

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

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

WP(C).No. 16060 of 2009 (B)

PETITIONER:

**ALICE MAMMEN,
ASSISTANT SELECTION GRADE/JUNIOR SUPERINTENDENT,
KERALA FOREST DEVELOPMENT CORPORATION LTD.,
HEAD OFFICE, KOTTAYAM.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

- 1. KERALA FOREST DEVELOPMENT CORPORATION LTD.,
REPRESENTED BY THE MANAGING DIRECTOR,
KERALA FOREST DEVELOPMENT CORPORATION LTD., KOTTAYAM.**
- 2. THE PROMOTION COMMITTEE IN KERALA
FOREST DEVELOPMENT CORPORATION LTD.,
(FOR THE POST OF SENIOR SUPERINTENDENT),
REPRESENTED BY ITS CHAIRMAN,, KERALA FOREST DEVELOPMENT
CORPORATION LTD., HEAD OFFICE, KOTTAYAM.**
- 3. P.S.RASHEEDA,
SENIOR SUPERINTENDENT
KERALA FOREST DEVELOPMENT CORPORATION LTD.,
HEAD OFFICE, KOTTAYAM.**

**R1 BY ADVS. SRI.V.G.ARUN SC KFDC
SRI.T.R.HARIKUMAR
R3 BY ADV. SRI.K.JAJU BABU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-01-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONER'S EXHIBITS

- EXT- P1- TRUE COPY OF THE RESOLUTION No.1174.
- EXT- P2- TRUE COPY OF THE ORDER DATED 29-03-2007.
- EXT- P3- TRUE COPY OF THE MINUTES OF THE KERALA FOREST DEVELOPMENT CORPORATION PROMOTION COMMITTEE HELD ON 15-02-2007.
- EXT- P4- TRUE COPY OF THE NOTE TO THE PROMOTION COMMITTEE FOR PROMOTION OF TECHNICAL AND ADMINISTRATIVE POSTS.
- EXT- P5- TRUE COPY OF THE APPLICATION DATED 07-11-2008.
- EXT- P6- TRUE COPY OF THE MEMO DATED 15-11-2008.
- EXT- P7- TRUE COPY OF THE BODY OF THE REPRESENTATION DATED 01-12-2008.
- EXT- P8- TRUE COPY OF THE LETTER DATED 19-03-2009 ISSUED BY THE CORPORATION TO THE PETITIONER.
- EXT- P9- TRUE COPY OF THE APPLICATION DATED 23-03-2009 FILED BY THE PETITIONER.
- EXT- P10- TRUE COPY OF THE REPLY DATED 22-04-2009.
- EXT- P11- TRUE COPY OF THE ATTESTED COPIES OF PAGE Nos.2 & 4 OF SERVICE BOOK OF THE 3RD RESPONDENT.
- EXT- P12- TRUE COPY OF THE KERALA FOREST DEVELOPMENT CORPORATION SERVICE RULES.
- EXT- P13- TRUE COPY OF THE KERALA FOREST DEVELOPMENT CORPORATION SERVICE REVISED RULES 2003.

RESPONDENTS' EXHIBITS

- EXT- R3 (a) - TRUE COPY OF THE G.O. (MS) No.194/84/Agri. Dated 04-07-1984 ISSUED BY THE GOVERNMENT OF KERALA.
- EXT- R3 (b) - TRUE COPY OF THE RELEVANT EXTRACT OF MINUTES OF THE BOARD MEETING HELD ON 28-02-2006.
- EXT- R3 (c) - TRUE COPY OF THE RELEVANT EXTRACT OF SERVICE BOOK OF THE 3RD RESPONDENT.
- EXT- R3 (d) - TRUE COPY OF ORDER No.E1-750/99 DATED 05-09-2005 ISSUED BY THE 1ST RESPONDENT.

True copy

P.A. To Judge

C.K. ABDUL REHIM, J.

W.P.(c) No. 16060 OF 2009-B

DATED THIS THE 16th DAY OF JANUARY, 2015.

J U D G M E N T

This writ petition was filed at a time when the petitioner was working as Assistant (Selection Grade)/ Junior Superintendent in the 1st respondent Corporation. Challenge raised is against the grant of promotion to the 3rd respondent to the post of Senior Superintendent, by virtue of Ext.P2 proceedings. The petitioner inter alia challenges Ext.P3 decision taken by the 'Promotion Committee' in the 1st respondent (the 2nd respondent) and also the resolution passed by the 1st respondent accepting the decision of the 'Promotion Committee' and also the select list prepared for effecting promotion to the post of Senior Superintendent.

2. Both the petitioner as well as the 3rd respondent had entered service of the 1st respondent corporation as Assistant Grade-II. By virtue of promotions granted on various dates, both of them have reached the post of Assistant (Selection Grade). In Ext.P3 minutes of the

meeting of the 2nd respondent a select list was prepared for promotion to the post of Senior Superintendent, based on the fact that there exist two vacancies of Senior Superintendents, which arose due to retirement of one incumbent as Administrative Assistant. After evaluating merits and abilities of each candidates, a select list was prepared based on service particulars. The 3rd respondent was included as Sl. No.1 and the petitioner was included as Sl. No.2. The Board of Directors of the 1st respondent had approved the select list by virtue of Ext.P1 resolution. On that basis the 3rd respondent was promoted by virtue of Ext.P2 order dated 29-03-2007, to the post of Senior Superintendent.

3. Contention of the petitioner is that inclusion of the name of the 3rd respondent as Sl. No.1 in Ext.P3 was wrong, because as on the date of occurrence of the vacancy the petitioner alone was qualified to the post of Senior Superintendent. It is pointed out that, for promotion to the post of Senior Superintendent the incumbent should have passed the Departmental test as insisted under Rule 8 (5) of

the Kerala Forest Development Corporation Service Rules, 2003. The petitioner contended that the vacancy to which the 3rd respondent was promoted by virtue of Ext.P2 arose on 31-03-2006 consequent to retirement of an incumbent in the post of Senior Superintendent namely Sri. K. Vasudevan. It is stated that the petitioner passed the Departmental test held in January 2006. But as on the date of occurrence of the vacancy the 3rd respondent had not passed the Departmental test. It is pointed out that the above fact is evident from Ext.P4 which is the notes submitted to the 2nd respondent/Promotion Committee. It is pointed out that, the 1st respondent corporation had already adopted Part-II of KS & SSR, as evident from Rule 5 (2) of the Kerala Forest Development Corporation Service Rules. Under Rule 28 (b) (iA) of Part II of KS & SSR, when the select list is prepared subsequent to occurrence of any vacancy, no person who was qualified for inclusion in the select list at the time of occurrence of the vacancy should be included in the select list for appointment against the said vacancy. Therefore the inclusion of the 3rd respondent

in the select list prepared by the 2nd respondent is violative of Rule 28 (b) (iA), is the contention.

4. It is stated that, complaining about the anomaly, the petitioner had submitted Ext.P7 representation before the 2nd respondent. But in Ext.P8 the 1st respondent had replied that the 3rd respondent being first in the select list prepared, was found fit for promoting to the post of Senior Superintendent. The petitioner had produced Ext.P11 which is extract of the Service Book of the 3rd respondent and had even raised a contention that the 3rd respondent has not even passed the Typewriting test which is one of the requisite qualification for appointment as Assistant Grade-II. On the ground that promotion to the 3rd respondent was given in violative of Rule 28 (b) (iA) of Part II KS & SSR the petitioner is seeking relief to the extent of quashing the select list and inter alia seeking relief by way of a direction to promote the petitioner to post which arose on 31-03-2006, with retrospective effect.

5. In the counter affidavit filed by the 3rd respondent it is pointed out that, she got appointment in the 1st

respondent corporation under compassionate employment scheme since her husband had died-in-harness. It is stated that, initially she was appointed as Peon on 14-04-1983 and thereafter by virtue of Government order dated 04-07-1984 she was appointed as Assistant Grade-II, by granting exemption from acquiring requisite qualifications prescribed to the post of Assistant Grade-II. It is contended that the 3rd respondent joined in the post of Assistant Grade-II in the year 1984, whereas the petitioner joined service as Assistant Grade-II only in the year 1990. With respect to subsequent promotion as Assistant Grade-I, Assistant (Senior Grade) and Assistant (Selection Grade) the 3rd respondent got promotions much before the dates of promotion of the petitioner in all the cadre. Hence the petitioner cannot have any claim with respect to seniority over the 3rd respondent, is the contention. It is pointed out that Ext.P2 order of promotion as Senior Superintendent was granted on a provisional basis subject to acquiring the test qualification. According to the 3rd respondent such promotion was effected based on Rule 8 of the Special Rules

which stood amended by virtue of Ext.R3 (b) Government order. Therefore the provisional promotion granted by virtue of Ext.P2 subject to condition of the 3rd respondent acquiring the test qualification within the time stipulated, cannot be challenged as violative of Rule 28 (b) (iA), is the contention.

6. There is no much dispute with respect to the fact that the vacancy to which the 3rd respondent was promoted occurred on 31-03-2006. It is evident that the 2nd respondent prepared a select list for promotion, in its meeting held on 15-02-2007. By virtue of Ext.P1 the 1st respondent had approved the select list and the promotion of the 3rd respondent was effected through Ext.P2 order dated 29-03-2007. Under normal circumstances, going by Rule 28 (b) (iA) of Part-II KS & SSR the 2nd respondent should not have included the 3rd respondent in the select list, because she remained not qualified as on the date of occurrence of the vacancy. Contention of the 3rd respondent is that the requirement of acquiring the test qualification of Departmental Test for getting promotion was introduced

only through the Service Rules revised by virtue of Ext.P13 Government order, dated 19-04-2005. Therefore there cannot be any dispute that the incumbent should have acquired the Departmental Test qualification for getting promotion with respect to a vacancy which arose on 31-03-2006. But, contention of the 3rd respondent is that, in Ext.P13 Special Rules itself, under Rule 8 (6) there is a provision included to the effect of providing relaxation of time till 31-12-2014 for passing the requisite Departmental test. The said provision enable the Board of Directors of the 1st respondent to grant provisional promotion to the higher post till 31-12-2004 subject to condition insisting upon acquiring test qualification on or before 31-12-2004. It is further pointed out that the Board of Directors of the 1st respondent in its meeting held on 28-02-2006 have adopted a resolution to further amend the Rule 8 (6) of the Special Rules relaxing the time limit for acquisition of test qualification till 18-04-2007. The amendment thus proposed was approved by the Government as indicated in Ext.R3 (b) by virtue of G.O (MS) No.56/2008/F&WLD dated 21-08-

2008. The said Government order indicates that the Government have accorded sanction for revision of Special Rules as per the decision taken by the Board of Directors on 28-02-2006. Hence it is contended that as on the date on which Ext.P3 decision was taken by the 2nd respondent and as on the date on which Ext.P2 provisional promotion was ordered by the 1st respondent, the respondents were entitled to grant provisional promotion to the 3rd respondent by virtue of Rule 8 (6) subject to condition of her acquiring test qualification on or before 18-04-2007. It is clearly evident from the terms of Ext.P2 that the promotion of the 3rd respondent was on provisional basis and subject to the condition of acquiring the required test qualification as per Rule 8 of the revised Service Rules on or before 19-04-2007. It is also made clear in Ext.P2 that on failure to acquire the test qualification within the date prescribed, the 3rd respondent will be liable for reversion.

7. On the facts existed as on today, it is conceded by counsel appearing for all the parties that, the 3rd respondent had acquired the requisite test qualification, within the date

stipulated. It is also conceded that the petitioner herein was promoted to the post of Senior Superintendent against a vacancy which arose subsequently. Under such circumstances this court is of the opinion that there is no valid legal grounds existing to interfere with the provisional promotion granted to the 3rd respondent based on Ext.P2 proceedings, relying on the decision of the 2nd respondent.

Consequently the writ petition fails and the same is hereby dismissed.

Sd/-
C.K. ABDUL REHIM
JUDGE

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P.A. to Judge