

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 16229 of 2011 (C)

PETITIONER(S) :

K.P.RAMANI, TECHNICAL ASSISTANT,
THE MARINE PRODUCTS EXPORTS DEVELOPMENT AUTHORITY
KOCHI, RESIDING AT CHAKKULANGARA HOUSE,
SOUTH PARAVOOR P.O., PIN-682320, UDAYAMPEROOR,
ERNAKULAM

BY ADVS.SRI.T.P.SAJAN
SRI.M.MOHAMED NAVAZ

RESPONDENT(S) :

1. THE PRINCIPAL SECRETARY TO GOVERNMENT
AND CHAIRMAN SCRUTINY COMMITTEE FOR VERIFICATION
OF SC/ST/CLAIMS, SCHEDULED CASTE AND SCHEDULED
TRIBE(G) DEPARTMENT, THIRUVANANTHAPURAM.

2. VIGILANCE OFFICER, VIGILANCE CELL
DIRECTORATE OF KIRTADS, KOZHIKODE, PIN-673017.

3. TAHSILDAR,
O/O.THE TAHSILDAR, TALUK OFFICE, FORTKOCHI

4. THE CHAIRMAN,
O/O.THE MPEDA, THE MARINE PRODUCTS EXPORTS
DEVELOPMENT AUTHORITY, KOCHI

R,R3 BY ADV. SRI.V.ABRAHAM MARKOS
R,R3 BY ADV. SRI.MATHEWS K.UTHUPPACHAN
R,R3 BY ADV. SRI.BINU MATHEW
R,R3 BY ADV. SRI.TERRY V.JAMES
R,R3 BY ADV. SRI.B.J.JOHN PRAKASH
R,R3 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)
R BY GOVERNMENT PLEADER SMT.LALY VINCENT (SPL.GP.SC)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P. (C) NO.16229/2011

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE CERTIFICATE DATED 3/3/1961 ISSUED BY 505 COAST BATTERY.

EXT.P2: COPY OF THE TRANSFER CERTIFICATE ISSUED BY ST.MARY'S CONVENT ANGLO INDIAN HIGH SCHOOL FORTKOCHI.

EXT.P3: COPY OF THE CERTIFICATE ISSUED BY ST.MARY'S CONVENT ANGLO INDIAN HIGH SCHOOL FORTKOCHI.

EXT.P4: COPY OF THE 3RD PAGE OF SSLC BOOK OF GULA BAI.

EXT.P5: COPY OF THE COMMUNITY CERTIFICATE ISSUED BY TAHSILAR, FORTKOCHI DATE 22/2/1974,

EXT.P6: COPY OF THE APPLICATION DATED 3/7/1974.

EXT.P7: COPY OF REPORT OF THE 2ND RESPONDENT.

EXT.P8: COPY OF THE EXPLANATION DATED 20/6/2009.

EXT.P9: COPY OF THE NOTICE DATED 2/7/2009.

EXT.P10: COPY OF THE ARGUMENT NOTE DATED 4/8/2009.

EXT.P11: COPY OF the LETTER DATED 7/10/2009 ALONG WITH COPY OF THE LETTER OF THE YEAR DATED 30/9/2009

EXT.P12: COPY OF THE PROCEEDINGS VIDE NO.211661/G2/2006 SC STDD DATED 25/56/2011.

EXT.P13: COPY OF THE PAGE OF THE NEWS PAPER "THE INDIAN EXPRESS" DATED 20/6/1974.

EXT.P13A: READABLE COPY OF THE GENERAL CONDITIONS AND THE DETAILS OF CATEGORY NO.7, CONTAINED IN EXT.P13.

EXT.P14: COPY OF COMMUNICATION VIDE REF NO.PER:II-B DATED 23/4/1975.

EXT.P15: COPY OF THE COMMUNICATION VIDE REF NO. PER:II-B DATED 19/2/1976 INFORMING THAT TERM OF PANEL PREPARED BY THE 4TH RESPONDENT WAS EXTENDED FROM 15/4/76 TO 14/4/77

EXT.P16: COPY OF THE LETYTER VIDES P.107 PERS 3793 DATED 17/3/1976 OFFERING APPOINTMENT.

RESPONDENTS EXHIBITS:

EXT.R4(a): COPY OF THE LETTER DATED 17/3/1976 ISSUED TO THE PETITIONER.

EXT.R4(B): COPY OF THE PETITIONER'S LETTER DATED 25/3/1976.

EXT.R4(C): COPY OF THE PETITIONER'S JOINING REPORT DATED 7/4/1976.

EXT.R4(D): COPY OF THE COMMUNITY CERTIFICATE DATED 22/2/1974 ISSUED BY THE DY.THAHSILDAR, COCHIN.

EXT.R45(E): COPY OF THE MINUTES OF THE MEETING DATED 12/4/1976.

EXT.R4(F): COPY OF THE NOTE REGARDING REGULARIZATION OF THE PETITIONER ON COMPLETION OF INITIAL THREE MONTHS SERVICE ON 6/7/1976.

EXT.R4(G): COPY OF THE RELVANT PAGE OF RESERVATION ROSTER AND COPY OF THE NOTE, PROMOTION ORDER AND PROCEEDINGS OF THE DPC IN RESPECT OF THE POST TECHNICAL ASSISTANT.

XT.R4(H): COPY OF THE LETTER DATED 26/8/1994.

EXT.R4(I): COPY OF THE REPLY DATED 6/9/1994 ISSUED BY MPEDA

EXT.R4(J): COPY OF THE APPLICATION DATED 12/7/1996 SUBMITTED BY THE PTEITIONER SEEKING VOLUNTARY RETIRMENET.

EXT.R4(K): COPY OF THE FEDERATION'S LETTER DATED 19/7/2006 ISSUED TO THE 1ST RESPONDENT.

EXT.R4(I): COPY OF THE RESPONDENT'S LETTER DATED 17/10/2006 TO THE PRINCIPAL SECRETARY, GOVT. OF KERALA.

EXT.R4(M): COPY OF THE PROCEEDINGS DATED 25/5/2011 OF THE SCRUTINY committee.

EXT.R4(N): COPY OF THE NOTE ALLOWING THE PETITIONER TO CONTINUE IN SERVICE TILL RETIREMENT ON 30/6/2012.

/TRUE COPY/ P.S. TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.16229 OF 2011

Dated this the 11th day of March, 2015

JUDGMENT

The petitioner responded on 3/7/1974 to the notification issued by the 4th respondent for the post of Junior Clerk in the Central Government undertaking. Ext.P6 dated 3/7/1974 is the application submitted by the petitioner. The appointment to that post is temporary and adhoc basis as seen from Ext.R4(a) offer of appointment dated 17/3/1976. It is stated in Ext.R4(a) that the writ petitioner's service likely to be terminated without any notice and without assigning any reason. While notifying the post, it is mentioned that the preference will be given to the Scheduled Caste & Scheduled Tribe community. It appears that the petitioner, along with the application, produced the caste certificate showing that she belongs to Vannan community, which comes under the scheduled caste category. The application made by the petitioner does not indicate that she made a claim for appointment based on the caste status. The appointment

order also does not indicate that the petitioner's appointment was in the vacancy earmarked for the scheduled caste candidates. Thereafter, taking note of the petitioner's caste status, as reflected in the caste certificate, the petitioner has been regularized in the vacancy earmarked for a scheduled caste candidate. The petitioner has been given promotion thereafter from time to time.

2. It appears that Ext.R4(i) complaint dated 6/9/1994 has been filed by the Federation of Central Government Scheduled Castes and Scheduled Tribes Employees. Ultimately, the Scrutiny Committee after adverting to the various materials on record, vide Ext.P12 proceedings dated 25/5/2011, concluded that the petitioner does not belong to scheduled caste Vannan community and she belongs to Ezhava community.

3 . The petitioner has approached this Court challenging the action taken under the Kerala (Scheduled Caste/Scheduled Tribe)Regulation of Issue of Community Certificate Act 1996. In the meanwhile, the petitioner retired from the service on 30/6/2012. Now the only issue pertains to retiral benefits of the petitioner. I do not find any reason to interfere with

Ext.P12 order for the purpose of disposal of this writ petition. I leave open that issue in the sense the present dispute now only pertains to the pensionary benefits.

4. The learned counsel for the petitioner submits, leaving open the issue relating to the caste status of the petitioner, that this writ petition may be decided on the ground that the petitioner was not appointed in the vacancy earmarked for the scheduled caste candidate. Counsel further submits that the petitioner has not usurped the rights belong to the scheduled caste member by fraudulent method.

5. Admittedly, no proceedings have been initiated against the 5th respondent to the effect that the petitioner obtained appointment by fraudulent method by concealing her caste status as Ezhava in the post earmarked for the SC/ST community. The petitioner was appointed in the year 1976 as a Junior Clerk. The advertisement is produced as Ext.P13. That advertisement would only indicate that preference should be given to SC/ST members. Nowhere it stipulates that the post was exclusively earmarked for the scheduled caste candidates. It is to be noted that the vacancy was temporary and was only adhoc basis. Therefore, in such circumstances, it

is not safe to conclude that the appointment was made in the vacancy exclusively earmarked for the scheduled caste candidates. Ext.P16 offer of appointment would indicate that the appointment was never to the post which was exclusive earmarked for the scheduled caste members.

6. The learned counsel for the 4th respondent submits about the regularisation of the petitioner in the vacancy of scheduled caste candidate. It is to be noted that the 4th respondent has no case that the petitioner made a claim for regularisation based on her caste status. Perhaps it is for the reason that as the caste certificate has already been given by her in the record the Authority, believing that she belongs to scheduled caste community, proceeded to regularise her appointment in the vacancy of scheduled caste member. Regularisation does not depend upon the caste status. If the petitioner might have been regularized in the vacancy earmarked for the scheduled caste community, that does not indicate that the petitioner has been regularized by any fraudulent act on her part. If at all any regularisation is made in the vacancy exclusively earmarked for the scheduled caste community, that would be termed as irregular and not

illegal vitiated by fraud.

7. The petitioner has been given promotion to various higher cadre. But, it can be seen that none of the promotions effected on the basis that the petitioner belongs to scheduled caste community. All these would clearly establish the fact that the petitioner had not committed any fraudulent act. In Law, there is difference between irregular and void appointment. In the matter of fraud, necessarily it can be concluded that the appointment would be vitiated for all practical purposes. However, irregular appointment can be rectified if otherwise possible. The petitioner having retired from the service, it would not be proper at this juncture to deny the retiral benefit mainly because of the finding by the Scrutiny Committee that the petitioner does not belong to scheduled cast community. As has already been noted, the petitioner enjoyed the service benefits not on account of any fraudulent act done by her, but, it is on account of wrong assumption of the 4th respondent that the petitioner belongs to scheduled caste community.

8. Considering the peculiar facts and circumstances of the case, I am of the view that the petitioner is entitled for entire

retiral benefits. Consequently, there will be a direction to the 4th respondent to disburse the entire pensionary benefits to the petitioner within a period of two months from the date of receipt of a copy of this judgment.

9. The issue relating to the petitioner's caste status is left open.

The writ petition is disposed of as above.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/true copy/ P.S. To Judge.

