

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No.19099 of 2012 (J)

PETITIONERS:

1. **P.NIXON ALEXANDER,S/O.W.ALEXANDER,
VILLAGE INDUSTRIES OFFICER,
DISTRICT KHADI AND VILLAGE INDUSTRIES OFFICE.
UPPALAM ROAD,THIRUVANANTHAPURAM,PIN-691001.**
2. **SEBASTIAN.K.J.,S/O.JOSEPH K.A.,AGED 48 YEARS,
VILLAGE INDUSTRIES OFFICER,
KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
VANCHIYOOR P.O.,THIRUVANANTHAPURAM-695 035.**
3. **HARIKUMAR.R.,S/O.RAVEENDRAN NAIR,AGED 61 YEARS,
SENIOR SUPERINTENDENT,
KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
VANCHIYOOR P.O.,THIRUVANANTHAPURAM-695035.**
4. **NAZEER KHAN.P.,S/O.H.PASHA KHAN,AGED 55 YEARS,
ACCOUNTS OFFICER I,KERALA KHADI AND VILLAGE
INDUSTRIES BOARD,VANCHIYOOR P.O.,
THIRUVANANTHAPURAM-695035.**

BY ADV.SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:

1. **KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
REPRESENTED BY ITS SECRETARY,
THIRUVANANTHAPURAM-695001.**
2. **THE SECRETARY, KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
THIRUVANANTHAPURAM-695001.**
3. **SRI.ANANTHAN.K,DIRECTOR,
KERALA KHADI & VILLAGE INDUSTRIES BOARD,
VANCHIYOOR P.O.,THIRUVANANTHAPURAM-695 035,
NOW ON DEPUTATION TO ANERT,PROJECT MANAGER,
DISTRICT PROJECT OFFICE,ANERT,RAILWAY STATION ROAD,
CLOCK TOWER,KASARAGOD-671121.**

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4. SMT.JAMEELA.P,DEPUTY DIRECTOR,
KERALA KHADI & VILLAGE INDUSTRIES BOARD,
VANCHIYOOR P.O,THIRUVANANTHAPURAM-695 035.
5. SMT.SREEDEVI.M.,PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
CHELLIOZHUKKAM ROAD,KOTTAYAM-686001.
6. SMT.PRASANNAKUMARI.J.,PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
UPPALAM ROAD,GPO,THIRUVANANTHAPURAM-695001.
7. SRI.THULASEEDHARAN PILLAI.R.
ACCOUNTS OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES BOARD,
VANCHIYOOR P.O,THIRUVANANTHAPURAM-695035.
8. SRI.ANILKUMAR.N.,PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
ELANTHOOR,PATHANAMTHITTA-686643.
9. SMT.REVAMMA.K.,PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
KALPATTA,WAYANAD 673121.
10. SRI PAVITHRAN O.T.,PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
WEST FORT ROAD,PALAKKAD 678 001.
11. SRI SURESAN.P.,PROJECT MANAGER,
CENTRAL SILVER PLANT,ETTUKUDUKKA,
KANNUR DISTRICT-670 521.
12. SRI.VENUGOPAL M.V.,PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
OAYYANNUR KHADI CENTRE,PAYYANNUR P.O.
KANNUR DISTRICT-670 307.
13. SRI DAYANANDAN.K.K.,PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
NEAR KAMALA KARBALA JUNCTION,
KOLLAM DISTRICT-691 001.
14. SRI.CHANDRAN K.K.,PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
CHEMBUKAVU PALACE ROAD,THRISSUR-680020.
15. SRI.SETHUMADHAVAN.T.,PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
COLLECTORATE ROAD,ALAPPUZHA-688001.

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16. SRI RAJENDRAN NAIR.K.,MARKETING OFFICER,
KERALA KHADI & VILLAGE INDUSTRIES BOARD,
VANCHIYOOR P.O.,THIRUVANANTHAPURAM-695035.
 17. SMT RAMANI.N.,PROJECT OFFICER (RETIRED),
ARUN NIVAS,PUNNAMUKKU,PERUMPUZHA P.O.,
KOLLAM DISTRICT-691504.
 18. SRI.RAMACHANDRAN.N.,ACCOUNTS OFFICER (RETIRED),
KUZHIVILAYI PADINJAREPURA,KUNNATHOOR WEST,
KUNNATHOOR P.O.,KOLLAM DISTRICT-691 508.
 19. SMT.JAYALAKSHMI.C.R.,PROJECT OFFICER (RETIRED),
KRISHNAMBUJAM,THACHILATH,POONITHURA P.O.,
ERNAKULAM-682 038.

***ADDITIONAL R20 & R21 IMPEADED**

Addl.20.DOMINIC JOHN,JUNIOR ACCOUNTS OFFICER-
IN CHARGE OF ASSISTANT REGISTRAR,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
ALAPPUZHA.

Addl.21.ABDUL KAREEM.K.H.,VILLAGE INDUSTRIES OFFICER
IN CHARGE OF THE PROJECT OFFICER,
DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,
IDUKKI,THODUPUZA.

***ADDL.R20 & R21 ARE IMPEADED AS PER ORDER DATED 05/03/2013 IN
IA 2817/2013.**

***ADDL.R22 IMPEADED.**

Addl.R22:SREEKANTAN NAIR.N.,JUNIOR ACCOUNTS OFFICER,
KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
VANCHIYOOR,THIRUVANANTHAPURAM-35.

***ADDL.R22 IS IMPEADED AS PER ORDER DATED 13.08.2013 IN
IA 10384/2013.**

***ADDL.R23 IMPEADED**

Addl.R23.P.SATHEESAN NAIR,S/O.S.PADMANABHA PILLAI,
RESIDING CHAITHRAM,MAVARTHALAKANAM,
VALLUNNI LANE,MEDICAL COLLEGE.P.O.
THIRUVANANTHAPURAM.

***ADDL. R23 IS IMPEADED AS PER ORDER DATED 07/02/2014 IN
IA 1637/2014.**

**R1 & R2 BY ADV. SRI.TOM K.THOMAS, SC KERALA KHADI VILLAGE
INDUSTRIES
R3,R4,R12,R16 BY ADV.SRI.K.P.RAJEEVAN**

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**R5,R 7,R 14,R 15,R 19 BY ADV. SRI.K.S.MANU (PUNUKKONNOOR)
R6 ,R8 & R11 BY ADV.SRI.K.P.HARISH
R10,R13,R17 & 18 BY DR.K.P.SATHEESAN (SENIOR ADVOCATE.)**

**ADVS.SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR**

**ADDL.R20,R21 BY SRI.K.RAMAKUMAR (SENIOR ADVOCATE.)
ADVS.SRI.S.M.PRASANTH
SMT.SMITHA GEORGE**

**ADDL BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
ADDL BY ADV. SMT.N.SANTHA
ADDL BY ADV. SRI.K.A.BALAN
ADDL BY ADV. SRI.PETER JOSE CHRISTO
ADDL BY ADV. SRI.S.A.ANAND
ADDL BY ADV. SMT.LAMMU PILLAI
ADDL.R23 BY ADV.SRI.G.SANTHOSH KUMAR (P).
BY SRI.R.S.HARI KUMAR ,SC,KERALA KHADI AND VILLAGE**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-03-2015, ALONG WITH W.P(C) NO.26470/2014 THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

pk

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1:TRUE COPY OF JUDGMENT DATED 20.1.2011 IN W.P(C) 2004/2011
PASSED BY THIS HONOURABLE COURT.
- EXT.P2:TRUE COPY OF PROCEEDINGS KB 5170/10/EIA DATED 25.7.2011 ISSUED
BY 2ND RESPONDENT.
- EXT.P3:TRUE COPY OF 2ND REPRESENTATION DATED 9.6.2011 SUBMITTED BY
THE 4TH PETITIONER.
- EXT.P4:TRUE COPY OF ORDER NO.KB.601/10/E1(A) AND KB/2059/10E1(A)
THIRUVANANTHAPURAM 8.12.2010 OF THE 2ND RESPONDENT.
- EXT.P5:TRUE COPY OF CIRCULAR NO.10267/RULES-187/P & ARD
DATED 9.11.1987.
- EXT.P6:TRUE COPY OF JUDGMENT DATED 10.10.2007 OF THIS HONOURABLE
COURT IN WRIT APPEAL NO.2353/07.
- EXT.P7:TRUE COPY OF JUDGMENT DATED 23.5.2008 OF THIS HONOURABLE
COURT IN WRIT APPEAL NO.1024/2008.
- EXT.P8:TRUE COPY OF AUDIT OBJECTION DATED 26.3.2012 ISSUED BY THE
AUDIT DEPARTMENT OF THE 1ST RESPONDENT.
- EXT.P9:TRUE COPY OF PROMOTION ORDER OF THE RESPONDENTS 3 TO 19
NO.KB/12439/2007/E1(A) DATED 1.1.2008.
- EXT.P10:TRUE COPY OF PROMOTION ORDER NO,KB 12439/07/E1 (A)
DATED 7.11.2008.
- EXT.P11:TRUE COPY OF ORDER NO.KB/5837/2007/E1(A)(3) DATED 31.3.2011.
- EXT.P12:TRUE COPY OF ORDER NO.KB/5837/2007/E1(A) (2) DATED 31.3.2011.
- EXT.P13:TRUE COPY OF ORDER NO.KB-1066/2014/E1(A) DATED 4.2.2014 ISSUED
BY THE RESPONDENT KHADI BOARD AND ITS ENGLISH TRANSLATION.
- EXT.P14:TRUE COPY OF THE PROCEEDINGS NO.KB 1066/2014/E1A
DATED 22.9.2014 ISSUED BY THE RESPONDENT KHADI BOARD.
- EXT.P15:TRUE COPY OF ORDER DATED 24.9.2014 OF THE HONOURABLE COURT
IN CONT.CASE (CIVIL)195/2014.
- EXT.P16:TRUE COPY OF PROCEEDINGS NO.KB 1066/2014/E1(A)/1
DATED 25.9.2014 ISSUED BY THE RESPONDENT KHADI BOARD.
- EXT.P17:TRUE COPY OF PROCEEDINGS NO.1066/2014/E1(A)/II DATED 25.9.2014
ISSUED BY THE RESPONDENT KHADI BOARD.

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EXT.P13 IN IA NO.10181/2013

**EXT.P13:TRUE COPY OF RELEVANT PAGES OF PROVISIONAL COMBINED
SENIORITY LIST OF VILLAGE INDUSTRIES OFFICERS AND IDENTICAL
POSTS AS ON 1.5.2013.**

RESPONDENT'S EXHIBITS:

EXT.R1(a):TRUE COPY OF JUDGMENT IN W.P(C) NO.17896/2007 DATED 12.6.2007.

EXT.R1(b):TRUE COPY OF THE BOARD RESOLUTION.

**EXT.R1(c):TRUE COPY OF THE DRAFT AMENDMENT TO THE KERALA PUBLIC
SERVICE COMMISSION FOR FINALIZATION.**

**EXT.R6(a):THE TRUE COPY OF THE PROCEEDINGS NO.KB/5837/2007/E1(4)
DATED 31.3.011 OF THE 2ND RESPONDENT.**

**EXT.R6(b):THE TRUE COPY OF THE PROCEEDINGS NO.KB/12439/07/E1 (A)
DATED 6.4.2010 OF THE 2ND RESPONDENT.**

**EXT.R6(c):THE TRUE COPY OF THE SELECT LIST PREPARED BY THE STAFF
SELECTION COMMITTEE IN ITS MEETING HELD ON 18.2.2011.**

**EXT.13(a):TRUE COPY OF THE PROPOSED AMENDMENT WITH COVER LETTER
ADDRESSED TO THE SECRETARY,KERALA PUBLIC SERVICE
COMMISSION DATED 7.10.2014.**

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 19099 of 2012

and

W.P.(C) No.26470 of 2014

Dated this the 5th day of March, 2015

J U D G M E N T

The petitioners 1 and 2 in W.P(C) No.19099 are working as Project Officers in Khadi Village Industries. They are seeking a promotion to the post of Project Officer/Deputy/Directors. This matter is pertaining to the promotion of the petitioners therein. Along with this writ petition an interim relief was sought for restraining respondents 1 and 2 from effecting further promotion of unqualified incumbents to the post of Project Officer/Deputy Director/Director in the 1st respondent Board. This court granted interim order dated 18.12.2012 restraining the Board to promote the unqualified hands. Subsequently this was clarified by Interim order dated 5.3.2013 to the effect that this will not affect qualified hands being promoted.

2. The petitioners in writ petition No. 26470 of 2014 was promoted by Ext.P5 therein. Their promotion was cancelled as

per Ext.P7 proceedings pursuant to a contempt proceedings initiated by the petitioner in W.P.(C) 19099 of 2014. Ext.P6 order says, that the order promoting the petitioners in W.P.(C) No.26470 have been recalled. The party respondents says that they all are entitled for promotion and they have sufficient qualification to promote. Some of them would say that they have exemption from test qualification. The petitioner in W.P. (C) No.26470 of 2014 also submits that they are also entitled for exemption.

3. Going by the nature of order passed in W.P.(C) No.26470 of 2014, I am of the view that the order is unsustainable in law, in as much as this was passed without adverting to the qualification of the petitioner therein. Ext.P7 proceedings have been issued pursuant to contempt proceedings initiated by the petitioner in W.P.(C) No.19099 of 2014. This Court did not pass any interim order in contempt proceedings to annul the promotion given to the petitioner, nor it found that the petitioner herein was unfit for promotion. No right of employee

can be interfered, without giving an opportunity of being heard. In that circumstances, I am of the view that Ext.P7 in W.P.(C) No.26470 has to be set aside. Therefore, without giving an opportunity of hearing to the petitioner, the order of recalling promotion is unsustainable.

4. Essentially the dispute espoused in W.P.(C) No.19099 of 2012 is with regard to qualification of the party respondents for considering their eligibility of promotion. This exercise has to be done by the employer itself after advertizing to the objection of the petitioner. The learned counsel Adv.Sri.Ramesan Nambisan for petitioners in W.P.(C) No.19099 of 2012 by reference in W.A.No. 2353/2007 and W.A No.1024 of 2008 and submits that this Court accorded an interpretation for a Regulation for 9 (ab) of the Kerala Khadi and Village Industries Board (Classification and Condition and Recruitment of Staff) Regulations 2006. It is submitted that in the light of the above, only the petitioners in W.P.(C) No.19099 of 2012 alone are eligible to be promoted as Project Officers/Deputy Directors. It is submitted that

overlooking these legal position as declared by this Court, the impugned orders have been issued.

5. The Learned counsel for the contesting respondents would submit that, that judgment in writ appeal has noting to do with claim of each individual respondents. That judgment was rendered in different context. It is submitted that there are three test qualification as prescribed. 1) a pass in S.S.L.C. Or equivalent (2) Account Test (Higher) and (3) experience - a minimum service of 10 years under the Board.

6. I am of the view that individual merit of each of the respondents and petitioners for promotion has to adverted to by primary authorities itself. This has to be adverted by the staff selection committee as contemplated in Regulation 25. Whether the petitioners alone are eligible or not or the respondents are not eligible for promotion have to be adverted by the staff selection committee. The petitioners are free to raise their objection before the selection committee on individual merit of each of the respondents. Thereafter, the staff selection

committee shall take a decision within a period on month after hearing the petitioners and party respondents within a period of six weeks. If any objection has to be raised against the individual respondents that has to be submitted within a period of two weeks from the date of receipt of a copy of this judgment. Thereafter based on the decision of the staff selection committee, the eligible candidates has to be promoted in accordance with the Regulation. Necessarily the judgment referred as above by the petitioner in W.P.(C) No.19099 of 2012 shall also be adverted before taking a decision. Till a decision is taken in this matter, all vacancies of project officer shall be kept vacant. The vacancy shall be filled only based on the decision of the selection committee.

These writ petitions are disposed of as above.

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/