



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945

OP(KAT) NO. 189 OF 2016

AGAINST THE ORDER TA 2765/2012 OF KERALA ADMINISTRATIVE
TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/S:

- 1 RANJITH KUMAR.K.V,
3RD GRADE OVERSEER, MECHANICAL SUB
DIVISION, IRRIGATION DEPARTMENT, KANNUR-2, KERALA.
- 2 SHUBI V.V.,
3RD GRADE OVERSEER, WORKSHOP SUB
DIVISION, IRRIGATION, MECHANICAL,
MALAMPUZHA, PALAKKAD, KERALA.
- 3 MOHANAN CHITTADICHALI,
3RD GRADE OVERSEER, MECHANICAL SUB
DIVISION, IRRIGATION DEPARTMENT, KANNUR-2, KERALA.
- 4 SALEEM KHAN T,
3RD GRADE OVERSEER, MECHANICAL SUB
DIVISION, IRRIGATION DEPARTMENT, KANNUR -2, KERALA.
- 5 RAJESH V,
3RD GRADE OVERSEER, MECHANICAL SUB
DIVISION, IRRIGATION DEPARTMENT, KANNUR-2, KERALA.
BY ADVS.
KALEESWARAM RAJ

THULASI K.RAJ
VARUN C.VIJAY

**RESPONDENT/S :**

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT
OF WATER RESOURCES, SECRETARIAT, THIRUVANANTHAPURAM.
PIN.695001, KERALA.
- 2 THE CHIEF ENGINEER,
IRRIGATION AND
ADMINISTRATION, THIRUVANANTHAPURAM.695001, KERALA.
- 3 THE CHIEF ENGINEER MECHANICAL
WATER RESOURCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.695001, KERALA.
- 4 SHAFEEQUE T.P,
THAZHEPARACHALIL HOUSE, MANGAD PO, UNNIKULAM VIA,
KOZHIKODE.673574, KERALA.
- 5 JAYAKUMAR K,
MAVOOR VEEDU, KULANGARA BHAGOM, CHAVARA PO,
KOLLAM.691583, KERALA.
- 6 NIGIL S.S.,
SREENIKETHAN, C.H. COLONY PO, MARIKUNNU,
KOZHIKODE.673012, KERALA.
- 7 SABU D,
ASHA VIHAR, VATTAPPARA, THIRUVANANTHAPURAM.695028,
KERALA.
- 8 MAHESH V.M.
V.M NIVAS, KOTTACKAKAM, PERINAD PO, KOLLAM -69160,
(ADDL.RESPONDENTS 4 TO 8 ARE IMPEADED AS PER ORDER
DATED 31.3.2011 IN IA. NO.5857/11), KERALA.
BY ADVS.
SR.GOVERNMENT PLEADER ADV. VINITHA B.

SRI.M.ABDUL VAHAB (PANGODE)

SRI.A.V.LIYAH
SRI.S.NARAYANAN NAIR

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN
FINALLY HEARD ON 2.11.2023, THE COURT ON 22/12/2023 DELIVERED
THE FOLLOWING:



"C.R."

J U D G M E N T**A. Muhamed Mustaque, J.**

The short issue in this original petition is as to the applicable rule in regard to the ratio in a matter of promotion to the post of Overseer/Draftsman (Mechanical Grade-II) between direct recruitees and promotees. Prior to 24/9/2010, the ratio was 3:1 between the direct recruitees and the promotes, as per the Special Rules applicable in the Water Resources Department. The Special Rules were amended with effect from 24/9/2010 and ratio was fixed as 1:1 between the direct recruitees and promotees. The total cadre strength is 20.

2. The Kerala Public Service Commission initiated direct recruitment to the above post. The petitioners, applicants before the Kerala Administrative Tribunal, who were working in the feeder category of Overseer/Draftsman (Mechanical Grade-III) sought for a declaration that the vacancies will have to be filled in accordance with the ratio based on the amended rules and not based on the unamended rules.



-:4:-

3. As seen from the Government order dated 6/1/2011, the Government had decided to fill the vacancies which arose prior to the amended rules in accordance with the unamended rules.

4. The Tribunal following the Judgment of the Full Bench in **Mohanan v. Director of Homoeopathy [2006 (3) KLT 641 (FB)]** was of the view that the vacancies that arose during the currency of unamended rules will have to be filled in accordance with the ratio of the relevant rules and, accordingly, dismissed the challenge.

5. The learned counsel for the petitioners Ms.Thulasi K. Raj submits that the Tribunal erred in placing reliance on **Mohanan's** case (*supra*). According to the learned counsel, **Mohanan's** case, in fact, relied on the judgment of the Apex Court in **Y.V.Rangaiah v. J. Sreenivasa Rao [(1983) 3 SCC 284]** wherein the Apex Court held that vacancies that occurred prior to the amended rules will have to be filled in accordance with the unamended rules. The learned counsel further placed reliance on the three-bench judgment of the Apex Court in **State of Himachal Pradesh and Others v. Raj Kumar and Others [(2023) 3 SCC 773]** (decided on May 20, 2022) overruling the earlier Division Bench decision in **Y.V.Rangaiah** case (*supra*). The



learned counsel particularly drew attention of this Court to para.82(1) which reads thus:

82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, *Rangaiah* case must be understood in the context of the rules involved therein.

6. The learned counsel further placed reliance on the judgment of this Court in **Mehaboob P.M. v. State of Kerala [2022 KHC 557]** wherein this Court held that **Mohanani's** case (*supra*) cannot be taken as a good law in view of the subsequent three-bench judgment in **Rajkumar's** case (*supra*).

7. We completely agree with the learned counsel Ms.Thulasi K.Raj on the proposition of law as to the rule applicable for filling up the vacancies. It is to be noted that no employee has a vested right for consideration for promotion. The right of employees for promotion is based on extant rule as on the date of consideration for promotion. The Government has every right to take a decision as to the applicability of the rule which would govern the promotion. If the Government takes a conscious decision that the vacancies which arose prior to the amended rules will have to be filled in accordance with the unamended rules, the Court cannot sit on judicial review to overturn the wisdom of the Government. In



Rajkumar's case (*supra*), the Apex Court in para 82.3 held as follows:

82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire *any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government.* There is no obligation for the Government to make appointments as per the old Rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

In view of the fact that the Government had taken conscious decision to fill the vacancies in accordance with the unamended rules, this Court cannot interfere with the decision of the Government. The original petition fails, and is accordingly dismissed.

Sd/-

A.MUHAMED MUSTAQUE , JUDGE

Sd/-

SHOBA ANNAMMA EAPEN, JUDGE

**APPENDIX OF OP (KAT) 189/2016**

PETITIONER ANNEXURES

ANNEXURE A1 TRUE COPY OF THE ORDER DATED DATED
12.8.2016 IN T.A.NO.2765/2012.

ANNEXURE A2 TRUE COPY OF THE MEMORANDUM OF WP(C)
NO.34672/2010 (TA NO.2765/2012) TOGETHER
WITH EXHIBITS.

ANNEXURE A3 TRUE COPY OF THE IMPLEADING PETITION.

ANNEXURE A4 TRUE COPY OF THE COUNTER AFFIDAVIT FILED
ON BEHALF OF THE 2ND RESPONDENT TOGETHER
WITH EXHIBITS.

ANNEXURE A5 TRUE COPY OF THE REPRESENTATION DATED
21.11.2016 SUBMITTED BY THE 1ST
PETITIONER.

ANNEXURE A6 TRUE COPY OF THE REPRESENTATION DATED
21.11.2016 SUBMITTED BY THE 2ND
PETITIONER.

ANNEXURE A7 TRUE COPY OF THE REPRESENTATION DATED
21.11.2016 SUBMITTED BY THE 3RD
PETITIONER.

ANNEXURE A8 TRUE COPY OF THE REPRESENTATION DATED
21.11.2016 SUBMITTED BY THE 4TH
PETITIONER.

ANNEXURE A9 TRUE COPY OF THE REPRESENTATION DATED
21.11.2016 SUBMITTED BY THE 5TH
PETITIONER.

EXHIBIT P1 TRUE COPY OF THE UNAMENDED RULES ISSUED BY
WAY OF G.O.(P) NO.26/2005/WRD DATED
2.6.2005.

EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 8.6.2010
IN WP(C) NO.17666/2010.

EXHIBIT P3 TRUE COPY OF THE G.O.(P) NO.63/2010 DATED
24.9.2010.

EXHIBIT P4 TRUE COPY OF THE ADVICE CHART TOGETHER
WITH THE COMMUNICATION DATED 3.11.2003.

EXHIBIT R2 (A) TRUE COPY OF THE LETTER DATED 6.1.2011.

EXHIBIT R2 (B) TRUE COPY OF THE INTERIM ORDER DATED
3.12.2010.