IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 25593 of 2011 (Y)

PETITIONERS :

1. **C.SHAJI,S/O.LATE C.C.BABY, PRESENTLY WORKING AS FILED ASSISTANT ON WORKING, ARRANGEMENT, PLANTATION CORPORATION OF KERALA LTD. CHANDANAPPILLY ESTATE, NEDUMANKAVU P.O., PATHANAMTHITTA DISTRICT.**

2. **K.R.ANIL KUMAR,S/O.LATE K.RAMACHANDRAN NAIR, PRESENTLY WORKING AS FILED ASSISTANT ON WORKING ARRANGEMENT, PLANTATION, CORPORATION OF KERALA LTD.A1 DIVISION, KODUMON, ESTATE, NEDUMANKAVU P.O., PATHANAMTHITTA DISTRICT.**

BY ADVS.SRI.N.HARIDAS
SRI.P.N.SASIDHARAN
SMT.RENJITHA PETER

RESPONDENTS :

1. **PLANTATION CORPORATION OF KERALA LTD., MUTTAMBALAM P.O., KOTTAYAM, PIN 686 004 REPRESENTED BY ITS MANAGING DIRECTOR.**

2. **STATE OF KERALA,NOTICE TO WHOM MAY BE SERVED ON THE CHIEF SECRETARY, GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM 695 001.**

R1 BY ADVS. SRI.V.ABRAHAM MARKOS
SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TERRY V.JAMES
SRI.B.J.JOHN PRAKASH
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.RAJU SEBASTIAN VADAKKEKARA, SC,
R2 BY GOVERNMENT PLEADER SRI. P.K. ABDUL REHIMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

APPENDIX

PETITIONER(S) EXHIBITS :

EXHIBIT P1 TRUE COPY OF LETTER DATED 3/10/1988 ISSUED BY THE MANGER, CHANDANAPPILLY ESTATE OF THE IST RESPONDENT TO THE GENERAL MANAGER (P & A), KOTTAYAM.

EXHIBIT P2 TRUE COPY OF LETTER NO.17760/PU 1/90/AD DATED 19/1/1993 ISSUED FROM AGRICULTURE (PU) DEPARTMENT OF THE 2ND RESPONDENT TO THE IST RESPONDENT.

EXHIBIT P3 TRUE COPY OF LETTER NO. PD/PA/108 DATED 3/1/1989 ISSUED BY THE IST RESPONDENT TO THE IST PETITIONER.

EXHIBIT P4 TRUE COPY OF LETTER NO.PD/PA/1207 DATED 2/2/1989 ISSUED BY THE IST RESPONDENT TO THE IST PETITIONER.

EXHIBIT P5 TRUE COPY OF THE LIST OF CANDIDATES UNDER THE DYING -IN-HAMESS SCHEME PUBLISHED BY THE IST RESPONDENT.

EXHIBIT P6 TRUE COPY OF LETTER NO.PD/PA/7916 DATED 26/9/1989 ISSUED BY THE IST RESPONDENT TO THE IST PETITIONER.

EXHIBIT P7 TRUE COPY OF ORDER NO.PD/PA/1244 DATED 4/2/1992 ISSUED BY THE IST RESPONDENT TO THE IST PETITIONER.

EXHIBIT P8 TRUE COPY OF ORDER M.S.NO.27/2000/AGRE DATED 29/6/2000 ISSUED FROM THE AGRICULTURE(PU) DEPT.OF THE 2ND RESPONDENT TO THE IST RESPONDENT.

EXHIBIT P9 TRUE COPY OF ORDER NO.PD/PA/7388 DATED 29/8/1991 ISSUED BY THE IST RESPONDENT TO THE 2ND PETITIONER.

EXHIBIT P10 TRUE COPY OF REPRESENTATION DATED 16/7/2000 SUBMITTED BY THE IST PETITIONER BEFORE THE IST RESPONDENT.

EXHIBIT P10(A): TRUE COPY OF ACKNOWLEDGMENT RECEIPT SIGNED BY THE IST RESPONDENT ON 24/7/2000 FOR HAVING RECEIVED EXT.P10

EXHIBIT P11 TRUE COPY OF REPRESENTATION DATED 16/7/2000 SUBMITTED BY THE 2ND PETITIONER BEFORE THE IST RESPONDENT.

EXHIBIT P11(A): TRUE COPY OF ACKNOWLEDGMENT RECEIPT SIGNED BY THE IST RESPONDENT ON 24/7/2000 FOR HAVING RECEIVED EXT.P11.

EXHIBIT P12 TRUE COPY OF JUDGMENT DATED 16/8/2000 IN OP NO.23465/2000 -R OF THIS HON'BLE COURT.

EXHIBIT P13 TRUE COPY OF COVERING LETTER DATED 1/9/2000 SENT TO THE IST RESPONDENT BY THE PETITIONERS COUNSEL ENCLOSING EXT.P12 JUDGMENT AND COPY OF OP NO.23465/2000-R

EXHIBIT P14: TRUE COPY OF ACKNOWLEDGMENT RECEIPT SIGNED BY THE IST RESPONDENT ON 5/9/2000 FOR HAVING RECEIVED EXTS.P12 & P13 AND COPY OF OP NO.23465/2000R

EXHIBIT P15 TRUE COPY OF LETTER NO.PD/PA/6597 DATED 16/9/2000 ISSUED TO THE IST PETITIONER THROUGH THE MANAGER,KODUMON ESTATE ON BEHALF OF THE IST RESPONDENT.

EXHIBIT P16 TRUE COPY OF LETTER NO.PD/PA/6597 DATED 16/9/2000 ISSUED TO THE 2ND PETITIONER THROUGH THE MANAGER, KODUMON ESTATE ON BEHALF OF THE IST RESPONDENT.

EXHIBIT P17 TRUE COPY OF LETTER NO.PD/PA/1261 DATED 12/10/2000 ADDRESSED TO THE SECRETARY TO GOVERNMENT AGRICULTURE (PU) DEPARTMENT OF THE 2ND RESPONDENT BY THE IST RESPONDENT ALONG WITH ITS ANEXURES.

EXHIBIT P18 TRUE COPY OF PROCEEDINGS DATED 1/2/2003 ISSUED BY THE IST RESPONDENT TO THE IST PETITIONER.

EXHIBIT P18(A):TRUE REEDABLE COPY OF EXHIBIT P18.

EXHIBIT P19 TRUE COY OF PROCEEDINGS NO.KOD/1/900 DATED 2/7/2002 ISSUED BY THE IST RESPONDENT TO THE 2ND PETITIONER.

EXHIBIT P20 TRUE COPY OF RELEVANT PORTION OF MINUTES OF JOINT COMMITTEE OF MANAGEMENT AND REPS OF EMPLOYEES HELD ON 27/3/2003.

EXHIBIT P21 TRUE COPY OF PROCEEDINGS NO.PD/PA/5341 DT.10/11/2009 ISSUED BY GENERAL MANGER OF THE IST RESPONDENT.

EXHIBIT P22 TRUE COPY OF THE PROCEEDINGS NO.ED/PA/3181 DT. 28/8/2009 OF THE IST RESPONDENT.

EXHIBIT P23 TRUE COPY OF THE COVERING LETTER DATED 26/12/2008 OF THE 2ND RESPONDENT ADDRESSED TO 2ND PETITIONER.

EXHIBIT P24: TRUE COPY OF THE IDENTITY CARD ISSUED BY THE IST RESPONDENT TO THE 2ND PETITIONER.

EXHIBIT P25 TRUE COPY OF THE LETTER NO.PD/PA/8983 DATED 23/11/2007 ISSUED BY THE IST RESPONDENT.

EXHIBIT P26 TRUE COPY OF THE AWARD IN ID NO.28/99 DATED 31/12/2003 OF INDUSTRIAL TRIBUNAL,ALAPPUZHA.

EXHIBIT P27 TRUE COPY OF THE JUDGMENT DT.22/2/2011 IN WPC NO.984/2004 OF THE HON'BLE COURT OF KERALA.

EXHIBIT P28 TRUE COPY OF THE ORDER NO.GO(RT) NO.1480/11/AD DT.17/8/2011 OF THE IST RESPONDENT.

EXHIBIT P29: COPY OF THE RESOLUTION NO. 4174 OF THE BOARD OF DIRECTORS OF THE R1.

EXHIBIT P30: COPY OF LETTER NO.PCK/LEGAL/RIA/57 DT 25/10/2011 OF THE PUBLIC INFORMATION OFFICER AND LEGAL OFFICER OF THE R1 CORPORATION

RESPONDENTS' EXHIBITS :

EXT.R1(A): COPY OF THE GOVT. ORDER M.S. NO. 227/2000/AGRI. DT 29/6/2000

EXT.R1(B): COPY OF THE LETTER FROM PUBLIC SERVICE COMMISSION.

EXT.R1(C): COPY OF THE ORDER G.O.M.S. NO. 149/2004 DT 15/7/2004.

EXT.R1(D): COPY OF THE ORDER NO.PD/PA/2302 DT 11/6/2002.

//TRUE COPY//

P.A. TO JUDGE

bp

A.M.SHAFFIQUE, J

* * * * * * * * * * * *

W.P.C.No.25593 of 2011

Dated this the 16th day of January 2015

J U D G M E N T

Petitioners have approached this Court seeking the following reliefs:

> *"i) Issue a Writ of Certiorari or any other appropriate writ, order or direction quashing Exhibit P28 order;*
>
> *ii) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the respondents to give appointments to the petitioners to the post of Field Assistants with retrospective effect at least with effect from 2/2/1989;*
>
> *iii) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the respondents to pay all monetary benefits to the petitioners in the post of Field Assistants including salary with effect from the date of Ext.P18 to the 1st petitioner and Ext.P19 to the 2nd petitioner;"*

2. Ext.P28 is an order passed by the Government based on representations submitted by the petitioners as directed by this Court.

3. The short facts involved in the *writ petition* would disclose that the petitioners are persons who claimed to be entitled for appointment in the Plantation Corporation of Kerala Limited on compassionate grounds. Their date of applications were 01/10/1988 and 20/10/1989 respectively. They have a contention that they were eligible to be appointed as Field Assistants and that few of their juniors were appointed as Field Assistants overlooking their seniority. Reference is made to an appointment made to one Sri.Mohan K.Abraham who was also appointed on compassionate grounds. Government, having considered the matter, observed that the petitioners, having exercised the option to be appointed in the post of Watchers on 07/02/1992 and 05/09/1991 respectively, cannot aspire for getting an appointment as Field Assistants with effect from an earlier date. With reference to Sri.Mohan K.Abraham's appointment, it was mentioned that his father died due to an accident during duty time and therefore a different approach

was made in the matter. That apart, it is observed that after getting an appointment on the basis of an option exercised, they cannot seek for change in category or cadre. Under such circumstances, the representation of the petitioners were rejected.

4. Petitioners inter alia contended that the above findings are absolutely baseless. It is pointed out that the Industrial Tribunal, in I.D.No.52/92 has passed an award directing appointments to be made in the post of Field Assistants on the ground that seniority has been overlooked. That apart, it is contended that the petitioners were serving as Field Assistants for the last more than seven years. Though they were discharging their duties, they were not given the pay scale and other benefits as that of Field Assistants.

5. The Learned counsel for the petitioners argues that the petitioners were qualified for the post of Field Assistants even at the time of filing the applications and

though only limited posts were available, there was no reason for the respondents to have overlooked the seniority of the persons listed under the dying-in-harness scheme and a different treatment should not have been meted out against them.

6. Counter affidavit has been filed by the 1st respondent inter alia supporting the stand taken by the Government in Ext.P28. It is stated that Sri.Mohan K.Abraham whose serial number is 25 in the rank list of candidates was appointed in the scheme of dying-in-harness as Field Assistant considering the fact that his father Sri.K.A.Abraham, who was a Manager, died during duty time. Another person Sri.Biju Mathew, whose father Sri.K.M.Mathew also died during duty time was appointed as Field Assistant. As far as the petitioners are concerned, it is stated that the 1st petitioner was appointed as Watcher in the Corporation who joined on 07/02/1992 and the 2nd petitioner joined duty during September 1991. It is also

indicated that there had been special circumstances under which Sri.Mohan K.Abraham and Biju Mathew were appointed. In fact, even according to the respondents, some of the employees raised an industrial dispute against the appointment given to Sri.Mohan K.Abraham and Sri.Biju Mathew and an award was passed by the Industrial Tribunal directing the Corporation to give appointment to eight employees as Field Assistants from the date on which their juniors were appointed. The award was implemented by the Corporation. The matter was taken up by filing writ petition as W.P.C.No.27660/2003 and the award passed by the Industrial Tribunal had been set aside and the matter remitted back. Since the petitioners were not parties to the said proceedings, they were not given any benefit as such. It is submitted that the appointment of such persons would depend upon the outcome of the decision to be taken by the Industrial Tribunal in the matter.

7. Having regard to these factual situations, the short

question to be considered is whether the petitioners are entitled to be appointed as Field Assistants with effect from 02/02/1989. Apparently, the very appointments as Workers/Watchers were with effect from 07/02/1992 and 05/09/1991 respectively. Under such circumstances, they cannot aspire to be appointed with effect from an earlier date. The post of Field Assistant is in a higher cadre than that of a Field Worker/Watcher. It is not in dispute that one Sri.Mohan K.Abraham, who was junior to the petitioners in the list of compassionate appointments, was appointed as Field Assistant in the year 1989. According to the petitioners, they should have been offered the said post at the relevant time which was not done. But the fact remains that the petitioners did not challenge the appointment of Sri.Mohan K.Abraham at that relevant point of time. Under such circumstances, when the petitioners, having later on accepted the appointments as last grade worker in the Corporation, cannot aspire for change in category unless any

specific rule permits such change in category. The Learned counsel for the petitioners was unable to point out any specific rule which enables such change of category from Field Worker to Field Assistant.

8. The learned counsel for the respondents now submits that the qualification of Field Assistant has been changed and minimum qualification of graduation is required to be appointed as Field Assistant. According to the petitioners, they have been working in the capacity of Field Assistants (in-charge). These are all adhoc arrangements until the regular appointments are made which cannot give any right to the petitioners to remain as Field Assistants. As far as their claim for salary and other benefits are concerned, it is also not in dispute that they have not been put in the pay scale of Field Assistants. They were only paid certain allowances for working in that position.

9. In the result, I do not think that the petitioners are entitled for any claim in the present writ petition. However,

it is made clear that if the petitioners have a case that their juniors were promoted on the basis of any decision, that might be taken by the Industrial Tribunal in I.D.No.52/1992, petitioners can also seek appropriate reliefs based on the said award.

With the above observation, this *writ petition* is dismissed.

(A.M.SHAFFIQUE, JUDGE)

jsr