

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No.24585 of 2013 (W)

PETITIONER:

**M.K.KUMAR,ASSISTANT FACTORY MECHANIC,
KALLELA ESTATE,THE PLANTATION CORPORATION OF
KEALA LIMITED,KALADY PLANTATION (P.O),ANGAMALY,
ERNAKULAM DISTRICT,RESIDING AT KARTHIKA,
T.C.54/1068/1,KARUMAM (P.O),THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.GOPAKUMAR R.THALIYAL
SRI.A.CHANDRA BABU**

RESPONDENT'S:

- 1. STATE OF KERALA,REPRESENTED BY THE SECRETARY TO
GOVERNMENT,AGRICULTURE (PU) DEPARTMENT,
GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM - 695 001.**
- 2. THE MANAGING DIRECTOR,
THE PLANTATION CORPORATION OF KERALA LIMITED,
REGISTERED OFFICE,KOTTAYAM,PIN - 686 004**

**R1 BY GOVT. PLEADER SRI.NOUSHAD THOTTATHIL.
R2 BY SRI.RAJU SEBASTIAN VADAKKEKARA, SC, PLANTATION
CORPORATION**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09.03.2015 THE COURT ON 20-03-2015, DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS

EXT.P1-TRUE COPY OF THE GOVERNMENT ORDER DATED 25-08-2007.

EXT.P2-TRUE COPY OF GOVERNMENT ORDER DATED 29-07-2008.

EXT.P3-TRUE COPY OF APPOINTMENT ORDER DATED 27-08-2008.

EXT.P4-TRUE COPY OF ORDER ISSUED BY THE MANAGING DIRECTOR, STATE
FARMING CORPORATION KERALA LIMITED DATED 31-07-2010.

EXT.P5-TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER
DATED 15-03-2011.

EXT.P6-TRUE COPY OF COVERING LETTER ISSUED BY THE 2ND RESPONDENT
DATED 27-4-2011.

EXT.P7-TRUE COPY OF COMMUNICATION ISSUED BY THE 2ND RESPONDENT
DATED 23-5-2011.

EXT.P8-TRUE COPY OF LETTER ISSUED BY THE 1ST RESPONDENT
DATED 14-06-2011.

EXT.P9-TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER
DATED 05-8-2011.

EXT.P10-TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT
DATED 12-12-2011.

EXT.P11-TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND
RESPONDENT DATED 16-8-2012.

EXT.P12-TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT
DATED 22-10-2012.

EXT.P13-TRUE COPY OF THE COMMUNICATION ISSUED BY THE 1ST
RESPONDENT DATED 17-7-2013.

EXT.P14:TRUE COPY OF THE COMMUNICATION DATED 19.12.2012 RECEIVED BY
THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT
REGARDING THE APPOINTMENT OF ASSISTANT FACTORY MECHANIC
IN PLANTATION CORPORATION.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

A.V.RAMAKRISHNA PILLAI, J

WPC No.24585 of 2013

Dated this the 20th day of March, 2015

JUDGMENT

Challenging Ext.P13 by which the first respondent has rejected the petitioner's claim for time bound higher grade, the petitioner has come up before this Court.

2. The petitioner entered service as First Grade Operator in M/s Trivandrum Rubber Works Limited on 20.7.1981. Owing to the acquisition of the property of the said company, the production activities of the said company were stopped with effect from 26.11.2005. Consequently, the Government issued Ext.P1 order implementing a special package scheme for the employees of the company. As per Ext.P1 Government Order, the employees who opted for special package have been paid compensation. Eleven employees who have not opted special package have been provided employment either in Plantation Corporation of Kerala Limited or in State Farming Corporation of Kerala Limited.

3. Pursuant to Ext.P2 order of sanction issued by the

Government, the petitioner was absorbed in the Plantation Corporation of Kerala Limited and as per Ext.P3 appointment order, the petitioner was appointed as Assistant Factory Mechanic and his service has been regularised in the Plantation Corporation of Kerala Limited. Similarly situated employees like the petitioner who have been absorbed in the State Farming Corporation of Kerala Limited have been granted time bound higher grade as per Ext.P4 order; it is alleged.

4. While absorbing the petitioner and similarly situated persons in the service of the Plantation Corporation of Kerala Limited/State Farming Corporation, it was specifically stated in Ext.P2 that the regular service of these employees under the Trivandrum Rubber Works would be counted for pay, leave and other service benefits as if they were the employees of the Plantation Corporation of Kerala Limited/State Farming Corporation. Hence, the petitioner is also entitled to get time bound higher grades considering his previous service in the Trivandrum Rubber Works Limited, as was given in the

case of other similarly situated persons as per Ext.P4. In the light of Ext.P4, the petitioner was granted time bound higher grade vide Ext.P11. Now, the first respondent has reviewed Ext.P11 and passed Ext.P13 rejecting the claim of the petitioner for time bound higher grades. It is with this background, the petitioner has come up before this Court.

5. In the counter affidavit filed by the second respondent, they have admitted that the petitioner is now working as Assistant Factory Manager in the second respondent Corporation and he had worked as Operator in Trivandrum Rubber Works Limited which was a worker grade category in Trivandrum Rubber Works and that he was absorbed in the service of Plantation Corporation on 8.9.2008.

6. The main contention raised by them is that even after 25 years of service in Trivandrum Rubber Works, no higher grade was sanctioned to the petitioner and he is demanding three higher grades, i.e. 8 years, 16 years and 23 years scale from the respondent Corporation. They

would further contend that the sanctioning of higher grade applicable to staff category to the petitioner reckoning his past service in the worker grade category of Trivandrum Rubber Works would naturally lead to similar claims from those who promoted from the worker category in the respondent Corporation.

7. Arguments have been heard.

8. According to the learned counsel for the petitioner, similarly situated persons who have been absorbed in the State Farming Corporation of Kerala Limited have been granted time bound higher grade as could be seen from Ext.P4. Therefore, under such a situation, the petitioner ought to have been granted the same benefit and the discrimination shown to the petitioner is arbitrary and illegal; so submitted the learned counsel for the petitioner. The reason stated in Ext.P13 for non-granting the time bound higher grade to the petitioner is that reckoning the past service of the petitioner in the worker category of Trivandrum Rubber Works would lead to similar claims from those who promoted from worker category in the

Plantation Corporation of Kerala Limited. In this context, the learned counsel for the petitioner pointed out that the persons in the worker category in the Plantation Corporation of Kerala Limited cannot be equated with the persons in the worker category in Trivandrum Rubber Works. It was pointed out that the employees in the worker category of Plantation Corporation of Kerala Limited are daily permanent workers and they have no scale of pay and other benefits. They are being paid wages on daily rate basis. The law applicable in the case of those workers are Plantation Labour Act. On the other hand, the workers in the erstwhile Trivandrum Rubber Works are industrial workers and they have scale of pay and other benefits. The scale of pay of staff and workers in the Trivandrum Rubber Works are one and the same. This fact is not at all denied.

9. While absorbing the petitioner and similarly situated persons in the service of the Plantation Corporation of Kerala Limited and State Farming Corporation, it was specifically mentioned in Ext.P2 that

regular service of these employees under the Trivandrum Rubber Works would be counted for pay, leave and other benefits as if they were the employees of the Plantation Corporation of Kerala Limited. Therefore, the petitioner ought to have been given time bound higher grade considering his previous service in the Trivandrum Rubber Works Limited, as was given in the case of other similarly situated persons as per Ext.P4. The petitioner was absorbed as Assistant Factory Mechanic in the Plantation Corporation of Kerala which is a post in the staff category. It is an admitted fact that in the Plantation Corporation of Kerala Limited, the appointment to the post of Tapping Supervisor/Field Supervisor, Pump Operator, Vehicle Operator etc. are filled through promotion from the worker category. However, their service in the worker category is reckoned only for calculating gratuity and not for other benefits like grade promotion, seniority etc. Therefore, the argument of the first respondent that if higher grade is sanctioned to the petitioner reckoning his past service in the worker grade category, similar claims from those who

promoted from the worker category in the Plantation Corporation of Kerala will not stand the test of reasons, because it is specifically stated in Ext.P2 absorption order that the previous service of those employees in the erstwhile Trivandrum Rubber Works would be counted for pay and other benefits. Once the first respondent has granted a time bound higher grade to the petitioner vide Ext.P11 which was perfectly legal and justifiable. However, without any valid reason, Ext.P11 was altered by Ext.P13.

10. On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioner is entitled to succeed.

In the result, Ext.P13 is quashed. The respondents are directed to grant time bound higher grade to the petitioner in the post of Assistant Factory Mechanic in the Plantation Corporation of Kerala Limited reckoning his past service in the Trivandrum Rubber Works Limited as has been granted to similarly situated employees who have been absorbed in the State Farming Corporation of

Kerala Limited. Formal orders to this effect shall be issued within a period of two months from the date of receipt of a copy of this judgment.

Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

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true copy

P.S.TO JUDGE