

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C) .NO. 12627 OF 2015 (C)

PETITIONER(S) :

SAJIMON V.T.
ASSISTANT ENVIRONMENTAL SCIENTIST
KERALA STATE POLLUTION CONTROL BOARD
DISTRICT OFFICE, THRISSUR
RESIDING AT VALIPLACKEL HOUSE, POST ARAKKULAM
IDUKKI - 685 591.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENT(S) :

1. THE CHAIRMAN, KERALA STATE POLLUTION CONTROL BOARD
PLAMODU JUNCTION, PATTAM P.O.
THIRUVANANTHAPURAM- 695 004.

2. THE DEPARTMENTAL PROMOTION COMMITTEE,
KERALA STATE POLLUTION CONTROL BOARD
REPRESENTED BY CONVENER AND MEMBER SECRETARY
PLAMODU JUNCTION, PATTAM P.O.
THIRUVANANTHAPURAM - 695 004.

3. K.V. GOPALAKRISHNAN
ASSISTANT ENVIRONMENTAL SCIENTIST
RESIDING AT AISWARYA, CHETTIPPADY P.O.
MALAPPURAM DISTRICT- 676 303.

R3 BY ADV. SRI.P.M.MOHAMMED SHIRAZ
R1-R2 BY ADV. SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1-A TRUE COPY OF THE RELEVANT PAGES OF NOTIFICATION DATED 20/11/1999.

EXHIBIT-P2-TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF THE DPC.

EXHIBIT-P3-A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 10/04/2015.

EXHIBIT-P4- A TRUE COPY OF THE COVERING LETTER OF THE CR FORWARDED BY THE CHIEF ENVIRONMENTAL SCIENTIST DATED 01/02/2005 FOR THE YEAR 2004.

EXT.P5: A TRUE COPY OF THE MINUTES OF THE SPECIAL MEETING OF THE BOARD HELD ON 02.03.2012

EXT.P6: A TRUE COPY OF THE LETTER DATED 26.05.2015

EXT.P6(A): A TRUE COPY OF FORWARDING LETTER DATED 01.02.2005

RESPONDENT(S) ' EXHIBITS:

EXT.R3(A): TRUE PHOTOCOPY OF ORDER NO.PCB/EI/6129/13 DATED 16.04.2015 OF CHAIRMAN, KERALA STATE POLLUTION CONTROL BOARD

EXT.R3(B): TRUE PHOTOCOPY OF THE ORDER DATED 09.04.2015 IN W.P.(C) . NO.29043/2013

EXT.R3(C): TRUE PHOTOCOPY OF G.O.(P)NO.7/2013/P&ARD DATED 19.03.2013

EXT.R1(A): A TRUE COPY OF THE CONFIDENTIAL REPORT SUBMITTED BY THE PETITIONER FOR THE YEAR 2002

EXT.R1(B): A TRUE COPY OF THE CONFIDENTIAL REPORT SUBMITTED BY THE PETITIONER FOR THE YEAR 2003

EXT.R1(C): A TRUE COPY OF THE CONFIDENTIAL REPORT SUBMITTED BY THE PETITIONER FOR THE YEAR 2004

EXT.R1(D): A TRUE COPY OF THE CONFIDENTIAL REPORT SUBMITTED BY THE PETITIONER FOR THE YEAR 2005

EXT.R1(E): A TRUE EXTRACT OF THE PROVISIONS OF KERALA STATE SUBORDINATE SERVICE RULES 1958

EXT.R1(F): A TRUE COPY OF THE GO(P)NO.42/2010/P &ARD DATED 20.12.2010

EXT.R1(G) A TRUE COPY OF THE MINUTES OF THE 177TH BOARD MEETING DATED 2.3.12

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.12627 of 2015

.....
Dated this the 12th day of August, 2015

J U D G M E N T

The petitioner entered service of the respondent Board as an Assistant Scientist. He was promoted as Assistant Environmental Scientist on 18.10.1999 and his probation in the post was declared on 14.11.2000. He, thereafter, availed Leave Without Allowance from 02.02.2005 and rejoined duty on 29.01.2015. In the proceedings of the Departmental Promotion Committee (DPC) that met for considering promotion of candidates to the post of Environmental Scientist, the petitioner's candidature was not considered and in the select list that was drawn up, the 3rd respondent alone was considered for promotion to a post of Environmental Scientist that had then existed. The petitioner's name was not included in the said select list. The petitioner, therefore, preferred Ext.P3 representation for revising the select list. In the writ petition, Ext.P2 select list is impugned, inter alia, on the ground that, the reason cited by the respondents namely, that the Confidential Reports of the petitioner for the immediately preceding three years were not available, was not a justifiable reason for excluding the candidature of the petitioner for promotion. The petitioner would also contend that the 3rd respondent had not completed his probation of one year at the time when he was included

in Ext.P2 select list.

2. A counter affidavit has been filed on behalf of respondents 1 and 2, wherein it is pointed out that the criteria for the assessment of merit while considering candidates for promotion to the post of Environmental Scientist was the scrutiny of the Confidential Reports of the preceding three years or the three years preceding the availment of the Leave Without Allowance. It is submitted that, the petitioner did not produce the Confidential Reports till 29.01.2015 and the Confidential Reports produced by the petitioner were placed before the DPC on 23.03.2015. The DPC then found that, the Confidential Reports of the petitioner were evaluated by persons who had since retired from service, and therefore, decided to consider the candidature of the petitioner on completion of six months service from 29.01.2015. The respondents would rely on the provisions of Rule 28 b (4a) (i) of the KS & SSR for the purposes of justifying their deferment of the consideration of the petitioner's candidature, on the ground that, the Confidential Reports available in the case of the petitioner were those that were evaluated by persons who had retired from service. In the counter affidavit filed by the 3rd respondent, it is stated that, he was the only other candidate, whose candidature was considered by the DPC for promotion to the post. It is stated that by

an order dated 16.04.2015, he was promoted to the post and it is only because of the pendency of the writ petition that his appointment to the post is not being given effect to. In a reply affidavit filed by the petitioner, the averments in the counter affidavit that suggest that the Confidential Reports were sent only in 2015 is denied. It is the case of the petitioner that the Confidential Reports were sent to the respondents in 2005 itself as evidenced in Exts.P6 and P6(a). It is also his case that Rule 28b (4a) (i) would apply only in a situation where the Confidential Reports relating to the petitioner were not available and not in cases where the Confidential Reports were prepared by persons who had since retired from the organisation.

3. I have heard the learned counsel for the petitioner, the learned counsel for the 3rd respondent and the learned Standing counsel for respondents 1 and 2.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the reasons put forth by the respondents for not considering the candidature of the petitioner for promotion to the post of Environmental Scientist are not convincing. The respondents would rely on the provisions of Rule 28b (4a) (i) for the purposes of deferring a consideration of the petitioner's

candidature for promotion. The said Rule applies only in cases where the Confidential Reports of a particular candidate are not available with the respondents for scrutiny. In the instant case, it is not in dispute that, the Confidential Reports pertaining to the petitioner for the three years preceding his availment of Leave Without Allowance was available with the respondents. The only objection to the same was that the Confidential Reports **were** prepared by persons who had since retired from the services of the respondent Board. In my view, the retirement of persons, who had evaluated the Confidential Reports of the petitioner, cannot be a reason for non-consideration of the Confidential Reports of the petitioner while considering his candidature for promotion. That apart, it is also stated by the learned Standing counsel for the respondents 1 and 2 that, as of today, there are three vacancies and only two candidates namely, the petitioner and the 3rd respondent, who have to be considered for promotion to the post of Environmental Scientist. It is also their case that, there is a dire need of Environmental Scientists and that both the petitioner as well as the 3rd respondent can presently be accommodated to the vacancies that are existing in the respondent Board. Taking note of the said submission of counsel for respondents 1 and 2, and the fact that, the reasons cited in the counter affidavit for non-inclusion of the petitioner's name in Ext.P2 select list cannot be legally sustained, I

dispose the writ petition with a direction to the 1st respondent to consider the candidature of the petitioner for promotion as Environmental Scientist to the vacancies that have arisen with effect from 01.07.2015. Consequential orders, promoting the petitioner to the vacancy arising with effect from 01.07.2015 to the post of Environmental Scientist, shall be passed within a period of two weeks from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns