

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 33289 of 2011 (I)

PETITIONER:

**M. JEEVAKUMAR
S/O.MANI, AGED 40 YEARS, OPERATOR-B
STAFF NO.83425, OM & S DEPARTMENT
BHARATH PETROLEUM CORPORATION LTD.
KOCHI REFINERY LTD., AMBALAMUGHAL P.O.
ERNAKULAM-682 302.**

**BY ADVS.SRI.T.S.RAJAN
SRI.V.K.DINESH KUMAR
SRI.T.C.GOVINDA SWAMY
SRI.C.K.SUNIL
SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.B.HARISH KUMAR**

RESPONDENTS:

- 1. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT
MINISTRY OF PETROLEUM AND NATURAL GAS
SASTHRI BHAVAN, NEW DELHI-110 001.**
- 2. CHAIRMAN AND MANAGING DIRECTOR,
BHARATH PETROLEUM CORPORATION LTD, BHARATH BHAVAN,
4 &6 CURRIMBOY ROAD, BALLARD ESTATE
MUMBAI, PIN-400 001.**
- 3. BHARATH PETROLEUM CORPORATION LTD,
KOCHI REFINERY, AMBALAMUGHAL
REPRESENTED BY ITS EXECUTIVE DIRECTOR
AMBALAMUGHAL.P.O, ERNAKULAM DISTRICT, PIN-682 302.**
- 4. GENERAL MANAGER (HUMAN RESOURCES),
BHARATH PETROLEUM CORPORATION LTD, KOCHI REFINERY
AMBALAMUGHAL, ERNAKULAM, PIN-682 302.**
- 5. PAULY PETER,
S/O.PETER POUL, AGED ABOUT 47 YEARS, EMPLOYEE NO.81639
ASSISTANT, OM & S DEPARTMENT, PDP & C SECTION
BHARATH PETROLEUM CORPORATION LTD.
KOCHI REFINERITES, AMBALAMUGHAL P.O.
ERNAKULAM DISTRICT, PIN-682 302.**

[CONTD...]

6. SUNIL KUMAR.N,
EMPLOYEE NO.81680
ASSISTANT, OM & S DEPARTMENT, PDP & C SECTION
BHARATH PETROLEUM CORPORATION LTD.
KOCHI REFINERITES, AMBALAMUGHAL P.O.
7. PRAMOD.K,
EMPLOYEE NO.81998
ASSISTANT, OM & S DEPARTMENT, PDP & C SECTION
BHARATH PETROLEUM CORPORATION LTD.
KOCHI REFINERITES, AMBALAMUGHAL P.O.
8. RAGHAVENDRA.D.M,
EMPLOYEE NO.83294
ASSISTANT, OM & S DEPARTMENT, PDP & C SECTION
BHARATH PETROLEUM CORPORATION LTD.
KOCHI REFINERITES, AMBALAMUGHAL P.O.
9. GEORGE BIBIN,
EMPLOYEE NO.83606
ASSISTANT, OM & S DEPARTMENT, PDP & C SECTION
BHARATH PETROLEUM CORPORATION LTD.
KOCHI REFINERITES, AMBALAMUGHAL P.O.
10. NAVEEN CHANDRAN.A,
EMPLOYEE NO.83698
ASSISTANT, OM & S DEPARTMENT, PDP & C SECTION
BHARATH PETROLEUM CORPORATION LTD.
KOCHI REFINERITES, AMBALAMUGHAL P.O.
11. RAJESH.M,
EMPLOYEE NO.83735
ASSISTANT, OM & S DEPARTMENT, PDP & C SECTION
BHARATH PETROLEUM CORPORATION LTD.
KOCHI REFINERITES, AMBALAMUGHAL P.O.
12. BIJU ABRAHAM.P.
EMPLOYEE NO.84127
ASSISTANT, OM & S DEPARTMENT, PDP & C SECTION
BHARATH PETROLEUM CORPORATION LTD.
KOCHI REFINERITES, AMBALAMUGHAL P.O.

BY ADVS. SRI.E.K.NANDAKUMAR
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH
SRI.SHAJI P.CHALY
SRI.R.SANJITH
SRI.E.K.NANDAKUMAR
BY SRI.N. NAGARESH, ASGI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- | | | |
|---------|---|--|
| EXT P1 | - | COPY OF THE NOTIFICATION DATED 04.11.2009. |
| EXT P2 | - | COPY OF THE TRANSFER ORDER DATED 17.11.2009. |
| EXT P3 | - | COPY OF TRANSFER ORDER TO COF SECTION VIDE ORDER NO.07/101/INT DATED 19.05.2010. |
| EXT P4 | - | COPY OF THE NOTIFICATION DATED 01.10.2010. |
| EXT P5 | - | COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE GENERAL MANAGER DATED 14.10.2010. |
| EXT P6 | - | COPY OF THE INVITATION OF INTERVIEW DATED 07.03.2011. |
| EXT P7 | - | COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE IMMEDIATE SUPERIOR DATED 11.04.2011. |
| EXT P8 | - | COPY OF THE REPLY ISSUED BY THE IMMEDIATE SUPERIOR TO THE PETITIONER DATED 20.04.2011. |
| EXT P9 | - | COPY OF THE REPLY OF DEPUTY GENERAL MANAGER OF OM & S TO THE PETITIONER DATED 25.04.2011. |
| EXT P10 | - | COPY OF THE REPLY OF DEPUTY GENERAL MANAGER OF OM & S BY THE PETITIONER DATED 09.05.2011. |
| EXT P11 | - | COPY OF THE REPLY FROM GENERAL MANAGER (OPERATIONS) TO THE PETITIONER DATED 11.07.2011. |
| EXT P12 | - | COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 14.07.2011. |
| EXT P13 | - | COPY OF A MINUTES OF GRIEVANCE COMMITTEE DATED 17.06.2011. |
| EXT P14 | - | COPY OF THE REQUEST DATED 02.08.2011 MADE BY THE PETITIONER FOR THE REPLY OF THE LETTER BEFORE THE GENERAL MANAGER OPERATIONS. |
| EXT P15 | - | COPY OF THE REPLY FROM THE EXECUTIVE DIRECTOR TO THE PETITIONER DATED 23.08.2011. |
| EXT P16 | - | COPY OF THE REPLY MADE BY THE PETITIONER TO THE EXECUTIVE DIRECTOR DATED 29.08.2011. |
| EXT P17 | - | COPY OF THE REPLY OF DEPUTY GENERAL MANAGER TO THE PETITIONER DATED 06.09.2011. |

[CONTD...]

- EXT P18 - COPY OF THE REPLY TO DEPUTY GENERAL MANAGER FILED BY THE PETITIONER DATED 15.09.2011.
- EXT P19 - COPY OF THE ORDER BY E-MAIL DATED 03.09.2011.
- EXT P20 - COPY OF THE OFFICE MEMORANDUM VIDE NUMBER 36012/2/96-ESTT. (RES) DATED 02.07.1997 ISSUED BY THE DEPARTMENT OF PERSONAL AND TRAINING, GOVERNMENT OF INDIA.
- EXT P21 - COPY OF THE REVISED PRESIDENTIAL DIRECTIVE NO,6-19/89-BPE (SC/ST CELL) ISSUED BY THE MINISTRY OF INDUSTRY DATED 25.04.1991.
- EXT P22 - COPY OF THE MEMORANDUM OF SETTLEMENT DATED 31.07.1993 RENEWED ON 18.01.2006.

RESPONDENTS' EXHIBITS:-

- ANNEXURE I - COPY OF THE RESERVATION ROSTER OF GRADE VII FOR THE YEARS 2009, 2010 AND 2011 DULY VERIFIED BY THE MINISTRY OFFICIAL.
- ANNEXURE II - STATEMENT SHOWING THE DETAILS OF VACANCIES NOTIFIED AND FILLED IN GRADE VII DURING THE YEARS 2009, 2010 AND 2011.

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.33289 of 2011

Dated this the 30th day of October, 2015.

JUDGMENT

The petitioner is aggrieved by Exts.P1 and P4 notifications dated 04.11.2009 and 01.10.2010. Admittedly, the petitioner appeared for promotion under the said notifications and on not being selected, has turned around to challenge the same on two grounds: (i) reservation having not been followed as per the roster indicated at Ext.P20; and the qualification of ITI having been included to accommodate one particular person, ie. the 5th respondent. Admittedly, respondents 5 to 12 were appointed after a valid selection and have been continuing in the said posts all these years. The selection as per Ext.P1 is said to have concluded with appointments as on 01.04.2010 and the selection at Ext.P4 is said to have been concluded with appointments on

01.04.2011. The writ petition is filed in December, 2011.

2. In addition to raising the ground of delay and the petitioner having not chosen to challenge the notifications for selection; the statement of the respondents' deals with the issue of reservation raised by the petitioner. It is stated in the statement dated 05.01.2012 that in the case of promotions, the percentage of reservation applicable is 15% for Scheduled Castes and 7.5% to Scheduled Tribes. It is also specifically contended that in the number of posts available in Grade-VII, there are in existence 6 Scheduled Castes in excess of the actual requirement of 15%.

3. To counter the said argument the petitioner's counsel relies on ***R.K. Sabharwal and Others v. State of Punjab and Others [1995 (2) SCC 745]***. The Hon'ble Supreme Court has specifically declared that the concept of vacancy is alien to the concept of reservation and reservation has to be with reference to the number of posts, which form the cadre strength. The Hon'ble Supreme Court held so:

"4. When a percentage of reservation is

fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non reserve posts and in the event of their appointment to the said posts their numbers cannot be added and taken into consideration for working out the percentage of reservation.

XXXXX

XXXXX

XXXXX

The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the members of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class."

4. The statement of the respondents would indicate that in the cadre, there have been appointed, in excess, 6 Scheduled Caste candidates, over and above the actual requirements, which however is not a relevant consideration, since the Scheduled Caste candidates promoted under the general merit would not be considered as persons posted in the reserved category. That

would not satisfy the mandate of reservation. However, the statement specifically points out that, as per the roster for Grade-VII, there was no requirement of providing a Scheduled Caste reservation as on 04.11.2009 and 01.09.2009 and it was hence there were no posts reserved for Scheduled Castes, while issuing the respective notifications.

5. To have more clarity, this Court directed the respondent to put forth the details of the reservation followed. The respondents 1 to 4 have then filed a statement dated 12.10.2015. The categorisation of posts, followed in the Company puts Grade VI & VII under Group B posts. There are said to be various designations in the same Grade; herein Grade VII. The reservation however is maintained grade wise and not post wise. Paragraphs 2 to 6 of the statement can be usefully extracted:

"2. In Kochi Refinery there are nearly 40 designations in Grade VII alone. The post of Assistants (OM & S) is one such designation in Gr.VII.

3. Ext.P1 notification dated 04.11.2009 and Ext.P4 notification dated 01.10.2010 were notified for 4 posts of Assistants (OM & S). These two are totally separate notifications

and issued almost one year after the first one. In between this period, notifications for other posts like Purchase Asst., Shift Chemist, Planning Assistant, etc: falling in Grade VII were also issued and posts filled up. Thus a total number 36 posts were notified during the year 2009, out of which 4 posts were reserved for SC candidates. Similarly 44 posts were notified during the year 2010, out of which 7 & 2 posts were reserved for SC & ST candidates respectively. During the year 2011, 33 posts were notified, out of which 4 & 2 posts were reserved for SC & ST candidates respectively.

4. BPCL being a Central Public Sector Enterprise coming under the Ministry of Petroleum and Natural Gas, the reservation roster of all units are scrupulously verified by the Ministry officials on a yearly basis. Accordingly, the reservation roster maintained in Kochi Refinery is also verified by the Ministry officials on a yearly basis. The copy of the reservation roster of Grade VII for the years 2009,2010 and 2011 duly verified by the Ministry official is attached herewith as Annexure-I."

6. This Court does not find any specific ground raised as to the Scheduled Caste reservation having been by-passed with reference to the appointments made to the various designations in the same grade over the years. But for the bland assertion that the roster as per Ext.P20 has not been followed; the petitioner does not point out the roster-point which was by-passed. The petitioner only contends that if both the notifications were

together then the 7th post would have to be conceded to the Scheduled Caste candidate, which contention is with reference to the number of vacancies and not the total cadre strength. The issue has been put in the proper perspective in the addl. statement filed. Reservation is not maintained on the particular designation and the cadre strength is taken with reference to the various designations in a cadre. There can be no fault found in the method of reservation thus followed. In ***Harinandan Sharan Bhatnagar v. S.N. Dixit [AIR 1970 SC 40]*** it was held that all officials working in the same scale of pay in a Department, although holding posts with different designations, shall be deemed to be holding posts in the same Grade, because their rank in the Department would be same and equal to one another.

7. The issue of qualification not available in the Rules, is raised on the strength of Ext.P22 produced along with the Reply Affidavit. Ext.P22 is a Memorandum of Settlement arrived at in the year 2006. The specific reference made is to the post of Operator and the qualification prescribed therein; under item No.45. True, the qualification of ITI is not referred therein. But

however, a perusal of Ext.P22 would not indicate a post of 'Assistant' in Grade VII, which post was notified as per Exts.P1 and P4. The Operator referred to in Ext.P22 is a technical post, while the post of Assistant, though in the same Grade, is a post in the Finance Department, where experience is also prescribed in Grade VI in the Project Despatch, Planning and Co-ordination (PDP&C) section of Oil Movement and Storage (OM&S) in the Finance Department. Hence, post of Assistant is an administrative post requiring some technical qualifications, which the respondent Company has provided as indicated in Exts.P1 and P4. It cannot at all be said that merely because the post is not specifically mentioned in Ext.P22 settlement, the same should be equated with the qualifications prescribed for the Operator in the very same Grade. Different designations in the same grade would have prescribed different qualifications, considering the nature of duties assigned to each. Further, if the allegation is the violation of the terms of a binding settlement, then the forum is that under the Industrial Disputes Act, 1947. In such circumstances, the petitioner's challenge cannot hold good.

Then again, it is to be noticed that the petitioner has approached this Court after appearing in the selections pursuant to the notifications issued, which he never chose to challenge. The petitioner, on being found to be not eligible for selection, has turned around to challenge the notification itself, which is not permissible as laid down in ***Nagamani K.A. v. Indian Airlines and Others [2009 (5) SCC 515]***.

On the aforesaid reasons, the inevitable conclusion is that the writ petition, is devoid of merit, and hence would stand dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

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