

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).NO. 11705 OF 2015 (K)

PETITIONER(S) :

1. S.JYOTHI
TYPIST (ON WORKING ARRANGEMENT), KAZHAKAM
SPECIAL TAHSILDAR'S OFFICE
TRAVANCORE DEVASWOM BOARD, NANTHANCODE
THIRUVANANTHAPURAM.

2. P.JAYACHANDRAN
TYPIST (ON WORKING ARRANGEMENT), KAZHAKAM
SREEKANTESWARAM DEVASWOM, THIRUVANANTHAPURAM.

BY ADVS.SRI.PIRAPPANCODE V.S.SUDHIR
SRI.JELSON J.EDAMPADAM

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM.

2. TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, NANTHANCODE
THIRUVANANTHAPURAM.

3. THE COMMISSIONER
TRAVANCORE DEVASWOM BOARD, DEVASWOM BUILDING
NANTHANCODE, THIRUVANANTHAPURAM.

R2 & 3 BY ADV. SRI.A.N.RAJAN BABU, SC, TRAVANCORE
DEVASWOM BOARD
BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 11705 OF 2015 (K)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : TRUE COPY OF THE TRAVANCORE DEVASWOM BOARD LOW PAID EMPLOYEES' APPOINTMENT AS CLERK/SUB GROUP OFFICER RULES 1990.

P2 : TRUE COPY OF THE NOTIFICATION NO.ROC 7921/2009 EST.II DT.30-3-2010 PUBLISHED IN THE KERALA GAZETTE DT.8-6-2010 PUBLISHED BY THE 2ND RESPONDENT

P3 : TRUE COPY OF THE NOTIFICATION NO.ROC 7921/2009/EST.II DT.18-1-2012 PUBLISHED IN THE KERALA GAZETTE DT.6-3-2012.

P4 : TRUE COPY OF THE RELEVANT EXTRACT OF THE LIST OF LOW PAID EMPLOYEES QUALIFIED FOR THE POST OF LD TYPIST AS ON 1-3-2012.

P5 : TRUE COPY OF THE PROCEEDINGS NO.ROC 1045/87/EST.DT.30-4-2012 OF THE 3RD RESPONDENT

P6 : TRUE COPY OF THE ORDER NO.ROC 1045/87/EST. DT.16-8-2013 OF THE 3RD RESPONDENT.

P7 : TRUE COPY OF THE JUDGMENT DT.2-4-2014 OF THIS HON'BLE COURT IN WPC 5310/2014.

P8 : TRUE COPY OF THE ORDER NO.ROC 1045/87/EST. DT.26-9-2014 OF THE 3RD RESPONDENT

P9 : TRUE COPY OF THE ORDER NO.ROC 2/10/P& SGRC DT.8-11-2013 OF THE 3RD RESPONDENT.

P10 : TRUE COPY OF THE ORDER NO.ROC 2/10/P&SGRC DT.22-11-13 OF THE 3RD RESPONDENT.

P11 : TRUE COPY OF THE ORDER NO.ROC 85/13/EST DT.12-9-2013 OF THE 3RD RESPONDENT.

P12 : TRUE COPY OF THE ORDER NO.ROC 15313/10/EST. DT.23-1-14 OF THE 3RD RESPONDENT.

P13 : TRUE COPY OF THE JUDGMENT DT.20-3-2015 OF THIS HON'BLE COURT IN WPC 20754/12.

P14 : TRUE COPY OF THE ORDER NO.ROC 85/13/EST.DT..../12/2013 OF THE 3RD RESPONDENT.

EXT.P15:TRUE COPY OF THE APPLICATION DATED 31.01.2014 SUBMITTED BY ONE R.RAJANI, BEFORE THE PUBLIC INFORMATION OFFICER, ATTACHED TO THE OFFICE OF THE 3RD RESPONDENT

EXT.P16: TRUE COPY OF THE LETTER NO.ROC 4146/2014/PIO/SA DATED 1.4.2014
OF THE PUBLIC INFORMATION OFFICER TO SMT.R.RAJANI.

EXT.P17: TRUE COPY OF THE CIRCULAR R.O.C NO.1045/87/EXTT.DATED 1.4.2010
OF THE 3RD RESPONDENT

EXT.P18: TRUE COPY OF THE CIRCULAR R.O.C NO.1045/87/EXTT.DATED
13.2.2012 OF THE 3RD RESPONDENT

EXT.P19: TRUE COPY OF THE CIRCULAR R.O.C NO.1045/87/EXTT.DATED 4.4.2012
OF THE 3RD RESPONDENT

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....

W.P.(C).No.11705 of 2015

.....

Dated this the 19th day of August, 2015

J U D G M E N T

The petitioners are persons who entered services under the 2nd respondent Board as Kazhakam. The 1st petitioner entered the service of the 2nd respondent Board on 16.09.1999 and the 2nd petitioner with effect from 05.11.1999. Both the petitioners are now stated to be working as Typist on work arrangement basis. As per the rules governing the preparation of select list and appointment of Low Paid Employees under the 2nd respondent Board, initially 18% of vacancies in a calender year in the cadre of L.D.Clerk/Sub Group Officer Gr.II/L.D.Typist, was reserved for being filled by transfer from Low Paid Employees of the 2nd respondent board. The rules were subsequently amended and the prescription of 18% of the vacancies was amended to read as 35% of the vacancies. It was also contemplated that a common seniority list, based on the date of entry of the Low Paid Employees in service would be maintained. This latter requirement of maintaining a common seniority list was also subsequently amended, and the rules provided for the maintenance of separate seniority lists for the category of L.D.Clerk/Sub Group Officer Gr.II and L.D.Typist respectively. By Ext.P4 final list dated 01.03.2012, the 2nd respondent Board prepared a list of Low Paid

Employees who had qualified for the post of L.D.Typist as on 01.03.2012. The petitioners in the writ petition are shown against serial Nos.14 and 17 in the said list. In the writ petition, it is averred that serial Nos.2 to 11 have since been promoted as L.D.Typist from that list, and that, there are 14 vacancies in the post of L.D.Typist that arose between 08.11.2013 and 01.12.2013. It is the stand of the petitioners that, if 35% of these 14 vacancies are to be filled by persons who are included in Ext.P4 final list, then the petitioners could be accommodated to the said five vacancies of L.D.Typist. It is on the basis of the said submission that the petitioners seek a direction to the 2nd and 3rd respondents to appoint the petitioners to the post of Typists.

2. A statement has been filed on behalf of the 2nd and 3rd respondents. Therein it is stated that, after preparation of Ext.P4 list, the Government had enhanced the retirement age of employees under the 2nd respondent Board to 56 years and this resulted in a situation where there was no retirement in the post of L.D.Typist during the year 2012-2013. It is also stated that after Ext.P4 list, a fresh list has not been prepared by the respondent Board primarily on account of redeployment of staff as directed by the Ombudsman, and on account of an interim order of status quo that was in force during the relevant

time in a writ petition that was subsequently dismissed. It is stated, however, that the respondents are now in the process of finalising a fresh list for 2015 and, under normal circumstances, the petitioners would also feature in the said list. A reply affidavit has been filed by the petitioners contending, inter alia, that the respondent Board cannot now prepared a fresh list and must effect promotion to the vacancies in the post of L.D.Typist that arose between 01.03.2012 and now, from candidates who have already been empanelled in Ext.P4 final list. It is reiterated that there are 13 vacancies of L.D.Typist now and the petitioners can easily be accommodated to the vacancies arising with effect from 01.12.2013.

3. I have heard the learned counsel for the petitioners and the learned Standing counsel for the respondent Board.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find force in the contention of the learned counsel for the petitioner that the right of the petitioners to be considered to vacancies that arose in the post of L.D.Typist under the 2nd respondent Board, during the period between the date of Ext.P4 list and now, has already accrued to them by virtue of their inclusion in Ext.P4 final list. This is more so because it is not

in dispute that the list prepared does not have a validity period. In view of the settled position that the eligibility of a candidate for consideration to a vacancy must be one that is determined as on the date of arising of the vacancy, the petitioners can certainly be considered for promotion to the vacancies that arose at a time when they were included in a final list which was not cancelled or superseded by any fresh list that was prepared by the respondent Board in accordance with the rules. Accordingly, I am of the view that, the petitioners can be considered for appointment to the existing vacancies with effect from 01.12.2013 in the post of L.D.Typist under the 2nd respondent Board. I, accordingly, allow the writ petition by quashing Ext.P8 order and directing the respondents to follow Ext.P4 list of Low Paid Employees while considering candidates for promotion to the post of L.D.Typist to vacancies that arose between the date of Ext.P4 list and now. The respondents shall do the needful in completing the process of appointment to the existing vacancies within a period of three months from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

