

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 19421 of 2015 (C)

PETITIONER(S):

**1. C.J.JAYALAKSHMI,
JUNIOR ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
DISTRICT OFFICE, MEDICAL COLLEGE P.O.
THIRUVANANTHAPURAM-695 011.**

**2. P.S.SHEEJA
JUNIOR ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
HEAD OFFICE, VANCHIYUR P.O.
THIRUVANANTHAPURAM-695 035.**

**BY ADVS.SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND**

RESPONDENT(S):

**1. THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
BACKWARD CLASSES DEVELOPMENT (A)DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

**2. KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
HEAD OFFICE, VANCHIYUR P.O.
THIRUVANANTHAPURAM-695 035
REPRESENTED BY ITS MANAGING DIRECTOR.**

**3. KERALA PUBLIC SERVICE COMMISSION
PATTOM PALACE P.O., THIRUVANANTHAPURAM-695 004
REPRESENTED BY ITS SECRETARY.**

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**Addl.4. SINDHU P
JUNIOR PROJECT ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
DISTRICT OFFICE, CIVIL STATION WARD, HEAD POST OFFICE
ALAPPUZHA - 688 001.**

**Addl.5. NANDAKUMAR K.S
JUNIOR PROJECT ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
PALACE ROAD, THRISSUR - 680 020.**

**Addl.6. RAVEENDRAN K
JUNIOR PROJECT ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
DISTRICT OFFICE, VIKAS BUILDING, LINK ROAD
KOZHIKODE - 670 002.**

**Addl.7. MOHANAN N.M
JUNIOR PROJECT ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
DISTRICT OFFICE, MG ROAD, KASARGOD - 671 121.**

**Addl.8. SOJAN P.S.
JUNIOR PROJECT ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
DISTRICT OFFICE, CHERUTHONI, IDUKKI - 685 602.**

**Addl.9. SEBASTIAN C
JUNIOR PROJECT ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
DISTRICT OFFICE, SNDP YOGAM BUILDING
KOLLAM - 691 001.**

**Addl.10. PRABHAKARAN NAIR
JUNIOR PROJECT ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
DISTRICT OFFICE, MEDICAL COLLEGE PO.
THIRUVANANTHAPURAM - 695 011.**

**Addl.11. NIZAM A
JUNIOR PROJECT ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
DISTRICT OFFICE, SNDP YOGAM BUILDING
KOLLAM - 691 001.**

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**Addl.12. RAJESH KUMAR K.P
JUNIOR PROJECT ASSISTANT
KERALA STATE BACKWARD CLASSES DEVELOPMENT CORPORATION
DISTRICT OFFICE, ERAYILKADAVU, KOTTAYAM -686001.**

**(ADDL.R4 TO R12 ARE IMPEADED AS PER ORDER DATED 23.07.2015 IN
IA 10238/15)**

R2 BY ADV. SRI.JAYAPRADEEP. V, SC, KSBCDC

RADDL. 7 & 8 BY ADV. SRI.V.RAJENDRAN

R1 BY ADV. SPECIAL GOVERNMENT PLEADER SRI. C.K. JAYAKUMAR

R3 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

RADDL.7&8 BY ADV. KUM.ANJU CLETUS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-10-2015, ALONG WITH WPC. 27990/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P1 :** A COPY OF THE GOVERNMENT ORDER DTD.5.9.2014 ISSUED BY THE 1ST RESPONDENT.
- EXT.P2 :** A COPY OF THE RECRUITMENT (QUALIFICATION AND METHOD OF APPOINTMENT)RULES OF THE 2ND RESPONDENT WITH ANNEXURE.
- EXT.P3 :** A COPY OF THE ORDER DTD.11.3.2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P4 :** A COPY OF THE ORDER DTD.15.6.2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P5 :** A COPY OF THE REPRESENTATION DTD.18.5.2015 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P6 :** A COPY OF THE REPRESENTATION DTD.23.6.2015 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P7** COPY OF THE ORDER DTD.21.08.14 ISSUED BY THE 2ND RESPONDENT.
- EXT.P8** COPY OF THE LETTER DTD. 9.12.14 FROM THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS

- ANNEXURE R2(A)** COPY OF THE JUDGMENT IN OP NO.18184/2005 DTD. 8.7.05 OF THIS HON'BLE COURT.
- ANNEXURE R2(B)** COPY OF THE ORDER DTD. 10.4.15
- ANNEXURE R2(C)** COPY OF THE LETTER DTD. 16.3.15
- EXT.R4(A)** COPY OF THE JUDGMENT DTD. 8.7.05 IN W.P.(C) NO.18184 OF 2005 OF THIS HON'BLE COURT.

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**EXT.R6(A) COPY OF THE REPRESENTATION DTD. 15.07.05 SUBMITTED BY
THE PETITIONER TO 4TH RESPONDENT.**

EXT.R6(A) COPY OF THE ORDER DTD. 24.2.06 OF THE 2ND RESPONDENT.

EXT.R6(B) COPY OF THE ORDER DTD. 24.07.08 OF THE 2ND RESPONDENT

EXT.R6(C) COPY OF THE ORDER D T D. 13.10.08 OF THE 2ND RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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27990 of 2015 - W**

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Dated this the 16th day of October, 2015

J U D G M E N T

The disposal of W.P(C) No.19421 of 2015 would substantially decide the issue raised in W.P.(C) No. 27990 of 2015 also. Hence, the documents and averments in the former are referred to.

2. The petitioners are Junior Assistants appointed in the respondent Corporation on 22.06.2012. The 1st petitioner has a graduate Degree in Science and B.Ed and the 2nd petitioner has a Post Graduate Degree in Commerce. The petitioners were initially appointed as Junior Assistants in the respondent Corporation. The petitioners are aggrieved by the retrospective regularisation of the party respondents, who were allegedly continuing as temporary Junior Project Assistants in the

respondent Corporation. The challenge is made primarily because the retrospective regularisation made, going by the provisions of Clause 7 (e) of the Special Rules, would enable them to aspire for promotion to the post of Project Assistants, thus stealing a march over the petitioners, who are more qualified than the party respondents.

3. The party respondents were appointed initially as daily rated employees and were subsequently regularised in the post of Driver/Watchman/Peon etc. on 14.03.2001. The party respondents were before this Court long back seeking opening up of promotional avenues, in the organization. The request was directed to be considered by Ext.R2(a) judgment. Eventually, the petitioners were promoted as Junior Project Assistants by Ext.R6 (a) dated 24.02.2006. However, since Special Rules as in existence, at that point of time, did not have provision for such promotion; they were so promoted temporarily, relying on Rule 31(a) (1) and 9 (a) (1) of the Kerala State and Subordinate

Services Rules, 1958 (for brevity, 'K.S and S.S.R')

4. While they were continuing in the promoted post temporarily, their probations were declared and subsequently the same was revoked, only since they were promoted temporarily. Admittedly all these party respondents were working as Junior Project Assistants from the date of Ext.R6(a) ie. on 24.02.2006. The amendment to the Special Rules also was pending before the Government. In 2014, Ext.P1 Special Rules came into effect, the annexure of which is produced as Ext.P2, which specifically provided for by-transfer appointment to the post of Junior Project Assistants from qualified employees in the lower post. The Special Rules having provided so, the party respondents could be accommodated in the Junior Project Assistant posts at least from the date of Special Rules.

5. But on such regularisation, they would stand to lose the long service they had in the post of Junior Project Assistants, though temporary service. They also would be denied

the promotional avenue available to them as per the earlier Special Rules, since with Ext.P2; the promotion from the Junior Project Assistant was to the post of Junior Assistant, the post now held by the petitioners herein.

6. As per the earlier Special Rules of 1997, admittedly the Junior Project Assistants could aspire for promotion to the post of Project Assistants. In fact as per the earlier Special Rules, there was an amount of equation between the post of Junior Project Assistant and the Junior Assistant, since the promotion post of Junior Assistant was to Senior Assistant and that of Junior Project Assistant to the Project Assistant. Project Assistant and Senior Assistant was the common feeder category to the post of Assistant Manager.

7. In any event, the Corporation quite conscious of the said fact, by clause 7 (e) of the Special Rules (Ext.P2) provides that if any of the employees, who were already in the service of the Corporation on the day on which the Special Rules came into

force, who were eligible for promotion as per the earlier rules and the same having been declined in the present dispensation, would be entitled for such promotion as per the earlier Special Rules.

8. However, there was a further difficulty insofar as the party respondents were continued temporarily and there had to be a regularisation in the post of Junior Project Assistants. That was what was attempted by Exts.P3 and P4. Ext.P3 need not be referred to since, there was a factual error and Ext.P4 is the final order of exemption passed under Rule 39 of K.S and S.S.R.

9. The learned Counsel for the petitioner would contend that as per Rule 31 (a) (1) of the K.S and S.S.R, it is provided that a person could be promoted temporarily to a post by reason only of emergent public interest and clause (d) specifically provides that the period spent on such temporary appointment cannot be considered as period of probation in the higher grade. Only when such regularisation is made in the

higher category, the probation in the higher category would commence as is indicated in Rule 7(e) of the Special Rules. The said contention is raised to buttress the contention that proviso to Rule 39 of K.S and S.S.R specifically mandates that such exemption granted shall not affect any one prejudicially and the exemption granted would affect the petitioners prejudicially.

10. Prima faice this Court is unable to countenance the interpretation placed on the proviso to Rule 39 of K.S and S.S.R. However, that need not be gone into since the petitioners' contention that the regularisation of the party respondents prejudices them cannot be countenanced. By virtue of clause 7(e) of the Special Rules, the Junior Project Assistants, as on the date of introduction of Exts.P1 and P2 would retain their right of promotion to the post of Project Assistants as per the earlier Special Rules. Though the earlier Special Rules provide for a specific period of experience for each cadre, the new Special Rules does not provide for such an experience. Then necessarily,

the senior would have to be considered first for promotion.

11. The apprehension of the petitioners is that by the regularisation from the date of Ext.R6(a), the party respondents would steal a march over them, since they would be deemed to have been promoted to the post of Junior Project Assistant from 2006 onwards. The contention would be justified if the Junior Project Assistant and Junior Assistants from a combined feeder category. As per the Special Rules, Junior Assistant is the feeder category to the post of Assistant Managers. The Junior Assistant is a higher post than that of Junior Project Assistant. By clause 7 (e), the Junior Project Assistant in the service of the Corporation at the time of introduction of the Special Rules were retained their promotional avenue, which they had as per the earlier Special Rules.

12. The apprehension is misplaced since admittedly, the petitioners are in the higher post of Junior Assistant with a higher scale of pay. Hence in determining seniority for the

purpose of promotion to the post of Project Assistants as per the Special Rules and even as per the reservation made in favour of the Junior Project Assistants, entitled to be promoted on the basis of the earlier Special Rules, necessarily, the petitioners or any other Junior Assistant in employment at the time of Ext.P2, would have to be placed at the senior position for reason of the position in the higher post, drawing a higher scale of pay. In such circumstance, this Court is of the opinion that the petitioners challenge to the retrospective regularisation and exemption granted need not be considered, since, it does not in any manner prejudice them.

13. W.P.(C) No. 27990 of 2015 is filed by one of the party respondents in the other writ petition seeking declaration of probation and consideration of their promotion in the light of Rule 7(e) of the Special Rules. Necessarily the respondent Corporation would immediately consider the declaration of probation and consideration for promotion would be in

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accordance with the directions issued herein above in the other writ petition. The consideration so directed, definitely cannot be confined to Junior Project Assistants alone and the Junior Assistants also ought to be considered as directed herein above. The respondent Corporation would expeditiously consider the issue.

In the result, the writ petitions would stand disposed of with the above observations.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/17 /10 /2015

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P.A to Judge.