

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 7865 of 2015 (G)

PETITIONER:

**S.K.SUPRIYA, AGED 57 YEARS
W/O.M.S.SUNIL KUMAR, PHARMACIST
FOOD CORPORATION OF INDIA, DISTRICT OFFICE
KOCHI-682 011, RESIDING AT MURIYAKKATT HOUSE
ELAMKUNNAPUZHA P.O., KOCHI-682 503.**

BY ADV. SRI.R.SURENDRAN

RESPONDENTS:

- 1. THE FOOD CORPORATION OF INDIA
REPRESENTED BY THE CHAIRMAN AND MANAGING DIRECTOR
FOOD CORPORATION OF INDIA, HEAD QUARTERS
16-20 BARAKHAMBA LANE, NEW DELHI-110 001.**
- 2. THE EXECUTIVE DIRECTOR,
FOOD CORPORATION OF INDIA, ZONAL OFFICE (SOUTH), NO.3
HADDOWS ROAD, CHENNAI-600 006.**
- 3. THE GENERAL MANAGER
FOOD CORPORATION OF INDIA, REGIONAL OFFICE
THIRUVANANTHAPURAM-695 004.**

BY ADV. SRI.VARGHESE M.EASO, SC, FOOD CORPORATION OF INDIA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT P1 : COPY OF THE DEGREE CERTIFICATE DATED 12.06.1979 ISSUED BY THE UNIVERSITY OF KERALA, IN FAVOUR OF THE PETITIONER.
- EXT P2 : COPY OF THE CONFIRMATION ORDER DATED 18.02.1983 ISSUED BY THE THIRD RESPONDENT.
- EXT P3 : COPY OF THE OFFICE ORDER DATED 22.11.1983 ISSUED BY THE THIRD RESPONDENT.
- EXT P4 : COPY OF THE OFFICE ORDER DATED 23.05.1996 ISSUED BY THE DISTRICT MANAGER, FCI, COCHIN.
- EXT P4 (A) : COPY OF THE OFFICE ORDER DATED 16.11.1996 ISSUED BY THE DISTRICT MANAGER (STORAGE), FCI DISTRICT OFFICE, COCHIN.
- EXT P5 : COPY OF THE OFFICE ORDER DATED 28.03.2000 ISSUED BY THE DISTRICT MANAGER (STORAGE), FCI DISTRICT OFFICE, COCHIN.
- EXT P6 : COPY OF THE CORRIGENDUM ORDER DATED 12.09.2003 ISSUED BY THE SECOND RESPONDENT.
- EXT P7 : COPY OF THE OFFICE ORDER DATED 16.03.2006 ISSUED BY THE AREA MANAGER, FCI DISTRICT OFFICE, COCHIN, WITH THE ATTENDANCE CERTIFICATE.
- EXT P8 : COPY OF THE OFFICE ORDER DATED 29.08.2006 ISSUED BY THE AREA MANAGER, FCI DISTRICT OFFICE, COCHIN.
- EXT P9 : COPY OF THE TRANSFER ORDER DATED 28.07.2007 ISSUED BY THIRD RESPONDENT.
- EXT P10 : COPY OF THE ORDER DATED 24.08.2009 ISSUED BY THE THIRD RESPONDENT.
- EXT P11 : COPY OF THE OFFICE ORDER DATED 11.09.2009 ISSUED BY THE AREA MANAGER, FCI, COCHIN.
- EXT P12 : COPY OF THE LETTER DATED 24.09.2008 ISSUED BY THE SECOND RESPONDENT.
- EXT P13 : COPY OF THE REPRESENTATION DATED 14.07.2008 MADE BY THE PETITIONER.

[CONTD..]

- EXT P14 : COPY OF THE REPRESENTATION DATED 08.06.2009 MADE BY THE PETITIONER.
- EXT P15 : COPY OF THE REPRESENTATION DATED 05.06.2011 MADE BY THE PETITIONER.
- EXT P16 : COPY OF THE REPLY DATED 21.12.2011 ISSUED BY THE FIRST RESPONDENT.
- EXT P17 : COPY OF THE PROMOTION ORDER DATED 16.09.2000 ISSUED BY THE THIRD RESPONDENT.
- EXT P18 : COPY OF THE LETTER DATED 06.10.2004 ISSUED BY THE JT. MANAGER OF FIRST RESPONDENT.
- EXT P19 : COPY OF THE PROVISIONAL SENIORITY LIST OF SENIOR PHARMACIST IN THE SOUTH ZONE OF FCI, OBTAINED FROM THE WEB SITE OF THE FIRST RESPONDENT.
- EXT P20 : COPY OF THE JUDGMENT DATED 29.05.2014 IN WPC. NO.17168 OF 2013 OF HIGH COURT OF KERALA.
- EXT P21 : COPY OF THE REPRESENTATION DATED 07.07.2014 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.
- EXT P22 : COPY OF THE ORDER DATED 07.01.2015 ISSUED BY THE SECOND RESPONDENT.
- EXT P23 : COPY OF CERTIFICATE DATED 15.05.1990 ISSUED TO THE PETITIONER IN RESPECT OF HINDI PRAGYA EXAMINATION.
- EXT P24 : COPY OF THE CERTIFICATE DATED 18.01.2007 ISSUED TO THE PETITIONER IN RESPECT OF THE COMPETITION IN ADMINISTRATIVE TERMINOLOGY/NOTING AND DRAFTING CONDUCTED BY KOCHI, TOLIC.
- EXT P25 : COPY OF PROVISIONAL SENIORITY LIST OF SENIOR PHARMACIST IN THE SOUTH ZONE OF FCI, WITH COVER PAGE OBTAINED FROM THE WEB SITE OF THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.7865 of 2015-G

Dated this the 1st day of December, 2015.

JUDGMENT

The petitioner, a Pharmacist, appointed in the 1st respondent Corporation on 04.01.1982, is aggrieved by Ext.P22 order, which refused her request to be incorporated in the seniority list of Assistant Grade-I (General)/Assistant Grade-I (Ministerial) as on 2000 for further promotion to the post of Manager (General).

2. The incumbency details of the petitioner is available in the various documents filed. The petitioner, who was continuing as a Pharmacist, was found surplus on the Pharmacy being closed down, for reason of the Doctor being transferred out. Hence by Ext.P4, the petitioner's willingness was obtained for being accommodated in the Account Section and she was directed to report for duty to the Assistant Manager

(Accounts) for deployment as per Ext.P4. Exts.P4(a), P8, P9 & P10 shows her deployment in various Offices and transfer to Trivandrum , all deployment in the accounts section of the Food Corporation. It is to be noticed that, in all the said communications, the designation of the petitioner is retained as Senior Pharmacist and she was deployed to the Accounts Department only on a work arrangement.

3. The learned Standing Counsel for the Food Corporation would also contend that this was only for the purpose of retaining the petitioner in the State itself, since otherwise on closure of the Dispensary, she had to be transferred out to any place within the country, where a Dispensary exists and functions. The petitioner also did not have any claim for integration into the Assistant's Grade, when she was retained for long in the State itself, with the very same designation but on work arrangement. A reading of the impugned order would also indicate that considering the fact that there are no promotional avenues, the

petitioner had been granted additional increments, twice, to avoid stagnation.

4. The petitioner continued so and on the verge of retirement, claimed incorporation of herself in the cadre of Assistant's Grade and consequential promotions also, with effect from 2000. Obviously such claim was raised on the basis of Ext.P17, which was a career progression scheme evolved by the Food Corporation of India, permitting certain Typists (Hindi) also to be included in the feeder category for promotion to the post of Assistant Grade-II. The petitioner's claim for retrospective inclusion in the Assistant's cadre is based on the order of 2000 at Ext.P17. Admittedly, the petitioner did not make any such claim within a reasonable period, proximate to Ext.P17.

5. Long after in the year 2013, the petitioner approached this Court with WP(C) No.17168 of 2013, produced at Ext.P20. Ext.P20, though dealt with the facts elaborately, did not answer the issue on merits. The learned Single Judge only directed consideration of

the petitioner's case by the respondent Corporation. Such consideration was made by the impugned order, which is challenged herein for reason of the same having not been considered by the respondent Corporation and the findings, being extraneous to the relevant facts. The petitioner also relies on Ext.P18 to contend that a clubbing of posts could be made only by the Head Office of the Corporation and the consideration by a Zonal Officer, done at Ext.P22, cannot be said to be a proper compliance of the decision of this Court at Ext. P-20 judgment.

6. As was noticed, Ext.P20 merely directed consideration of the petitioner's case by the respondent Corporation. The petitioner cannot insist that such consideration has to be made by the Corporation at its Head Quarters itself or by the Governing Body of the Corporation. Ext.P22 was made by the Executive Director (South) of the Food Corporation of India on behalf of the Corporation and it cannot be said that the directions in Ext.P20 is not complied

with.

7. Examining the specific claim of the petitioner; as raised in the earlier writ petition, revealed from Ext.P20, is that both the posts of Hindi Typists and Pharmacists did not have promotional avenues. However, Ext.P22 would indicate otherwise. A person appointed as a Hindi Typist in Assistant Grade-III would be entitled to be promoted to Grade-II, Grade-I and then as Manager. Though this promotional avenue is not seen in the Regulations produced, obviously the said benefit has been conferred by Ext.P18 dated 06.10.2004. Ext.P18 also indicates that the seniority of Hindi Typist has to be maintained as an integrated seniority with the seniority of Typist (English) for further promotions, to the post of Grade-II and Grade-I. Hence, there cannot be found any equation of posts between Hindi Typist and Pharmacist. Further, the reliance placed by the petitioner is on Ext.P17, which is of the year 2000. The petitioner; even if she had a case that the post of Senior Pharmacist was equivalent to that of a

Hindi Typist, ought to have raised it at the appropriate time.

8. In this context, it is also significant to notice the contention of the respondent Corporation that the petitioner had been continued on deployment to the Account Section only to permit her to continue within the State. The petitioner, though was not given any promotion, as she was not entitled to the same as per the Regulations, was given additional increments at two instances and a higher designation with pay fixation as Senior Pharmacist to avoid stagnation in the same post. In such circumstance, this Court cannot find any infirmity in Ext.P22. The claim of the petitioner to be integrated with the cadre of Assistants cannot be considered favourably for reason of it being belated and also for it being legally unsustainable.

In such circumstance, the petitioner would also be not entitled to a Selection Grade, which only the persons occupying the cadre of Assistants would be

entitled to.

The writ petition hence would stand dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

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P.A. to Judge.

sp/09/12/15