

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 24478 of 2010 (H)

PETITIONERS:

1. **P.S.MATHEW, AGED 41 YEARS**
S/O. LATE SCARIA, CONSTABLE, RAILWAY PROTECTION FORCE
SOUTHERN RAILWAY, ERNAKULAM JUNCTION, RESIDING AT
PUTHIYAPURAYIDATH , KADAMAKUZHAY PO, KATTAPPANA SOUTH
PIN-685 515.
2. **SALU M.DEVASSIA, AGED 40 YEARS,**
S/O.LATE M.M.DEVASSIA, HEAD CONSTABLE, RAILWAY
PROTECTION FORCE/SOUTHERN RAILWAY MORAPPUR OUTPOST
SALEM, PERMANENT ADDRESS:MALAYIL HOUSE, THOTTUR
KALPPATHUR PO, ERNAKULAM DISTRICT.
3. **K.MASILAMANI, AGED 38 YEARS,**
S/O.LATE R.KRISHNAN, HEAD CONSTABLE, RAILWAY
PROTECTION FORCE/SOUTHERN RAILWAY INTEGRAL COACH
FACOTRY/FURNISHING CHENNAI-38(PERMANENT ADDRESS
570/2.XIV STREET SOUTH COLONY, ICF, CHENNAI-38.

BY ADVS.SRI.T.C.GOVINDA SWAMY
SRI.G.SHYAM RAJ

RESPONDENTS:

1. **THE DIRECTOR GENERAL, RLY PROTECTION FORCE**
NEW DELHI-110 001.
2. **THE CHIEF SECURITY COMMISSIONER,**
RAILWAY PROTECTION FORCE, CHENNAI-600 003.
3. **THE RAILWAY BOARD, RAIL BHAVAN,**
NEW DELHI-THROUGH ITS SECRETARY-110 001.
4. **THE DIVISIONAL SECURITY COMMISSIONER,**
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY
TRIVANDRUM DIVISION, TRIVANDRUM-14.

5. SRI.T.S.VINOD KUMAR,
ASIPF, RAILWAY PROTECTION FORCE/SOUTHERN
RAILWAY DIVISIONAL RAILWAY MANAGER'S OUTPOST
THIRUVANANTHAPURAM-14.
 6. SRI.A.SIVASWAMY,
ASIPF, RAILWAY PROTECTION FORCE/SOUTHERN
RAILWAY AC LOCO SHED, ERODE, TAMIL NADU-638 002.
 7. SRI.S.MANOKARAN,
ASIOF, RAILWAY PROTECTION FORCE/SOUTHERN RAILWAY
CRIME INTELLIGENCE BRANCH, TIRUCHIRAPPALLI
TAMIL NADU-620001
 8. SRI.T.VINOD,
ASIPP, RAILWAY PROTECTION FORCE/SOUTHERN RAILWAY
RPF OUTPOST, TINDIVANAM, TAMIL NADU-604001
- R1 TO 4 BY ADV. SRI.VARGHESE P.THOMAS, SR.SC,RAILWAYS
BY SRI.N.B.SUNIL NATH,SC, RAILWAYS
BY SRI.C.S.DIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- P1: TRUE COPY OF NOTIFICATION BEARING NO.X/P.608/ASIPF/LDC/2000 DATED 31.1.2006, ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT
- P2: TRUE COPY OF JUDGMENT IN W.A. NO.966/09 DATED 15.6.2009 RENDERED BY THIS HON'BLE COURT
- P3: TRUE COPY OF LETTER BEARING NO.X/P.608/ASIPF SELECTION/RULE 72 (40%) 2007 DATED 6.8.2007 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT
- P4: TRUE COPY OF MEMORANDUM BEARING NO.X/P.608/ASIPF/UR-72/LDC/07 DATED 19.10.2007 FROM THE OFFICE OF THE 2ND RESPONDENT
- P5: TRUE COPY OF MEMORANDUM BEARING NO.X/P.608/ASIPF/UR-72/LDC/06 DATED 11.9.2009, ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT
- P6: TRUE COPY OF THE FINAL BROAD SHEET FOR THE SELECTION OF ASI UNDER RULE 72, ALONG WITH THE COVERING LETTER BEARING NO.X/G.50/RTI/KM/09 DATED 17.11.2009 ISSUED BY THE DEPUTY CHIEF SECURITY COMMISSIONER & PIO/SEC.
- P7: TRUE COPY OF MEMORANDUM NO.X/P.608/ASIPF/SELECTION/RULE 72 DATED 23.06.2011 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 24478 of 2010 (H)

Dated this the 9th day of December, 2015

J U D G M E N T

The petitioners are aggrieved with Ext.P4 list dated 19.10.2007, by which promotions were made under the Limited Departmental Competition quota. The petitioners claim is based on the revised list at Ext.P5 dated 11-09-2009, in which certain adjustments were made, with respect to an earlier promotion. The petitioners contend that serial no.10 in Ext.P4 was adjusted in the vacancy in Ext.P5 and the Scheduled Caste candidates recruited in Ext.P5; should bring about a consequent reduction in Ext.P4, for reason of the reservation being applicable to the cadre and not to the vacancies. The petitioners' contention has to be looked at in the perspective of the peculiar facts which arise in this writ petition.

2. Admittedly, Ext.P4 selection was made in pursuance of Ext.P3 notification. There was no difficulty insofar as Ext.P4 list, when it was brought out, since, they were all qualified and there was no infirmity in the reservation applied at that point of time. The entire problem arose due to two earlier selections and the litigations with respect to such selections.

3. The challenge herein is with respect to promotions under the limited departmental competition category for which 40% of vacancies are set apart, while 60% of the vacancies are filled up on the basis of seniority. A selection was contemplated by Ext.P1 to 50 vacancies under the Limited Departmental Competitive examination quota (LDC). Though 50 vacancies were notified, eventually only 33 were appointed on the basis of the selection made at that point of time. This was due to the fact that 17 vacancies were filled up on the

basis of directions issued by this Court in cases where there was a challenge against the 2001 selection.

4. A selection in the year 2001 was proceeded with, but, however, though a panel for selection was drawn up, the same was cancelled. The persons who were included in the said panel challenged the cancellation. A Division Bench of this Court, as is indicated from Ext.P2 judgment, directed that 17 persons, included in the panel of the year 2001, were entitled to get appointment. These 17 were those under the LDC quota, but in the meanwhile, 66 vacancies available to the LDC (40%) were filled up on the basis of seniority. A further selection was also undertaken under the LDC quota to fill up 50 vacancies. Though a list was drawn up comprising 50 eligible persons under LDC quota only 33 were promoted since 17 vacancies were adjusted to accommodate the persons included in the

LDC list of 2001. They were granted appointment from amongst the vacancies for which selection was contemplated as per Ext.P1. A challenge raised against that was favourably considered and it was directed that if the vacancies under the 40% quota was filled up from the 60%, then a proportionate number of vacancy should be made available to those 17, excluded from the 50, to accommodate the 17 of the 2001 panel.

5. In obedience to the said directions a list was issued, promoting 17 persons from the LDC quota, which again was challenged and eventually resulted in Ext.P2 judgment. Ext.P2 judgment directed that the 17 vacancies should be drawn from the seniority cadre and promotion should be made on the basis of the selection process undertaken under the LDC quota (40%). It was in such circumstance, that Ext.P5 came to be issued, which, in fact, adjusted the said persons to a date prior

to Ext.P4. The petitioners contend that their claim should have been re-considered on the basis of the reduction in the reservation quota as also the adjustment of one of the open candidates made in Ext.P5.

6. This Court is unable to countenance such contention, since, the adjustments made cannot result in revival of a claim with respect to an earlier selection, concluded as per Ext.P4. It is also to be noticed that the petitioners have impleaded only those persons who are promoted under the Scheduled Caste/Scheduled Tribe category, who are so promoted under Ext.P4 and had been continuing therein undisturbed for all these years. None of these persons under the Scheduled Caste category were adjusted as against Ext.P5. If at all, the petitioners had a contention against reduction of vacancies, then the petitioners ought to have

challenged Ext.P5 and the appointments made therein of Scheduled Caste candidates. The petitioners having not done so, the writ petition cannot be entertained.

7. Further, it is to be noticed that, in addition to the adjustments made by Ext:P-5, that too in the peculiar facts which have been detailed herein above, there would be other persons also affected, if now Ext.P4 is sought to be re-aligned. The persons promoted as per Ext- P-4 is also entitled to be continued in their respective higher posts to which they were promoted long back. Every realignment made of promotions and setting apart of vacancies, cannot result in upsetting the promotions already made. In such circumstance, the petitioners' prayer cannot be considered.

The Writ Petition is dismissed. No Costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE