

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C).No. 24652 of 2011 (F)

PETITIONER(S) :

V.K.SUDHAMONI, FLAT NO.1B,
RUBBER RESIDENCY, MUTTAMBALAM P.O., KOTTAYAM-686004
WORKING AS CIVIL ENGINEER, DEPARTMENT OF
PROCESSING & PRODUCT DEVELOPMENT, RUBBER BOARD
KOTTAYAM.

BY ADVS.SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)

RESPONDENT(S) :

1. THE RUBBER BOARD, P.B.NO.1122,
SUB JAIL ROAD, KOTTAYAM-686002,
REPRESENTED BY ITS CHAIRMAN.

2. K.P.SAJEEV, ESTATE OFFICER, RESEARCH
DEPARTMENT, RUBBER RESEARCH INSTITUTE OF INDIA
KOTTAYAM, PIN-686009.

R,R1 BY ADV. SRI.V.ABRAHAM MARKOS
R,R1 BY ADV. SRI.MATHEWS K.UTHUPPACHAN
R,R1 BY ADV. SRI.BINU MATHEW
R,R1 BY ADV. SRI.TERRY V.JAMES
R,R1 BY ADV. SRI.B.J.JOHN PRAKASH
R,R1 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)
R,R2 BY ADV. SRI.A.X.VARGHESE
R,R2 BY ADV. SRI.A.V.JOJO
R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

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

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PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF ORDER DATED 4-5-1989 APPOINTING THE PETITIONER PROVISIONALLY AS ASSISTANT ENGINEER.
- EXT.P2: TRUE COPY OF APPOINTMENT ORDER DT.31-8-1989 IN THE POST OF ASSISTANT ENGINEER (CIVIL).
- EXT.P3: TRUE COPY OF ORDER DT.6-1-1992 APPOINTING THE SANCTIONING HIGHER SCALE OF PAY TO THE PETITIONER.
- EXT.P4: TRUE COPY OF RELEVANT EXTRACT OF GRADATION LIST DT.26-7-1994.
- EXT.P4(A): TRUE COPY OF RELEVANT EXTRACT OF GRADATION LIST DT.28-10-1999.
- EXT.P5: TRUE COPY OF PROMOTION ORDER, DT.17-10-2001.
- EXT.P6: TRUE COPY OF RELEVANT PART OF RECRUITMENT RULES TO THE POST OF DY.DIRECTOR.
- EXT.P7: TRUE COPY OF MEMO 19-8-2011 DIRECTING THE PETITIONER AND 2ND RESPONDENT TO CALL FOR INTERVIEW.
- EXT.P8: TRUE COPY OF THE ORDER DATED 05.09.2011 PROMOTING THE 2ND RESPONDENT AS DEPUTY DIRECTOR (CIVIL ENGINEERING)
- EXT.P9 TRUE COPY OF OFFICE MEMORANDUM DTD 29.05.2012 ISSUED BY THE RUBBER BOARD

RESPONDENTS' EXHIBITS

- EXT.R2-A: TRUE COPY OF THE OFFICE MEMORANDUM DATED 06.11.2000
- EXT.R2B: TRUE COPY OF THE RECRUITMENT RULE FOR THE POST OF DEPUTY DIRECTOR (CIVIL ENGINEERING)
- EXT.R2C: TRUE COPY OF THE ORDER DATED 2.7.2010
- EXT.R2D: TRUE COPY OF NOTIFICATION DATED 2/9/2011.
- EXT.R2E: TRUE COPIES OF THE MEMORANDUM DATED 15.03.2006 AND 7.2.2006
- EXTR1(A): TRUE COPY OF RECRUITMENT RULES FOR THE POST OF DEPUTY DIRECTOR (CIVIL ENGINEERING)
- EXT.R1(B): TRUE COPY OF THE PROCEEDINGS DATED 01-09-2011.
- EXT .R1(C): TRUE COPY OF THE MEMORANDUM NO.3/23/1(1)/211/EST DATED 05.09.2011

// TRUE COPY //

PA TO JUDGE

“C.R.”

K.SURENDRA MOHAN, J.

W.P.(C) No.24652 of 2011

Dated this the 3rd day of March, 2015

J U D G M E N T

The petitioner, an employee of the first respondent has filed this writ petition challenging Exhibit P8 proceedings by which, the second respondent has been promoted to the post of Deputy Director (Civil Engineering). The contention of the petitioner is that, the said promotion has been granted overlooking the seniority of the petitioner.

2. The petitioner was initially appointed as an Assistant Engineer on 05.05.1987 on a consolidated monthly pay. It was a temporary appointment. By Exhibits P1 and P2, the term of her appointment was extended from time to time. As per Exhibit P3, she was granted grade promotion. The second respondent was also similarly appointed on temporary basis and was granted extension later on. Exhibit P4 gradation list shows that the petitioner is Sl.No.1

and that, she was granted her higher grade on 06.01.1992. The second respondent is Sl.No.5 and was granted higher grade on 12.04.1992. In Exhibit P4(a) gradation list dated 28.10.1999 also, the petitioner is senior. Thereafter, by Exhibit P5 dated 17.10.2001, the petitioner was promoted as a Civil Engineer. At about the same time, the second respondent was promoted as Estate Officer.

3. In the above circumstances, both the petitioner as well as the second respondent were called for an interview, as per Exhibit P7, for being considered for promotion to the post of Deputy Director (Civil Engineering). On the basis of the interview, the second respondent has been promoted. The petitioner is aggrieved by Exhibit P7.

4. According to Sri.Philip J. Vettickattu who appears for the petitioner, Exhibit P6 is a copy of the Recruitment Rules that are applicable. The said Recruitment Rules do not mention the post of Estate Officer as a feeder post for promotion to the post of Deputy Director (Civil).

Therefore, it is contended that, the second respondent was not entitled to be considered for the promotion. The counsel put forward a further contention that, the seniority of the petitioner has been overlooked without any justification.

5. Separate counter affidavits have been filed by the first respondent as well as the second respondent. According to the first respondent, Exhibit P6 is not a copy of the Recruitment Rules applicable to the selection. In compliance with the directions issued by the Department of Commerce, Ministry of Commerce and Industry dated 23.06.2008, the first respondent conducted a comprehensive review of the Recruitment Rules of all sanctioned posts, totalling 220 categories. The Recruitment Rules were revised in accordance with the Guidelines issued by the Department of Personnel and Training, Government of India. The Recruitment Rules were all approved by the Staff Affairs Committee of the Board held on 10.09.2009

and at its meetings held on 13.11.2009 and 12.05.2010. The revised Recruitment Rules are pending publication in the Official Gazette before the Central Government. The action of the Ministry issuing notification of the Revised Recruitment Rules is awaited. All promotions and recruitments to various posts of the first respondent are being conducted in accordance with the Revised Recruitment Rules. It is contended that, the said procedure is permissible. It is further pointed out that, promotion to the post Deputy Director (Civil Engineering) was not on the basis of seniority alone. The selection was conducted on the basis of an interview since the post is a selection post. Both the petitioner as well as the second respondent had participated in the interview and the second respondent was preferred. It is contended that, the promotion as per Exhibit P8 is perfectly in order.

6. A separate counter affidavit has been filed by the second respondent more or less on the same terms as the

counter affidavit of the first respondent. It is stated that, the post being a selection post, recruitment was conducted on the basis of the interview and not merely on seniority . The second respondent who emerged as the better candidate was therefore promoted. It is contended that, the said promotion is in order.

7. The counsel for the first respondent has placed reliance on two decisions of the Hon'ble Supreme Court to point out that, appointments are permissible to be made even on the basis of the Draft Rules that are pending approval of the Central Government. Such recruitments are perfectly legal since the Draft Rules qualify as Administrative Instructions that are capable of governing the Recruitment process of employees. Per Contra, the contention of the counsel for the petitioner is that, the Rules lack the force of law since they have not been approved by the Central Government. Reliance is placed on the provisions of the Rubber Act, 1947.

8. Heard. It is certainly true that, the petitioner is senior to the second respondent, as per Exhibits P4 and P4 (a) gradation lists. It is not in dispute that, the petitioner was promoted as Civil Engineer by Exhibit P5 in the year 2001. At about the same time, the second respondent was also promoted, but to the post of Estate Officer. It was in the above circumstances that, promotion to the post of Deputy Director (Civil Engineering) was effected. Even according to Exhibit P6, the post of Deputy Director (Civil Engineering) is a selection post. It is stated in Exhibit P6 that, the method of recruitment shall be through 'Selective Promotion' by interview. Since the promotion is through selective promotion by interview, the fact that the petitioner was senior to the second respondent, is of no consequence. The second respondent has been selected at the interview, obviously for the reason that he has performed better. The petitioner does not challenge the interview that was conducted. Therefore, it is held that, the contention of the

petitioner that his seniority has been overlooked cannot be accepted.

9. The next question is whether the Draft Recruitment Rules that are pending approval of the Central Government can govern the promotion that was granted to the second respondent. The Hon'ble Supreme Court had to consider a similar question in **Chandigarh Administration through The Director, Public Instructions (Colleges) Chandigarh v. Usha Kheterpal Waie** [AIR 2011 SC 2956]. The Apex Court has concluded the issue in paragraph 10 of the said judgment in the following words:-

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 finalised 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.

10. The decision **Abraham Jacob v. Union of India** [(1998) 4 SCC 65] relied upon to reach the above conclusion is also to the said effect. In the said case, what was involved was a promotion. The relevant passage of the said judgment, at paragraph 4 thereof, reads 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. It is also conceded that in the statutory rules the principle of determination of inter se seniority between the direct recruits and promotees has not been indicated.

In the face of the above authoritative pronouncements, it is beyond cavil that the promotion granted to the second respondent as per Exhibit P8 cannot be impeached on the grounds set out in the writ petition. Therefore, I am

satisfied that, the petitioner is not entitled to any of the reliefs sought for in this writ petition. The same is therefore dismissed.

The counsel for the petitioner submits placing reliance on Exhibit P9 that, there is likelihood of the Central Government not approving the Draft Recruitment Rules also. In the case of such an eventuality, I am certain that the promotion granted to the second respondent as per Exhibit P8 would also be reconsidered by the first respondent and appropriate orders would be passed thereon considering the claim of the petitioner.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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