IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 15TH DAY OF JANUARY 2024 / 25TH POUSHA, 1945

WP(C) NO. 11847 OF 2023

PETITIONER/S:

RENJITH RAJ, AGED 34 YEARS S/O. RAJU C K, RESIDING AT CHIRAYIL HOUSE, GOTHURUTH P O, MOOTHAKUNNAM (VIA) NORTH PARAVUR, ERNAKULAM, PIN - 683516

BY ADVS. C.S.AJITH PRAKASH, T.K.DEVARAJAN, BABU M., M.B.SOORI,ANCY THANKACHAN, NIDHIN RAJ VETTIKKADAN, GOURI KAILASH HAARIS MOOSA

RESPONDENT/S:

1 THE FERTILIZERS AND CHEMICALS TRAVANCORE LTD, (FACT) UDYOGAMANDAL (A GOVERNMENT OF INDIA ENTERPRISE) UDYOGAMANDAL P O, KOCHI - 683501 REPRESENTED BY THE CHAIRMAN & MANAGING DIRECTOR, PIN - 683501

2 THE FERTILIZERS AND CHEMICALS TRAVANCORE LTD, UDYOGAMANDAL (A GOVERNMENT OF INDIA ENTERPRISE) UDYOGAMANDAL P O, KOCHI - 683501 REPRESENTED BY THE EXECUTIVE DIRECTOR (HR)., PIN - 683501

BY ADVS. M.GOPIKRISHNAN NAMBIAR, K.JOHN MATHAI(K/413/1984) JOSON MANAVALAN(J-526) KURYAN THOMAS(K/131/2003) PAULOSE C. ABRAHAM(MAH/58/2006) RAJA KANNAN(K/356/2008)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON 15.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

(Dated this the 15th day of January 2024)

The petitioner was appointed as Technician (Process) as per Ext.P1 dated 24.3.2017 after due selection conducted by the first respondent and joined duty 17.4.2017. On 9.1.2018, he resigned from the service of the respondent and joined Kerala State Police Department. Later, he resigned police department on 27.7.2018 and applied for the post of Technician (Process) in the respondent company and after due process of selection, the petitioner was appointed temporarily as per Ext.P2 with effect from 22.6.2020. While so, a recruitment notification No.11/22 dated 25.10.2022 was issued by the respondent for the post of Technician (Process). The petitioner applied for the post based on his qualifications and experience. He attended the computer-based test and on the basis of the test, a list of eligible candidates was published on 3.1.2023 as per

Ext.P5. The petitioner was Sl.No.63 in Ext.P5 list. The next stage of verification was regarding the documents and the petitioner appeared for the document verification on 14.2.2023. After due verification Ext.P7 merit list of the candidates was published on 21.3.2023, but the petitioner was not included in the merit list. The petitioner when contacted the H.R. department, he was informed that he was not eligible for inclusion in the merit list as per clause 16.11 of Ext.P4 Recruitment Notification. The petitioner submits that this clause is not applicable to him as he was not a permanent employee of the company at the time of resignation. The petitioner is denied inclusion in the merit list by a wrong interpretation of the clause in the notification. Therefore, he seeks a direction to call for the records leading to Ext.P7 merit list and to quash the same to the extent of non-inclusion of the petitioner's name and a writ of mandamus commanding the respondents to include the petitioner in Ext.P7 merit list.

2. A counter affidavit is filed on behalf of the respondents, wherein it is contended that none of the fundamental rights of the petitioner under the Constitution of India have been infringed for filing this Writ petition. The petitioner, after participating in the selection process, cannot turn back and assail the selection process. The petitioner applied under notification and he was the successful candidate in the written examination. On verification of his documents submitted by the petitioner, it was found that he was earlier appointed on permanent post of Technician (Process) and he resigned from the service, and therefore, he is ineligible in view of clause 16.11 of the Recruitment Notification. The petitioner purposefully concealed his details of his employment with the respondent company from 17.4.2017 to 9.1.2018 in the online application form as well as in the application submitted at the time of document verification. Ext.R1(a) and R1(b) are the applications submitted by the petitioner that do not show that

he was employed in the respondent company from 17.4.2017 to 9.1.2018. As per Ext.P1 order, he was appointed as a permanent employee and he was governed by the Rules and Regulations of the respondent company. Merely because Ext.P1 order provides that the petitioner was entitled to a consolidated pay for the initial period of two years, it cannot be construed as the appointment is not for a permanent post. It is specifically stated in Ext.P1 that he should give an undertaking to serve the company for a period of 5 years which shows that the appointment was of a permanent nature. The employment under temporary basis is made for a limited period and the said fact would be specifically stated in the appointment order. Ext.R1(d) is the notification issued for engagement of persons as Technician (Process) on temporary basis and Ext.R1(e) is the Merit List on the basis of R1(d), which includes the petitioner's name also. On the basis of inclusion in the Ext.R1(e) merit list, he was appointed as per Ext.P2. So there

is substantial difference between the employment made with Ext.Nos.P1 and P2.

3. Heard the counsel, Sri.C.S. Ajith Prakash for the petitioner and Sri.Jay Mohan for the respondents.

4. The limited question to be answered in this petition is whether clause 16.11 of Ext.P4 notification is applicable to the petitioner. The petitioner was initially appointed to the post of Technician (Process) on the basis of Ext.P1. It is specifically stated in Ext.P1 itself that the petitioner is offered an appointment on a consolidated pay for a period of 2 years and on successful completion of the period and satisfactory performance, he will be considered for absorption in the regular roll. It was also made clear that the petitioner had to give an undertaking that he would serve the company for a period of 5 years including the consolidated pay period. It was during this period that he resigned from the service of the respondent on

9.1.2018 and joined the Kerala State Police Department. After resignation from the police department, he came back to the company and was appointed as Technician (Process) on temporary basis for a period of 6 months as per Ext.P2. In Ext.P2, clause 9 specifically states that the appointment was for a limited period and does not in any way directly or indirectly confer any right for extension of term of engagement or for permanent appointment or preferential treatment in the appointment. Ext.P4 Notification is issued to a substantive post and clause 16.11 excludes those persons who were employed on permanent basis and had resigned/taken voluntary retirement/ terminated from the company.

5. The counsel for the petitioner argued that as per Ext.P1, the petitioner was appointed on a consolidated pay and till he is regularised into regular service, it is only a temporary service

and therefore, clause 16.11 of Ext.P4 Notification cannot be used against him to deny appointment.

6. The counsel for the respondent, on the other hand, argued that the crucial question is whether the appointment made as per Ext.P1 is to a substantive post of a permanent nature. A comparison of Ext.Nos.P1 and P2 would clearly show that the appointment given to the petitioner as per Ext.P1, is to a substantive post in the nature of a permanent appointment. When the appointment is given on a permanent basis, as seen from Ext.P2, the order would specifically state so and it is only for a limited period for meeting the exigencies at that time.

7. The learned counsel appearing for the respondents relied on the judgment of the apex court in **Abdul Hakeem M.A. and others v. Mahatma Gandhi University and others [(2019) 16 SCC 328]** and contended that if the appointment is

of a substantive nature and not on a contract basis, it is permanent in nature. Any appointment made to a substantive post is always treated to be on a permanent basis. Their lordships in paragraph No.25, specifically adhered to this point and held as follows:

> *"……Their appointment orders did not mention anything that the appointments were contractual or on part-time basis. The appointment orders in fact stated that the appointment would be governed by the provisions of the University Statutes. The subsequent Notification dated 10-3-1998 inviting applications for further additional posts was also in the same light. All these documents unequivocally suggest that the appointments of the appellants were not on contractual basis or for a limited period of time……."*

8. The counsel for the petitioner relied on the judgment in **S. Sukhbans Singh v. State of Punjab (1962 KHC 626)** and submitted that a probationer cannot after the expiry of the probation period automatically acquire the status of the

permanent member of a service, unless the rules under which he is appointed expressly provide as such. Therefore he submitted that since the petitioner is appointed on a consolidated pay, it can only be termed as a temporary appointment. As mentioned earlier when the appointment of the petitioner was a substantive post, it can only be said that it is of a permanent nature. Though he was initially paid only consolidated pay and absorption is on the basis of successful and satisfactory performance, will not make the appointment a temporary one. Therefore, I have no hesitation to hold that the appointment of the petitioner as per Ext.P1 was of a permanent nature, and therefore, clause 16.11 of Ext.P4 Notification will clearly apply to the petitioner and the respondent had correctly applied it.

Therefore, the non-inclusion of the petitioner in Ext.P7 Merit list is fully justified. Therefore, the Writ Petition fails and is dismissed.

Sd/-

BASANT BALAJI,
JUDGE

dl/

APPENDIX OF WP(C) 11847/2023

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE APPOINTMENT ORDER NO. DGM(HR)-HO-089 DATED 24.03.2017 ISSUED BY THE RESPONDENT COMPANY TO THE PETITIONER
Exhibit P2	A TRUE COPY OF THE APPOINTMENT ORDER NO.DGM(HR)EST-HO-342 DATED 16.06.2020 ISSUED BY THE 1ST RESPONDENT COMPANY TO THE PETITIONER
Exhibit P3	A TRUE COPY OF THE EMPLOYEE'S PASS ISSUED BY THE AUTHORIZED SIGNATORY OF THE 1ST RESPONDENT COMPANY TO THE PETITIONER
Exhibit P4	A TRUE COPY OF THE RECRUITMENT NOTIFICATION NO.11/2022 DATED 25.10.2022 ISSUED BY THE RESPONDENT COMPANY
Exhibit P5	A TRUE COPY OF THE LIST OF TECHNICIANS (PROCESS) SHORT LISTED FOR FURTHER STAGE RECRUITMENT IS PUBLISHED BY THE RESPONDENT ON 03.01.2023
Exhibit P6	A TRUE COPY OF THE LIST PUBLISHED BY THE RESPONDENT DATED 24.01.2023 FOR DOCUMENT VERIFICATION
Exhibit P7	A TRUE COPY OF THE MERIT LIST PUBLISHED BY THE RESPONDENT COMPANY DATED 21.03.2023
Exhibit P8	. A TRUE COPY OF THE JOB NOTIFICATION ISSUED BY THE RESPONDENT COMPANY DATED 30.08.2016
Exhibit P9	A TRUE COPY OF THE LETTER FOR DOCUMENT VERIFICATION PUBLISHED BY THE RESPONDENT COMPANY DATED 03.01.2023

RESPONDENT EXHIBITS

Exhibit R1 (a)	True Copy of the Application No. 7046089 dated nil
Exhibit R1 (b)	True copy of the Application for Employment dated nil submitted by the petitioner
Exhibit R1 (c)	True Copy of the Recruitment Notification No. DGM-HR-TP-2016 dated 30.08.2016 published by the respondent company
Exhibit R1 (d)	True Copy of the Recruitment Notification No. 8/2019 dated 30.05.2019 for engagement as Technician (Process) and Technician (Electrical) on temporary basis
Exhibit R1 (e)	True Copy of the Merit List of candidates for the post of Technician (Process) and Technician (Electrical) on temporary basis dated 14.06.2019