

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 2ND DAY OF DECEMBER 2022 / 11TH AGRAHAYANA, 1944

WP(C) NO. 17759 OF 2021

PETITIONERS:

- 1 DR.P.K.THULASIDAS
AGED 62 YEARS
S/O. P.E.KUMARAN, RESIDING AT PUTHENPURAYIL, XXI/389-A,
DREAM NAGAR, KAMPANIPADY, KANNARA, THRISSUR-680 652.
- 2 DR. P.K. CHANDRASEKHARA PILLAI
AGED 62 YEARS
S/O. LATE KUTTAN PILLAI, RESIDING AT VISHNU BHAVAN,
MANNUTHY P.O., THRISSUR-680 651.
BY ADVS.
T.C.SURESH MENON
B.DEEPAK

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, FINANCE
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 KERALA STATE COUNCIL FOR SCIENCE TECHNOLOGY AND
ENVIRONMENT (KSCSTE)
REPRESENTED BY ITS EXECUTIVE VICE PRESIDENT, SASTHRA
BHAVAN, PATTOM, THIRUVANANTHAPURAM-695 004.
- 3 KERALA FOREST RESEARCH INSTITUTE (KFRI)
PEECHI P.O., THRISSUR-680 653, REPRESENTED BY ITS
DIRECTOR.
- 4 THE MANAGING COMMITTEE
KERALA STATE COUNCIL FOR SCIENCE, TECHNOLOGY AND
ENVIRONMENT, KERALA FOREST RESEARCH INSTITUTE,
REPRESENTED BY ITS DIRECTOR, PEECHI P.O, THRISSUR-680
653.
- 5 THE REGISTRAR
KERALA STATE COUNCIL FOR SCIENCE, TECHNOLOGY AND
ENVIRONMENT - KERALA FOREST RESEARCH INSTITUTE, PEECHI
P.O., THRISSUR-680 653.
BY ADVS.
P.C.SASIDHARAN, SC, KSCSTE
C.K.PRASAD, SC, KERALA FOREST RESEARCH INSTITUTE
BY SRI.M.RAJEEV-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02.12.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 2nd day of December, 2022

This writ petition is filed seeking the following reliefs:

- (i) call for the records leading to the passing of Ext.P2 order by the 5th respondent and quash the same in so far as the same relates to the keeping in abeyance of ratification of promotion of the petitioners;*
- (ii) issue a writ in the nature of mandamus directing the 2nd respondent to extend similar relief as that extended to Sri.V.P.Raveendran, in Ext.P13 order;*
- (iii) issue a writ in the nature of mandamus directing respondents 1 and 2 to take a final decision on the ratification of the promotion of the petitioners expeditiously;*
- (iv) issue a writ in the nature of mandamus directing respondents 2 and 3 to reconsider the case of the petitioners in the light of Ext.P12 judgment and the principles laid down therein."*

2. Heard the learned counsel for the petitioners and the learned Government Pleader,

learned counsel appearing for respondents 2, 4 and 5 as well as the learned counsel for the 3rd respondent.

3. It is submitted by the learned counsel for the petitioners that the petitioners have retired from the service as Senior Scientists in the 3rd respondent. The 1st petitioner retired on 31.05.2019 and the 2nd petitioner retired on 31.10.2018. It is submitted that the performance assessment interview was conducted in respect of the petitioners on 02.03.2020 and the 3rd respondent decided to grant promotions to the petitioners along with 2 other persons to the post of Principal Scientist with retrospective effect from 01.03.2017 and 1.03.2018 respectively as evidenced by Exhibit P1. Exhibit P2 office order was issued on 16.07.2020, stating that ratification of the assessment promotion of the petitioners along with

one Sri.V.P.Raveendran was kept pending, since there were observations in an inspection report of the Finance Department, which is pending decision of the Government and the Kerala State Council for Science, Technology and Environment (KSCSTE). Learned counsel for the petitioners submits that the cases of the petitioners and Sri.V.P.Raveendran were identical in nature.

4. It is submitted that Sri.V.P.Raveendran had approached this Court against the refusal to grant assessment promotion to him and Exhibit P12 judgment had been rendered. It was found that the audit objections and the irregularity, if any, in grant of promotion to the post of Scientist-B to the said person, in the year 2002, had never been put to his notice and that the error, if any, in the promotion was never notified. In the above view of this matter, this Court has set aside Exhibit P7 therein

which is Exhibit P2 produced by the petitioners herein and had directed the consideration of his claim for promotion as Principal Scientist with retrospective effect as was ordered in Exhibit P1. It is submitted that pursuant to Exhibit P12, Exhibit P13 order had been passed by the KSCSTE on 13.05.2021, granting the benefits to the said Sri.V.P.Raveendran. However, it is stated in Exhibit P13 order that the benefit is being granted as a special case subject to the condition that it will not be treated as a precedent to ratify any erroneous promotions.

5. The learned counsel for the petitioners submits that though the petitioners are identically situated as Sri.V.P.Raveendran, only due to the fact that the order states that it will not be treated as a precedent, the petitioners are denied the promotion. Learned counsel for the petitioners

submits that the differential treatment meted out to identically situated persons amounts to discrimination and that the petitioners are also entitled to the identical relief.

6. In the counter affidavit filed by respondents 2 and 5, it is specifically stated that the Financial Inspection Wing of the Finance Department of the Government had submitted an Inspection Report on 19.10.2018 wherein, it was found that the promotion given to Sri.K.H.Hussain, Dr.P.K.Thulasidas, Dr.P.K.Chandrasekhara Pillai, Sri.K.K.Unni, Sri.V.P.Raveendran and Dr.K.F.George, who were holding the post of Non-Scientific (Technical) to Scientist post was not in order and recommended to revert them to the original post. It is further submitted that the case of the petitioners is not similar to the case of Sri.V.P.Raveendran, since there was no objection

raised by the Inspection Wing in the case of Sri.V.P.Raveendran.

7. A reply affidavit has also been placed on record by the petitioners producing documents to show that the case of the petitioners and that of Sri.V.P.Raveendran was identical.

8. Having considered the contentions advanced, I notice that Exhibit P1 is a proceedings by which the petitioners herein, ie. Dr.N.Sarojam, Dr.P.K.Thulasidas as well as Sri.V.P.Raveendran and Dr.P.K.Chandrasekhara Pillai had been found fit for promotion from the post of Senior Scientist to Principal Scientist. The proposal for promotion was sent for ratification by the Management Committee. Thereafter, Exhibit P2 order specifically states that ratification of assessment promotions of the following 3 Scientists against whom observation of Finance

Department is pending decision of the Government/KSCSTE is kept in abeyance. The 3 Scientists mentioned are specifically the petitioners herein and Sri.V.P.Raveendran. It is therefore, futile, to now contend that the petitioners and Sri.V.P.Raveendran are not identically situated in the matter of promotion as well as in the matter of their earlier promotions being found to be erroneous by the Financial Inspection Wing. Exhibit P12 judgment proceeded to consider the contention of the respondents that the initial promotion granted to the petitioner therein as Scientist-B was erroneous. It was found that the petitioner therein was never put on notice of the fact that there was any error in his promotion as Scientist B. It was also found that there were several further promotions granted to the petitioner thereafter.

9. In the above view of the matter, Exhibit P7

therein which is Exhibit P2 in this writ petition was set aside and the claim of the petitioner for promotion to the post of Principal Scientist as directed in Exhibit P1 was directed to be reconsidered. It was on the basis of the said directions that Exhibit P13 order has been passed on 13.05.2021. Though Exhibit P13 specifically states that it shall not be treated as a precedent to ratify any other erroneous promotions, in view of the specific contention raised by the petitioners that the petitioners and the beneficiary of Exhibit P13 order were identically situated, I am of the opinion that the respondents cannot refuse to consider the claim of the petitioners also for promotion as Principal Scientists and for an equal treatment as has been granted to the petitioner in Exhibit P12 judgment.

In the above view of the matter, Exhibit P2

in so far as it affects the petitioners in this writ petition, shall stand set aside. There will be a direction to the 2nd respondent to take up the claim of the petitioners for promotion to the post of Principal Scientists as ordered in Exhibit P1 and pass appropriate orders on the same, taking note of Exhibit P12 judgment and Exhibit P13 order. Appropriate steps shall be taken within a period of two months from the date of receipt of a copy of this judgment.

**Sd/-
ANU SIVARAMAN
JUDGE**

SSK/02/12

APPENDIX

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE ORDER NO.G34/KFRI/ESTT/85 PASSED BY THE 3RD RESPONDENT, DATED 6.3.2020.
Exhibit P2	TRUE COPY OF THE OFFICE ORDER NO.G10/KSCSTE/KFRI/ESTT/80 PASSED BY THE 3RD RESPONDENT, DATED 16.7.2020.
Exhibit P3	TRUE COPY OF THE PROCEEDINGS NO.G.49/KFRI/ESTT/93 ISSUED BY THE 3RD RESPONDENT, DATED 27.2.2002.
Exhibit P4	TRUE COPY OF THE INTERIM ORDER I.A.NO.15534/2008 IN WPC NO.9399/2006 ON THE FILE OF THIS HONOURABLE COURT, DATED 17.12.2008.
Exhibit P5	TRUE COPY OF THE PROCEEDINGS NO.G49/KFRI/ESTT/93 ISSUED BY THE 3RD RESPONDENT, DATED 19.9.2009.
Exhibit P6	TRUE COPY OF THE RELEVANT PAGES OF THE 7TH ANNUAL GENERAL MEETING HELD ON 19.8.2009.
Exhibit P7	TRUE COPY OF THE PROCEEDINGS NO.G34/KFRI/ESTT/85 ISSUED BY THE 3RD RESPONDENT IN FAVOUR OF THE 1ST PETITIONER, DATED 26.2.2011.
Exhibit P8	TRUE COPY OF THE PROCEEDINGS NO.GE34/KFRI/ESTT/85 ISSUED BY THE 3RD RESPONDENT IN FAVOUR OF THE 2ND PETITIONER, DATED 26.2.2011.
Exhibit P9	TRUE COPY OF THE PROCEEDINGS NO.G34/KFRI/ESTT/85 ISSUED BY HE 3RD RESPONDENT PROMOTING THE PETITIONERS AS SCIENTIST-EI, DATED 5.5.2018.
Exhibit P10	TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT, 22.7.2020.
Exhibit P11	TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT, 23.7.2020.
Exhibit P12	TRUE COPY OF THE JUDGMENT IN WPC 15177/2020-V ON THE FILE OF THIS HONOURABLE COURT, DATED 9.4.2021.
Exhibit P13	TRUE COPY OF COUNCIL (M) ORDER NO.38/2021/KSCSTE ISSUED BY THE 2ND RESPONDENT, DATED 13.5.2021.
Exhibit P14	TRUE COPY OF THE REQUEST MADE BY THE PETITIONERS TO THE 2ND RESPONDENT, DATED 17.5.2021.
Exhibit P15	TRUE COPY OF THE COMMUNICATION NO.KSCSTE/1024/2020-C2 ISSUED BY THE MEMBER SECRETARY OF KSCSTE, DATED 28.7.2021.
Exhibit P16	TRUE COPY OF THE COMMUNICATION NO.G.34/KSCSTE/KFRI/ESTT/86 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONERS, DATED 5.8.2021.
EXHIBIT P17	TRUE COPY OF THE DIRECTOR NOTE NO.DR20/KSCSTE/KFRI/2020, DATED 25.2.2020.
EXHIBIT P18	TRUE COPY OF THE CLARIFICATION NO.G118/KFRI/ESTT/03/FIN., DATED 27.5.2019.
EXHIBIT P19	TRUE COPY OF THE LETTER OF CLARIFICATION NO.G113/KFRI/ESTT/03/FIN, DATED 1.7.2020 ISSUED BY THE 3RD RESPONDENT.

SSK

//TRUE COPY//

PA TO JUDGE