

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 13308 of 2013 (K)

PETITIONER(S):

**MANAGING DIRECTOR,
ERNAKULAM REGIONAL CO-OP.MILK PRODUCERS UNION LTD
EDAPPALLY, KOCHI 682 024.**

**BY ADVS.SRI.K.ANAND (SR.)
SMT.LATHA KRISHNAN**

RESPONDENT(S):

- 1. STATE OF KERALA
REP.BY SECRETARY, AGRICULTURAL DAIRY DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. DIRECTOR OF DAIRY DEVELOPMENT
PATTOM, THIRUVANANTHAPURAM.**
- 3. DIAS DAVIS M
MALIAKKAL HOUSE, PULLANIKKAD, WADAKKANCHERY
(RS) P.O, THRISSUR 680 623.**

**R1 & 2 BY ADV. GOVERNMENT PLEADER SRI.REJI JOSEPH
R3 BY ADV. SRI.K.SASIKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 13308 of 2013 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 27.4.13.
EXHIBIT P2. TRUE COPY OF THE NOTIFICATION DATED 29.01.11.
EXHIBIT P3. TRUE COPY OF THE APPLICATION MADE BY THE 3RD RESPONDENT.
EXHIBIT P4. TRUE COPY OF THE LETTER BY THE 1ST RESPONDENT DATED 5.4.13.
EXHIBIT P5. TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER TO THE 1ST RESPONDENT DATED 8.4.13.

2ND RESPONDENT(S)' EXHIBITS

EXT.R2(a): A TRUE COPY OF THE GOVERNMENT LETTER NO.21347/D2/08/AD DATED 19.1.2009.

EXT.R2(b): A TRUE COPY OF GO(P) NO.20/98/P&ARD DATED 14.7.1998.

3RD RESPONDENT'S EXHIBITS

EXT.R3(a): A TRUE COPY OF THE LETTER DT 19.1.2009 ISSUED FROM THE GOVERNMENT OF KERALA TO THE PETITIONER.

EXT.R3(b): A TRUE COPY OF THE DISABILITY CERTIFICATE DT 16.3.2005.

EXT.R3(c): A TRUE COPY OF THE CERTIFICATE DT 14.9.2006 ISSUED FROM THE THRISSUR DAIRY OF THE PETITIONER ESTABLISHMENT.

EXT.R3(d): A TRUE COPY OF THE CERTIFICATE DT 4.11.2009 ISSUED FROM THE THRISSUR DAIRY OF THE PETITIONER ESTABLISHMENT.

Rp

//True copy//

PS to Judge

A.M. SHAFFIQUE, J.

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W.P. (C) No. 13308 of 2013

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Dated this, the 10th day of December, 2015

J U D G M E N T

Petitioner challenges Ext.P1 order dated 27/4/2013 passed by the Government by which direction had been issued to appoint the 3rd respondent to the post of Technician (Fill Pack) Grade II in the Ernakulam Regional Co-operative Milk Producers' Union under the quota reserved for physically handicapped person. Further direction had been issued to the Managing Director to take immediate action to identify categories for which 3% vacancies are to be earmarked for physically handicapped person, as provided under the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995.

2. It is contended by the petitioner that no post was identified for physically disabled in the notification issued in terms of Ext.P2. In Ext.P2, in different categories, 132 posts were notified and as far as the post of Technician (Fill Pack) Grade II is concerned, two posts were notified and two persons were

selected and appointed. In the meantime, 3rd respondent had filed the writ petition before this Court challenging the non inclusion of physically disabled persons in the notification and this Court had directed the Government to consider the said issue. Government while considering the said issue called for certain clarification from the petitioner in terms of Ext.P4 dated 5/4/2013. Petitioner had given necessary clarifications as per Ext.P5. Pursuant to the same, Government considered the matter and passed Ext.P1 order. The main contention urged by the petitioner is that the explanation provided in terms of Ext.P5 have not been considered and the petitioner was not given an opportunity for hearing in the matter.

3. Counter affidavit has been filed by the 2nd respondent supporting the stand taken in the matter. 3rd respondent has also filed counter affidavit *inter alia* stating that despite the Act coming into force in 1995, no steps were taken by the petitioner to designate various posts for physically disabled. This matter came to the attention of the Government and a conscious decision had been taken by the Government taking into consideration the entire factual scenario involved in the matter.

4. Having heard the learned on either side and having perused the records, it is rather clear that after the Act coming into force, no steps were taken by the petitioner Organization for designating specified posts for physically disabled. In terms with the statutory provision, 3% of the posts are to be designated for physically disabled. In fact, in the notification dated 29/1/2011, Ext.P2, not even a single post has been designated for physically disabled. This aspect has received the attention of the Apex Court and this Court in several judgments. It is the settled position of law that sufficient number of posts are to be designated for physically disabled which is to be identified by the Government in consultation with the respective organizations. After the coming into force of the Act until now, no action had been taken by the petitioner Organization, which resulted in this Court directing the Government to consider the matter in the light of the claim made by the 3rd respondent. Government has considered the entire issue after evaluating the necessity for filling up the post, which are to be designated for physically disabled and it is found that the aforesaid post namely Technician (Fill Pack) Grade II can be a designated post for physically

disabled. That apart, it is clear from the certificate issued by the petitioner on 14/9/2006 in favour of the 3rd respondent that he was working from 4/4/2005 to 14/9/2006 as Packing Machine Operator with the responsibilities of all electrical and electronic maintenance in the factory. It is also contended by the 3rd respondent that he was working in the said establishment as a contract employee.

5. Having regard to the fact that the Government had considered the entire issue involved in the matter and had issued appropriate directions, I do not think that this Court will be justified in interfering with the said order by exercising the power of judicial review. For the aforesaid reasons, I do not think that the petitioner has ventilated a case to be interfered with Ext.P1 order.

Accordingly, this writ petition is dismissed.

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp10/12/2015

//True copy//

PS to Judge