

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 36747 of 2010 (P)

PETITIONER:

**K.G.MANOJKUMAR, S/O.K.T.GOPALAN, KOKKATTU HOUSE
PULLADU.P.O, THIRUVALLA (TECHNICAL GRADE II
COLLEGE OF ENGINEERING, ATTINGAL).**

**BY ADVS.SRI.S.SUBHASH CHAND
SRI.T.NIKLAVU**

RESPONDENTS:

- 1. INSTITUTE OF HUMAN RESOURCES DEVELOPMENT
PRAJEO TOWERS, VAZHUTHACAUD, THIRUVANANTHAPURAM-14
REPRESENTED BY ITS DIRECTOR.**
- 2. THE DIRECTOR
INSTITUTE OF HUMAN RESOURCES DEVELOPMENT,
PRAJEO TOWERS, VAZHUTHACAUD
THIRUVANANTHAPURAM-14.**

BY ADV. SHRI M.K.CHANDRAMOHAN DAS,SC,IHRD

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 - COPY OF THE ORDER BEARING NO.E4/7750/2001/HRD DATED 03.11.2001 OF RESPONDENT NO.2.
- EXHIBIT P2 - COPY OF THE PROCEEDINGS BEARING E4/7750/01/HRD DATED 03.09.2002.
- EXHIBIT P3 - COPY OF THE APPLICATION DATED 19.09.2006 SUBMITTED BY THE PETITIONER BEFORE THE INFORMATION OFFICER, IHRD HEADQUARTERS, THIRUVANANTHAPURAM.
- EXHIBIT P4 - COPY OF THE COMMUNICATION DATED 09.10.2006 THUS ISSUED BY RESPONDENT NO.2 TO THE PETITIONER.
- EXHIBIT P5 - COPY OF THE REPRESENTATION DATED 23.08.2006 SUBMITTED BY THE PETITIONER BEFORE RESPONDENT NO.2.
- EXHIBIT P6 - COPY OF THE REPRESENTATION 09/11/2006 SUBMITTED BY THE PETITIONER BEFORE RESPONDENT NO.2.
- EXHIBIT P6(A) - COPY OF THE REPRESENTATION 08.03.2007 SUBMITTED BY THE PETITIONER BEFORE RESPONDENT NO.2.
- EXHIBIT P7 - COPY OF THE PROCEEDING DATED 11.10.2007 ISSUED BY THE PUBLIC INFORMATION OFFICER, COLLEGE OF ENGINEERING, CHENGANNOOR.
- EXHIBIT P8 - COPY OF THE JUDGMENT DATED 11.01.2007 PASSED BY THIS HON'BLE COURT IN WP(C) NO.1269 OF 2007.
- EXHIBIT P9 - COPY OF THE PROCEEDINGS DATED 01.09.2007 OF RESPONDENT NO.2.
- EXHIBIT P10 - COPY OF THE PROCEEDINGS DATED 12.09.2007 OF THE PRINCIPAL, COLLEGE OF ENGINEERING, CHENGANNOOR.
- EXHIBIT P11 - COPY OF THE REPRESENTATION DATED 08.06.2009 THU SUBMITTED BY THE PETITIONER BEFORE RESPONDENT NO.2.
- EXHIBIT P12 - COPY OF THE PROCEEDINGS NO.EB2/2765/004/HRD (2) DATED 13.09.2007.
- EXHIBIT P13 - COPY OF THE PROCEEDINGS NO.E4/2907/98/HRD DATED 01.12.2000.
- EXHIBIT P14 - COPY OF THE PROCEEDINGS NO.E4/8325/2002/HRD (1) DATED 25.09.2004.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.36747 of 2010

Dated this the 22nd day of September, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner was not promoted when a vacancy arose in the post of Technician Grade-II. The background to be noticed are that the petitioner was appointed as a Workshop Assistant under the respondents on 01.07.1992, in the College of Engineering, Attingal. The petitioner's grievance is with respect to the delayed promotion to the post of Technician Grade-II (Electrical), despite having acquired qualification of First Class Diploma in Electrical on 25.08.2005.

2. The petitioner, on the basis of the answers to queries made under the Right to Information Act, 2005, claimed that there were vacancies existing in the post of Technician Grade-II/ Workshop Instructor from 2002 onwards. He hence claims a

promotion, atleast notional, from the date of acquisition of qualification to the existing vacancy.

3. The special Rules of the IHRD, as is produced at Ext.P2, would indicate that the promotion to Technician Grade-II/ Workshop Instructor was to be made from the feeder category of Trade Instructor/Tradesman, in the absence of whom, the Workshop Assistants or Data Entry Operators also could be considered. The further stipulation was only with respect to service of two years in the entry post, which obviously the petitioner satisfies.

4. The petitioner relies on Exts.P4 & P5 to contend that there were vacancies existing, of Technician Grade-II under the respondents. The petitioner earlier filed WP(C) No.1269 of 2007, wherein Ext.P8 judgment was passed. The petitioner pressed for a direction to the respondents to consider and take a decision on Exts.P5&P6 representations filed by the petitioner. In compliance with the said judgments, the respondents convened a Screening Committee and promoted the petitioner by Ext.P9 on 01.09.2007. The petitioner, relying on Exts.P12, P13 & P14

orders passed by the respondents, claims that the petitioner also ought to be considered for notional promotion from the date of occurrence of vacancy. The petitioner also relies on the decisions of the Hon'ble Supreme Court reported in ***Union of India v. B.S. Agarwal and others [1997 (8) SCC 89]*** and ***Ramesh Kumar v. Union of India and others [2015 (4) KHC SN 13]***.

5. This Court is of the opinion that both the decisions do not apply herein. ***Ramesh Kumar*** (supra) deals with retrospective promotions and the claim for monetary benefits for the period in which there was no duty discharged in the promoted post. It is an established proposition that, no person in the feeder category has a claim to the promoted post and the right arises only when there is a consideration made, that too for a proper consideration.

6. The proposition relied on by the petitioner on a reference to ***B.S. Agarwal*** (supra) is that the scheme for filling up posts is referable to the date of accrual of vacancy and not the date of appointment. The said declaration was on an interpretation of Clause 7.3 of the Scheme for filling up of posts of General Manager, Indian Railways. Clause 7.3 stipulated that only

empanelled officers would be normally appointed to the post, as will be able to serve for at least two years, in the higher post. The Railways determined the said two years from the date of accrual of vacancy. Some of the empanelled officers who did not have such tenure; challenged the method of computation, on the ground that such determination would lead to a relaxation and in that circumstance there is no reason why they who had such tenure on the date of empanellment be denied promotion. The ground of hostile discrimination was negatived and it was held that the determination of tenure from the date of accrual of vacancy would ensure justice and fair play and also avoid any capricious exercise of 'pick and choose'; since the date is clearly ascertainable. It was held so:

"In our considered view, determination of residuary length of service with reference to accrual of vacancy will not be consistent with the language of para 7.3 but such interpretation will also not frustrate the purpose for which residuary length of service is intended in para 7.3 of the Scheme. The Court should lean in favour of such interpretation of statute which conforms to justice and fair play and prevents potentiality to injustice by liberally construing the provision without intrinsically violating the language of the

statute and the purpose intended to be achieved."

7. The said declaration was on the specific terms of the Scheme and cannot have universal application. Admittedly, herein, there was no violation of the ratio of promotees and direct recruit nor was any junior of the petitioner promoted to the higher post. The fact remains that though there were vacancies of Technician Grade-II in the organisation, the organisation thought it fit not to make any promotions. In any event, pursuant to Ext.P8, the petitioner was promoted after a selection process and appointed on 01.09.2007.

8. Exts.P12,P13 and P14 have been passed on the facts noticed therein, which this Court is of the opinion, does not apply in the present case. In Ext.P12 the seniority in the feeder category was directed, by this Court, to be refixed, by which fixation the petitioner before this Court was placed higher up and thus was entitled to be promoted earlier. By Ext.P13, notional promotion was given from the date of eligibility or date of receipt of application, whichever is later, since there was considerable

delay in finalising the promotions. Ext.P14 does not disclose the reason for notional promotion nor does the petitioner point out how it is similar to the facts urged herein. No ground of hostile discrimination can be urged on the said documents.

In such circumstances, the petitioner cannot have any claim for retrospective promotion, even notional, from the date of arising, of the vacancy or from the date of acquisition of qualification by the petitioner.

The writ petition stands dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

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