IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 14500 of 2012 (J)

PETITIONER :

DEEPA.E.V.,
PULICKAL HOUSE,NADAKKAVU.P.O.,
UDAYAMPEROOR, ERNAKULAM DISTRICT-682 307.

BY SRI.K.RAMAKUMAR,SENIOR ADVOCATE
ADVS. SRI.S.M.PRASANTH
SMT.SMITHA GEORGE

RESPONDENT(S):

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1. **UNION OF INDIA,**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   MINISTRY OF COMMERCE & INDUSTRY,
   GOVERNMENT OF INDIA, NEW DELHI-110 001

2. **THE EXPORT INSPECTION COUNCIL OF INDIA**
   (MINISTRY OF COMMERCE AND INDUSTRY, GOVERNMENT OF INDIA),
   3RD FLOORE, NDYMCA CULTURAL CENTRE BUILDING,
   1 JAI SINGH ROAD, NEW DELHI-110 001.
   REPRESENTED BY ITS DIRECTOR.

3. **THE EXPORT INSPECTION AGENCY-KOCHI**
   (MINISTRY OF COMMERCE AND INDUSTRY, GOVERNMENT OF INDIA),
   27/1767A, SHIPYARD QUARTERS ROAD, PANAMPILLY NAGAR (SOUTH),
   KOCHI-682 036, REPRESENTED BY ITS JOINT DIRECTOR.

BY ADV. SRI.T.SANJAY, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-11-2014, THE COURT ON 16-01-2015 DELIVERED THE FOLLOWING:

sts

WP(C).NO.14500/2012

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE NOTIFICATION ISSUED BY R1 INVITING APPLICATIONS TO THE POST OF LABORATORY ASSISTANT.

P2 COPY OF THE RANK LIST DATED 20/6/2011 ISSUED BY R3 ON INFORMATION SOUGHT FOR UNDER THE R1 ACT.

P3 COPY OF THE COMMUNICATION DATED 20/6/2011 CONTAINING THE DETAILS OF VACANCY POSITION OF LABORATORY ASSISTANT

P4 COPY OF THE EXTRACT OF SELECTION NOTIFICATION APPEARED IN ONE OF THE JOB PORTALS FOR RECRUITMENT TO THE POST OF LABORATORY ASSISTANT GR.II IN R3 AGENCY

P5 COPY OF THE EXTRACT OF THE OFFICE MEMORANDUM OF THE GOVERNMENT OF INDIA DATED 1/7/1998

RESPONDENT'S EXHIBITS AND ANNEXURES:

R1(A) COPY OF THE SELECTION PROCEDURE OF LAB ASSISTANT GRADE II

COPY OF THE O.M.NO.36012/13/88-ESTT(SCT) DATED 22/05/1989 AND O.M.NO.36011/1/98-ESTT(RES) DATED 01/07/1998 AS CONTAINED IN SWAMY'S COMPILATION ON RESERVATIONS AND CONCESSIONS (NINTH EDITION-2008 PAGES 140 AND 141)

R1(B) COPY OF THE CONSOLIDATED TABULATION SHEET OF EVALUATION OF THE CANDIDATES.

COPY OF THE JUDGMENT PASSED BY THE DIVISION BENCH OF THIS HON'BLE COURT DATED 28/11/2012 IN O.P.(CAT) NO.4038 OF 2012(Z)

R1(C) COPY OF THE MINUTES OF THE SELECTION COMMITTEE MEETING HELD ON 09/12/2010

R1(D) COPY OF THE EXTRACT OF THE OFFICE MEMORANDUM ISSUED BY THE GOVERNMENT OF INDIA DATED 01/07/1998

R1(E) COPY OF THE RELEVANT PAGE OF THE RECRUITMENT RULES.

ANNEX R1(A) COPY OF THE APPLICATION DATED 19/04/2010 SUBMITTED BY THE PETITIONER ALONG WITH THE CASTE CERTIFICATE

ANNEX R1(B) COPY OF THE RECRUITMENT RULES OF THE EXPORT INSPECTION AGENCY.

/TRUE COPY/

P.A.TO.JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 14500 of 2012

Dated this the 16th day of January 2015

JUDGMENT

The Export Inspection Council of India (2nd respondent) functioning under the Ministry of Commerce and Industry, Government of India invited applications for the post of Laboratory Assistant Grade II by a notification. According to the same, there were three vacancies in the Kochi Office of the Agency. Among these three vacancies, one was reserved for 'other backward classes'. The remaining two vacancies were intended for candidates from general category. The petitioner belonging to Dheevara community, which is one of the 'other backward classes' in the notification, submitted an application. After participating in the interview, she was selected and included in a rank-list for the OBC candidates prepared by the respondents. Following the new list, a member of the Latin Catholic Community who has secured the highest rank in the category was appointed. According to the petitioners, the remaining two vacancies intended for general category still

remain vacant because of the non-availability of candidates from the said category. According to the petitioner, there is no barrier to effect the appointment of the petitioner who is entitled to be appointed pursuant to the inclusion in the rank-list in view of the existence of vacancies. She alleges that if not selected, she would become over-aged in submitting application for the employment either under the Government or under the statutory authority. It is with this background, the petitioner come up before this Court.

2. In the counter affidavit filed by the respondents, they would contend that the Export Inspection Council follows the Government of India's policy on reservation in recruitment/promotion etc. to various categories. According to them, as per the notification, there were two posts for general category candidates and one post for OBC candidates. The respondents would contend that, the petitioner who was above 26 years became eligible for participation in the recruitment process only on relaxed standards in terms of age limit as she belongs to OBC category. The four candidates conforming to the eligibility criteria prescribed for general category qualified for interview against the two posts of general category could not secure the cut off marks in the interview and therefore, none

could be finally selected against the general vacancies. Thus, both the vacancies remained unfilled. According to the respondents, the petitioner who participated in the recruitment process on relaxed standards cannot claim the posts reserved for general candidates. According to them, the question of offering unreserved vacancy to a reserved category candidate does not arise as per the reservation policy of the Government of India.

3. Arguments have been heard.

4. The petitioner is included in the rank-list for reserved category candidates. It is settled law that inclusion in the rank-list shall not confer a legal right to be appointed. However, the petitioner points out that there is a violation of fundamental rights by deliberately refusing to appoint the petitioner while two vacancies which were intended for general category remain unfilled on account of the non-availability of candidates from the general candidates. According to the petitioner, she is a meritorious candidate who came out successfully in the selection process. Therefore, according to her, depending upon her rank in the selection list, she could be considered either for a vacancy in the general category or in the reserved category. Unfortunately, only one seat was reserved for the OBC category. The four candidates belonging to general category who were

qualified for interview could not get the cut off marks fixed in the interview and therefore, none of them could be appointed.

5. The main contention raised by the respondents is that as the petitioner claims reservation as a person belonging to other backward community and that the age relaxation claimed by her is relaxation of the standards, in view of Ext.P15, she is not eligible for a vacancy in the general category. According to the learned counsel for the petitioner, the said contention is unsustainable in the light of the decision of the Apex Court in **Jitendra Kumar Singh and another Vs. State of Uttar Pradesh and others [2010 (3) SCC 119].** The learned counsel for the respondent per contra would submit that the said case is not applicable to the present situation.

6. In Jitendra Kumar Singh's case, the respondent State conducted a competitive examination for filling up of posts of Sub-Inspectors of Civil Police and Platoon Commanders in PAC by direct recruitment. Candidates belonging to Scheduled Castes, Scheduled Tribes and OBCs were granted waiver of examination fee and also relaxation in upper age-limit as provided under Section 8(1) of the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994. Section 3(6) of the said Act

provided that if a reserved candidate gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against vacancies reserved for reserved category. There were Government instructions also to that effect. The Apex Court found that it was immaterial that the candidate had availed of any facility of relaxation in age limit etc available to the reserved category. The appellants contended that candidates who had availed of waiver of fee and relaxation in upper age limit should be adjusted against reserved vacancies even if marks secured by them in open competition were more than that the marks secured by a last general candidate in open competition. The said plea was not accepted either by the High Court or the Apex Court in appeal. It is evident that the Apex Court relied upon the instructions dated 25.03.1994 issued by the State Government and therefore, held that the State has not pleaded relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test, ie, main written test followed by interview. Therefore, it was found, such relaxation cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of the merit in the competitive examination. The proposition laid down in Jitendra Kumar

Singh's case cannot be extended automatically to other cases like the present one where the employees are governed by different set of rules.

7. The policy of the Government of India (Department of Personnel & Training) relevant in the present context is laid down in the Department of Personnel & Training OM No.36012/13/88-Estt(SCT) dated 22.05.1989 and OM No.36011/1/98-Estt(Res.) dated 01.07.1998, copies of which produced are R1(A). The policy enunciation in the aforesaid OM as clarified vide OM dated 01.7.1998 in brief is as follows:

(i) the direct recruitment to vacancies in posts under the Central Government, the candidates who are selected on their own merit without relaxed standards along with the candidates belonging to the other communities, will not be adjusted against the reserved share of the vacancies and the reserved vacancies will be filled up separately from amongst the eligible reserved category candidates who are lower in merit; and

(ii) only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, <u>when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written</u>

> examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidate are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies. (emphasis supplied)

8. The petitioner was rank No.3 in the merit list for OBC candidates and there being only one vacancy, the candidate holding the 1st rank has been appointed. As per the policy now followed by the respondent, the petitioner has no right against the unreserved vacancy as she had participated in the recruitment process as OBC after availing age relaxation as available to the OBC candidates and she was over-aged as per age prescribed for the general category candidates. The position laid down by the Apex Court in Jitendra Kumar Singh's case is not applicable to the facts of the present case because the present case is governed by a different policy of reservation and the contention to apply the said judgment to the present case is not in accordance with law. It is also crucial to note that the reservation policy of the Government of India referred to in the OM sited above which are applicable in the present case were not under consideration of the Apex Court in Jitendra Kumar

Singh's case. On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioner is not entitled to succeed.

In the result, the writ petition fails and accordingly it is dismissed. No order as to cost.

Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE

JV