

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 19094 of 2006 (W)

PETITIONER(S) :

SAKUNTHALA VIJAYAN,
FACT QUARTERS, 518/11, AMBALAMEDU
ERNAKULAM.

BY ADVS.SRI.P.RAVINDRAN (SR.)
SRI.HARIKRISHNAN RAVINDRAN

RESPONDENT(S) :

1. KOCHI REFINERIES LTD.,
AMBALAMUGHAL, ERNAKULAM, PIN-682 302
REP. BY THE MANAGING DIRECTOR.

2. COCHIN REFINERIES EMPLOYEES
SUPERANNUATION BENEFIT FUND TRUST
COCHIN REFINERIES LTD., AMBALAMUGHAL, ERNAKULAM
PIN-682 302, REP. BY THE MANAGING TRUSTEE.

R,R1 BY ADV. SRI.E.K.NANDAKUMAR
R,R1 BY ADV. SRI.JAYASANKAR.A.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND
RESPONDENT DATED 03.01.99
- EXT.P2: TRUE COPY OF THE PHOTOSTAT COPY OF THE FORMATTED OPTIONS
- EXT.P3: TRUE COPY OF THE COMMUNICATION ISSUED BY THE FEDERATION
DATED 08.01.1999
- EXT.P4: TRUE COPY OF THE COMMUNICATION DTD 12.12.2002.
- EXT.P5: TRUE COPY OF THE REPRESENTATION DATED 30.04.2004
- EXT.P6: TRUE COPY OF THE CONTRACTUAL APPOINTMENT ORDER DTD 8.7.03
- EXT.P7: TRUE COPY OF THE EXTENSION ORDER DATED 25.05.2004
- EXT.P8: TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 15372/04 DTD
16.06.06
- EXT.P9 TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT
DATED 05.07.2006
- EXT.P10: TRUE COPY OF THE RELEVANT PAGES OF MEMORANDUM
UNDERSTANDING DATED 20.01.1989
- EXT.P11: TRUE COPY OF THE RELEVANT EXTRACT OF THE ADVERTISEMENT AS
APPEARED IN THE WEB SITE DATED 14.06.2006

RESPONDENTS' EXHIBITS

- EXT.R1 (a) : TRUE COPY OF THE RECRUITMENT POLICY OF THE FIRST
RESPONDENT WHICH HAS BEEN VAGUE SINCE 22.01.2001
- EXT.R1 (b) : TRUE COPY OF THE TEXT OF THE PROMOTIN POLICY APPLICABLE
TO NON OFFICER CATEGORY OF EMPLOYEES IN THE 1ST
RESPONDENT DATED 31.07.2003
- EXT.R1 (C) : TRUE COPY OF THE MINUTES OF THE MEETING OF THE 2ND
RESPONDENT TRUST HELD ON 26.10.2001

K.SURENDRA MOHAN, J.

W.P.(C) No.19094 of 2006-W

Dated this the 27th day of January, 2015

J U D G M E N T

The petitioner has filed this writ petition seeking the following reliefs:-

- a) issue a writ in the nature of mandamus or such other writ, order, or direction commanding the respondents to appoint the petitioner to the post of Typist/Clerk to the existing vacancy under the 1st respondent;
- b) issue a writ in the nature of mandamus or such other writ, order or direction commanding the respondents to consider the claim of the petitioner to be appointed as typist pursuant to Ext.P8 judgment to one of the existing vacancy of typist/clerk;
- c) issue any other such writ, order or direction as this Hon'ble Court may deem fit and necessary in order to meet the ends of justice on the facts and in the circumstances of the instant case; and
- d) award the costs of this case to the petitioner.

2. The petitioner's husband died on 06.12.1998 while working as a Senior Operator. Thereafter, as per Exhibit P1 dated 03.01.1999, she was informed that, she was eligible

W.P.(C) No.19094 of 2006-W

to get benefits of Superannuation Benefit Fund Scheme in which her husband was a member. Exhibit P1 also instructed her to indicate her choices out of three options that are specified therein. She chose the second option which was to be provided with employment under the first respondent. Exhibit P2 is the option submitted by her on 06.01.1999. Thereafter, she pursued Exhibit P2 by submitting Exhibit P3 representation. Exhibit P4 is the reply received by her intimating that, there were no vacancies available. Thereafter, the petitioner submitted Exhibit P5 representation. Finally, the petitioner approached this Court by filing WP(C) No.15372 of 2004. As per Exhibit P8 judgment, the said writ petition was disposed of directing the respondents to consider the option indicated by the petitioner. It is also directed in Exhibit P8 that, the first respondent (2nd respondent herein) shall consider the request for Full Superannuation benefits of her diseased husband made by the petitioner. It is contended that, though as per Exhibit P9, vacancies have been notified

for appointment, the petitioner has not been given the benefit of an appointment in spite of Exhibit P8.

3. According to the counsel for the petitioner, Exhibit P1 contains an offer made by the Company. Accordingly, the petitioner had expressed her option of being provided with an employment. The company has not honoured the commitment in Exhibit P1, though it is clear from Exhibit P9 that, vacancies of Typist/Clerk are available. The petitioner has therefore sought for the issue of directions to be appointed to one of the posts in Exhibit P9.

4. A counter affidavit has been filed on behalf of the first respondent. According to Advocate Benny P. Thomas who appears for the respondents, the company does not have a Dying in Harness Scheme in its establishment. The Superannuation Benefit Fund Scheme that is implemented gives three options to the applicants. The petitioner has chosen the second option. As per the relevant clause, the petitioner could be appointed only on her 'fulfilling the

required recruitment criteria at entry level vacancy.' After the petitioner had exercised her option, no vacancies had arisen at the entry level. Only one recruitment was attempted to the post of a Commercial Trainee, which is the junior most office job of the company. The qualification stipulated is Graduation with Certificates in English Type Writing (Lower), with a suitable relaxation in the case of candidates belonging to the Scheduled Castes. In August 2000, the company had notified 13 posts of Commercial Trainees. Though the petitioner was not qualified, she was considered and permitted to appear for a written test. However, she could not perform well. In spite of the above, she was shortlisted and was called for a skill test. In the said test also, the petitioner could not perform well. Despite her shortcomings referred to above, she was called for an interview. But her performance was not satisfactory and therefore, she was held unsuitable by the Interview Committee. Though a selection process was conducted as above, no appointments were made from even the selected

candidates for the reason that, an Expansion Project that was anticipated, was dropped by the Company.

5. Pursuant to the direction of this Court in Exhibit P8 judgment, the petitioner is being given a monthly payment of ₹3564.50/-. Though a regular appointment had been offered to her in a school in which the company is a stakeholder, she did not take up the same. With respect to Exhibit P9, it is contended that, the said notification is intended only for the employees of the company and not for outsiders. It has been stated in the counter affidavit that, the petitioner's case would be considered as and when suitable vacancies arise.

6. Having heard the counsel appearing for the petitioner as well as the respondents, I do not think that, it is necessary for me to issue any further directions at this stage. The petitioner is being given a monthly payment in accordance with the direction contained in Exhibit P8 and also she was considered for appointment in accordance with the stipulations contained in the Superannuation Benefit

Fund Scheme. As per the option exercised by the petitioner, it is a precondition that, she should be suitable for the post. It is stated in the counter affidavit that, her case would be considered as and when vacancies arise. The relevant portion of the counter affidavit reads as follows:-

This Respondent would clarify that as and when vacancies are sought to be filled in the Company through external recruitment the Petitioner's case can also be considered subject to her satisfying the eligibility requirements specified in the vacancy notification and in accordance with the inter-se seniority of her claim vis-a-vis the claims of other persons similarly situated in the dying in harness category.

In view of the above, this writ petition is disposed of recording the statements made in the counter affidavit extracted above.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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