-Y, 7949 of 2015 - P,
8373 of 2015 - V and 12091 of 2015 - J**

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Dated this the 6th day of October, 2015

J U D G M E N T

The petitioners in all the writ petitions were the persons, who were included in the rank list prepared in pursuance to a notification, inter alia for selection of Assistant Manager by direct recruitment. The subsequent notification issued on 10.02.2015 for filling up the very same post is challenged as malafide and against the specific mandate of the Government for keeping alive the list prepared for two years.

2. The petitioners were all included in the list prepared in pursuance to the selection conducted by a notification dated 04.04.2013. The same is produced in W.P.(C) No. 5798 of 2015. Ext.P1 called for 10 number of Assistant Managers. The petitioner's though included in Ext.P3 rank list

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prepared pursuant to the said selection could not get appointment since only 10 were appointed and they joined pursuant to the offer of appointment. Almost two years later, the respondent company, came forward with Ext.P4 notification advertising 21 posts of Assistant Managers again for direct recruitment.

3. The malafides alleged by the petitioners is on the ground that the said vacancies were available even at the time of Ext.P1 notification. The claim for appointment as per Ext.P3 is asserted on the basis of Ext.P5, specifically clause 14, which mandates that a rank list prepared based on a selection process involving huge financial commitment, should be valid for a period of two years from the date of publishing of the list.

4. Dealing with the contention of the list being kept valid for two years, it has to be noticed that Ext.P5 is only in the nature of a guideline issued, on the basis of the request of the

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Secretary Public Sector Restructuring and Internal Audit Board.

The respondent Corporation is a statutory body created with its own Board of Directors, which is entrusted with the functions of the Corporation. The participation in the Corporation is also 50% by the State Government and 50% by the Central Government. It cannot at all in the above fact situation, be said that Ext.P5 is a definite mandate prescribed on the respondent Corporation, to keep a list valid for two years.

5. Further it is to be noticed that the clarification as per Ext.P5 dated 17.06.2013 came only later to Ext.P1 notification dated 04.04.2013. The validity of a rank list not being a specific condition in the notification, definitely any appointments made, over and above the vacancies notified, would have given room for allegations of nepotism against the respondent Corporation, as has been held in **Rakhi Ray and others v. High Court of Delhi and others [(2010) 2 SCC 637]**.

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6. **Rakhi Ray** (supra) dealt with a prayer for filling up vacancies from a list prepared, which arose after the notification was published. However the Hon'ble Sub Court held so:-

4. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law.

In such circumstance, the ground raised of making further appointments from Ext.P3 list over and above that advertised in Ext.P1 cannot countenanced.

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7. The further claim raised is with respect to Exts.P1 and P4 notification being malafide a calculated action insofar as the entire vacancies having not been notified, when Ext.P1 notification was issued. At the out set it is to be noticed that it is the prerogative of the employer to fill up the vacancies according to its needs and according to the decisions taken by the governing body. Herein again paragraph 24 of **Rakhi Ray** (supra) is relevant.

A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment.

8. The statement filed on behalf of the respondent

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Corporation clearly puts the matter in the correct perspective. It is stated that, as on 01.01.2014, there were 39 posts of Assistant Managers lying vacant and at the time of notification, there existed 36 vacancies. 50% of the vacancies of Assistant Managers were to be filled up by promotion from the employees of the Corporation. Hence, only 50% was available for appointment by selection for direct recruitment. It is also stated that 5 posts of Assistant Managers were to be filled up by special recruitment for SC/ST, which had also been simultaneously proceeded with. It was in such circumstances that the Management decided to notify appointment of 10 posts of Assistant Managers. At best it could be hence said that three vacancies were not notified; which was the decision of the management, not liable to be scrutinised by this Court; for reason of it being a negligible number and for reason of such an exercise resulting in the reasonableness of a policy decision

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being looked into.

9. The Board resolution leading to the said decision is taken by Resolution No.2959 by the 266th Board of Directors Meeting of the Corporation, as stated in the counter affidavit. The mere fact that three posts were not notified at the point of time, cannot at all said to be a malafide attempt on the part of the Corporation. In any event, but for raising the allegation of malafides, there is no specific ground pointed out as to how the process of selection was attempted to be subverted to benefit some or to exclude others. It is also significant that the petitioners at the time of the 1st selection or afterwards had no complaints about the vacancies notified. The list too was exhausted by filling up the notified vacancies. Only on the 2nd notification, did the petitioners raise malafides against the 1st notification. It is also not perceivable as to what malafide attempt was intended at the first instance when allegedly all

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vacancies were not notified.

For all the above reasons, this Court is of the opinion that there is absolutely no sustainable ground to interfere with the second notification. The writ petition would stand dismissed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/ 07/10 /2015

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P.A to Judge.