

A.A. George Vs. Kerala Water Authority

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Court : Kerala

Decided On : Jul-29-2013

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : A.A. George

Respondent : Kerala Water Authority

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE MONDAY,THE 29TH DAY OF JULY2013/7TH SRAVANA, 1935 WP(C).No. 16292 of 2012 (J)

----- PETITIONER(S): ----- A.A. GEORGE RETIRED NMR OPERATOR, P.H SECTION KERALA WATER AUTHORITY, CHERTHALA RESIDING AT VALIYAKARAYIL, THANNEERMUKKOM P.O CHERTHALA 68 527. BY ADVS.SRI.B.GOPAKUMAR SMT.CHINCY GOPAKUMAR RESPONDENT(S): ----- 1. KERALA WATER AUTHORITY REPRESENTED BY ITS MANAGING DIRECTOR, JALA BHAVAN VELLAYAMBALAM, THIRUVANANTHAPURAM 69 033.

2. ASST. ENGINEER P.H SECTION, KERALA WATER AUTHORITY, CHERTHALA ALAPPUZHA DISTRICT.

3. STATE OF KERALA REPRESENTED BY ITS SECRETARY TO WATER RESOURCES (WATER SUPPLY) DEPARTMENT GOVERNMENT OF KERALA,

SECRETARIAT, THIRUVANANTHAPURAM. R1,R2 BY ADV. SRI.MILLU DANDAPANI, SC, KERALA WATER AUTHORITY R3 BY SENIOR GOVT. PLEADER SRI.RAMAPRASAD UNNI THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: tss W.P.(C) NO.16292/20122 APPENDIX PETITIONER'S EXHIBITS P1:- COPY OF LETTER NO.KWA/JB/E3 9970/2011 DTD 31.3.2012 /3.4.2012 RECEIVED ON 18.4.2012 ISSUED BY 1ST RESPONDENT. P2:- COPY OF PROCEEDINGS G.O.(RT) 1205/08/WRD DT.D 22.11.2008 ISSUED BY 3RD RESPONDENT. P3:- COPY OF JUDGMENT IN WP(C) 30093/2007 DTD., 22.7.2009 IN THIS HONOURABLE COURT. P4:- COPY OF PROCEEDINGS KWA/JB/E3-10911/20123 DTD. 28.10.2005 ISSUED BY 3RD RESPONDENT. P5:- COPY OF JUDGMENT IN WP(C)(21036/2004 DTD. 19.8.2004 IN THIS HONOURABLE COURT. RESPONDENT'S EXHIBITS NIL TRUE COPY P.A. TO JUDGE tss A.M.SHAFFIQUE,J.

----- W.P.(C).No.16292 OF 201.----- Dated this the 29th day of July, 2013 JUDGMENT The petitioner was working as NMR in the Kerala Water Authority at the time of his retirement which was on 31.5.2004. 2.According to the petitioner, he was entitled to be regularized in the category of NMR on completion of 5 years service as he was an employee of the Public Health Engineering Department (PHED) which was brought under the service of the first respondent with effect from 1.4.1984. Petitioner relies upon Ext.P4 order issued by the Kerala Water Authority inter alia stating that the Government has accorded sanction to the Kerala Water Authority for absorption of 328 unqualified NMR workers in certain categories. According to the petitioner, his name also appears in the list as serial No.58 and therefore, petitioner is entitled for the benefit of the said Government Order. Hence the petitioner seeks for regularization of his service with effect from 19.9.1990 or at least from 1.4.1989 consequent to the judgment of Supreme Court in Jacob v. Kerala Water Authority (1990(2) KLT 673).

3. Counter affidavit is filed by Kerala Water Authority inter alia contending that Jacob's case does not apply to the factual situation in the petitioner's case. It is stated that the Supreme Court directed regularization of service of all Ex-PHED employees and regularization of service of workers employed by Kerala Water

W.P.(C).No.16292 OF 201.2 Authority between 1st April 1984 and 4th August, 1986 provided they had the requisite qualification. It was also held that service of workers appointed after 4th August, 1984 possessing requisite qualification should be regularized in respect of those persons who had continued service of one year or more and the Kerala Public Service Commission was to consider the question of regularization of workers who possessed requisite qualification of who had less than one year service. It was also found that the authority was at liberty to deal with the service of workers who did not have the requisite qualification. Apparently the petitioner does not have the requisite qualification and therefore unless the Kerala Water Authority decides to regularize them by virtue of orders passed by the Kerala Water Authority, the petitioner will not be entitled for the benefit of Jacob's case.

4. In regard to the factual situation that arises in the case it was contended that the petitioner continued as a NMR worker till his retirement on 31.5.2004 and by virtue of Ext.P4, the Government had granted sanction to Kerala Water Authority for absorption of unqualified NMR workers in the various categories by giving exemption from the technical general education qualification. The said order is only prospective in operation and even if the petitioner's name is included, he having superannuated from service on 31.5.2004 he is not entitled for the said benefit. W.P.(C).No.16292 OF 201.3 5. The short question to be considered is whether the petitioner can claim a legal right to get regularization with effect from 1989/1990 as the case may be. Apparently, on going through the judgment in Jacob's case, the petitioner cannot be considered for regularization on account of the fact that he was an unqualified person and admittedly Kerala Water Authority had not come up with any notification to regularise them until Ext.P4 order came to be passed. Even in respect of Ext.P4 order by the time it had come into force petitioner had superannuated from service. In the above circumstance, I do not think that the petitioner is entitled for any benefit in terms of Ext.P4 or Jacob's case. In the result, this writ petition is only to be dismissed. Accordingly, I do so. A.M.SHAFFIQUE, JUDGE cms