

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 25TH DAY OF AUGUST 2016/3RD BHADRA, 1938

OP(KAT).No. 100 of 2016 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 2040/2014 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 27.01.2016

PETITIONER(S)/RESPONDENTS 1 TO 4 IN OA :

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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
FINANCE (PAY REVISION CELL-D) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
 2. SECRETARY TO GOVERNMENT,
DEPARTMENT OF AGRICULTURE (DAIRY DEPARTMENT),
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
 3. THE DIRECTOR OF DAIRY DEVELOPMENT,
PATTOM, THIRUVANANTHAPURAM-695 004.
 4. THE ACCOUNTANT GENERAL (A & E),
M.G.ROAD, THIRUVANANTHAPURAM-695 039.

BY SRI.T.RAJASEKHARAN NAIR, GOVERNMENT PLEADER

RESPONDENT(S)/APPLICANTS 1 TO 3 IN OA :

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1. VINOJ MAMMEN,
S/O. A.K.MAMMEN, ASSISTANT DIRECTOR,
OFFICE OF THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT, CIVIL STATION,
PATHANAMTHITTA-689 645.
RESIDING AT AMBIYIL HOUSE, VADAKKADATHUCAVU P.O.,
ADOOR, PATHANAMTHITTA-691 529.
 2. RAFI PAUL ,
S/O. K.A.ANTONY, ASSISTANT DAIRY DIRECTOR,
OFFICE OF THE DEPUTY DAIRY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT, MINI CIVIL STATION,
CHEMPUKAVU, THRISSUR-680 020, RESIDING AT KALLUKARAN
HOUSE,
HOLY ANGELS ROAD, OLLUR P.O., THRISSUR-680 306.
 3. JOSEPH KURIEN E.
S/O. E.N.KURIEN, ASSISTANT DIRECTOR,
OFFICE OF THE DEPUTY DIRECTOR, DAIRY DEVELOPMENT
DEPARTMENT,

**ERAYILKADAVU, KOTTAYAM-686 001, RESIDING AT ENCHACAUD
HOUSE,
PUTHUPPALLY P.O., KOTTAYAM-686 011.**

**R1-R3 BY ADVS. SRI.P.NANDAKUMAR
SRI.S.ANEESH**

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 25-08-2016, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

DG

OP(KAT).No. 100 of 2016 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1: A COPY OF THE ORIGINAL APPLICATION ALONG WITH ANNEXURES.

EXHIBIT P2: A COPY OF THE REPLY STATEMENT FILED BY THE 1ST PETITIONER/1ST RESPONDENT.

EXHIBIT P3: A COPY OF THE ORDER IN OA NO.2040/2014.

RESPONDENT(S)' EXHIBITS - NIL

/TRUE COPY/

P.A.TO JUDGE

**P.R. RAMACHANDRA MENON &
ANIL K.NARENDRAN, JJ.**

O.P.(KAT) No.100 of 2016

Dated this the 25th day of August, 2016

J U D G M E N T

P.R.Ramachandra Menon, J.

The challenge is against the verdict passed by the Kerala Administrative Tribunal in O.A.No.2040 of 2014, whereby the respondents 2 and 3 in the original application were directed to issue orders re-designating the applicants as Deputy Directors (Non-Cadre) in the scale of pay of ₹24040-38840 and directing the 4th respondent to issue pay slips to the applicants showing the designated post as Deputy Directors (Non-Cadre) in the scale of pay of ₹24040-38840.

2. The main ground of challenge is that, the Tribunal has set aside the order under challenge, that is Annexure A14, without actually appreciating the change in circumstance, as to the qualification prescribed for providing the benefit of Career Advancement Scheme, insisting possession of the requisite qualification to the post in question. Referring to the change in

qualification introduced in the amendment as per Annexure A5 Special Rules, Degree was a must. The original application was filed with following prayers:

“In view of the facts mentioned in para 6 above, the applicants pray for the following reliefs:

(i) To call for the records leading to Annexure A14 and quash the same.

(ii) To declare that directly recruited Diploma Holders as Dairy Extension Officers now working as Assistant Directors of Dairy Development are also entitled to be re-designated as Deputy Directors (Non-Cadre) in the scale of pay of Rs.24040-38840.

(iii) To direct respondents 2 and 3 to issue orders re-designating the applicants as Deputy Directors (Non-Cadre) in the scale of pay of Rs.24040-38840.

(iv) To direct the 4th respondent to issue Pay Slips to the applicants showing the designated post as Deputy Directors (Non-Cadre) in the scale of pay of Rs.24040-38840.

(v) To issue such other orders, or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

3. The claim was resisted from the part of the respondents contending that the applicants were not having a Degree, which was a qualification to be insisted for providing the

benefit as suggested under the Career Advancement Scheme. It was accordingly, that the question was considered and the representation preferred in this regard came to be answered by issuing Annexure A14 dated 19.08.2014 holding that they were not entitled to have the benefit sought for. This was sought to be challenged before the Tribunal with the aforesaid prayers.

4. After hearing both the sides, the Tribunal held that the stand taken by the respondents could not be acceded to, as the original qualification stipulated for the post of Assistant Directors by way of Direct recruitment and for the promoted post of Deputy Director was Degree or Diploma earlier, it came to be changed insisting 'Degree', as per Annexure A5. But since the appointment given to the applicants was based on the Rules then in existence and since the very same qualification was there at the time of appointment as Assistant Directors and the promoted post of Deputy Director, there was no rationale for having incorporated the adverse stipulation as contained in Annexure A5. It was accordingly, that Annexure A14 order was intercepted giving the directions as aforesaid.

5. The learned Senior Government Pleader submits that there is no dispute to the fact that the qualification prescribed as per Annexure A5 at the time of initial appointment given to the applicants was either a Degree or Diploma. Based on the relevant rules related to Time Bound Grade Promotions, Higher Grade was given on completion of 'Ten' years and the Second Higher Grade was given on completion of '16' years of service. The applicants were promoted as Assistant Directors way back in the year 2010. The Government introduced the Career Advancement Scheme to direct recruits on 29.09.2012 whereupon Degree was insisted as the basic qualification in this regard, as evident from Annexure A6; which was also issued on the very same date ie., on the date of issuance of Annexure A3. With reference to Sub Clause (v) of Annexure A6, the learned Government Pleader submits that the persons who are already given the benefit of Time Bound Higher Grade were not entitled to have the benefit of Career Advancement Scheme. However, Sub Clause (v) stipulates the course of action to be pursued in respect of persons who have already been given the benefit of

Time Bound Higher Grade. However, in so far as the applicants were already given the benefit of Annexure A5, it cannot but be said that they are still entitled to have the benefit of Clause (v) on Annexure A6 and there could not be any dispute in this regard.

6. When Annexure A7, A8 and A9 representations were preferred claiming for the benefit of ACP, the same was considered and the position was answered and clarified by Annexure A14 dated 19.08.2014, pointing out that there was a change in circumstance; particularly with regard to the qualification stipulating a Degree, by virtue of which it was not liable to be acceded to. This made them feel aggrieved, who have filed the Original Application. It was without proper appreciation of the facts and figures and the sequence of events that the matter was finalized by the Tribunal, directing respondents in the Original Application to give the benefit, categorizing the applicants as Deputy Director (Non-Cadre) in the scale of pay of Rs.24040-38840. This is stated as not correct or sustainable and hence the challenge.

7. The learned counsel appearing for the respondents/applicants in the Original Application submits that the Original Application came to be filed because of the grievance felt by the applicants, when the respondent/department in the Original Application gave placement to one of their juniors as Deputy Director (Non-Cadre) in the scale of pay of Rs.24040-38840. It is also pointed out that all the applicants were admittedly given the benefit of Time Bound Higher Grade and were drawing the salary in the scale of pay of Deputy Director (Non Cadre). That apart, by virtue of the subsequent developments, pursuant to the 10th Pay Commission's recommendations, the very concept of giving promotion to the post of Deputy Director has been taken away and no such post is in existence as on date.

The learned counsel for the applicants submits that the 2nd respondent/2nd applicant has already obtained the benefit of regular promotion as Deputy Director and that the others are about to get the same; under which circumstances, no grievance is remaining with regard to the rights and liberties in this

regard. It is also stated by the learned counsel that, by virtue of the turn of events, no further proceedings are required to be pursued pursuant to the verdict passed by the Tribunal, with reference to the directions as aforesaid. In the above circumstances, nothing requires to be considered in the Original Petition and the same is closed, making it clear that the order passed by the Tribunal setting aside Annexure A14 will not be having any sanctity in so far as the issue involved is concerned and the merit of the challenge in this regard is left open.

Sd/-
(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-
(ANIL K.NARENDRAN, JUDGE)

/TRUE COPY/

P.A.TO JUDGE

DG