

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 19882 of 2013 (I)

PETITIONER(S):

1. **P.T.AUGUSTINE, AGED 57 YEARS,
S/O.THOMAS P.G, PAZHAMPILLY HOUSE, OLANADU P.O.,
VARAPUZHA - 6835 17.**
2. **BALAKRISHNAN NAIR P., AGED 56 YEARS
S/O.LATE GOPALAN NAIR, AMBADY HOUSE, KAKKODI POST
KOZHIKODE - 673 611.**
3. **GIRISH BABU, AGED 57 YEARS,
S/O.LATE SANTHOSH GOVIND, SREEGOVIND,
CHODOPARAMBIL HOUSE, P.O ALAVI, KANNUR - 670 008.**
4. **P.V. GEORGE, AGED 54 YEARS,
S/O.OUSEPH VARKEY, POOVATHUKUNNEL, KUSUMAGIRI,
KAKKANAD, KOCHI 682 030.**
5. **K.N. MANOJ, AGED 54 YEARS,
S/O.LATE NATESHAN, KOLLAMPARAMBIL HOUSE,
KADUNGALLOOR P.O, ALWAYS.**
6. **K.P. AJITHKUMAR, AGED 54 YEARS,
S/O.PARAMESWARAN NAIR, TULASIDALAM, KANJOOR P.O.,
ERNAKULAM 683 575.**
7. **VINAYARAJAN, AGED 57 YEARS,
S/O.SREEDHARAN, AVITTOM, CHEKKALAMUKKU,
SREEKARIYAM P.O., TRIVANDRUM 695 018.**
8. **K.K. KRISHNAPILLAI, AGED 57 YEARS,
S/O.LATE KUNJAN PILLAI, KUZHUVELISARAS,
NORTH MYNAGAPPILLY, KARUNAGAPPALLY, KOLLAM 690 519.**
9. **K.A. CHERIAN, AGED 53 YEARS,
S/O.K.A ABRAHAM, OORAMVELIL HOUSE, PANDANKARY P.O.,
EDATHUA 689 573.**

mnsv/

WP(C).No. 19882 of 2013 (I)

10. JOSE ANTONY, AGED 58 YEARS,
S/O.JOSEPH ANTONY, KIZHAKKEKALLOPARAMBIL HOUSE,
PANDANKERY P.O, EDATHUA 689 573.

11. T.B. MURALIDHARAN, AGED 54 YEARS,
S/O.LATE BHASKARANN NAIR T.G, THOZHELI HOUSE,
OKKAL P.O., ERNAKULAM 683 550.

BY ADVS.SRI.MATHEW SEBASTIAN
SRI.E.N.VISHNU NAMBOODIRI

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM 695 001.

2. KERALA STATE CONSTRUCTION CORPORATION LTD.,
REPRESENTED BY THE MANAGING DIRECTOR,
POST BOX NO 30/1521-A, NORTHERN SIDE OF RAILWAY,
PONNURUNNI, VYTILA, KOCHI 682 019.

R1 BY SENIOR GOVERNMENT PLEADER SRI.R.PADMARAJ
R2 BY ADV.SRI.M.V.THAMBAN, SC.,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 TRUE COPY OF THE LETTER DATED 17-12-2002 BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.P2 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER DATED 15-05-2012 TO THE RESPONDENTS 1 & 2.

EXT.P3 TRUE COPY OF THE LETTER DATED 4-8-2012 OF THE FIRST RESPONDENT.

EXT.P4 TRUE COPY OF THE REPORT DATED 3-10-2012 OF THE 2ND RESPONDENT SUBMITTED TO THE 1ST RESPONDENT.

EXT.P5 TRUE COPY OF THE REMINDER DATED 1-1-2013 SENT BY 1ST PETITIONER TO THE 1ST RESPONDENT.

EXT.P6: TRUE COPY OF THE ORDER DTD.23.9.2013 OF THE 1ST RESPONDENT.

EXT.P7: TRUE COPY OF JUDGMENT DELIVERED IN OP.NO.210 OF 1988 DTD.8.1.1983.

EXT.P8: TRUE COPY OF RELEVANT PAGES OF THE JUDGMENT DELIVERED IN OP.NO.7113 OF 1988 DTD.3.10.1989.

EXT.P9: TRUE COPY OF ORDER NO.CC/OP/210/88/2509 DTD.6.7.1988 ISSUED BY THE 2ND RESPONDENT.

EXT.P10: TRUE COPY OF ORDER IN GO(MS)NO.8/98/PW DTD.7.1.1998 PUBLISHED BY THE RESPONDENT WITH SPECIAL RULES.

EXT.P11: TRUE COPY OF THE STATEMENT OF FIXATION OF PAY, PROMOTION AND HIGHER GRADE ISSUED BY RESPONDENTS IN THE CASE OF SRI.T.T.BABY.

EXT.P12: TRUE COPY OF REPRESENTATION SUBMITTED BY 4TH PETITIONER TO THE RESPONDENTS DTD.23.6.2015.

RESPONDENT(S)' EXHIBITS:

EXT.R1(a): THE TRUE EXTRACT OF THE 40TH MEETING OF THE BOARD OF DIRECTORS OF THE CORPORATION.

EXT.R1(b): TRUE COPY OF THE LETTER NO.13445/B1/2012/PWD DTD.23.9.2013.

//TRUE COPY//

P.S.TO JUDGE

A.M. SHAFFIQUE, J.

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W.P. (C) No. 19882 of 2013

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Dated this, the 29th day of October, 2015

J U D G M E N T

Petitioners challenge Ext.P6 by which their representation had been rejected by the Government. Their claim was that they entered service of the 2nd respondent as Attender/Watcher w.e.f. 1976. Their services were regularised w.e.f. 25/8/1978 as per Government letter dated 3/8/1985. They were promoted as Site Assistants/Typist Clerk/Driver as per order dated 4/6/1987 on a provisional basis. Though they were promoted, they were not granted higher grades on completion of the requisite years of service. Though representations were submitted, nothing has been done in the matter and ultimately by Ext.P6 dated 23/9/2013, the Government had rejected the representation on the ground that there were no rules for promoting the petitioners during the relevant time and the rules for recruitment and promotion of posts in the 2nd respondent had been approved only as per order dated 7/1/1998 in which the post of Site Assistant had to be made by “direct recruitment” only.

2. Counter affidavit has been filed by the 1st respondent *inter alia* stating that the 2nd respondent approved and finalised draft Special Rules to various posts in the 40th Board Meeting held on 27/2/1980. The extract of the minutes of the Board Meeting is produced as Ext.R1(a). As per resolution No.12 (A)(2) of the said minutes, various posts required at site included 24 posts of Site Assistants in which the qualification and method of recruitment was approved by the Board as per para (B) (4) therein. Para (B) (4) indicates that as far as Site Assistant is concerned, it can only be by “direct recruitment”. Further, it is indicated that rules for recruitment and promotion of posts in the 2nd respondent Corporation has been issued as per Government Order dated 7/1/1998 and in respect of appointment for the post of Site Assistant, it can be done only by direct recruitment. It is stated that petitioners were promoted during the year 1980 when there was no recruitment or promotion rules prevailing in the 2nd respondent. The promotion rules were finally approved by Government only in 1998 wherein there was no provision for promotion “by transfer”. Under such circumstances, it is contended that no right is available for the petitioners as claimed in the representations.

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3. Heard the learned counsel for the petitioners, learned Government Pleader appearing on behalf of the 1st respondent State as well as the learned standing counsel appearing for the 2nd respondent.

4. It is clear from the factual narration as stated above that petitioners' appointment to the promotion post was provisional especially when there was no rules prevailing in the 2nd respondent relating to promotion. The rules were finalised only in the year 1998. 1998 Rules clearly indicate that the post of Site Assistants should be filled up by direct recruitment. That apart, even according to the petitioners, their promotion was on provisional basis. Under such circumstances, there was justification on the part of the Government in denying the claim made by the petitioners and accordingly, I do not find any reason to interfere with Ext.P6.

Writ petition is, therefore, dismissed.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
30/10/2015

//True Copy//

P.S to Judge