

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.210/2003

THURSDAY THIS THE 24TH DAY OF FEBRUARY, 2005

CORAM

**HON'BLE MR.A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER**

**Dr. Sudha Sukumaran,
D/o Mr. Abdul Azeez, aged 55years,
Scientist (Senior Scale)
(Under orders of Termination)
Central Plantation Crops Research Institute,
Kudlu PO, Kasargod
residing at Type V-7, Residential Complex,
CPCRI, Kasargod 671 124. Applicant**

(By Advocate Mr.O.V.Radhakrishnan)

V.

**1.Indian Council of Agricultural Research,
represented by its Director General,]
Krishi Bhavan, New Delhi.1.**

**2.President, Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi.1.**

3.Deputy Secretary (P)

.2.

Indian Council Agricultural Research,
Krishi Bhavan, New Delhi.1.

4. Director,
Central Plantation Crops Research Institute
Kudlu, Kasargod.

5. State of Kerala represented by its Secretary
to Government, Scheduled Caste and Scheduled
Tribes Department, Govt. Secretariat,
Thiruvananthapuram.

6. Union of India represented by its
Secretary, Ministry of Agriculture,
Krishi Bhavan, New Delhi. Respondents

(By Advocate Mr. CN Radhakrishnan, R.1 to 4 and 6
Advocate Mrs. M. Lalitha Nair, GP for R.5)

The application having been heard on 19.1.2005 the
Tribunal on 24.2.2005 delivered the following order:

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O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who was Scientist (Senior Scale) in the Central Plantation Crops Research Institute (CPCRI) Kasargod an institute under the Indian Council of Agricultural Research (ICAR) has filed this application challenging the legality, propriety and correctness of the order dated 3rd March, 2003 of the second respondent (Annexure.A.15) by which her services were terminated.

2. The undisputed facts are as follows. The applicant was born on 31.5.1947 in a Muslim family of Pappanancode in Thiruvananthapuram. Her father Abdul Azeez and mother Peerummal were Muslims. Thus the applicant was a Muslim by birth. She lived and got educated as a Muslim. Her name was Fathima Beevi P and her religion was Islam as recorded in the third page of her SSLC Book (A4). In November, 1969 she got married to Sri A.S.sukumaran, a member of Hindu Paravan Community, which was classified as a Scheduled Caste. She thereafter changed her name as "Sudha Sukumaran" by publishing a notification in Kerala Gazette on 24.11.1970 (A5). She embraced Hinduism as per religious ceremony known as "Sudhi" conducted on 21.11.1981 at Mayayakshikavu Devaswom, Ochira, Kollam District as per certificate issued by the Assistant Commissioner as mentioned in page 5 of Annexure.A.11 (photo copy of Enquiry Report of the Vigilance Officer, KIRTADS). After marriage the applicant became a

part of the family of her husband Sukumaran who belonged to Paravan Community. The change of her name was notified by the Registrar of the University of Kerala to the Principal, University College, Trivandrum by order dated 2.9.1972 (A6). While so the applicant being successful in the Agricultural Research Service Examination held by the ASRB in 1982 was recruited as Scientist and after verification of antecedents and suitability as per rules, her appointment as Scientist Grade I was approved by the President of the ICAR as per Memorandum dated 24.6.1983 (A2). As required the applicant submitted her declaration regarding merital status indicating A.S.Sukumaran, a Scientist under the third respondent as her husband and also produced her SSLC book as also A5 notification before joining the post. She had passed MSc in Zoology and had while in service obtained Phd [in Bio Science from Mangalore University. She had also produced Annexure A.7 certificate dated 19.10.83 to the effect that she belonged to Hindu Paravan community which is recognised as a Scheduled Caste. In August, 1991 she was asked by a note dated 28.8.1991 by the 4th respondent to produce the original SSLC book as also A5 Gazette notification which she complied with. Her probation was declared by Annexure A.9 order and she was promoted as Scientist (Senior Scale) w.e.f. 1.6.1991. While matters stood so on the basis of some anonymous complaints the National Commission for SC/ST directed holding an anthropological investigation into the caste status of the applicant. The applicant was by notice dated 21.11.2000 (Annexure A.10) directed to appear before the Investigating

Officer, KIRTADS. In reply to this the applicant stated that she was a Muslim by birth and that she having got married in 1969 to Sukumaran a member of Paravan Community was accepted by the community into its fold. She was thereafter served with copy of Annexure.A.11 of KIRTADS holding that the applicant being a muslim by birth her claim to be a member of SC Paravan community on the basis of her marriage with A.S.Sukumaran was found to be wrong and the SC certificate issued to her is liable to be cancelled. The applicant submitted Annexure A.12 reply to Annexure.A.11 explaining that she had brought to the notice of the authorities before her selection to the post that she a born Muslim was married in 1969 to A.S.Sukumaran a member of Paravan Community which is a Scheduled Caste, that she embraced hinduism by performing Sudhi, that she became part of her husband's family, that the community certificate was issued only after due enquiry and that under such circumstances there was no ground to proceed against her. Thereafter the Scrutiny Committee for verification of SC/ST claims after personal hearing by proceedings dated 28.5.2002 (Annexure.A.13) rejected the Scheduled Caste claim of the applicant and submitted a copy of the same for further action to the State Government. On receipt of Annexure.A.13 proceedings of the Scrutiny Committee the 5th respondent issued G.O.dated 21.6.2002 (Annexure.A.14) cancelling the Scheduled Caste Certificate issued to the applicant, directing that the entry in the records pertaining to the applicant's community be corrected as Muslim and recommending termination of service of the applicant and

appointment of a candidate belonging to Scheduled Caste in her place. Although the applicant filed an MFA before the Hon'ble High Court of Kerala challenging the proceedings of the Scrutiny Committee (Annexure.A.13) it was dismissed by judgment dated 13.2.2002. On the basis of Annexure.A.13 and A.14 the third respondent issued the impugned order Annexure.A.15 terminating the services of the applicant. Alleging that the third respondent who is subordinate to the appointing authority had no jurisdiction to issue Annexure.A.15 order, that the applicant having not suppressed any material fact termination of her services was not justified, that even if after the judgment of the Apex Court a woman seeking transplanted to a SC by voluntary movement would not be entitled to the reservation benefit due to members of SC as she was not appointed against a vacancy reserved for SC the order of termination was wholly unwarranted and unjustified the applicant has filed this application seeking to set aside Annexure.A.15 order, for a direction to the respondents 1 to 4 to allow the applicant to continue in service as Scientist (Senior Scale) in CPCRI without regard to Annexure.A.15 and to make available to her the consequential benefits including full backwages.

4. On behalf of respondents 1 to 4 a reply statement was filed raising the following material contentions. The applicant was recruited and appointed to the post of Scientist on the basis of the Agricultural Research Service Examination against a post reserved for Scheduled Caste as per ASRB letter dated 18/12/82 on her producing a Scheduled

Caste Certificate issued on 19.10.1983. The Scheduled Caste Certificate issued to the applicant by the Tahsildar was on the basis of the applicant's (a muslim by birth) marriage to Sri Sukumaran, a member of Scheduled Caste Paravan community, the Scrutiny Committee after detailed enquiry with which the applicant was associated held that the certificate was not valid because voluntary mobility into scheduled caste would not entitle a muslim for the benefit due to that community. The certificate was thus cancelled. The applicant challenged Annexure.A.13 report of the Scrutiny Committee before the Hon'ble High Court of Kerala in MFA 664/2002. The Hon'ble High Court found that the applicant did not belong to Scheduled Caste and dismissed the MFA observing that it was admitted that the applicant obtained a job against a vacancy reserved for a Scheduled Caste and that a person not belonging to Scheduled caste cannot grab the chance of employment for Scheduled Castes in civil service. The Government of Kerala cancelled the Scheduled Caste certificate and as a result the appointment of the applicant was terminated rightly. The Hon'ble High Court having dismissed the MFA, the remedy of the applicant was to file an appeal to the Apex Court and this Original Application is not maintainable as the Tribunal has no jurisdiction in the matter.

5. The applicant filed a rejoinder. It is contended that as the respondents have not produced any material to show that the applicant secured appointment against a vacancy reserved for SC, and it is evident that the

applicant has not suppressed any material either to the Tahsildar or other authorities the applicant cannot be accused of having falsely or fraudulently obtained the Scheduled Caste certificate or employment and therefore the impugned order is unsustainable. It is further contended that the Hon'ble High Court of Kerala in OP No.4351 of 1981 having held that the cancellation of SC certificate by Government of Kerala the services of the petitioner could not have been validly terminated by the Government of India the respondents were wrong in terminating the services of the applicant on the basis of Annexure A.13 order. It is also contended that the termination of services of the applicant without giving her a reasonable opportunity to explain her case is vitiated by non-observance of principles of natural justice.

6. The fifth respondent State of Kerala has also filed a reply statement justifying the impugned orders.

7. We have with meticulous care perused the entire pleadings and all the documents placed on record. We have also carefully scrutinised the File No.4(141)ARS/78-Estt. Vol.1V on the subject of appointment of ARS probationers under CPCRI which was produced for our perusal by the learned counsel of respondents 1 to 4 and 6.

8. Shri O.V.Radhakrishnan, the learned counsel of the applicant adverting to the undisputed fact that the applicant a Muslim by birth in 1947 got married to

A.S.Sukumaran, a member of Scheduled Caste Paravan in 1969, moved into her husband's family and embraced hinduism by performing Sudhi on 21.11.1981, argued that on the date of issue of Scheduled Caste Certificate by the competent authority (A7 dated 19.10.1983) the applicant had no caste to indicate different from her husband's caste as she no longer belonged to Islam religion, that therefore she was not guilty of any fraud or suppression of material facts, that details regarding all these facts were furnished by her before her appointment and that the law on the point on the caste status of a woman belonging to forward community or other religion moving into a family belonging to a Scheduled Caste by marriage at that time as declared by the Hon'ble Supreme Court in N.E.Horo Jahan Ara Jaipal Singh, AIR 1972 SC 1840 was that a woman by birth not being a member of a Scheduled Caste or Scheduled Tribe cannot be deprived of the status and benefit attached to the caste to which her husband belonged if she had been accepted and assimilated to that community even if it be a tribal community, the action on the part of the respondents 1 to 4 and 6 to terminate her services for the reason that her Scheduled Caste Certificate was cancelled by the state Government on the basis of a later decision of the Hon'ble Supreme Court in Valsamma Paul (Mrs) V. Cochin University and others, 1996 (3) SCC 545, which declared that a member of a forward caste who had an advantageous start in life and had not been subjected to the disadvantages, handicaps, indignation and disabilities attached to a dalit by mere voluntary transplantation to the family and community by marrying a dalit would not become

eligible for the benefit of reservation under Article 15(4) or 16(4) of the Constitution of India as acquisition of status by voluntary movement would amount to a fraud on the constitution and frustrate the constitutional policy under Articles 15(4) and 16(4) of the Constitution was arbitrary, irrational, illegal and unsupported by a principle of law, justice and equity. He argued that long before any employment was even contemplated applicant had married Sukumaran and became a member of his family and therefore she being not guilty of any fraud or misrepresentation, though might not have been eligible to claim the benefit of reservation after the judgment in Valsamma Paul's case (supra), the respondents had no legal justification to terminate her services to which she had been appointed regularly and in accordance with law then in existence. He further argued that as there is no material on record to show that the applicant was appointed on a roster point reserved for Scheduled caste in any case the impugned order is unsustainable. He further argued that in any case the order of termination of service without giving the applicant an opportunity to present her case is vitiated by violation of principles of natural justice. The learned counsel still further argued that the third respondent not being the appointing authority or competent disciplinary authority had no jurisdiction to issue Annexure A.15 order terminating the services of the applicant and the impugned order for all these reasons is liable to be set aside with all consequential benefits to the applicant.

9. The learned Government Pleader appearing for the fifth respondent argued that since the Scrutiny Committee after due enquiry has rejected the Scheduled Caste class claim of the applicant the cancellation of the S.C.Certificate by the Government in terms of Section 11 of the Kerala Scheduled Castes and Scheduled Tribes (Regulation of Issue of Community Certificates) Act, 1996 is unexceptionable and the Hon'ble High Court of Kerala having dismissed the appeal against this order cancelling the certificate the applicant is not entitled to any relief.

10. Shri C.N.Radhakrishnan, the learned counsel of the respondents 1 to 4 and 6 argued that since admittedly the applicant did not belong to Paravan Community by birth, and was a muslim in view of the decision of the Hon'ble Supreme Court in Valsamma Paul's case (supra) that a woman does not become entitled to the benefit of reservation available to members of SC/ST by voluntary movement by marriage from a forward caste or any other caste, the Scheduled Caste certificate issued by the Tahsildar in favour of the applicant has been rightly cancelled by the Scrutiny Committee after due enquiry giving reasonable opportunity to the applicant, which decision has been upheld by the Hon'ble High Court of Kerala the respondents cannot be faulted for terminating the services of the applicant from the post on which she was appointed on the basis of a false claim of Scheduled Caste status and that there is no infirmity with the order. He argued that Annexure.A.15 order not being an order under CCS (CCA) Rules could be validly authenticated by the Deputy Secretary. Since the appeal against the

.12.

Scrutiny Committee's order has been dismissed by the Hon'ble High Court the application is not maintainable before this Tribunal, argued the learned counsel. He further argued that there has been no violation of principles of natural justice because the Scrutiny Committee has afforded the applicant reasonable opportunity. He also argued that as the Scheduled Caste Certificate was obtained by the applicant falsely she cannot legitimately claim protection of the principles of natural justice. The counsel also argued that as the Hon'ble High Court in its order in MFA 664/02 has held that the applicant obtained a job reserved for Scheduled Caste the termination of services of the applicant cannot be challenged before the Tribunal.

11. We have given our serious thought and careful consideration to all the facts and circumstances brought out in the pleadings and the arguments advanced by the counsel of all the parties. It would be appropriate that we first deal with the argument that the application is not maintainable before this Tribunal because the Hon'ble High Court of Kerala has already dismissed the MFA filed against the finding and report of the Scrutiny Committee. It is not disputed that the Scrutiny Committee has held that the applicant was not entitled to get the benefit due to a member of Scheduled Caste and had recommended the cancellation of the Scheduled Caste Certificate issued in favour of the applicant and that the Hon'ble High Court has dismissed MFA 664/2002 by order dated 13.12.2000. However, this Original Application is not directed against the report of the Scrutiny Committee or the order in the MFA. This

application is directed against Annexure.A.15 order issued by the third respondent terminating the services of the applicant although basing on the cancellation of the S.C.Certificate by the Government of Kerala accepting the Scrutiny Committee's report. The order of termination of applicant's service being a service matter, the Tribunal has jurisdiction to entertain and adjudicate this application challenging that order.

12. The most important question that arises for consideration in this case is whether in the factual and legal situation available in this case Annexure.A.15 order terminating the services of the applicant is justified. If the applicant had by playing a fraud obtained a Scheduled Caste Certificate falsely claimed the benefit of reservation and secured employment on a post reserved for Scheduled Caste then on cancellation of the Scheduled Caste Certificate the competent authority would be fully justified in cancelling her appointment in view of the dictum laid down by the Apex Court in Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Devpt.& others (1994) 6 SCC 241. The undisputed facts of the case disclose that the applicant a Muslim by birth at the age of 22 years married Mr.Sukumaran a member of the Scheduled Caste Paravan moved into his family and community denouncing Islam and embracing Hinduism,by performing "Sudhi" obtained a Scheduled Caste Certificate in 1983 and was appointed as Scientist in CPCRI and that the Scrutiny Committee has found that the applicant was not entitled to S.C. status and the competent authority

has cancelled the S.C.Certificate. On this facts situation the learned counsel of the respondents strongly argued that the competent authority is left with no option but to terminate the services of the applicant, otherwise it would amount to allow the fraud to be perpetrated. The argument of Shri OV Radhakrishnan, the learned counsel of the applicant is that cancellation of appointment of the applicant would be justified only if it was found that the applicant was guilty of falsely obtaining Scheduled Caste Certificate by playing a fraud, that as the applicant had not suppressed any information from the Tahsildar or the ICAR or the ASRB she could not be accused of playing a fraud or representing falsehood and that just because the law has been declared differently by the Apex Court more than a decade after the issue of Scheduled Caste Certificate in her favour and her appointment the claim of status bonafide made in terms of the then existing law on the point cannot be held as false or fraudulent.

13. The undisputed facts of the case disclose that the fact situation is entirely different from the facts of the cases concerned in Kumari Madhuri Patil and another v. Assitant Commissioner, Tribal Development and others (1994 (6) SCC 241). These were cases where members of other communities fraudulently obtaining Scheduled Caste/Scheduled Tribe certificates and getting admission to professional colleges on seats reserved for Scheduled Castes/Scheduled Tribes. The Hon'ble Supreme Court held that once the Scrutiny Committee reject the caste status claimed and the

certificate falsely obtained are cancelled the admission or appointment fraudulently obtained should be cancelled. Here is a case where the applicant admittedly a Muslim by birth by marriage to a Scheduled Caste Hindu moving into his family and community denouncing Islam and embracing Hinduism. While applying for admission to the ASRB Examination the applicant should definitely have produced the relevant page of SSLC Book (Annexure.A.4) which clearly disclosed that she originally belonged to Islam and her name was Fathima Beevi. She should also have produced the Kerala Gazette notification dated 24.11.1970 (Annexur.A.5) by which the applicant notified the change of her name as Sudha Sukumaran. Therefore, even without any anthropological research the fact that applicant was a Muslim by birth and became Sudha Sukumaran after marriage to Sukumaran a member of Paravan community was clear and evident. The fourth respondent had called upon the applicant again by letter dated 28.8.91 to produce original SSLC book and gazette notification dated 24.11.1970 changing the applicant's name from Fathima Beevi to Sudha Sukumaran. Therefore, this is a very clear and straight forward case where a muslim lady getting married to a Scheduled Caste Paravan gentleman and moving into his family. She had admittedly produced Annexure.A7 Scheduled Caste Certificate dated 19.10.1983. Under these very clear and transparent circumstances and facts it is doubtful whether an anthropological research by KIRTADS or even a determination by the Scrutiny Committee was at all necessary. Since the applicant had no case that she was a member of S.C. by birth what was required was

only taking a view as to whether a muslim by marriage to a member of Scheduled Caste and moving into his family would become entitled to the benefits of reservation available to a member of Scheduled Caste for which no anthropological research would have been necessary. In N.E.HORO Vs.Smt. Jahan Ara Jaipal Singh AIR 1972 SC 1840 the Apex Court considered the question whether a non-tribal woman by marriage with a tribal and assimilation in the community would be entitled to rights and privileges to which that community was entitled. The court in paragraph 23 of the judgment observed as follows:

"Where a non-munda woman is married to a munda male and the marriage is approved and sanctioned by the Parha Panchayat of that tribes and the marriage is valid she may not, on the assumption that the rule of endogamy prevails, become a member of the Munda tribe in the strict sense as not having been born in the tribe. She cannot, however, be excluded from the larger group, namely, the tribal community. The High Court has taken the view that the use of the term "tribal communities" in addition to the term 'tribes' in Article 342 shows that a wide import and meaning should be given to these words and even if the respondent is not a member of the Munda tribe by virtue of birth she having been married to a munda after due observance of all formalities and after obtaining the approval of the elders of the tribes would belong to the tribal community to which her hsuband belongs on the analogy of the wife taking the husband's domicile. Even without invoking the doctrine of domicile the respondent's marriage with late Shri Jaipal Singh who was a Munda having been approved and sanctioned by the Parha Panchayat of the Munda tribe it can well be said that she became a member of the munda tribal community. We have not been shown any infirmity in the reasoning of the High Court on this point. When a person, in the course of time, has been assimilated in the community it is somewhat difficult to comprehend how that person can be denied the rights and privileges which may be conferred on that community even though tribal by constitutional provisions."

After the above declaration of law by the Apex Court a woman belonging to a community other than SC/ST if got assimilated

into the Scheduled Caste or Scheduled Tribe by marriage with a member of such community she was considered entitled to be treated as a member of that community eligible to the benefits, concessions and privileges enjoyed by the community because the law declared by the Apex Court is binding. This law has undergone a change by the pronouncement by the Apex Court in Valsamma Paul(Mrs) vs. Cochin University and others reported in 1996(3) SCC 545. In that case while the Apex Court held that even without recognition by the family or community a woman marrying a hindu becomes an integral part of her husband 's marital home and member of the family and community it was also held that such voluntary transplantation by itself would not confer on her the eligibility to the benefits of reservation or concessions under Articles 15(4) or16(4) as the case may be of the constitution if she had not been subjected to the inequalities, disadvantages and sufferings attached to a Scheduled Caste. The Apex Court in paragraphs 31 and 32 observed as follows:

31. "It is well settled law from Bhoobum Moyee Debia V.Ram Kishore Acharj Chowdhary (1865)10MIA 279:3 WR 25 that judiciary recognised a century and a half ago that a husband and wife are one under Hindu law, and so long as the wife survives, she is half of the husband. She is "sapinda" of her husband as held in Lulloobhoy Bappoobhoy Cassidas Moolchand V. Cassibai (1879-80)71A 212). It would therefore be clear that be it either under the Canon law or the Hindu law, on marriage the wife becomes an integral part of husband's marital home entitled to equal status of husband as a member of the family. Therefore, the lady, on marriage becomes a member of the family and thereby she becomes a member of the caste to which she moved. The caste rigidity breaks down and would stand no impediment to her becoming a member of the family to which the husband belongs and she gets herself transplanted.

32. The immediate question arises: whether recognition of the community is a precondition? Though it was consistently held that recognition is a circumstance to be taken into consideration, marriage being personal right of the spouses they are entitled to live, after marriage, openly to the knowledge of all the members of the community or locality in which they live and by such living they acquire married status. In the light of the constitutional philosophy of social integrity and national unity, right to equality assured by the human rights and the constitution of India, on marriage of a man and woman, they become members of the family and are entitled to the social status as married couple, recognition *per se* is not a precondition but entitled to be considered, when evidence is available. It is common knowledge that with education or advance of economic status, young man and woman marry against the wishes of parents and in many a case consent or recognition would scarcely be given by either or both the parties or parents of both spouses. Recognition by family or community is not precondition for married status.

It is evident from what is quoted above that even without recognition by the family or community a woman married to a Hindu becomes integral part of her husband's family and gets assimilated into this community thus getting herself totally transplanted to that community. However, on the question whether by such voluntary transplantation a woman would become entitled to the reservation and other privileges enjoyed by the community to which she had by marriage been transplanted the Apex Court in paragraph 34 of the judgment observed as follows:

34. In *Muralidhar Dayandeo Kesekar Vs. Viswanath Pandu Barde* (1995) Supp. 2 SCC 549) and *R. Chandavarappa Vs. State of Karnataka*, 1995 (6) SCC 309: JT 1995 (7) SC 93 this court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Article 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in

appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the dalits, tribes and OBCs he/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantages start in life being born in Forward Caste and had march of advantages life but is transplanted in Backward Class by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the constitution."

This observation of their Lordships is a deviation from law till then followed that a woman becoming a member of the Scheduled Castes or Scheduled Tribes by marriage and being assimilated into that community would be entitled to the rights, privileges and concession attached to the caste or tribe. as had been declared by the Hon'ble Supreme Court in N.E.Horo Vs. Jahan Ara Jaipal Singh (supra) The applicant in this case a Muslim by birth got married in the year 1969 to A.S.Sukumaran a member of Paravan community which is recognised as Scheduled Caste. She changed her name from Fathima Beevi to Sudha Sukumaran as is evident from the Gazette Notification (A5) and she changed her religion by embracing hinduism performing the religious ceremony Sudhi on 21.11.1981 at the Maya Yakshikavu Devaswom, Ochira, Kollam District as is evidenced by certificate issued by the Assistant Commissioner as mentioned in the report of the Vigilance Officer, KIRTADS to the Scrutiny Committee (Annexure.A.11). That the performance of 'Sudhi' was not published in Gazette does not annull the effect of the religious ceremony since there is no rule that conversion

unless published in gazette would not be effective. Non-production of a certificate from Mohal regarding the applicant's denouncement of Islam also is of no consequence as it is unlikely that there would be any such record because "Sudhi" was not conducted in the mosque or mohal. It was after embracing hinduism on her marriage with A.S.Sukumaran that the applicant applied for participating in the examination of ASRB and produced Annexur.A.7 Scheduled Caste Certificate issued by the Tahsildar, Kasargod on 19.11.1983. It cannot be presumed that the Tahsildar, Kasargod issued the certificate on 19.10.1983 without making enquiry and without verifying the SSLC Book and other relevant documents. That the applicant married Sukumaran in 1969 moved into his family and community are not disputed. While she applied for admission to the examination held by the ASRB and while she obtained the Scheduled Caste Certificate she did not have any other caste to belong than the caste of her husband for she had already denounced Islam and become a Hindu by performing Sudhi and had become a part of her husband's family. It therefore, cannot be said that the applicant obtained the community certificate Annexure.A7 falsely or by playing a fraud. The decision of the Apex Court in Valsamma Paul's case which held that a person by transplantation by marriage or adoption to a Scheduled Caste or Scheduled Tribe merely on account of the transplantation would not become entitled to the reservations and privileges attached to Scheduled Caste or Scheduled Tribes was rendered only on 4.10.1996. Even in that ruling the Apex Court made it clear that even without

the consent or approval or the elders by marriage a woman becomes an integral part of her husband's family and consequently of the community. Therefore, even if the applicant had claimed to belong to Scheduled Caste and she obtained a Scheduled Caste Certificate there was no dishonesty on her part because she then belonged to the Paravan community of her husband. The nonentitlement of a woman to the reservations and concessions available to the community to which she was transplanted by marriage was declared by the Apex Court only in the year 1996 in Valsamma Paul's case whereas till then the principle that held the field was that a woman who got assimilated into the Scheduled Caste or Tribe by marriage to a member of that caste or community would be entitled to such privileges. Therefore, this case is totally different from the cases decided by the Apex Court in Madhuri Patil's case, the distinction being that in those cases persons who belonged to other communities had falsely claimed status of Scheduled Caste and their certificates were cancelled finding that the claims were false, while in the case on hand there was no falsehood in the claim of the applicant that she belonged to the Scheduled Caste of her husband for on the date of application to ASRB she was not a Muslim but a part of her husband's family which belonged to Scheduled Caste. Even according to the dictum in Valsamma Paul's case as has been discussed in paragraphs 31 and 32 of the judgment a woman by marriage becomes an integral part of her husband's family as also the community to which her husband belongs. Therefore, even though after the decision of the Apex Court in Valsamma Paul's case a person by voluntary transplantation to a

Scheduled Caste or Scheduled Tribe would not become eligible or entitled to the reservation and concessions available to Scheduled Castes or Scheduled Tribes it cannot be said that she did not belong to the community and the claim made by her that she belonged to that community was false because she got transplanted. Since the applicant in this case ceased to be Muslim after embracing hinduism and as it was incumbent on a candidate to indicate the caste or community to which he or she belonged while applying for admission to examination or for applying for job the applicant had no option but to indicate her caste as Paravan for after marriage with A.S.Sukumaran and on embracing hinduism and getting transplanted to her husband's family and community she honestly and sincerely believed that she belonged to that community in the light of the prelevant legal position and had no other caste to be indicated. Since the applicant did not obtain a Scheduled Caste Certificate falsely as she had not suppressed any material and she did not secure employment "fraudulently" the action on the part of the respondents in terminating the services of the applicant merely because the Scheduled caste Certificate was cancelled by the Government under Section 11 of the Kerala Scheduled Castes & Scheduled Tribes (Regulation of Issue of Community Certificate) Act, 1996 is not at all justified.

14. Shri O.V.Radhakrishnan, the learned counsel of the applicant adverting to the pleadings in this case submitted that the respondents have not been able to establish that

the applicant was appointed against a vacancy reserved for Scheduled Caste and therefore under any circumstances the termination of the applicant's service by the impugned order cannot be sustained. The learned counsel of the respondents on the other hand argued that the file No.4/141/ARC/78-Estt.Vol.IV pertaining to "appointment of ARS probationers" would disclose that the applicant was appointed against a post reserved for Scheduled Caste. He stated that the entry regarding the applicants case would be seen in Sl.No.520, 530, 531, 543, 544 and 556 of the file. We have carefully gone through the entire file and especially to the serial numbers mentioned above. Nowhere in the file it is seen recorded that the appointment of the applicant was against a vacancy reserved for Scheduled Castes. Sl.No.520 dated 18.12.1982 is a letter from the Controller of Examinations to all Directors of ICAR Institutes and to all the Vice Chancellors of Agricultural Universities which reads as follows:

AGRICULTURAL SCIENTISTS RECRUITMENT BOARD
NIRMAL TOWER, 26, BARAKHAMBA ROAD
NEW DELHI-110 001.

No.1(7)/82-ARS-II

Date: 18.12.1982

To

1. All the Directors of ICAR Institutes.
2. All the Vice-Chancellors of Agri.Universities.

Sub: ARS Examination 1982.

Sir,

I am to forward herewith for your information a copy of the result of the ARS Examination 1982, which has since been released.

Yours faithfully,

Sd/-
(R.P.SHUKLA)
Controller of Examinations

The results have been tabulated in six pages. The caption in the front page reads as follows:

AGRICULTURAL SCIENTISTS RCRUITMENT BOARD
(Indian Council of Agricultural Research)

AGRICULTURAL RESEARCH SERVICE EXAMINATION 1982
(List of Successful candidates arranged in order of merit)

The relevant page which relates to the applicant is page 2 which reads as follows:

Horticulture

S.No.	Roll. No.	Name
1.	38	Prem Sagar Chauhan
2.	386	G.N.Mohan Kumar
3.	611	V.Chikkasubbanna
4.	777	G.S.Karibasappa
5.	234	Mehar Chand (S/Tribe)
6.	760	Pritam Kalia
7.	325	V.S.R.Krishna Prasad
8.	396	N.S.Suresh
9.	778	Shrikant hankarrao Hiwale
10.	909	R.Jayaseelan (S/Tribe)

Microbiology(Agrl.Sciences)

1.	304	Satyendar Kumar Garg
2.	286	Kum. Santosh Jain
3.	704	G.Subrahmanyam
4.	240	Shyamal Banik
5.	47	Km.Nikhat Parveen
6.	298	Km.Subhashini Dan Damudi

Nematology

1.	295	Pramoda Kumar Swain
2.	591	Sudha Sukumaran (S/Caste).

While the results of the ARS Examination in various disciplines are recorded separately on merits there is no indication that there was separate merit list for SC/ST or that the applicant was selected against SC roster point although against her name SC is shown in bracket. There was

no indication anywhere in the file that any post was reserved either for SC or ST. Serial Nos. 530 and 531 are joining report dated 28.6.1983 and office order dated 11.7.1983 which read as follows.

From

Smt. Sudha Sukumaran
C/o A.S. Sukumaran,
Scientist SI, CPCRI
Kasargod-670124.

To

The Director,
CPCI, Kasargod.

Respected Sir,

With reference to the offer of appointment No.F.35(8)83-POer.I dated the 24th June, 1983 issued by the deputy Director (P) ICAR, New Delhi, I am joining for duty as Scientist SI (Nematology) in the forenoon of today the 28th June, 1983. I am enclosing herewith a copy of the acceptance of the offer sent to ICAR for your kind information and necessary action.

Yours faithfully,

Sd/-
(SUDHA SUKUMARAN)

KASARGOD

DATE: 28.6.1983.

CENTRAL PLANTATION CROPS RESEARCH INSTITUTE
Indian Council of Agricultural Research)
Kasargod 670 124 Kerala

F.NO.4(141)/76-ESTT.

Date: 7th July, 1983.

OFFICE ORDER

One post of Scientist S-1 (non-plan) under the discipline "Nematology" at the CPCRI, Regd. Station, Kayamkulam is transferred to CPCRI, Kasargod with effect from the forenoon of 28 June, 1983.

Smt. Sudha Sukumaran who has joined at this Institute on the forenoon of 28.6.1983 as Scientist S.1 (Nematology) as per ICAR order No.35(8)/83/Per.I dated 24.6.1983 is adjusted against the above post.

Smt. Sudha Sukumaran will be attached to Plant Pathology Division till the Nematology section is established at CPCRI, Kasargod.

Sd/-
K.V.Ahamed Bavappa
Director

Distribution:-

1. Smt. Sudha Sukumaran, Scientist S.1 (Nematology) CPCRI, Kasargod through the Scientist S.3 (Plant Pathology). The following particulars may please be furnished.
 - (i) A surety bond int he prescribed form.
 - (ii) A caste certificate stating that she belongs to SC community.
2. The Assistant Accounts Officer, CPCRI, Kasargod/Kayamkulam.
3. The Joint Director, CPCRI Regl. Station, Kayamkulam.
4. The Scientist S.3 (Plant Pathology), CPCRI, Kasargod.
5. Pay bill file.
6. Personal file.
7. Guard file.

In both the above letters, there is no indication that the applicant was appointed against a reserved vacancy.

Sl.No.543 is a Memorandum of Appointment dated 24.6.1983 which reads as follows.

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAVAN, DR.RAJENDRA PRASAD ROAD,
NEW DELHI-110 001.

No.F.35(8)/83-Per.I

Date: 24th June, 1983.

MEMORANDUM

On behalf of the Agricultural Research Service Examination held by the Agricultural Scientist Recruitment Board in 1982 the President of the Indian Council of Agricultural Research Society is pleased to approve the appointment of Smt.Sudha Sukumaran as Scientist Grade S.1 int he Agricultural Research Service on the following terms:

1. The appointment is subject to the rules of Agricultural Research Service and the Rules, By laws and regulations of the Indian Council of Agricultural Research Society.
2. The scale of pay of grade is Rs. 700-40-900-EB-40-1100-50-1300.

3. The appointment is permanent but he/she will be on probation for a period of two years from the date of appointment which may be extended or curtailed at the discretion of the competent authority. During the period of probation, he/she will be required to undergo training for a period of one year, which include a three month's course at the National Academy of Agril. Research Management, Hyderabad. Failure to complete the period of probation to the satisfaction of the competent authority will render him/her liable to discharge from service/reversion to his/her substantive post on which his/her lien may have been retained.

4. If he/she is found to be guilty of unbecoming conduct during the period of training he/she will be discharged even before completion of the period of training.

5. He/She will be required to serve the Council for a minimum period of four years as provided under the Rules.

6. He/She will be required to execute a bond for Rs. 8000/- in the enclosed form on stamped paper of appropriate value.

7. He/She has been initially posted to work as Scientist (Nematology) in Grade S.I of Agricultural Research Service under Central Plantation Crops Research Institute, Kasargod but as a member of the Service, he/she will be liable to be posted to any Grade S.I assignment anywhere in India.

XXX

XXX

XXXXXX

Sd/-
Y.N.Nigam
Deputy Director (P)

Smt. Sudha Sukumaran,
C/o A.S.Sukumaran,
Scientist S.I, Central Planatation
Crops Research Institute,
Kudlu PO, Kasargod.24.

There again we do not find any indication that the applicant was adjusted against a vacancy reserved for Scheduled Caste.

Sl.No.544 dated 17.12.1983 and Sl.No.556 dated 27.12.1983 read as follows:

4(141)/ARS/78-Estt.

Date: 17.12.1983

The Deputy Director (Personnel)
Personnel I Section,
ICAR, Krishi Bhavan,
New Delhi-110 001.

Sub:- Appointment of Smt. Sudha Sukumaran as Scientist S1
at this Institute.
Ref:- Council's Memorandum No.35(8)/83-Per.I dated
24.6.83.

Sir,

Smt. Sudha Sukumaran has joined duty at this Institute on the forenoon of 28th June 1983 as per council's memorandum cited above. She has now completed all formalities required for issue of appointment order as detailed below:-

1. Verification of character and antecedents.
2. Medical examination.
3. Surety bond furnished
4. Patent right undertaking furnished.

Joining report and patent right undertaking (in original) are enclosed herewith. Kindly therefore issue appointment order to Smt. Sudha Sukumaran Scientist S1 (Nematology) at an early date.

Yours faithfully,

Sd/-
(P.C.Jacob)
Admve. Officer
for Director

Indian Council of Agricultural Research
Krishi Bhavan, New Delhi.1.

F.No.35(8)/83/Per.I

Date: 27 Dec.1983

OFFICE ORDER

The President, ICAR Society is pleased to appoint Smt. Sudha Sukumaran, Scientist Grade S.1 of the ARS in the scale of Rs.. 700-40-900-EB-40-1100-50-1300 in the Council with effect from 28.6.1983 (FN) on the terms and conditions contained in Council's Memorandum No.35-8/83-Per.I dated 24.6.1983. He is posted to work as Scientist (Nematology) at the Central Plantation Crops Research Institute, Kasargod from that date until further orders.

Sd/_
(Y.N.NIGAM)
DEPUTY DIRECTOR(P)

Scanning through the entire file we could not find any indication that the appointment of the applicant was against a vacancy reserved for Scheduled Caste. In the forgoing paragraphs we have held that since the applicant was not guilty of fraud or dishonesty in either obtaining the Scheduled Caste Certificate or securing employment and therefore the cancellation of the Scheduled Caste Certificate by itself would not justify termination of her services. // Now we find that as there is nothing on record to establish that the applicant was appointed against a vacancy reserved for Scheduled Caste, the action on the part of the respondents in terminating the services of the applicant cannot at all to be justified.

15. The learned counsel of the respondents argued that even if the respondents have not produced sufficient evidence to establish that the applicant was appointed against a vacancy reserved for SC, since the Hon'ble High Court has in its order in MFA 664/2002 held that if the applicant had secured a job reserved for Scheduled Caste the Tribunal is not justified in going into that question. The order of the Hon'ble High Court in MFA 664/2002 in full is reproduced below:

"It is an admitted case before us by the appellant that he was born to Muslim parents in the main land of India. It is true that the appellant got married to a person belonging to Scheduled Caste. That will not cloth the appellant the protection available to Scheduled Caste. The appellant will continue to be a non-Scheduled Caste, irrespective of her change of religion. Therefore, whatever be the legality pointed out with respect to the proceedings before

the scrutiny committee, the fact remains that the appellant does not belong to Scheduled Caste. That clinches the issue as to whether the appellant belongs to scheduled caste. The answer is irrebutably in the negative and appeal thus fails. Further it is an admitted fact that the appellant has obtained a job against a vacancy reserved for Scheduled Caste. A person not belonging to Scheduled Caste cannot grab the chance of employment for Scheduled Caste in civil service. Appeals fails and is dismissed."

The MFA was filed by the applicant against Annexure.A13 report of the Scrutiny Committee. Annexure.A13 the report of the Scrutiny Committee starts with the following sentences:

"The Assistant Director, National Commission for Scheduled Castes and Scheduled Tribes, Kerala Lakshadweep in his letter dated 21.10.1998 informed government that a study conducted by his office has revealed that Dr.Sudha Sukumaran, Senior Scientist, CPCRI, Kasargod is falsely claiming the benefits meant for Scheduled Castes. He also requested to scrutinise the Scheduled Caste (Paravan) claim of Dr.Sudha Sukumaran....." (emphasis supplied by us).

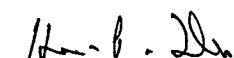
Apart from stating that "Dr.Sudha Sukumaran, Senior Scientist, CPCRI, Kasargod is falsely claiming the benefit meant for 'Scheduled Castes' there is no mention that she got appointment as Scientist against a post reserved for S.C. No notice ever was issued to her alleging that she playing a fraud secured employment on a post reserved for SC. Nowhere she has admitted that she was appointed on a post reserved for SC. Nowhere in the Scrutiny Committee's report there is any mention that either the applicant was appointed as a Scientist against a vacancy reserved for SC or that the applicant admitted that she was appointed against a vacancy resrvd for SC. Therefore the observation in the judgment of the Hon'ble High Court of Kerala in its order in MFA 664/2002 filed against Annexur3e.A13 order.

"Further it is an admitted fact that the applicant has obtained a job against a vacancy reserved for Scheduled Caste. A person not belonging to a Scheduled Caste cannot grab the chance of employment for Scheduled Caste in Civil Service" does not absolve the respondents from the liability to allege and prove that the applicant was appointed against a vacancy reserved for SC and that she fraudulently and falsely secured employment, by producing a SC certificate which she knew to be false. Observation in orders of Courts on issues which were not raised, litigated, admitted or adjudicated do not give rise to any legal consequences. The subject matter of MFA 664/02 ws only whether the rejection of Scheduled Caste claim by the applicant by the Scrutiny Committee was legal, proper and correct, and not whether the applicant's appointment as Scientist in CPCRI was against a vacancy reserved for SC or not. Therefore, the argument of the learned counsel of the respondents in view of the above observation in the order of the Hon'ble High Court in MFA 664/2002 the application is not maintainable has to be rejected. We do so.

16. Shri OV Radhakrishnan, argued that the third respondent not being the appointing authority or competent disciplinary authority he had no jurisdiction to issue the impugned order Annexure.A.15. We find that the third respondent is authorised to authenticate and sign order on behalf of the first respondent. As a matter of fact the appointment order of the applicant was signed by the third respondent. Therefore we do not find any merit in this argument.

17. In the conspectus of facts and circumstances, we find that the impugned order (Annexure.A.15) is unsustainable in law and therefore, we allow this application setting aside the impugned order Annexure.A.15 directing the respondents to allow the applicant to continue in service reinstating her forthwith and to make available to her the entire backwages for the period she was kept out of service on the basis of the impugned order Annexure.A15. The above direction shall be complied with in full within a period of two months from the date of receipt of a copy of this order. However, we make it clear that if the respondents consider that the applicant was appointed against a vacancy reserved for Scheduled Caste on her falsely claiming the benefit of reservation due to Scheduled Castes this order would not preclude them taking any action in accordance with law affording adequate opportunity to the applicant to put forth her case. There is no order as to costs.

Dated this the 24th day of February, 2005



H.P.DAS
ADMINISTRATIVE MEMBER

(s)



A.V. HARIDASAN
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 210 of 2003

Tuesday, this the 18th day of December, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

Dr. Sudha Sukumaran,
D/o. Mr. Abdul Azeez,
Scientist (Senior Scale)
(Under orders of termination),
Central Plantation Crops Research Institute,
Kudlu P.O, Kasargod,
Residing at Type V-7, Residential Complex,
CPCRI, Kasargod : 671 124

: Applicant.

(By Advocate Mr. P.V. Mohanan)

v e r s u s

1. Indian Council of Agricultural Research
Represented by its Director General,
Krishi Bhavan, New Delhi : 1
2. President,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi : 1
3. Deputy Secretary (P),
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi : 1
4. Director,
Central Plantation Crops Research Institute,
Kudlu, Kasargod
5. State of Kerala represented by its
Secretary to Government, Scheduled Caste
and Scheduled Tribes Department,
Government Secretariat, Thiruvananthapuram
6. Union of India represented by its
Secretary, Ministry of Agriculture,
Krishi Bhavan, New Delhi. : Respondents.

[By Advocates Mr. P. Jacob Varghese (for R1-4)
& Mr. R. Prem Shanker, GP (for R-5)]

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant was appointed as Scientist Grade I in Indian Council of Agricultural Research (ICAR). Her appointment was later terminated on the ground that she was appointed in a vacancy reserved for Scheduled Caste but actually she is not belonging to Scheduled Caste. The fact that she is not entitled to Scheduled Caste status cannot be disputed because at the time of appointment she was a Muslim and the decision of Hon'ble High Court of Kerala in M.F.A. No. 664/2002 also shows that she is not entitled to the vacancy of Scheduled Caste. When the termination order was questioned before this Bench, she raised a contention that she got appointment in the general vacancy and not as a candidate belonging to Scheduled Caste. After perusal of the documents, this Tribunal in its order dated 24.02.2005 held as under :

"..... We have carefully gone through the entire file Nowhere in the file it is seen recorded that the appointment of the applicant was against a vacancy reserved for Scheduled Castes..... While the results of the ARS Examination in various disciplines are recorded separately on merits there is no indication that there was separate merit list for SC/ST or that the applicant was selected against SC roster point although against her name SC is shown in bracket. There was no indication anywhere in the file that any post was reserved either for SC or ST..... Now we find that as there is nothing on record to establish that the applicant was appointed against a vacancy reserved for Scheduled Caste, the action on the part of the respondents in terminating the services of the applicant cannot at all to be justified.

17. In the conspectus of facts and circumstances, we find that the impugned order (Annexure A/15) is unsustainable in law and therefore, we allow this application setting aside the impugned order Annexure A-15 directing the respondents to allow the applicant to continue in service reinstating her forthwith and to make available to her the entire back wages for the period she was kept out of service on the basis of the impugned order Annexure A/15. The above direction shall be complied with in full within a period of two months from the date of receipt of a



copy of this order. However, we make it clear that if the respondents consider that the applicant was appointed against a vacancy reserved for Scheduled Caste on her falsely claiming the benefit of reservation due to Scheduled Castes this order would not preclude them taking any action in accordance with law affording adequate opportunity to the applicant to put forth her case. There is no order as to costs."

2. It was argued before the Hon'ble High Court by the writ petitioner (5th respondent in OA) that at the time of the appointment of the original applicant, she had completed 34 years and 7 months as her date of birth is 31.05.1947. Age limit prescribed for direct recruitment was 30 years as on 1.1.1982. Only Scheduled Caste and Scheduled Tribe persons were given age relaxation upto the age of 35. That the applicant was appointed after the age bar of 30 years shows that she was over aged if she was a general category candidate and only in the Scheduled Caste vacancy she was given appointment giving the benefit of age relaxation. This point was not considered by the Tribunal even though the Tribunal has perused the papers. In the above circumstances, the Hon'ble High Court set aside the order dated 24.02.2005 of this Tribunal and the matter was remanded for fresh consideration. The Tribunal was directed to pass fresh orders after hearing both sides on this point within a period of three months from the date of receipt of a copy of the judgement of the Hon'ble High Court. Thus, the point to be decided in this case is whether, by virtue of the fact that the applicant's age at the time of initial appointment was 34 years it should be construed that she was appointed against a Scheduled Caste vacancy.

3. The applicant submitted various documents which mainly related to the notification (advertisement) prior and posterior to the applicant's appointment, and the Recruitment Rules. Annexure A/15 filed by the applicant is a copy of communication dated 13.05.1982 calling the applicant for viva-voce in the

[Signature]

Agricultural Research Service Examination, 1982. Annexure A/17 is a copy of the Employment News regarding ARS Examination, 1978, wherein, as to the age factor, it was indicated "*candidates for admission to the examination must have attained the age of 21 years on 1st January, 1978. There will be no upper age limit, but persons who have already superannuated or retired from the service of any organization will not be eligible to apply for the examination.*" Annexure A/18 is a copy of notification of 1991 ARS Examination wherein the following was the condition in respect of age limit :

"Candidates for admission to the examination must have attained the age of 21 years on 1st January, 1978. There will be no upper age limit."

Annexure A/19 is a copy of Schedule- II appended with the Recruitment Rules wherein the following has been reflected:

"PART II : RECRUITMENT THROUGH COMPETITIVE EXAMINATION TO S-1 OF THE SERVICE."

4. Age limit. A candidate must have attained the age of 21 years and must not have attained the age of 30 years on the (i) 1st day of January of the year in which the examination is held, if the examination is held in the first half of the year and (ii) 1st day of August of the year in which the examination is held, if the examination is held in the later half of the year.

Provided that the upper age limit may be relaxed in respect of such categories as may be notified by the Controlling Authority from time to time and to the extend notified in respect of each category,

Provided further that for the first two examinations to be held under these rules, there will be no age restriction."
(Emphasis supplied)

Annexure A/20 is a copy of the notification for the ARS Examination, 1990, wherein the age limit is prescribed as under:

fn "AGE: A candidate for admission to this examination must have attained the age of 21 years but not have attained the age of 30

years as on 1st January, 1990.

In-service employees of the ICAR less than 35 years of age (i.e. born not earlier than 1st January, 1955) are eligible to appear in this examination subject to possession of prescribed qualifications. The upper age limit prescribed above will be relaxable upto a maximum of 5 years, if a candidate belongs to a Scheduled Caste or Scheduled Tribe. It is also relaxable for certain other categories e.g. bonafide displaced persons, ex-servicemen etc."

4. Learned counsel for the applicant argued that the findings recorded by the Tribunal would undergo a change depending upon whether age relaxation is applicable to SC/ST candidates in the 1982 ARS Examination. Instead, if there is no prescription of maximum age for any candidate, then it cannot at all be stated that the applicant was appointed against a reserved vacancy. According to the learned counsel for the applicant, the findings of the Tribunal as contained in its order were not, by the High Court, held to be incorrect. If it were otherwise, the Hon'ble High Court would have apart from allowing the Writ Petition dismissed the O.A. itself. It has remanded the matter back to the Tribunal to pass fresh orders after hearing both the sides on this point i.e., the age of the applicant being 34 years at the time of appointment, whether the applicant was appointed against a reserved vacancy.

5. Learned counsel for the applicant further submitted that it could be curious to note that as per notification published in the year 1978, there was no prescription of maximum age limit. So was the case in respect of 1980 notification. In so far as 1982 Examination is concerned, separate rule provided for vide Annexure A/19 would hold to be fort. It was in 1981 that an amendment was introduced fixing the age limit to 30 years and further it has also been provided that for the first two examinations to be held under these rules, there will be no upper age restriction. It was thereafter that the

[Signature]

aforesaid proviso was not available as could be seen from Annexure A/20, notification for 1990 ARS Examination. The counsel for applicant, therefore, contended that since the amendment to the Recruitment Rules was notified in 1981 and the applicant's participation was in 1982 ARS Examination, the same falling within the proviso as extracted above, there was no upper age limit at all for any candidate. Thus, just because the applicant was 34 years plus at the time she took 1982 examination, it cannot be stated that she was recruited under age relaxation for SC candidate.

6. Learned counsel for the respondents submitted a number of documents as these were not earlier filed. According to Annexure R/2 submitted by the respondents' counsel, the Deputy Director (P), ICAR was informed by Agricultural Scientists Recruitment Board (ACRB) that the applicant was selected in 1982 ARS Examination in the discipline of Namatology against reserved post for SC. Vide Annexure R/5 document furnished by the respondents, separate norms were prescribed for calling general candidates and SC/ST candidates for viva-voce and similarly for final selection. As per Annexure R/6, the following stipulations were found notified in the notification when the applications were invited.

"Candidates for admission to the examination must have attained the age of 21 years on 1st January, 1982, but must not have attained the age of 30 years on that date. The upper-age limit is relaxable in the case of certain categories of persons including those belonging to Scheduled Castes or Scheduled Tribes as detailed in the rules for the examination, obtainable from the office of the Agricultural Scientists' Recruitment Board along with the application forms etc."

Annexure R/11 is the copy of M.F.A. no. 664 of 2002 in which certain averments were made by the applicant that in the application, the appellant, in the prescribed column relating to the caste, mentioned that she having



married Shri A.S. Sukumaran who is a member of Hindu-Paravan community, is entitled to get the benefit of reservation meant for Scheduled Caste Community. Yet another averment made was, "*it was thereafter the appellant was selected and appointed as Scientist S-1 in the quota reserved for Scheduled Caste*". Thereafter also, it was stated that "*by no stretch of imagination it can be held that the appellant secured the job as Scientist in the quota reserved for Scheduled Caste by falsely claiming that she belonged to Scheduled Caste community*".

7. Learned counsel for the respondents referring to the documents as mentioned at para 6 above, submitted that the correspondence/documents would confirm that the vacancy in question was reserved for SC candidate.

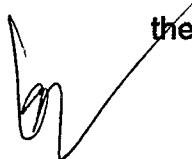
8. Arguments were heard and documents perused. It is pertinent to mention here that Hon'ble High Court has not held as incorrect any of the findings recorded by the Tribunal in its earlier order dated 24.02.2005. Remanding the matter back to the Tribunal was on account of the fact that one crucial factor namely, age limit might change the very colour of the judgement. Thus, the earlier findings as extracted in para 1 above in so far as non-availability of any indication in the records that the vacancy was earmarked for reserved candidates will hold good even now. In addition to that it is seen that in the 1982 ARS Examination if the rules amended in 1981 are applied, there is no age limit for any type of candidate though the notification vide Annexure R/6 indicated age limit as 30 years with the prescription that the upper age limit is relaxable in the case of certain categories of persons including those belonging to Scheduled Castes or Scheduled Tribes as detailed in the rules for the examination,

bn

prescription as above cannot override the separate prescription in the Recruitment Rules. The said notification also does not specifically indicate that the posts against which the applicant was selected and appointed was earmarked to the reserved category. Thus, it is seen that even if the age factor is taken into consideration, it cannot be held that the post against which the applicant was inducted in the wake of the selection in 1982 ARS Examination was meant for any reserved category. It was for the first time as late as 2000 only (Annexure R/2 letter dated 28.8.2000 refers), that too without any other documentary proof, that Agricultural Scientists Recruitment Board stated that the the post against which the applicant was appointed was earmarked for SC candidate. The said communication does not say that the applicant was given concession of relaxed standard of selection as per Annexure R/5. The original records submitted by the respondents have also been scanned through. Nowhere it is found that the particular post against which the applicant was appointed was earmarked for reserved category.

9. In view of the above, the Tribunal is of the concrete view that the applicant's selection was against general vacancy and she has not been appointed against any reserved vacancy. The O.A. is, therefore, allowed. The impugned order vide Annexure A/15 whereby the services of the applicant were terminated is hereby quashed and set aside. The applicant is deemed to have continued in service in the post held by her as on the date of issue of Annexure A/15. She is also entitled to the entire back wages from the date she was kept out of service on the basis of impugned order Annexure A/15. While ordering so, the ratio contained in

the judgement of Hon'ble Supreme Court in **Commissioner, Karnataka**



Housing Board vs. Muddaiah, (2007) 2 SCC (L&S) 748, has also been taken into account. The same reads as follows:

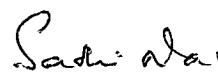
"34. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a Court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected."

The applicant if already retired would be entitled to count the period from the date of her termination till the date of retirement as qualifying period for terminal benefits applicable to the applicant. The arrears of pay and allowance shall be worked out duly granting the annual increment and the same shall be paid to the applicant within a period of three months from the date of communication of this order. Arrears of terminal benefits, if any, arising out of this order shall also be paid to the applicant accordingly.

10. There shall be no order as to costs.

(Dated, the 18th December, 2007)


 (Dr. K B S RAJAN)
 JUDICIAL MEMBER


 (SATHI NAIR)
 VICE CHAIRMAN

CVR.