

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 28127 of 2007 (W)

PETITIONER :

C.A.KOCHUMOHAMMED
S/O.LATE ANTHU PILLAI, CHAKKANAM PARAMBIL HOUSE
HOUSE NO.23/2455-A, PALLURUTHY P.O., KOCHI - 682 006.

BY ADVS.SRI.K.C.ELDHO
SRI.JJO THOMAS

RESPONDENT :

THE MARINE PRODUCTS EXPORT DEVELOPMENT
AUTHORITY, REPRESENTED BY ITS SECRETARY, MPEDA HOUSE
PANAMPILLY AVENUE, COCHI - 6.

R1 BY ADVS. SRI.JOSEPH MARKOSE (SR.)
SRI.MATHEWS K.UTHUPPACHAN
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ISAAC THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE JUDGMENT IN O.P.NO.4244/1994 DATED 14.2.2003 OF THIS HONOURABLE COURT.

EXT.P2 : COPY OF THE JUDGMENT IN W.A.NO.902/03 DATED 9.3.2005 OF THIS HONOURABLE COURT

EXT.P3 : COPY OF THE JUDGMENT DATED 30.11.2005 IN CON.CASE (C)NO.944/2005

EXT.P4 : COPY OF THE MEMORANDUM DATED 1.9.2006

EXT.P5 : COPY OF THE JUDGMENTT IN WP(C)NO.32200/2006

EXT.P6 : COPY OF THE COVERING LETTER DATED 8.1.2007, FILED ALONGWITH EXT.P5 JUDGMENT BEFORE THE RESPONDENT

EXT.P7 : COPY OF THE OFFICE ORDER PART II NO.99 DATED 20.04.2007 ISSUED TO THE PETITIONER BY THE RESPONDENT

EXT.P8 : COPY OF THE JOINING REPORT OF THE UPGRADED POST OF SENIOR FOREMAN AND SELECTION GRADE FOREMAN TO THE RESPONDENT DATED 24.4.2007

EXT.P9 : COPY OF THE OFFICE ORDER PART II NO.451, FIXING THE PAY OF THE PETITIONER AS SENIOR FOREMAN AND SELECTION GRADE FOREMAN DATED 8.6.2007

EXT.P10 : COPY OF THE SANCTION ORDER NO.42 DATED 26.6.2007

EXT.P11 : COPY OF THE STATEMENT PREPARED BY THE PETITIONER SHOWING THE ARREARS OF SALARY IN GRADE OF DY.DIRECTOR WITH EFFECT FROM 1.9.1990

EXT.P12 : COPY OF THE STATEMENT PREPARED BY THE PETITIONER ON THE BASIS OF PAY FIXATION ORDER DATED 8.6.2007, SHOWING THE ARREARS OF SALARY AND ALLOWANCES, ON UP GRADATION POST OF FOREMAN AS SENIOR FOREMAN AND SELECTION GRADE FOREMAN.

RESPONDENT'S EXHIBITS :

EXT.R1(a) : COPY OF THE REPRESENTATION DATED 27.3.1985 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT

EXT.R1(b) : COPY OF REPLY GIVEN TO THE PETITIONER VIDE MEMO NO.PF/284/PERS/2643-44 DATED 13.5.1985

EXT.R1(c) : COPY OF RECRUITMENT RULE FOR THE POST OF DD (FS)

EXT.R1(d) : COPY OF RECRUITMENT RULE FOR THE POST OF DD (EXTN)

EXT.R1(e) : COPY OF RECRUITMENT RULE FOR THE POST OF FOREMAN

EXT.R1(f) : COPY OF RECRUITMENT RULE FOR THE POST OF SECTION OFFICER

EXT.R1(g) : COPY OF RECRUITMENT RULE FOR THE POST OF PLANT MANAGER

WP(C).No. 28127 of 2007 (W)

EXT.R1(h) : COPY OF JUDGMENT DATED 4.7.2006 PASSED BY THIS HON'BLE COURT IN WP (C).NO.30227/2003

EXT.R1(i) : COPY OF THE EXTRACT OF THE AUTHORITY'S RESOLUTION

EXT.R1(j) : COPY OF RECRUITMENT RULE FOR THE POST OF DD (REGIONAL OFFICES, MARKET SERVICES AND DEVELOPMENT, P & MP)

EXT.R1(k) : COPY OF THE DYNAMIC SCALE

EXT.R1(l) : COPY OF RECRUITMENT RULE FOR THE POST OF SENIOR FOREMAN

EXT.R1(m) : COPY OF RECRUITMENT RULE FOR THE POST OF SELECTION GRADE FOREMAN

EXT.R1(n) : COPY OF LETTER NO.PF/284/PERS DATED 18.10.2007

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.28127 of 2007

Dated this the 23rd day of March, 2015

J U D G M E N T

The petitioner has filed this writ petition challenging Ext.P7 order of the respondent by which, the petitioner has been granted notional promotion to the posts of Senior Foreman and Selection Grade Foreman after upgrading the post of Foreman. The order Ext.P7 has been passed pursuant to the directions issued by this Court in Exts.P1, P2, P3 & P5 proceedings.

2. The petitioner was appointed as a Foreman in the year 1980. His appointment was regularised on 09.03.1981. He was appointed as a Foreman in the Frozen Storage Department of the respondent. In sharp contrast to the situation in the other departments under the respondent like Administration, Marketing Service, Quality Control and Inspection and Shrimp Farming, in the department of Frozen Storage, there are only three posts. They are the posts of Engineering Assistant, Foreman and the Deputy Director. The method of recruitment to all the posts are by direct recruitment. Therefore, there is no avenue for promotion of the persons occupying the posts of Engineering Assistant and Foreman. At the same time, in the other departments, the channels of promotion are defined. The result of the above anomalous situation was that, the petitioner was left to stagnate in the post of Foreman. Therefore, he approached this Court

complaining of discrimination by filing O.P.No.4244/1994. By Ext.P1 judgment dated 14.02.2003, the petitioner's case was directed to be considered. Dissatisfied with the direction, the petitioner had challenged Ext.P1 in Writ Appeal No.902/03, unsuccessfully. Ext.P2 is the judgment in the Writ Appeal. Later on, the petitioner approached this Court again complaining of non compliance with the direction contained in Ext.P1 judgment. Contempt Case No.914/2005 was disposed of by Ext.P3 judgment with a direction to consider the case of the petitioner. Pursuant to Ext.P3, the matter was considered and by Ext.P4 order dated 1.9.2006, the claim of the petitioner was rejected.

3. Ext.P4 was the subject matter of challenge before this Court in W.P(C).No.32200/2006. The said writ petition was allowed by Ext.P5. Ext.P4 order was set aside and the matter was directed to be reconsidered in accordance with the directions in the judgment of this Court. Thereupon the petitioner submitted a fresh representation Ext.P6. The matter was considered thereafter and by Ext.P7 order dated 20.04.2007, the petitioner's post of Foreman was upgraded to that of a Senior Foreman and Selection Grade Foreman and the petitioner was given notional promotions successively to the said posts. By this time, the petitioner was about to retire. Therefore, he joined duty after submitting Ext.P8 letter. Ext.P9 is the order fixing his pay and Ext.P10 is the order sanctioning his pension.

4. The petitioner has filed this writ petition challenging Exts.P7,

P9 and P12. The contention of the petitioner is that, the pay fixation and pension computed in Ext.P10 are not in conformity with Ext.P7. It is contended that, since the post of Foreman has been upgraded, the petitioner ought to have been granted the promotions from the respective dates on which he acquired eligibility for such promotions. By Ext.P7, the promotions have been granted only from some other dates fixed by the respondent, without any basis. It is also contended that, the petitioner ought to have been granted promotion as Deputy Director as sought for by him. According to Sri.K.C.Eldho the learned counsel for the petitioner, this Court had directed in Ext.P2 to consider the case of the petitioner in view of the fact that, the responsibilities discharged by the persons holding the posts of Assistant Directors in the other channels were substantially the same. However, the spirit of the direction issued by this Court has not been assimilated by Ext.P7 order that has been passed. For the said reason, it is contended that Exts.P7, P9 and P10 are liable to be set aside.

5. A counter affidavit has been filed on behalf of the respondent producing Ext.R1(a) to R1(n) documents. Adv.Sri.Issac Thomas appears for the respondent. According to the counsel, apart from the post of Engineering Assistant, Foreman and Deputy Director, in the Frozen Storage Department, there was another post just below that of the Deputy Director and above that of the post of Foreman. The said post is that of the Plant Manager. The learned counsel places reliance

on the observation in Ext.P2 judgment directing that, in case the petitioner is found lacking in qualification, the same treatment given to one Sri.P.S.Nair be given to him. The direction of this Court was only to consider the case of the petitioner for promotion subject to his qualification and eligibility. It was in the light of the said direction that, the case of the petitioner was considered and since he was not found to be qualified, he has been granted the scale of pay of the post of Deputy Director by upgrading the post of Foreman. The said course has been adopted with the object of accommodating his claim. According to the learned counsel, the petitioner had been shifted to Channel II in the year 2000. The learned counsel also places reliance on judicial decisions to support his contentions.

6. Heard. The fact that the petitioner had entered service in the year 1980 and that, he had been stagnating in the post of Foreman ever since is not disputed. It is also not in dispute that, in all other departments, there existed avenues for promotion of employees working in similar posts. It is only in the Frozen Storage Department that, the peculiar situation of entry through direct recruitment alone was in existence. In Ext.P2 judgment, this Court has considered the case of the petitioner in the following passage :

“5. The writ petition was filed by the respondent challenging the method of recruitment to the category of Deputy Director of Frozen Storage inasmuch as it provided for 100% direct recruitment, thereby foreclosing any chance

of promotion for the respondent, who was in the category of Foreman, which is the next in the hierarchy in Channel IV. The respondent attempted to make out a case of hostile discrimination by contending that appointment to the posts Deputy Director in all the other four channels are by promotions from the category of Assistant Director. Though this position was contested by the appellant Authority by stating that there is no category of Assistant Director in Channel IV, the apparent situation is that though there is no category of Assistant Director in Channel IV, the scale of pay and responsibilities of the Foreman in Channel IV is not much different from that of Assistant Directors in the other four channels. We say so because, as already noticed, the respondent has a liability under his conditions of appointment to Work in any channel. Though it is pointed out by the appellant Authority that the categories are not interchangeable and separate seniority lists are provided and promotion to the post of Deputy Director in Channel II can only be from among Assistant Directors in Channel II, we are of the considered view that the post of Deputy Director in Channel IV having been shifted to Channel II, there is no reason why the respondent, writ petitioner shall not be considered for the said post, having regard to the very peculiar facts and circumstances of this case. His entire length of service is a relevant factor in doing so. We say so because the respondent has served the institution from 1980, admittedly without any blemish. We also notice that while he entered as Foreman in the service it is his legitimate expectation to go up the ladder in the institution and this is essentially the part of the legitimate expectations of the respondent. Had not the Frozen Storage of the appellant Authority failed, when direct recruitment would be resorted to fill the vacancy of Deputy Director in Channel IV,

that fell vacant in 1990, the respondent would have legitimately been entitled to be considered for direct recruitment to that post in relaxation of the qualification, by recourse to Clause 7(c) of Ext.P2 Standing Instructions, which we have already noticed above. The pleadings in the case do not disclose that the appellant Authority has any complaint regarding the respondent, his conduct, the quality of his labour and service and the contributions that he has made to the institution. We have specifically enquired about this to the learned counsel appearing for the appellant and nothing was pointed out against the respondent. We are, therefore of the view that, had Channel IV continued to be viable and vibrant, we are sure that the respondent could have legitimately expected that his employer, the appellant Authority would have duly exercised authority under Clause 7(c) of Ext.P2 Standing Instructions. Such legitimate expectations stand stultified for no attribute that could be made against the respondent."

It is true that, this Court has in Ext.P2 taken note of the treatment that was given to Sri.P.S.Nair who was working as an Artist-cum-Photographer.

7. It was pursuant to the above direction that, Ext.P4 order was issued. However, the same was set aside. After quoting the observations of the Division Bench contained in Ext.P2 judgment, this Court has held as follows in paragraph 4 of the judgment :

"A perusal of Exts.P7 and P8 shows that the 1st respondent has not considered the claim of the petitioner for relaxation from qualification using the inputs referred to in Ext.P7 or factors made mention in Ext.P7 as relevant. Hence, I am of the view that this is a matter which requires reconsideration

by the 1st respondent strictly in terms of the observations made by this Court in Ext.P7 judgment which has been affirmed by the Division Bench vide Ext.P8 judgment."

It was in view of the above observation that, Ext.P4 was set aside. It is in the light of above observation that, Ext.P7 has to be examined for the purpose of ascertaining whether the directions of this Court have been considered or not.

8. The observations quoted above show that, it was necessary for the respondent to have examined whether the petitioner having been brought to channel II in the year 2000 should have been promoted to one of the higher post available in the said channel for promotion. The question of relaxation of qualifications that was directed to be considered by this Court also has not been considered in Ext.P7. What appears from a reading of Ext.P7 is that, the respondent has proceeded to extend the same treatment that was given to Sri.P.S.Nair, an Artist-cum-Photographer, who was facing stagnation, on an earlier occasion. It was the last aspect that was directed to be considered by Ext.P7. What has been done by Ext.P7 is to upgrade the post of Foreman, in which the petitioner was working, successively to that of a Senior Foreman and a Special Grade Foreman. It has to be held that, such up-gradation cannot be found fault with. However, the fact remains that, since the re-designated posts are also the posts of Senior Foreman and Special Grade Foreman with only a difference in the scale of pay applicable, the further question arises as to why the petitioner could

not have been given the benefit of the said promotions from the dates on which he actually acquired eligibility for such promotions. Exts.R1(l) and R1(m) contain the qualifications for the posts of Senior Foreman and Selection Grade Foreman respectively. There is no answer to the question as to why, the petitioner was not considered for promotion to the said posts, at any time after he acquired eligibility for such promotion in the year 1990 and 1996 respectively. The procedure adopted in Ext.P7 of considering his case on par with that of Sri.P.S.Nair is not proper. The fact that, the case of Sri.P.S.Nair was considered after he had completed the 18 years, 4 months and 8 days of service under the respondent is not a relevant consideration at all. The petitioner had approached this Court by filing a writ petition, in the year 2003 itself. This Court had issued necessary directions for the consideration of his case. Therefore, it was necessary that the case of the petitioner was considered with effect from the date on which the petitioner acquired eligibility for promotion as Senior Foreman and Special Grade Foreman in accordance with Exts.R1(l) and R1(m) respectively. Therefore, to the extent to which Ext.P7 has fixed the date of promotion to the upgraded post of Senior Foreman and Special Grade Foreman, cannot be sustained. The eligibility of the petitioner for promotion would have to be considered afresh with effect from the date on which he completed 10 years of service as a Foreman and the date on which he would have completed 6 years service as a Special

Grade Foreman. The pay as well as the pensionary benefits of the petitioner would have to be worked out afresh on the basis of such consideration.

For the foregoing reasons, Ext.P7 to the extent it fixes the date of promotion of the petitioner as Senior Foreman on 01.04.1998 and to the post of Selection Grade Foreman on 22.12.2004 are set aside. The respondent is directed to consider the eligibility of the petitioner for promotion to the said posts with effect from the dates on which he acquired the qualification as per Exts.R1(l) and R1(m) to be considered for promotion to the said posts. The petitioner's eligibility shall be considered, in accordance with the directions contained in Exts.P1 and P2 judgments. Appropriate orders in this regard shall be issued as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment. The petitioner shall be entitled to all consequential benefits on the basis of the order to be so passed.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV