

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

W.P.(C).No.23217 of 2007 (L)

PETITIONER(S):-

P.RAJEEV,
SUPERVISOR, MOTEL ARAM,
VAIKOM.

BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE.

RESPONDENT(S):-

1. THE KERALA TOURISM DEVELOPMENT CORPORATION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
MASCOT SQUARE, P.B. NO.5425,
THIRUVANANTHAPURAM.
2. THE CHAIRMAN,
KERALA TOURISM DEVELOPMENT CORPORATION LTD.,
THIRUVANANTHAPURAM.

R1 & R2 BY STANDING COUNSEL SRI.P.A.AHAMED.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

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| EXT.P1 | TRUE COPY OF ORDER DATED 15.6.1991 OF THE MANAGING DIRECTOR, K.T.D.C. LTD. |
| EXT.P2 | TRUE COPY OF ORDER DATED 29.6.1991 OF THE MANAGING DIRECTOR, KTDC. |
| EXT.P3 | TRUE COPY OF ORDER DATED 16.10.1993 OF THE MANAGING DIRECTOR, KTDC. |
| EXT.P4 | TRUE COPY OF THE ORDER DATED 7.8.1996 OF THE MANAGING DIRECTOR, KTDC. |
| EXT.P5 | TRUE COPY OF REPRESENTATION DATED 16.12.2000 FROM THE PETITIONER BEFORE 2ND RESPONDENT. |
| EXT.P6 | TRUE COPY OF JUDGMENT IN W.P.(C).NO.34350 OF 2004-L DATED 10.12.2004. |
| EXT.P7 | TRUE COPY OF DECISION TAKEN BY KTDC DATED 15.02.2005 ISSUED TO PETITIONER. |
| EXT.P8 | TRUE COPY OF REPRESENTATION FROM THE PETITIONER BEFORE THE MANAGING DIRECTOR, KTDC. |
| EXT.P9 | TRUE COPY OF THE ORDER DATED 28.6.2007 OF THE MANAGING DIRECTOR, KTDC. |
| EXT.P10 | TRUE COPY OF ORDER INVITING APPLICATION FOR DIRECT RECRUITMENT, BY MANAGING DIRECTOR, KTDC. |
| EXT.P11 | TRUE COPY OF ORDER DATED 20.07.2005 OF THE MANAGING DIRECTOR, KERALA TOURISM DEVELOPMENT CORPORATION LIMITED. |
| EXT.P12 | TRUE COPY OF ORDER DATED 27.06.2001 OF THE MANAGING DIRECTOR, KERALA TOURISM DEVELOPMENT CORPORATION LIMITED. |
| EXT.P13 | TRUE COPY OF CIRCULAR DATED 18.10.2010 WITH THE PROVISIONAL SENIORITY LIST. |
| EXT.P14 | TRUE COPY OF OBJECTION DATED 13.11.2010. |

RESPONDENT'S EXHIBITS:-

EXT.R1(a) TRUE COPY OF THE ORDER NO.KTDC/PA(3)/43/07
DATED 6.11.2007.

EXT.R1(b) TRUE COPY OF THE RESOLUTION NO.5223 IN THE MEETING
OF THE BOARD OF DIRECTORS HELD ON 2.12.06 AND NOTE
TO BOARD.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.23217 of 2007-L

Dated this the 14th day of September, 2015

JUDGMENT

The petitioner seeks retrospective promotion in the cadre of Supervisor and also in the cadre of Manager.

2. The first contention is based on a selection conducted, evidenced at Exhibit P1. The petitioner, who was appointed as a Receptionist on 03.08.1980 in the respondent-Corporation, was selected as a Supervisor and was also deputed for training of two weeks as per order dated 15.06.1991. The training was to commence on 18.06.1991 and was for a period of two weeks. The petitioner, immediately after the training was completed; was reverted as per Exhibit P2.

3. The reversion was due to an interim order passed by this Court in a writ petition, which challenged the promotion of the petitioner along with 14 others. The petitioner has not challenged Exhibit P2; but, however, the writ petition was subsequently dismissed and a Writ Appeal was filed, and the

same stood dismissed in the year 1993; when Exhibit P3 order was passed by the respondent-Corporation, by which the petitioner along with the others earlier promoted were appointed as Supervisors. The petitioner's claim is that, the petitioner ought to have been granted promotion with effect from the date on which the writ petition was dismissed, i.e., 16.09.1991.

4. It is pertinent to note that the petitioner neither challenged Exhibit P2 before this Court; nor sought for an appointment on the dismissal of the writ petition. The petitioner also, after Exhibit P3 on 16.10.1993, did not, at any point of time, raise any claim for retrospective promotion from the date of dismissal of the writ petition. The petitioner in the year 2007 by the instant writ petition raised the above claim along with a claim for retrospective promotion in the post of Manager. The claim for retrospective promotion to the post of Supervisor is hit by gross delay and the same is negatived.

5. The next question is with respect to the retrospective promotion to the post of Manager. The petitioner, admittedly, was promoted as a Supervisor in 1993 and his entitlement to be considered for promotion to the post of

Manager would arise only after completion of eight years, as has been provided in the Recruitment Rules of the Corporation. The petitioner contends that, by Exhibit P4 there is also a ratio of 1:3 prescribed for direct appointment, for promotion to the post of Manager, which was not followed by the respondent-Corporation. Again it is to be noticed that the petitioner at no point of time after his alleged entitlement in 2001, sought for a promotion to the higher post; nor for consideration of his claim as per Exhibit P4 ratio fixed.

6. In the year 2004 the petitioner filed W.P.(C). No.34350 of 2004 along with three others, who also had a similar claim. The claim of the petitioners were directed to be considered as per Exhibit P6 judgment. The claims stood rejected as per Exhibit P7, which is dated 15.02.2005, in which it was ordered that the 1/3rd ratio applicable to the promoted would be followed scrupulously. The petitioner, by the above writ petition of the year 2007, contended that despite Exhibit P7 the ratio is not being followed. In such circumstance, this Court by the interim order dated 30.07.2007 directed that the ratio in Exhibit P7 shall be scrupulously followed.

7. The petitioner was promoted to the post of Manager by Exhibit R1(a) during the pendency of the writ petition. The petitioner contends that the ratio having not been followed earlier, the petitioner is entitled to be given promotion, with retrospective effect, above the direct recruitees appointed in violation of the ratio. However, none of the direct recruitees, even in a representative capacity, have been impleaded in the writ petition. It is also not clear as to when such appointments were made. The petitioner's claim for retrospective promotion cannot also be countenanced, since the petitioner has not thought it fit to approach this Court when the entitlement arose. The petitioner's claim for retrospective promotion from 2001 is urged in the writ petition filed in 2007.

For all the above reasons, the writ petition is found to be devoid of merit and the same is, accordingly, dismissed. Parties are left to suffer their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]