

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

W.P.(C).No.29043 of 2013 (E)

PETITIONER(S):-

V.RAMACHANDRAN, AGED 52 YEARS,
ASSISTANT ENVIRONMENTAL SCIENTIST,
CENTRAL LABORATORY, GANDHINAGAR, ERNAKULAM,
PIN-682020,
S/O.D.VELAYUDHAN, RESIDING AT "VAASTHUKAM"
KRA 40-A, KANCHIYOORKONAM, KATTAKADA,
THIRUVANANTHAPURAM-695572.

BY ADVS.SMT.A.G.ANEETHA
SRI.KABANI DINESH.

RESPONDENT(S):-

1. THE CHAIRMAN, KERALA STATE POLLUTION CONTROL BOARD,
PLAMOODU JUNCTION, PATTOM P.O.,
THIRUVANANTHAPURAM, PIN-695004.
2. THE MEMBER SECRETARY,
KERALA STATE POLLUTION CONTROL BOARD,
PLAMOODU JUNCTION ALSO CONVENER,
DEPARTMENTAL PROMOTION COMMITTEE, PATTOM P.O.,
THIRUVANANTHAPURAM, PIN-695004.
3. K.V. MOHAMMED VAHIDUDEEN SHANAVAS,, AGED 51 YEARS
ASSISTANT ENVIRONMENTAL SCIENTIST,
KERALA STATE POLLUTION CONTROL BOARD,
ENVIRONMENTAL SURVEILLANCE CENTRE, ELOOR,
UDHYOGAMANDAL P.O., PIN-685301.

4. STATE OF KERALA

REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF ENVIRONMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.

* ADDITIONAL 5TH RESPONDENT IMPEADED:

ADDL.R5. K.V.GOPALAKRISHNAN, AGED 54 YEARS,
ASST. ENVIRONMENTAL SCIENTIST,
ENVIRONMENTAL SURVEILLANCE CENTRE,
KERALA STATE POLLUTION CONTROL BOARD, ELOOR,
S/O.LATE K.V.BALAKRISHNAN,
"AISWARYA", CHETTIPADY P.O., MALAPURAM DISTRICT.

*[ADDITIONAL 5TH RESPONDENT IS IMPEADED AS PER ORDER
ON I.A.NO.5305 OF 2015 DATED 8.4.2015].

R1 & 2 BY STANDING COUNSEL SRI. M.AJAY.
R3 & ADDL.R5 BY ADVS. SRI.P.M.MOHAMMED SHIRAZ
SMT.G.R.MANJU
R4 BY GOVERNMENT PLEADER SMT.A.LOWSY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1: COPY OF PROCEEDINGS OF 1ST RESPONDENT DECLARING PETITIONER'S PROBATION DATED 10.7.2008.
- EXT.P2: COPY OF NOTIFICATION DT.19/8/1958 OF CENTRAL GOVERNMENT.
- EXT.P3: COPY OF GOVT. ORDER DT.20.12.1985 OF STATE GOVT. HEALTH & FAMILY WELFARE DEPARTMENT.
- EXT.P4: COPY OF GOVT. ORDER DT.25.11.1978 OF STATE GOVERNMENT.
- EXT.P5: COPY OF ORDER DT.22.6.1984 ISSUED BY UNIVERSITY OF KOCHI.
- EXT.P6: COPY OF PROCEEDINGS DT.22.10.1986 OF 1ST RESPONDENT PCB.
- EXT.P7: COPY OF REPRESENTATION DT.31.1.2011.
- EXT.P8: COPY OF LETTER FROM 1ST RESPONDENT DT.25.1.2012.
- EXT.P9: COPOY OF REPRESENTATION DT.7.5.2012.
- EXT.P10: COPY OF REPRESENTATION DT.8.4.2013.
- EXT.P11: COPY OF NOTIFICATION OF 1ST RESPONDENT DT.14.5.2013.
- EXT.P12: COPY OF GOVT. NOTIFICATION DT.15.4.1997.
- EXT.P13: COPY OF REPRESENTATION DT.5.6.2013.
- EXT.P14: COPY OF PAGE 428 OF SCIENTIFIC SERVICE SPECIAL RULES.
- EXT.P15: COPIES OF PAGES 419 & 420 OF THE GENERAL RULES CONTAINING CLAUSE 13.
- EXT.P16: COPIES OF PAGES 1, 2 AND 15 TO 17 OF KERALA STATE POLLUTION CONTROL BOARD NOTIFICATION DT.20.11.1999.
- EXT.P17: COPY OF THE ORDER DT.27.11.2013 OF KERALA STATE POLLUTION CONTROL BOARD.
- EXT.P18: COPY OF THE PROCEEDINGS DT.8.1.2001 OF THE 1ST RESPONDENT BOARD.

RESPONDENT(S)' EXHIBITS

- EXT.R2(a) TRUE COPY OF THE MINUTES OF THE 60TH MEETING
OF THE KERALA STATE POLLUTION CONTROL BOARD
DATED 24.09.1986.
- EXT.R2(b) TRUE COPY OF THE NOTIFICATION NO.PCB/FI/15639/89
DATED 20.11.1999.
- EXT.R3(a) TRUE PHOTOCOPY OF APPENDIX-IV OF INFORMATION
BULLETIN AND APPLICATION FORM FOR NATIONAL
ELIGIBILITY TEST - JUNE, 2013.
- EXT.R3(b) TRUE PHOTOCOPY OF ORDER NO.PCB/E1/21084/11
DATED 26.03.2015.
- EXT.R5(a) TRUE PHOTOCOPY OF MINUTES OF 194TH BOARD MEETING
DATED 26.03.2015.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.29043 of 2013-H

Dated this the 09th day of October, 2015

JUDGMENT

The petitioner challenges the promotion granted to the additional 5th respondent and other juniors to the post of Environmental Scientist without considering him for such promotion. The petitioner admittedly was appointed to the Kerala State Pollution Control Board [for brevity “the Board”] as Junior Scientific Assistant on 21.04.1983. He had a graduate degree in Botany and Post Graduate Diploma in Analytical Chemistry of Institution of Chemists (India).

2. The petitioner was promoted as Senior Scientific Assistant on 10.02.1988; but the further promotion to Assistant Scientist required a qualification of post-graduation in Chemistry/ Bio-Chemistry/ Marine Biology/ Aquatic Biology/ Physical Chemistry or should possess a 2nd Class Bachelor’s degree *inter alia* in Botany and must have completed a minimum of three years service as Senior Scientific Assistant. Obviously for reason either of the petitioner not possessing a 2nd Class Bachelor’s degree or

for reason for the petitioner not having three years service as a Senior Scientific Assistant, the petitioner could not be promoted to the post of Assistant Scientist. The same was facilitated by Exhibit P6 order of the Board in the 60th meeting, wherein the Diploma in Analytical Chemistry acquired by the petitioner was treated as equivalent to M.Sc [Chemistry] for appointment as Assistant Scientist. The Board was so empowered by Clause 13 of the General Rules, produced at Exhibit P15, which conferred the appointing authority to treat other qualifications as equivalent to such qualification or special test prescribed in the Special Rules.

3. The petitioner continued as Assistant Scientist and later was promoted to the post of Assistant Environmental Scientist on 10.05.2001. The petitioner is aggrieved by the fact that his further promotions are interdicted insofar as the Special Rules of 1999, by Exhibit P16 provided for a Second Class Master's Degree with 50% marks in the branches specified thereunder for promotion. The petitioner's contention is that since the petitioner's Diploma qualification has been equalised with the post-graduate qualification, there would be no further equalisation required. The petitioner also relies on Exhibits P2, P3, P4 and P5,

wherein various academic bodies and Government have recognised the petitioner's Diploma as equivalent to M.Sc. [Chemistry].

4. On a reading of the Special Rules as it existed prior, an extract of which is produced at Exhibit P14; promotion from the post of Assistant Environmental Scientist to the Environmental Scientist could be of officers who had a minimum of five years service as Assistant Environmental Scientist. But, at that point of time, the qualification prescribed for Assistant Environmental Scientist was a Master's degree in the subjects specified thereunder. Hence, when such Special Rules were in existence, the petitioner could not have aspired to be promoted to the post of Assistant Environmental Scientist unless the Board again considered the question of equivalency.

5. The petitioner's contention that once the qualification was considered as equivalent, there need be no subsequent consideration, cannot be countenanced. The appointing authority has been conferred with the power to consider as equivalent any qualification obtained by a person, as equivalent to a qualification prescribed for **a post**, by the General

Rules and Exhibit P6 could only be deemed to be an equivalency made for **the post of Assistant Scientist**. At each stage, definitely, the exemption would have to be considered by the appointing authority.

6. The learned counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in ***Jagdish Pandey v. Chancellor, University of Bihar and Others* [AIR 1968 SC 353]**. There, *inter alia* the issue raised was with respect to continuance of a teacher as Principal despite his not possessing a Second Class Master's degree. The Principal, who was appointed prior to the Statutes, had only a Second Class degree. Hon'ble Supreme Court noticed the specific provision in the Statutes, being sub-rule (6) of Rule 1, which was a *non obstante* clause deeming the qualifications of teachers already in service and confirmed before 01.07.1952 to be equivalent to the minimum qualifications for the post he holds. There the statutory rule, by a deeming provision, conferred the equivalence, which is not the case herein. The appointing authority is expected to consider the question of equivalency at each point when promotions are made with reference to the post to which promotion is sought.

7. As noticed above, the Special Rules prior to amendment provides for a Master's degree for being promoted as Assistant Environmental Scientist. The petitioner could not have normally expected to be offered such a promotion unless an equivalence was considered. However, the Special Rules were amended in 1999, which is produced at Exhibit P16. The essential qualification for the Assistant Environmental Scientist was reduced to a Bachelor's degree, in any branch of a subject specified therein; which the petitioner possessed. The petitioner was hence, promoted after Exhibit P16 Special Rules came into force. The Special Rules, in fact, took note of the Diploma issued by the Institutions of Chemists (India) and did not, however, equalise it with the Master's degree, but provided an exemption insofar as exempting the experience of three years for such Diploma holders. Hence, the authority consciously did not consider any exemption at the time of the amended Special Rules. The petitioner was also promoted to the post of Assistant Environmental Scientist on the basis of the said Special Rules. It was the reduction in qualification made for appointment to the post of Assistant Environmental Scientist by the new Special Rules that enabled the

promotion of the petitioner.

8. The further promotion to the post of Environmental Scientist could be only for persons who have Second Class Master's Degree in any of the branches specified therein. The petitioner obviously does not have such qualification. The petitioner's contention that no further equivalence need be sought for has already been negated. As was noticed, earlier exemption was granted to the petitioner only with reference to the post of Assistant Scientist.

9. The petitioner, along with other Diploma holders, had approached the Board for equivalency by way of a representation. The Board, having taken the opinion of the Chief Government Analyst of the Government Analytical Laboratory, found that, even under the Government the Diploma of Associateship in Institution of Chemists (AIC) holders were found to be eligible only for promotion upto the level of Research Officer, deeming the same to be an equivalent qualification to M.Sc degree. The Board categorically found that, in the Board, AIC holders were entitled for exemption from experience and was entitled to be promoted to the post of Assistant Environmental

Scientist, which is on the higher scale of pay than the post of Research Officer. This Court cannot interfere with Exhibit P8 order of the Board, since balancing considerations on a technical matter cannot be interfered with lightly by this Court under Article 226 of the Constitution, especially when this Court does not have the expertise in deciding upon such technical issues. No arbitrariness or discrimination can be found, since obviously the petitioner did not have the higher qualification and none other with a Diploma was treated differently.

For all the above reasons, the writ petition is devoid of merit and would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]