

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 23389 of 2008 (H)

PETITIONER :

ALL INDIA RUBBER BOARD EMPLOYEES ORGANIZATION, AZAD LANE,
KOTTAYAM, REPRESENTED BY ITS GENERAL SECRETARY,
(K.G.SREEKUMAR, SECTION OFFICER, R.I.DIVISION,
RUBBER BOARD, KOTTAYAM-2.)

BY ADV. SRI.T.C.GOVINDA SWAMY

RESPONDENTS :

1. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF COMMERCE AND INDUSTRY, GOVT.OF INDIA,
UDYOG BHAVAN, NEW DELHI-110011.
2. THE RUBBER BOARD REPRESENTED BY ITS CHAIRMAN,
RUBBER ROAD, KEEZHUKUNNU, KOTTAYAM-686 002.
3. RUBBER BOARD STENOGRAPHERS GUILD REPRESENTED ITS GENERAL
SECRETARY SRI.K.A.ANTONY, (STENOGRAPHER GD.II, RUBBER BOARD HEAD
QUARTERS, KEEZHUKUNNU.P.O, KOTTAYAM-686 002.
4. THANKAMMAL.R, THANKOM JYOTHI, NEDUVELI VILLAGE,
PADINJAREKKARA, KOCHUKAVALA, VAIKOM-PO, KOTTAYAM - 686 142.
5. SALY.K.C, PULLOLICKAL HOUSE, PUTHUPPALLY, P.O, KOTTAYAM 686011.
6. ANANDAVALLY.V.R, KOLLAMPARAMBIL,
MUTTAMPALAM VILLAGE, NAGAMPADOM.P.O, KOTTAYAM -686 011.
7. KALA.K.G, KALA SADANAM, RUBY NAGAR,
MANGANAM.P.O, KOTTAYAM-686018.
8. PHILOMINA THOMAS, PATHINANCHIL PARAMBIL,
VILLOONNI.P.O, ARPOOKARA, KOTTAYAM-686 008.
9. DHANALAKSHMI AMMAL, N,KOLLASSERIL,
PUTHENMADOM, NEAR UNION CLUB, KOTTAYAM-686001.
10. ALEYAMMA VARGHESE, KALAPPURAKUNNEL HOUSE,
VELLOOR.P.O, KOTTAYAM-686 501.
11. A.N.RAJALEKSHMI, DEEPANJALI, RUBY NAGAR,
MANGANAM.P.O, KOTTAYAM 686 018.

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12. SARALA.P.NAIR, BHARGAVI BHAVAN, KILIROOR,
NORTH.P.O, KOTTAYAM 686 020.
13. P.VALSALAKUMARI, SREEVALSAM, MUNDENCAVU,
CHENGANNOOR, ALAPPUZHA - 688 004.
14. E A CHACKO, ELAKODINJIYIL HOUSE,
SOUTH PAMPADI.P.O, KOTTAYAM-686 521.
15. PRABIN RABHA, VILL:GOPCHANCHUBA,
PO;MALMURA, VIA:KHAIRABARI, DIST:UDALGURI
ASSAM - 784 522.

R1 BY ADVS. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 BY ADVS. SRI.V.ABRAHAM MARKOS, SC, RUBBER BOARD
SRI.JOSEPH KODIANTHARA (SR.)
SRI.TERRY V.JAMES
R3 TO 15 BY ADV. SRI.KALEESWARAM RAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE RECRUITMENT RULES FOR THE POSTS OF JUNIOR ASSISTANT, JUNIOR ASSISTANT GD.I, AND ASSISTANT

EXT.P1A : COPY OF THE RECRUITMENT RULES FOR THE POSTS OF STENOGRAPHER GD.II, STENOGRAPHER GD.I, PERSONAL ASSISTANT AND PS TO CHAIRMAN.

EXT.P2 : COPY OF THE RECRUITMENT RULES FOR THE POST OF SECTION OFFICER

EXT.P3 : COPY OF PARA 6.13, 6.14 AND 9.07 OF THE MANUAL OF GENERAL PROCEDURE

EXT.P3A : COPY OF OFFICE NOTE NO 1/5/1/94/EST DATED 2/5/1994 IN RESPECT OF ADMINISTRATION AND ESTABLISHMENT

EXT.P3B : COPY OF OFFICE NOTE NO 3/12/2001/RPD DATED 2/07/2001 IN RESPECT OF RP DEPARTMENT OF RUBBER BOARD

EXT.P3C : COPY OF SECTIONAL ORDER NO.3/10/97/ED DATED 6/1/1997 IN RESPECT OF EXCISE DUTY SECTION

EXT.P3D : COPY OF MEMORANDUM NO.3/2003-04/MID DATED 14/10/2003 IN RESPECT OF MARKET INTELLIGENCE DIVISION

EXT.P4 : COPY OF MEMORANDUM NO.3/23/2(3)/96/EST DATED 4/03/1996 ISSUED TO SRI.GOPALAKRISHNAN A, JR.ASSISTANT

EXT.P5A : COPY OF MEMORANDUM NO.3/23/1(2)/2005/EST DATED 28/03/2005 PROMOTING SMT.R.THANKAMMAL, PERSONAL ASSISTANT TO THE POST OF SECTION OFFICER

EXT.P5B : COPY OF OFFICE MEMORANDUM NO.3/23/2/2005/EST DATED 20/9/2005 PROMOTING K.C.SALY, PERSONAL ASSISTANT TO THE POST OF SECTION OFFICER

EXT.P5C : COPY OF OFFICE MEMORANDUM NO.3/23/1(1&2)/2005/EST DATED 29/11/2005 PROMOTING VR ANANDAVALLY, PERSONAL ASSISTANT TO THE POST OF SECTION OFFICER

EXT.P5D : COPY OF OFFICE MEMORANDUM NO.3/23/1(1&2)/2006/EST DATED 01/03/2006 PROMOTING KG KALA, PERSONAL ASSISTANT TO THE POST OF SECTION OFFICER

EXT.P5E : COPY OF OFFICE MEMORANDUM NO.3/23/1(1&2)/2006/EST DATED 07/03/2006 PROMOTING PHILOMINA THOMAS, PERSONAL ASSISTANT TO THE POST OF SECTION OFFICER

EXT.P5F : COPY OF OFFICE MEMORANDUM NO.3/23/1(1&2)/2006/EST DATED 15/5/2006 PROMOTING N DHANALAKSHMI AMMAL, PERSONAL ASSISTANT TO THE POST OF SECTION OFFICER

EXT.P5G : COPY OF OFFICE MEMORANDUM NO.3/23/1(1&2)/2006/EST DATED 01/12/2006 PROMOTING ALEYAMMA VARGHESE AND AN RAJALAKSHMI, PERSONAL ASSISTANTS TO THE POST OF SECTION OFFICER

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EXT.P5H : COPY OF OFFICE MEMORANDUM NO.3/23/1(1&2)/2006/EST DATED 04/12/2006
PROMOTING SARALA P NAIR, PERSONAL ASSISTANT TO THE POST OF SECTION OFFICER

EXT.P5I : COPY OF OFFICE MEMORANDUM NO.3/23/1(2)/2005/EST DATED 23/9/2005
PROMOTING P VALSALA KUMARI AND EA CHACKO, STENOGRAPHERS GD.I TO THE POST
OF SECTION OFFICER

EXT.P5J : COPY OF OFFICE MEMORANDUM NO.3/23/1(1&2)/2005/EST DATED 12/12/2005
PROMOTING PRABIN RABHA, PERSONAL ASSISTANT TO THE POST OF SECTION OFFICER

EXT.P6 : COPY OF THE JUDGMENT DATED 26/10/2007 OF THIS HON'BLE COURT IN WP(C)
NO.191 OF 2005

EXT.P7 : COPY OF LETTER NO.F-23014/5/92-E-III DATED 25/08/1992 OF THE 1ST
RESPONDENT (ILLEGIBLE)

EXT.P7A : COPY OF OFFICE MEMORANDUM NO.AB 14017/53/2005-ESTT (RR) DATED
17/02/2006 OF THE 1ST RESPONDENT

EXT.P8 : COPY OF THE JUDGMENT DATED 22/01/2008 OF THIS HON'BLE COURT IN WPC
NO.196 OF 2008

EXT.P9 : COPY OF THE REPRESENTATION NO.CH/5/AIRBEO/2008 DATED 13/2/2008 OF THE
PETITIONER-UNION

EXT.P10 : COPY OF ORDER NO.3/23/2008/EST DATED 24/07/2008 OF THE 2ND RESPONDENT
-BOARD

EXT.P11 : COPY OF LETTER DATED 17.06.2010 OF THE PETITIONER'S COUNSEL FILED
UNDER RIGHT TO INFORMATION ACT, 2005 BEFORE THE 1ST RESPONDENT

EXT.P12 : COPY OF THE LETTER F.NO.R-17(1)2010-RTI DATED 24TH JUNE 2010 OF THE 1ST
RESPONDENT

EXT.P13 : COPY OF LETTER F NO.8/8/2007 - PLANT (C) DATED 16.07.2010 OF THE 1ST
RESPONDENT SENT TO THE COUNSEL FOR THE PETITIONER UNDER RTI ACT, 2005.

RESPONDENTS' EXHIBITS :

EXT.R2(a) : COPY OF REVISED RECRUITMENT RULES AND MINUTES OF THE STAFF
AFFAIRS COMMITTEE AND BOARD MEETINGS WERE SENT TO THE DEPARTMENT OF
COMMERCE VIDE LETTER NO.3/23/2009/EST DATED 2.7.2010

/TRUE COPY/

PA TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.23389 of 2008

Dated this the 9th day of March, 2015

J U D G M E N T

The petitioner, an association of the ministerial staff of the Rubber Board has filed this writ petition challenging Exts.P2, P5 and P10. Ext.P2 is the Recruitment Rules for the post of Section Officer. Ext.P5 are the consequential promotion orders issued on the basis of Ext.P2. Ext.P10 is an order passed by the Chairman of the Rubber Board considering the contentions of the petitioner, pursuant to a direction issued by this Court as per judgment dated 22.01.2008 in W.P.(C).No.196/2008. The petitioner challenges the action of the 2nd respondent in clubbing the posts of Stenographers and Assistants (clerical staff) for promotion to the post of Section Officer. The contention is that, Stenographers and Assistants form different cadres, discharging different duties and having different channels of promotion. Therefore, by clubbing the two posts, the 2nd respondent has treated unequals equally in violation of Article 14 of the Constitution.

2. The 2nd respondent is governed by the provisions of the Rubber Act, 1947 (hereinafter referred to as 'the Act' for short). Section 25 of the Act confers the power to make rules on the Central Government. In exercise of the said power, Rubber Board Service (Recruitment) Rules, 1961 (hereinafter referred to as 'the Rules' for short) was framed. It is the provisions of the said Rules that govern

the service under the 2nd respondent. Rule 12 of the Rules provides as follows:

12. Other conditions of service.- The conditions of service of the members of the Service in respect of matters for which no provision is made in these rules, except the retirement benefits, shall be the same as are for the time being applicable to officers of the Government of India of corresponding category.

As per the above Rule, where no provision is made regarding the conditions of service of any post, the Rules applicable to similar posts under the Government of India shall be applicable. Therefore, upon the creation of a new post, if no Rules are framed regarding appointment or promotion to the said post, it is the Rule framed by the Central Government for the similar posts that should govern. However, instead of abiding by the mandate of Rule 12, when the post of Section Officer was created, the 2nd respondent has, according to the petitioner, framed Ext.P2 Recruitment Rules clubbing the post of an Assistant (clerk) with that of a Stenographer to form a common cadre. This according to the petitioner, is violative of Article 14 of the Constitution. It is also contended that, Ext.P2 being an administrative order cannot amend or modify the Service Rules of 1961, framed in exercise of the legislative power.

3. Aggrieved by the provision in Ext.P2, entitling the Stenographer Grade-I also to be promoted as Section Officer along with an Assistant, the petitioner had approached this Court by filing O.P.No.191/2005. The

said petition was dismissed relegating the petitioner to the remedy of pursuing the matter with the 2nd respondent. Thereafter, the petitioner again approached this Court by filing W.P.(C).No.196/2008. The said writ petition was disposed of by Ext.P8 judgment directing the 2nd respondent to review the existing Rules in accordance with the directions of the Central Government contained in Exts.P7 and P7(a) and to pass final orders on the claims of the petitioner. Accordingly, the matter was considered and Ext.P10 order has been passed rejecting the contentions of the petitioner. It is in the above circumstances that the petitioner has approached this Court by filing the present writ petition.

4. According to Adv.Sri.T.R.Mohankumar who appears for the petitioner, the Service Rules of 1961 is the product of a legislative exercise. Any alteration or amendment thereof is permissible only in exercise of a similar legislative power. Ext.P2 is only an administrative order. Ext.P2 cannot alter or amend the Service Rules. For the above reason, it is contended that Ext.P2 cannot be implemented and that, for promotion to the post of Section Officer, the relevant Rules framed by the Central Government for promotion to a similar post would have to be followed.

5. It is further contended by the learned counsel for the petitioner that, Exts.P1 and P1(a) show the nature of duties that are expected to be discharged by an Assistant as well as a Stenographer. It is contended that, a person who enters service as a Junior Assistant is

promoted as Junior Assistant Grade I and thereafter, as an Assistant and so on. At the same time, a Stenographer who is recruited on a higher pay scale as Stenographer Grade II gets promotion as a Stenographer Gr.I, as Personal Assistant and thereafter as Private Secretary to the Chairman. Therefore, it is contended that both the posts have different channels of promotion. The nature of duties discharged by an Assistant as well as a Stenographer are different. While an Assistant discharges a variety of functions, a Stenographer only takes down dictations and types them out. It is also pointed out that, an Assistant is necessary to appear and pass a Departmental Examination, whereas, a Stenographer need not do so. On the basis of the above distinctions, it is contended by the counsel that both the posts are different, with different duties attached to each post. Therefore to club both the posts into a common cadre results in treating unequals equally, which is unsustainable. Reference is made to Ext.P7 Model Rules to point out that, Stenographers are granted promotion as per the said Rules. There are at least 500 clerks working under the 2nd respondent, whereas, only 37 Stenographers are there. In view of the above, according to the learned counsel, Ext.P2 is liable to be set aside as discriminatory. Consequently, Exts.P5 and P10 are also liable to be set aside.

6. Adv.Sri.V.Abraham Markos appears for the 2nd respondent Board. According to the learned counsel, the contentions of the counsel for the petitioner are unsustainable. He refutes the contention that the

Stenographers have a separate channel of promotion. According to the learned counsel, the basic qualification prescribed for recruitment to both the posts of Assistant and Stenographer is the same, namely, Matriculation. In the case of a Stenographer, the person is also expected to have proficiency in typewriting as well as shorthand. Even as per Ext.P7, it is pointed out that the Stenographers do not have a separate channel of promotion. They only stagnate after a particular stage. The post of Private Secretary to Chairman is only a tenure post. Therefore, according to the counsel, all along, both the posts of an Assistant and Stenographer were being clubbed together after a particular level. It is pointed out by the counsel that, the Rubber Board Service (Recruitment) Rules, 1961 had been amended in the year 1967 to provide for the clubbing of the posts of an Assistant and Stenographer. The same position was continued in the later amendments also. Therefore, the clubbing of which the petitioner complains now is not a phenomenon that was introduced for the first time by Ext.P2. It was legislatively incorporated into the Rules, as far back as in the year 1967. Rule 12 on which reliance is placed by the learned counsel for the petitioner does not apply to the facts of the present case for the reason that, with respect to promotion to the post of Section Officer, Ext.P2 makes specific provision. It is only in cases where no provision is available that, Rule 12 would come into operation. With respect to Ext.P7, the answer of the counsel for the 2nd respondent

is that, the said Model Rules relate to the service of Stenographers and do not deal with promotion to the post of Section Officers. It is pointed out with reference to the amended Service Rules, 1967 that, it is the post designated as Superintendent that has been re-designated as Section Officer in Ext.P2. According to the learned counsel, both the posts are ministerial posts. Therefore, they are interchangeable. Stenographers also have experience in ministerial work and therefore, the clubbing that has been made does not suffer from the vice of discrimination, as alleged. According to the learned counsel, Ext.P2 draft rules have been submitted to the Central Government for approval. What remains to be completed is only the publication thereof in the Government Gazette. The above being the position, it is contended that, the 2nd respondent is entitled to act upon the said Rules and to grant promotions, which is permissible, as recognised by the Apex Court. For the above reasons, it is contended that the petitioner is not entitled to any of the reliefs sought for in the writ petition.

7. Adv.Sri.Kaleeswaram Raj appears for respondents 3 to 15. The 3rd respondent is the organisation of the Stenographers, while respondents 4 to 15 are the Stenographers who have been promoted. According to the learned counsel, the initial qualification for recruitment to both the posts is the same. The Assistants are lesser qualified for the reason that, only persons having knowledge of typewriting and shorthand, apart from Matriculation, are appointed as Stenographers.

According to the counsel, even as per Ext.P2, the Stenographers are not treated equally with the other Assistants and are being discriminated. In the case of Stenographers, 5 years service is stipulated after a Stenographer Grade-I is included in the common cadre. A Stenographer Grade-I is included in the common cadre only after completion of 3 years. Therefore, in effect, a Stenographer has to complete 8 years before he acquires eligibility to be promoted as a Section Officer. For the above reason, according to the learned counsel, there is absolutely no justification for the contentions raised against the clubbing.

8. Heard. What is to be noticed in the first place is that, the Rubber Board Service (Recruitment) Rules, 1961 was amended by the Rubber Board (Service) Amendment Rules, 1967. As per the above amended Rules, it is seen that the posts of Stenographer as well as Lower Division Clerks have been clubbed into the common cadre of Assistants. The post is to be filled up by promotion from Lower Division Clerks with three years experience and Stenographers with eight years experience in the ratio 3:1 respectively. As per the above provision, therefore, an Assistant (Clerk) with 3 years experience has been equated to a Stenographer with 8 years experience. The promotion to the post of Assistant is stipulated in the ratio of 3:1. As per Office Order dated 14.02.1979, a copy of which has been handed over to me by the learned counsel for the 2nd respondent across the Bar, it is seen that the post of Assistant Superintendent was to be filled up by promotion from

a common cadre of Grade-I Stenographers and Assistants of 3 years experience. A similar provision as in the Amendment Act, 1967 is seen in the said order also. It is the post of Assistant Superintendent that has been re-designated as Assistant Section Officer, in 1989. The post of Superintendent has been re-designated as Section Officer. Therefore, it is clear that the post of an Assistant as well as Stenographer were being equated for the purpose of promotion to the higher post from the year 1967 onwards.

9. It is also worth noticing that, as per Exts.P1 and P1(a), the qualification prescribed for the post of Assistant as well as Stenographer is similar. For a Junior Assistant, a pass in S.S.L.C. Examination and a minimum speed of 30 words per minute in typewriting is stipulated. In the case of a Stenographer Gr.II, a pass in matriculation, 100 words per minute speed in shorthand and 40 words per minute speed in typewriting is stipulated. There is slight difference in the pay scale for both the posts. However, the fact remains that, typewriting as well as minimum qualification of matriculation are stipulated as the minimum qualifications for both the posts. The nature of the duties discharged are also, according to the learned counsel for the 2nd respondent and respondents 3 to 15, identical with the Stenographers also performing ministerial duties. It is further worth noticing that for the purpose of clubbing, considering the lesser experience of Stenographers in the discharge of clerical duties, experience of a longer duration is

stipulated. For promotion to the post of Section Officer, 3 years experience in the common cadre is stipulated. Therefore, it cannot be said that, there is any infirmity in the manner in which clubbing of both the posts was effected. As already noticed above, such clubbing was in vogue right from 1967 onwards. The petitioners had not raised any challenge against such clubbing, at that time. For the above reasons, it cannot be said that, an Assistant as well a Stenographer are persons discharging different functions and that, a clubbing of the said posts would result in treating unequals equally. On the other hand, as already notice above, the qualifications and nature of duties are similar. For the lack of experience in clerical duties on the part of a Stenographer, a longer experience is stipulated while forming the common cadre, which takes care of the lesser experience in such matters, of a Stenographer. Even according to the petitioner, while the number of clerks are 500, Stenographers number only 37. Therefore, I am not satisfied that any prejudice is caused to the petitioner by clubbing the two posts. A clerk does not discharge a function that requires any technical or expert knowledge that a Stenographer is not possessed of. Therefore, the said contention that clubbing of the two posts would result in discrimination, fails and is accordingly rejected.

10. The other contention of the counsel for the petitioner is that, Ext.P2 not being a product of legislative exercise cannot be acted upon for the purpose of issuing Ext.P5 promotion orders. In answer to the

contentions of the counsel for the petitioner, the counsel for the 2nd respondent has placed reliance on the decision in ***Abraham Jacob and Others v. Union of India [1998 (4) SCC 65]*** wherein the Honourable Supreme Court had to consider whether promotions could be made under draft recruitment rules. The Supreme Court in the said case held as follows :

“From 1969 after formulation of a set of draft rules promotion was being given to the Junior Engineers to the post of Assistant Engineer in accordance with the provisions contained in the draft rules even before such draft rules were approved by the governmental authority and became statutory rules, by virtue of an administrative decision of the Government. It is too well settled that the service conditions of employees, in the absence of a statutory rule could be governed by administrative instructions. There was, therefore, no illegality in giving promotion to the Junior Engineers to the post of Assistant Engineer because of the aforesaid administrative decision of the Government.”

The above dictum has been followed in ***Chandigarh Administration through The Director, Public Instructions (Colleges) Chandigarh v. Usha Kheterpal Waie & Ors. [AIR 2011 SC 2956]*** where the question as to whether appointments could be made on the basis of certain draft rules the Apex Court has in Paragraph 10 of the judgment held as follows :

“In Abraham Jacob v. Union of India (1998) (4) SCC 65 : (AIR 1998 SC 1011 : 1998 AIR SCW 782), this

Court held that where draft rules have been made, an administrative decision taken to make promotions in accordance with the draft rules which were to be finalized later on, was valid. In Vimal Kumari v. State of Haryana (1998) (4) SCC 114, this Court held that it is open to the Government to regulate the service conditions of the employees for whom the rules were made, even if they were in their draft stage, provided there is a clear intention on the part of the Government to enforce those rules in the near future."

11. In the present case, Ext.P2 has only to be published in the official gazette. It has already received the approval of the Central Government. The clubbing of the two posts is one that has been statutorily accepted as evident from the amendment of 1967. Therefore, it has to be held that the promotions made as per Ext.P5 in accordance with Ext.P2 are neither infirm nor invalid. I do not find any grounds to interfere with the said proceedings. For the various reasons given above, I also do not find any grounds to interfere with Ext.P10.

This writ petition is therefore dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.