

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

WEDNESDAY, THE 21ST DAY OF FEBRUARY 2024 / 2ND PHALGUNA, 1945

WP(C) NO. 17124 OF 2021

PETITIONER/S:

BIJU B.N., AGED 43 YEARS, S/O.G.NARAYANA PANICKER,
ACCOUNTANT, CIVIL ENGINEERING DEPARTMENT, COCHIN PORT TRUST,
WILLINGTON ISLAND, COCHIN - 682 009, RESIDING AT THACHECTH,
BIJU BHAVAN, UDYOGAMANDAL P.O., ELOOR SOUTH, PIN- 683 501.

BY ADV M.R.HARIRAJ

RESPONDENT/S:

- 1 COCHIN PORT TRUST, REPRESENTED BY ITS CHAIRMAN, COCHIN PORT TRUST, COCHIN - 682 009.
- 2 SECRETARY, COCHIN PORT TRUST, ADMINISTRATIVE OFFICE, COCHIN - 682 009.
- 3 UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF SHIPPING, NEW DELHI - 110 001.

BY ADVS.M.GOPIKRISHNAN NAMBIAR
MANU S., ASG OF INDIA
K.JOHN MATHAI, JOSON MANAVALAN
KURRYAN THOMAS, PAULOSE C. ABRAHAM
RAJA KANNAN

OTHER PRESENT:

ADV JAI MOHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

(Dated: 21st February, 2024)

The petitioner commenced his service as Bundary, Marine Department under the 1st respondent Port in 2008. As per the recruitment regulations applicable to the Lower Division Clerks (LDC) post, 20% of the vacancies in the said cadre were earmarked for promotion among persons working in categories lower than LDC based on a competitive examination. By Ext.P1 Minutes of the proceedings of Meeting No.4 of 1997-98 of the Board of Trustees held on 28.11.1997, revised the recruitment rules, *i.e.*, the qualification for direct recruitment to the post of LDC was revised as Graduation. A similar resolution was adopted with respect to the shed clerks. The recruitment regulations approved by the Board of Trustees were not approved by the Central Government or published in the Official Gazette as required under Section 124 of the Major Port Trust Act.

2. The Central Government Industrial Tribunal Cum Labour Court, Ernakulam, had occasion to deal with an issue in respect of Shed Clerks in ID No.39/2008. In the award of the Tribunal, it was held that the Regulation Amendment was not effective, and the qualification for appointment of Shed

Clerks remained to be SSLC, and Ext.P2 is the copy of the award. However, the said award was upheld by this Court through Ext.P3 judgment. The selection to the post of LDC among the lower grade officials was conducted, and the petitioner became the first rank holder and was accordingly appointed as LDC by order dated 03.09.2011 (Ext.P5).

3. The petitioner completed a distance education course conducted by Chhattisgarh University and cleared his B.A. Economics, Ext.P6 is the degree certificate. The Chhattisgarh University was a private university, and the Apex Court had occasion to consider the validity of the notification establishing universities in Chhattisgarh. Sections 5 and 6 of the notification, by which the universities were established in the State of Chhattisgarh, were held to be *ultra vires*, and the gazette notification notifying the university was quashed.

4. The Cochin Port Trust (Recruitment Seniority and Promotion) Amendment Rules, 2015, were approved by the Central Government and published in the Kerala Gazette dated 22.03.2016. While so, the petitioner was directed to show cause, why action should not be initiated against him as his degree from Chhattisgarh University is not a valid degree.

5. The petitioner submitted a detailed reply, pointing out that the Rule at the time of appointment does not require any graduation, and his graduation

is not acceptable and cannot affect his promotion granted to LDC based on a competitive examination, but it was rejected by Ext.P12. The petitioner challenges Exts.P12 and P15 before this Court. The petitioner has also procured another degree from M.S.University, Tirunelveli, subsequently, as per the degree certificate dated 11.01.2013. Thereafter, by Ext.P15 order, the petitioner was reverted to the post of Bundary with immediate effect.

6. A counter affidavit and an additional counter are filed on behalf of the 1st and 2nd respondents. In the counter affidavit filed, it is submitted that a circular dated 03.03.2011 was issued for the preparation of a select list of candidates for the appointment to the post of LDC against the unfilled vacancies of 20% quota for the year 2009 - 10. The method of recruitment was through competitive examination and interview. The minimum qualification stated in Ext.R1(a) is graduation in any subject from a recognized university or its equivalent. However, an exception was given to persons who were in service as of 26.03.1994 from the minimum graduation qualification. This exemption does not apply to the petitioner as he joined the service of the 1st respondent on 19.06.2008.

7. The qualification in the recruitment rules was incorporated pursuant to a direction issued by the Ministry of Shipping, Government of India, followed

by a conciliation settlement dated 26.03.1994. Ext.R1(c) is the memorandum of settlement by which the basic qualification for the recruitment of L.D.Clerks will be graduation with KGTE (Lower) in Typewriting (English) or its equivalent. The petitioner, on 16.03.2011, submitted an application for the above post stating that he has passed B.A.(Economics) Examination and awaiting the certificate. A copy of the provisional certificate dated 20.01.2005 issued by the Chhattisgarh University declaring that the petitioner has passed the Bachelor of Arts (Honours) Economics in the examination held in 2004 was produced. Based on the performance in the written exam and personal interview, the Service Selection Committee on 10.08.2011 recommended the petitioner for appointment for the post of LDC. He was promoted to UDC on 09.09.2014 and to the post of accountant on 18.11.2017. While so, the 1st respondent received a complaint regarding alleged irregularities like promotions/appointments based on false qualifications, and upon investigation, it was found that the degree certificate obtained by the petitioner from Chhattisgarh University was invalid. Accordingly, he was issued with Ext.P10 notice dated 6.07.2021. The 2nd respondent heard the petitioner, and he requested time for the submission of an explanation.

8. He submitted Ext.P11 reply, and the departmental promotion committee on 31.07.2021 recommended a review of the petitioner's case as he has deliberately concealed and suppressed the fact that the B.A. degree from Chhattisgarh University was invalid. Thereafter he was directed to be reverted from the post of accountant to the post of Bunday. The recruitment regulations of LDC and Shed Clerks are not approved by the Central Government or published in the Official Gazette as required under Section 124 of the Major Port Trusts Act, is incorrect and denied. Under Section 28 of the Major Port Trusts Act 1963, the Cochin Port Trust Employees (Recruitment, Seniority and Promotion) and Regulations, 2010 was issued in exercise of the powers under Section 28 with the approval of the Central Government as required under Section 124 of the Act.

9. In Class II, III, and IV, the manner of appointment shall be laid down by the board from time to time. Accordingly, the board, in exercise of the power vested in it, had laid down the regulation fixing graduation as a minimum qualification.

10. Regarding Ext.P2 award, it pertains to different posts, and the issue is different. Therefore, prayed for dismissal of the writ petition. An additional counter affidavit was also filed in which the marks obtained by the candidates

and the copy of the certificate were also produced. A reply affidavit is filed to the counter affidavit filed by the respondents, in which it is stated that the provisional degree certificate of B.A. Economics passed from Chhattisgarh University submitted along with the application was entered into the service of records correctly based on the application the petitioner was permitted to appear for the examination. After joining LDC in 2011, he was placed on probation for a period of two years, and after the declaration of probation, he was further promoted to UDC and then Accountant.

11. As far as the 2010 regulation is concerned, the schedule contains only recruitment posts of Class-1. The recruitment Rules of Classes II, III, and IV to the post that includes the recruitment rules of LDC were only notified on 22.3.2016 in the State Gazette. Therefore, as of that date, the minimum qualification required is SSLC, and though he has produced a degree certificate, even if it is ignored, the petitioner is fully qualified for appointment of LDC under the 20% quota. Therefore, prayed for allowing the prayers in the writ petition.

12. Heard Sri.M.R. Hariraj, counsel for the petitioner and Sri.Jayamohan, counsel for the respondents.

13. The question to be decided in the writ petition is whether Ext.P12 and P15 need interference. Ext.P12 is the order dated 17.08.2021 by which the petitioner, while working as an accountant in the Civil Engineering Department, is reverted to the post of Bundary with immediate effect. Ext.P15 is the proceedings of the Secretary of the Cochin Port Trust, by which a detailed examination of the case of the petitioner was done, and it was decided to revert the petitioner to the post of Bundary. The short question that arises for consideration is, on the date of application of the petitioner for promotion to the post of LDC, whether the minimum qualification required for the post can be fixed as graduation or not.

14. Ext.P1 is issued based on a letter issued by the Ministry of Surface Transport for restructuring the staff in a ministerial wing and regarding the basic qualification for direct recruitment as graduation. The Board of Trustees held on 28.11.1997 decided to include graduation as a minimum qualification for Class IV Employees, eligible for promotion as LDC in 20% quota. The petitioners applied to the said post pursuant to Ext.R1(a) circular dated 03.03.2011, in which graduation is shown as a minimum qualification. It is not in dispute that the minimum qualification for the post of LDC as graduation was amended as per the Cochin Port Trust (Recruitment, Seniority and

Promotion) Amendment Rules, 2015, which was published in the Gazette on 22.03.2016. Short title and commencement sub-clause -2 specifically state that which shall come into force on the date of publication of the State Gazette, therefore; the amendment incorporating the university degree in any subject from a recognised university for the post of LDC for promotion from Category -IV of the employees can only act prospectively from 22.03.2016 onwards.

15. Section 124 of the Major Port Trust Authorities Act, 1963 reads as follows:

124. Provisions with respect to regulations.- (1) No regulation made by the Board under this Act other than a regulation made under sub-section(2) of section 17, shall have effect until it has been approved by the Central Government and until such approval has been published in the Official Gazette.

16. The board is given the power to make regulations not inconsistent with the Act to provide for the appointment, promotions, suspension, removal of its employees, their leave, and other service conditions. So once the board makes the regulation under Section 28, the same has to be approved by the Central Government and published in the Official Gazette. Section 124 states explicitly that no regulation made by the Board shall have effect until the Central Government has approved it and until such approval has to be

published. So, there are two conditions to be satisfied for approval of the regulation.

i) The Central Government should approve it, and it should be published in the Official Gazette. Admittedly, the resolution of the board fixing the minimum qualification/graduation for the post of LDC to 20% graduation is only approved by the Central Government and published in the Gazette as per Ext.P8 amendment on 22.03.2016. Therefore, as of the date of application, the minimum qualification required for the promotion to the post of LDC from among the lower categories can only be SSLC. Even though the petitioner has applied with the provisional certificate issued by the Chhattisgarh University and subsequently the Apex Court has held that the degree issued by the said University is non est, it does not affect the promotion of the petitioner, as he has got the minimum qualification as on the date of consideration of the application to the post of LDC.

ii) The respondent has found that he is fully qualified as promoted to the post of LDC and subsequently UDC and to an accountant. It is also a fact that in 2013, he obtained another degree certificate from another university in Tamil Nadu in 2013. Ext.P10 show cause notice is issued to the petitioner only in the year 2021, a period of approximately

10 years after he has been given promotion. As held earlier, as a minimum qualification required as of the date of an application pursuant to Ext.R1(a) can only be SSLC and not graduation as the Special Rules have not been given effect to approve by the Central Government as well as the publication in the Official Gazette. It was only in 2016 that the same was published.

Therefore, I have no hesitation in holding that Ext.P12 and P15 are issued in violation of the then-existing rules regarding promotion. Therefore, Ext.P12 and P15 stand quashed. The writ petition allowed as stated above.

Sd/-

BASANT BALAJI,

JUDGE

APPENDIX OF WP(C) 17124/2021

PETITIONER EXHIBITS

- Exhibit P1 MINUTES OF PROCEEDINGS OF MEETING NO.4 OF 1997-98 OF BOARD OF TRUSTEES HELD ON 28/11/1997 ALONG WITH RELEVANT AGENDA NOTE.
- Exhibit P2 AWARD DATED 31/5/2011 OF CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, ERNAKULAM, IN ID 39/2008.
- Exhibit P3 JUDGMENT DATED 29/8/2011 IN WP(C) 23334/2011 OF THIS HONOURABLE COURT.
- Exhibit P4 COPY OF THE PROCEEDINGS OF THE SERVICE SELECTION COMMITTEE HELD ON 10/8/2011.
- Exhibit P5 ORDER NO.A10/4393/LDC/C1.IV/2011/S DATED 03/09/2011.
- Exhibit P6 TRUE COPY OF THE CERTIFICATE ISSUED BY THE CHHATTISGARH UNIVERSITY IN DECEMBER, 2004.
- Exhibit P7 LETTER NO.PR 12012/12/2013-PE-1 DATED 6/4/2014.
- Exhibit P8 COCHIN PORT TRUST (RECRUITMENT, SENIORITY AND PROMOTION) AMENDMENT RULES, 2015.
- Exhibit P9 JUDGMENT DATED 15/1/2019 OF THIS HONOURABLE COURT IN WP(C) 955/2014.
- Exhibit P10 COPY OF THE NOTICE NO.A10/58/VIG/BBEN/2021/S DATED 6/7/2021.

Exhibit P11	REPRESENTATION DATED 19/07/2021.
Exhibit P12	ORDER NO.A10/58/VIG/BBN-REVERSION/2021-S DATED 17/08/2021.
Exhibit P13	CERTIFICATE DATED 11/1/2013 FROM MS UNIVERSITY TIRUNALVELI.
Exhibit P14	LETTER DATED 6/3/2021 ISSUED TO THE FIRST RESPONDENT FROM THE MS UNIVERSITY.
Exhibit P17	True Copy of the order No. D7/Probation/2013-S dated 28.11.2013
Exhibit P18	True copy of the Agenda Item No.C4 in Board of Trustees meeting for the year 2012-2013 dated 28-03- 2013
Exhibit P19	Agenda Item number C-6 in Board of Trustees Meeting for the year 2013-14 dated 29-5-2013
Exhibit P20	Agenda item No. C6 in Board of Trustees meeting for the year 2013-14 dated 29.01.2014
Exhibit P21	True copy of the judgment dated 26/11/2018 in W.P. (C) 32038/2018

RESPONDENT EXHIBITS

Exhibit R1 (h)	A TRUE COPY OF STATEMENT OF MARKS OBTAINED IN THE WRITTEN EXAMINATION HELD ON 21.07.2011.
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WPC. 17124/2021

Exhibit A TRUE COPY OF FIRST PAGE OF SERVICE BOOK OF
R1 (I) PETITIONER.