

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 10651 of 2014 (F)

PETITIONER:

**MERCY JOSEPH,
ACCOUNTANT OFFICER (RETD.),
(KERALA WATER AUTHORITY)
BANGALAVIL, CONTINENTAL GARDENS,
VATTIYOORKAVU P.O.,
THIRUVANANTHAPURAM - 695 013.**

BY ADV. SRI.ROY CHACKO

RESPONDENT(S):

- 1. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF WATER RESOURCES,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE MANAGING DIRECTOR,
KERALA WATER AUTHORITY, VIKAS BHAVAN,
VELLAYAMBALAM, THIRUVANANTHAPURAM - 695 033.**

**R1 BY GOVERNMENT PLEADER SMT.LOWSY.A
R2 BY SRI.JOSEPH JOHN, SC,**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 10651 of 2014 (F)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE SELECT LIST DATED 29.06.2011.

EXHIBIT P2 : TRUE COPY OF THE 2011 RULES.

EXHIBIT P3 : TRUE COPY OF THE REPRESENTATION DATED 07.09.2012 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXHIBIT P4 : TRUE COPY OF THE REMINDER DATED 17.05.2013 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXHIBIT P5 : TRUE COPY OF THE ORDER PASSED BY THE CHIEF ENGINEER (HRD & GL) DATED 25.01.2013.

EXHIBIT P6 : A TRUE COPY OF THE COMMUNICATION NO.KWA/JB/E2(B)/1146//2012 DATED 22.8.2014 2ND RESPONDENT.

EXHIBIT P7 : A TRUE COPY OF THE PROMOTION ORDER DATED 16.7.2011.

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.10651 of 2014**  
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Dated this the 29th day of January, 2015

J U D G M E N T

The petitioner was promoted as a Senior Superintendent from the cadre of Junior Superintendent in the year 2008. Thereafter, she was promoted as Accounts Officer in the year 2011. She has approached this Court on account of non declaration of her probation in the post of Accounts Officer. She has already retired from service on 31/03/2014. The petitioner had completed probation successfully and was entitled for declaration of probation with effect from 17/07/2012.

2. The reason stated for non declaration of probation in the post of Accounts Officer is that the petitioner did not acquire Account Test (Higher).

3. The petitioner relies on Ext.P2, i.e. the Kerala Water Authority (Administrative Ministerial and Last Grade) Service Rules, 2011 (for short, the "Special Rules"). In the above Special Rules, against the category of Accounts Officer in the Administrative Service it is mentioned that the method of appointment to the said post is by promotion from the category of Senior Superintendent/Revenue Officer based on seniority. Petitioner submits that since she has been promoted as Senior Superintendent based on the relevant regulation prevailing at that time, for the purpose of considering her for promotion to the post of Accounts Officer, acquisition of qualification of Account Test (Higher) cannot be insisted. Petitioner also relies on Rule 8 of the Special Rules which prescribes departmental tests for certain categories. Petitioner submits that nowhere in the Rule 8 it is mentioned that Senior Superintendent should acquire Account Test (Higher) for becoming eligible for promotion. But, it

is prescribed as a requisite qualification for the post of Junior Superintendent.

4. The petitioner got promotion to the post of Senior Superintendent before the commencement of the Special Rules. For the purpose of promotion from the post of Junior Superintendent to the Senior Superintendent, the only qualification required is Account Test (Lower). It is from the year 2011, Account Test (Higher) is prescribed as a requisite qualification for the post of Junior Superintendent. In this case, admittedly, there is no qualification prescribed to the category of Senior Superintendent to be considered for promotion as Accounts Officer. The learned Standing Counsel for the Kerala Water Authority has no case that the Special Rules prescribe Account Test (Higher) as a requisite qualification for Senior Superintendent and also those candidates who do not have such qualification need to acquire such qualification before being considered for promotion to the post of Accounts Officer. In the absence of such

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prescription, the Kerala Water Authority cannot insist that the petitioner should acquire the test qualification of Account Test (Higher). Since there is no prescription that Senior Superintendent should acquire the test qualification to be considered for promotion as Accounts Officer, the petitioner's promotion cannot be withheld.

5. The writ petition is allowed. There shall be direction to declare the probation of the petitioner within a period of four weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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