



2023/KER/65625

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
FRIDAY, THE 27TH DAY OF OCTOBER 2023 / 5TH KARTHIKA, 1945
WP(C) NO. 23667 OF 2022

PETITIONER:

RAJAN P,
AGED 39 YEARS



BY ADV AYSHA ABRAHAM

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM- 695 001
- 2 KERALA STATE COUNCIL FOR SCIENCE,
TECHNOLOGY AND ENVIRONMENT, THROUGH THE EXECUTIVE VICE
PRESIDENT, 4TH FLOOR, KSCSTE SASTHRA BHAVAN, PATTOM,
THIRUVANANTHAPURAM- 695 004.
- 3 KERALA FOREST RESEARCH INSITUTE,
REPRESENTED BY ITS DIRECTOR, PEECHI P.O,
THRISSUR 680 653.
- 4 DR. R. SUGANTHASAKTHIVEL,



BY ADV Sujin S

SRI. C K PRASAD, SC FOR KERALA FOREST RESEARCH
INSTITUTE
SRI. P C SASIDHARAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



"CR"

J U D G M E N T

The petitioner states that he belongs to the Scheduled Tribe Community. He is a Ph.D. holder in Zoology and has acquired an M.Sc in Zoology with a specialization in Wildlife Biology. He had approached this Court, seeking the following reliefs:

- i. to declare the candidature of the Respondent No. 4 to be illegal and impermissible under the Ext P1 & Ext P3 Notifications.
- ii. to set aside the selection and appointment of Respondent No.4.
- iii. to direct Respondent No.3 to appoint the Petitioner to the post of Scientist B- Wild Life Biology forthwith.
- iv. to direct the Respondent No.3 to compensate the Petitioner against the blatant discrimination against him.
- v. to order the Respondents to pay the costs of this Petition.

2. The short facts of the case, as is discernible from the pleadings, are as under:



a) The Kerala State Council for Science, Technology & Environment is an Institution conducting research in Tropical Forestry and Biodiversity Conservation. The 3rd respondent issued Ext.P1 notification dated 14.8.2018 inviting applications to the post of Scientists in various disciplines. Ext.P1 notification was challenged before this Court by certain aspirants to the post on the ground that in the notification itself, vacancies have been earmarked to particular communities, which disables other candidates from offering their candidature for various posts. A Single Judge of this Court, by judgment dated 20.12.2018 in W.P.(C) No. 33574/2018, allowed the writ petition, and after setting aside the notification, the respondents were directed to renotify the same in accordance with the law.

b) In terms of the directions issued by this Court, the 3rd respondent renotified the vacancies and came out with Ext.P3 notification. According to the petitioner, being fully qualified, he applied for the post of Scientist-B in Wildlife Biology. He asserts that 10 candidates were shortlisted for the interview. Their details are as under:



S.NO	NAME	DATE OF BIRTH	STATE	RELIGION AND CASTE
1.	Dr. R. Suganthasakthivel	31.10.1979	Tamil Nadu	OBC, Hindu, Maravur
2.	Dr. Joseph J. Erinjery	19.01.1987	Kerala	Open
3.	Mr. Anil K.	27.03.1989	Kerala	Open
4.	Mr. Ramesh Kumar S.	30.05.1985	Tamil Nadu	OBC, Vettuva, Gounder
5.	Mr. Ashok Kumar M.	5.07.1980	Tamil Nadu	OBC, Hindu,
6.	Mr. Suresh K. Govind	29.11.1985	Kerala	OBC, Hindu
7.	Pritha Dey	7.10.1988	Bengal	Open
8.	Mr. Bharat Bhushan Sharma	25.09.1985	Delhi	Open
9.	Dr. Ahmed Masood Khan	26.03.1986	Uttar Pradesh	Muslim, Open, General
10.	Mr. Rajan. P	21.06.1983	Kerala	Kurichiyan, ST

c) However, only candidates falling under Sl. Nos. 1, 3, 4,5, and 10 appeared for the interview.

d) Ext.P5 selection list of Junior Scientists and Scientists posts were issued. The name of the 4th respondent found a place in the selection list for the post of Junior Scientist in Wildlife Biology. It was on the premise that the post of Scientist B was reserved for OBC candidates



and that the 4th respondent fell in the OBC category.

e) Immediately thereafter, the petitioner is stated to have submitted Ext.P6 letter highlighting his grievances. He has stated in Ext.P6 that the rank list has not been published on the website, that the 4th respondent, who has been selected to the post of Junior Scientist in Wildlife Biology, is overaged, and that the selected candidate was not an OBC, declared as such in the State of Kerala.

f) According to the petitioner, the 4th respondent has been appointed in clear violation of the conditions in the notification. The prescription in the notification was that the upper age limit of the candidate has to be 35 years as on 19.9.2018, the date of notification. The 4th respondent was aged 38 years, 10 months, and 19 days and, therefore, grossly overaged. It is also stated that the party respondent had declared that he belongs to the State of Tamil Nadu and is an OBC (Hindu Maravar). It is stated that Maravar does not hold recognition or inclusion as an OBC category in the State of Kerala.

g) The petitioner asserts that the appointment of the 4th respondent on the basis of his OBC status in Tamil Nadu and the



exemption from the upper age limit on its basis is illegal.

3. In the Counter Affidavit filed by the 2nd respondent, it is stated that though an independent rank list was published after a due course of selection with reference to each discipline while making an appointment to the post of Scientist by Direct Recruitment, the vacancies are clubbed together treating all the departments as one unit for applying the rules of reservation and rotation. It is stated that after an in-depth examination of the entire aspects of the matter, for the purpose of applying the reservation principles, the occurrence of vacancy is taken as the criteria for arranging the departments for the purpose of working out the rotation in its order. Though notification was issued for selecting 18 Junior Scientist/Scientists-B and 3 Scientists, the rank list could be published only in relation to Junior Scientists/Scientists B posts in 13 disciplines and Scientist Post in one discipline since suitable and eligible candidates were not available in other disciplines. The occurrence of a vacancy in relation to 13 disciplines of Junior Scientist/Scientist-B is taken as a criterion for applying the reservation. It is stated that the petitioner was included in the rank list in the discipline of Wildlife Biology. However, the post notified was only one, and going by the Rules, the turn of the discipline fell to an OBC candidate. It is neither an



open competition turn nor an SC turn. Even if the 4th respondent is found ineligible, the petitioner will not get the turn since the turn falls under OBC turn, and only candidates of that turn can be appointed.

4. In the counter-affidavit submitted by the 4th respondent, it is asserted that he applied for the position of Junior Scientist/Scientist-B Wildlife Biology in response to the notification issued by the 3rd respondent. He maintains that he possesses the requisite qualifications for the role of Junior Scientist and, notably, secured the highest rank during the selection process conducted in 2019. It is further contended that, despite being 38 years, 10 months, and 19 days old on September 19, 2018, he is entitled to an exemption from the upper age limit due to the benefits conferred to SC/ST and OBC candidates. Given the qualifications and merits of the 4th respondent, it is stated that the institution should have exercised its discretion to grant an exemption from the upper age limit in his case. The 4th respondent underscores that he has only asserted his claim based on merit, having secured the first rank in the selection process. He emphasizes that, as a new candidate in the general category, he was erroneously placed in the OBC category despite his clear qualification for the post based on merit alone. It is categorically stated that the



4th respondent did not assert any rights related to OBC or SC benefits, as his appointment should ideally have been based solely on merit. His domicile in the State of Tamil Nadu should not have affected the consideration of his application on its merits. The claim made in the writ petition that the 4th respondent is not entitled to OBC reservations in the State of Kerala is stated to be misconceived. Furthermore, it is highlighted that the 4th respondent, being an exceptionally qualified candidate, was appointed based on merit, with the institution choosing to relax the upper age limit in recognition of his merit.

5. In the counter affidavit filed by the 3rd respondent, the contentions in the counter affidavit filed by the 2nd respondent have been reiterated.

6. I have heard Sri. Yeshwanth Shenoy, the learned counsel appearing for the petitioner, Sri.P.C Sasidharan, the learned Standing counsel appearing for the 2nd respondent, Sri.C.K Prasad, the learned Standing Counsel appearing for the 3rd respondent and Sri.N.N.Sugunapalan, the learned Senior counsel for the 4th respondent as instructed by Sri.S Sujin.

7. I have carefully considered the submissions advanced and have gone through the records.

8. Exhibit P3 is the notification issued by the 3rd respondent inviting



applications for the recruitment of scientists. We are, in this case, concerned with the post of Junior Scientist/ Scientist B in Wild Life Biology. The relevant portions of the notification essential for the adjudication of this petition read as under.

SC 12/18	Junior Scientist/ Scientist B	Wildlife Biology	1.First Class PG in Wildlife/Zoology/Ecology 2. Ph.D in the field related to Wildlife studies	Research experience in Vertebrate studies
----------	-------------------------------	------------------	--	---

'Clause (1) Age: 35 years on the closing date of application of original notification viz.19/09/2018. Age limit may be relaxed in the case of internal candidates and candidates belonging to SC/ST/OBC as per the Government Rules.

Clause (5) In the case of exceptionally meritorious candidates, relaxation in the requirements may apply, subject to the approval from the Executive Vice President of the Kerala State Council for Science Technology and Environment, on the recommendation from the Director KFRI. The Director KFRI reserves the right to fill or not to fill any or all of the above posts.

Clause (10) Candidates already applied need not apply again for the posts they have already applied. Those who are desirous to apply other posts due to removal of reservation norms at the time of application,(as per Court Judgment) may have to apply again. Those who require updating of qualification/experience may do so by making specific request along with self-attested photocopies of the relevant documents.'

9. A reading of Exhibit P3 notification would disclose that the upper age limit was 35 years as of the closing date of the application of original



notification. viz., 19/09/2018. However, the age limit could be relaxed in the case of internal candidates and candidates belonging to SC/ST/OBC as per Government Rules. Insofar as exceptionally meritorious candidates are concerned, relaxation in the requirements may apply, subject to approval from the Executive Vice President based on the recommendation from the Director KFRI.

10. The 4th respondent has produced a copy of the application form filled up by him in response to the Post of Junior Scientist/ Scientist B. The said application form discloses the relevant details, and the same is extracted hereunder:

Advertisement No.	No.D113/KFRI/Estt/04 dated 03.July 2019
Post applied for	Junior Scientist/Scientist B-Wildlife Biology
Post Code	SC 12/18

1. General Information

1	Name(in block letters)	Dr.R.SUGANTHASAKTHIVEL	Affix a recent photograph here and sign across
2.	Father's Name	Mr.M.Ramamoorthy	
3.	Nationality	Indian	
4.	Sex	Male	



5.	Marital Status	Married	
6.	Postal address for Communication	Project Fellow, Forest Entomology Department, Kerala Forest Research Institute, Peechi, Thrissur, Kerala-680653	
	Phone	04872690277	
	Mobile	9496864822	
	Email	suganthan31@gmail.com , suganthan@kfri.res.in	
7	Permanent address	71/32, South Agraharam Street, Watrap (P.O), Virudhunagar District, Tamil Nadu-626132	
8	State to which belong	Tamil Nadu	
9	Date of Birth	31.10.1979	
10.	Present Employment	Kerala Forest Research Institute	
	Post held	Project Fellow	
	Temporary/Permanent	Temporary	
	Grade of Pay	NA	
	Salary drawn	Rs.22,000 (Consolidated)	
11.	Employer's name and address	Kerala Forest Research Institute, Peechi, Thrissur, Kerala-680653	
12	Category (General/SC/ST/OBC/ETB/MUSLIM/LC/AI/V ISWAKARMA)	OBC(Hindu Maravar)	

11. What is discernible is that the 4th respondent was born on



31.10.1979, and he was aged over 39 years as of the date of submission of the application. From his application, it is obvious that he had applied in the OBC (Hindu Maravar) category. He has also stated that he is domiciled in the State of Tamil Nadu.

12. In the counter affidavit filed by the 4th respondent, so far as is contextually relevant to the issue raised in this writ petition, it has been stated as under in paragraph No.8.

“8. The contentions raised in para 2 of the writ petition that I was overaged as per the conditions of the notification is not correct, although my age was 38 years 10 months 19 days as on 19/09/2018. On a scrutiny of the benefits granted to the scheduled caste and scheduled. tribes and OBC, I am entitled for a higher age limit. Even going by my qualifications, the respondent institution can grant exemptions so far as upper age limit is concerned. Already, I have applied for the concession on the basis of my outstanding academic qualifications compared to others, and same was granted without considering the restrictions of age limit. It is submitted that I ought to have been appointed as a new candidate in the general seat but the respondents has fitted me in the OBC seat when I got qualified for the post even though I had not raised any claims other than on merit as I had qualified the selection process with 1 Rank. Even without any reservation, I am eligible for the post merely on the basis of merit and the contentions



levelled by the petitioner that I being domicile of Tamil Nadu, cannot claim any OBC or SC benefits is baseless and without any legal foundation (emphasis supplied).

13. A reading of the counter would disclose that the petitioner seeks age exemption on the ground that he belongs to the OBC community. However, in the same breath, he states that the respondents could have granted him age relaxation, taking note of his outstanding academic qualifications. At any rate, even for a person who falls in the category of OBC, the age relaxation would be three years. I have already extracted clause (5) of Ext.P3 notification, which states that in the case of exceptionally meritorious candidates, relaxation in the requirements may apply, subject to the approval from the Executive Vice President of the Kerala State Council for Science Technology and Environment, on the recommendation from the Director KFRI. There is no case for any of the respondents that such a course was followed.

14. At this juncture, it would be relevant to consider the stand taken by respondent No.2 in the counter, which is reiterated in the counter filed by the 3rd respondent as well. What has been stated is that the post notified was only one and going by the rules, the turn in the discipline was for the selection of a



candidate from the OBC category. It is stated that the petitioner cannot claim the 10th turn since the said turn is exclusively reserved for OBC candidates. Even more astonishing is the assertion in paragraph No. 12 that the 4th respondent belongs to Vadakkancherry Panchayat in Palakkad District, which is a contention even the 4th respondent does not have. It is further stated that age relaxation was granted since the 4th respondent was an applicant to the post based on the earlier notification.

15. The next question is whether the 4th respondent would fall within the OBC category in the State of Kerala. In **Action Committee on the issue of Caste Certificate to Schedule Castes and Scheduled Tribes in the State of Maharashtra and another vs. Union of India and another**¹, certain individuals who had migrated from one state to another had approached the Apex Court and challenged the Government order which stated that a Scheduled Caste/Scheduled Tribe person who migrates from the State of his origin to another State in search of employment or for educational purposes, cannot be treated as a person belonging to the Scheduled Caste/Scheduled Tribe of the State to which he migrates and hence cannot claim benefits as such

¹ (1994) 5 SCC 244



in the latter state. They contended that the above Government order was unconstitutional. They also contended that they belonged to the Scheduled Caste/Scheduled Tribes and that they experienced difficulties in securing certificates from the State of origin as well as the State to which they had migrated on account of the instructions issued by the Government of India. Their prayer before the Apex Court was that a uniform pattern in regard to the issuance of certificates be introduced to the persons belonging to the Scheduled Castes/Scheduled Tribes without being compelled to knock at the doors of different high Courts. Their prayer was dismissed by holding as under:

15.[A] Constitution Bench headed by Sabyasachi Mukharji, C.J., as he then was, examined the question whether one who is recognised as a Scheduled Tribe in the State of his origin continues to have the benefits or privileges or rights in the State to which he migrates. In paragraph 6 of the judgment the precise question was formulated as follows:

“This question, therefore, that arises in this case is whether the petitioner can claim the benefit of being a Scheduled Tribe in the State of Maharashtra though he had, as he states, a Scheduled Caste certificate in the State of Andhra Pradesh?”

In answering this question the Constitution Bench was called upon to interpret Articles 341 and 342 of the Constitution and



determine what the expression “in relation to that State” read in conjunction with “for the purposes of this Constitution” seeks to convey. After referring to the provisions of Articles 14, 15 and 16 and the decision of this Court in *Pradeep Jain (Dr) v. Union of India* [(1984) 3 SCC 654] the Constitution Bench took notice of the fact that Scheduled Castes and Scheduled Tribes had to suffer social disadvantages and were denied facilities for development and growth in certain States. To grant equality in those States where they suffered and were denied facilities for development and growth certain protective preferences, facilities and benefits in the form of reservation, etc., had to be provided to them to enable them to compete on equal terms with the more advantageous and developed sections of the community. It is not necessary to dilate on this point as the Constitution itself recognises that members belonging to the Scheduled Castes and Scheduled Tribes and other backward classes have to be given certain incentives, preferences and benefits to put them on an even keel with others who have hitherto enjoyed a major share of the facilities for development and growth offered by the State, so that the former may, in course of time, be able to overcome the handicap caused on account of denial of opportunities. The interpretation that the Court must put on the relevant constitutional provisions in regard to Scheduled Castes/Scheduled Tribes and other backward classes must be aimed at achieving the objective of equality promised to all citizens by the Preamble of our Constitution. At the same time it must also be realised that the language of clause (1) of both the Articles 341 and 342 is quite plain and unambiguous. It clearly states that the President may specify the castes or tribes, as the case may be, in relation each State or Union Territory for the purposes of the Constitution. It must also be realised that before specifying the castes or tribes under either of the two articles the President is, in the case of a State, obliged to consult Governor of that State. Therefore, when a class is specified by the President, after consulting the Governor of State A, it is difficult to understand how that specification made “in relation to that State” can be treated as specification in relation to any other State whose



Governor the President has not consulted. True, it is that this specification is not only in relation to a given State whose Governor has been consulted but is “for the purposes of this Constitution” meaning thereby the various provisions of the Constitution which deal with Scheduled Castes/Scheduled Tribes. The Constitution Bench has, after referring to the debates in the Constituent Assembly relating to these articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. The Constitution Bench summed up as under:

“In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult.”



16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State “for the purposes of this Constitution”. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

“He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a



member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....”

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.

16. It was held that the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to become equals with others, but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas

17. Later in **MCD v. Veena**², the above view was followed and it was held as under:

6. Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste

² (2001) 6 SCC 571



belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.

18. A Division bench of this Court in **Abdul Haleem v State of Kerala**³ has followed the above precedents and also the law laid down in **Pankaj Kumar v. State of Jharkhand & Ors.**⁴ and held that a member of the OBC from the State of Karnataka cannot have a claim for the reserved seat under the notification issued by the State of Kerala.

19. In view of the principles laid down above, the 4th respondent, who

³ (2022 (3) KLT 47)

⁴ (2021 (4) KLT OnLine 1152 (SC))



would not satisfy the criteria of being an OBC in the State of Kerala, would not qualify for the 10th turn, which has been set apart for an OBC. The Hindu Maravar Community does not hold recognition or inclusion as an OBC category in the State of Kerala. In that view of the matter, the selection of the 4th respondent on the ground that he is a member of the OBC community is clearly illegal. The 4th respondent has taken a contention in the counter that he was entitled to be appointed as a candidate in the general seat. Such a contention cannot be taken at this juncture as from Ext.R4(b) application filed by him, it is clearly evident that he had claimed selection purely on the basis of his inclusion in the OBC category. After having gained advantage on all counts, including age relaxation, he cannot turn around at this stage and contend otherwise.

20. Insofar as the age relaxation is concerned, the learned Standing Counsel appearing for the 3rd respondent has taken a contention that age relaxation was granted as the 4th respondent was an applicant to the post as per the original notification. However, as rightly submitted by the learned counsel appearing for the petitioner, the said question has been settled by a learned Division Bench of this Court in **Nicky K. Xavier v State of Kerala and**



Others⁵. In the said case, notification was invited to the post of Scientist E-1 in the KFRI. As per the original notification, the age limit prescribed was up to 40 years as on 10.4.2012. The selection process had to be cancelled for one reason or the other on more than one occasion. Finally, the process was re-initiated and though the age limit was fixed as 40 years, a clause was included that those who had applied earlier need not apply afresh. This clause was interpreted by the Division Bench and it was held as under in paragraph 5 of the judgment.

That apart, we also find that while Ext.P25 notification grants an exemption to those candidates who had responded to earlier notification from applying afresh for the purposes of the said notification, the Clause does not grant any age relaxation to such candidates who are exempted from applying afresh. This, according to us, is a significant factor since, admittedly, even if the appellant could be treated as one who had been exempted from the requirement of preferring a fresh application for the purposes of Ext.P25 notification, he could not have satisfied the age criteria for consideration to the post in terms of Ext.P25 notification.

21. The very same situation has arisen in the instant case as well.

Though the 4th respondent has been exempted from the requirement of

⁵ 2022 (6) KLT Online 1175



preferring a fresh application, he could not have satisfied the age criteria for consideration as, on the date of the notification, the 4th respondent was over 39 years of age. The contention of the 4th respondent that he is entitled to age relaxation on the ground that he is a member of the OBC community has also been held against him above. Furthermore, no material is placed before this Court to substantiate that the Director, KFRI, had recommended any relaxation and that the same was approved by the Executive Vice President. In view of the principles laid down in **Nicky** (supra), the grant of age relaxation to the 4th respondent is clearly illegal.

22. Now, the question is as regards the relief that can be granted to the petitioner in the instant case. In addition to requesting the nullification of the selection and appointment of the 4th respondent, the petitioner has also sought for a direction ordering the 3rd respondent to appoint him to the position of Scientist B - Wildlife Biology. However, the fact remains that the appointment for this position is specifically reserved for a candidate from the OBC category. Therefore, the relief sought by the petitioner cannot be granted based on this ground. It is evident from the facts presented that respondents 2 and 3 have indeed selected and appointed the 4th respondent in a manner that appears to



be in direct contravention of the notification and the settled legal principles. At any rate, while granting age relaxation, the respondents could not have ignored the principles laid down in **Nicky** (supra) in which the KFRI was a party. The petitioner has placed on record Exhibit P9, a letter issued by a person occupying a high political position in the state of Tamil Nadu to his counterpart in the State of Kerala. This letter is highlighted by the petitioner to substantiate that the Rules and Regulations were stretched to favor the 4th respondent. Given the sequence of events, it is clear that the petitioner had a legitimate cause to bring this matter to the attention of this Court. The petitioner has clearly highlighted the apparent efforts made by respondents 2 and 3 to select and accommodate the 4th respondent, which raises questions about the fairness and legality of the selection process. If the respondents had acted fairly and in consonance to the law laid down by the Apex Court as well as this Court, the petitioner herein would not have been drawn to a litigation of this nature. In that view of the matter, I am of the view that the petitioner is liable to be compensated for the manner in which the respondents have acted, which course could easily have been avoided if the respondents had acted fairly and reasonably.

In view of the discussion above, this Writ Petition is ordered, and the



following directions are issued.

- a. The selection and appointment of the 4th respondent to the post of Junior Scientist / Scientist B in Wildlife Biology by granting age relaxation and by including him in the turn of OBC category in the State of Kerala is illegal, and the same is quashed.
- b. I decline the prayer of the petitioner to appoint him to the post of Scientist B- Wild Life Biology.
- c. Towards compensation to the petitioner and for driving him to litigation, respondents 2 and 3 are directed to pay a sum of Rs 25,000/- to the petitioner, which shall be paid within a period of one month from today.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

@S/16/10/2023



APPENDIX OF WP(C) 23667/2022

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTIFICATION DATED 14.08.2018 ISSUED BY THE 3RD RESPONDENT.
- Exhibit P2 TRUE COPY OF THE ORDER IN W.P.C NO. 33574 OF 2018 OF HON'BLE HIGH COURT OF KERALA.
- Exhibit P3 TRUE COPY OF THE NOTIFICATION DATED 03.07.2019 ISSUED BY THE 3RD RESPONDENT.
- Exhibit P4 TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE POST OF SCIENTIST B-WILDLIFE BIOLOGY.
- Exhibit P5 TRUE COPY OF THE SELECTION LIST AS PER EXT. P1 PUBLISHED IN THE OFFICIAL WEBSITE OF 3RD RESPONDENT IN APRIL, 2022.
- Exhibit P6 TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE CHIEF MINISTER WHO IS THE PRESIDENT OF THE 2ND RESPONDENT, DATED 22.04.2022.
- Exhibit P7 TRUE COPY OF THE RTI APPLICATION FILED BY MR. HARISH V. SUDHAKARAN DATED 04.05.2022.
- Exhibit P8 TRUE COPY OF THE ANSWERS RECEIVED FOR THE RTI QUERIES DATED 13.06.2022.
- Exhibit P9 A copy of the letter dated 10 March 2022 written by K.Balakrishnan, Secretary of the Communist Party of India (Marxist), Tamilnadu State Committee addressed to Com. Kodiyeeri Balakrishnan.



RESPONDENTS EXHIBITS

EXHIBIT R4 (a) TRUE COPY OF THE APPLICATION DATED 11/09/2018 SUBMITTED BY 4TH RESPONDENT FOR THE POST OF JUNIOR SCIENTIST OR SCIENTIST - B.

EXHIBIT R4 (b) TRUE COPY OF THE APPLICATION DATED 30/07/2019 SUBMITTED BY 4TH RESPONDENT FOR THE POST OF JUNIOR SCIENTIST OR SCIENTIST - B.

EXHIBIT R4 (c) TRUE COPY OF THE APPOINTMENT ORDER DATED 12/04/2022 ISSUED TO ME.

EXHIBIT R4 (d) TRUE COPY OF THE MEMO DATED 19/04/2022 ISSUED FOR JOINING DUTY.

Annexure (R 3) 1 A True copy of the consolidated mark sheet of KFRI Scientist interview held on 1 4 2022. to the post of Scientist B-Wildlife Biology.

Annexure (R3) 2 A True copy of the KSCSTE Reservation in appointment - Amendment of KSCSTE Rules bearing Council (M) Order No 43 2021 KSCSTE DATED ON 18 06 2021.

Exhibit R3(a) A true copy of the said judgement in WP(c) No.30747 of 2015. dated on: 19/12/2016



2023/KER/65625

W.P.(C.) No.23667 of 2022

28

Exhibit R3(b) The decisions of the(post of Scientist-B/
J. Scientist) Screening Committee meetings
held on 8-10/09/2021,15-17/11/2021

Exhibit R3 (C) A true copy of the Kerala State Council for
Science, Technology and Environment
-Scientist Recruitment and Promotion Rules
. Section II, Part IV.