

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00569/2017

Friday, this the 13th day of April, 2018

CORAM:

Hon'ble Dr. K.B. Suresh, Judicial Member

Dr. Sudha Sukumaran,
Aged 70, W/o. A.S. Sukumaran,
(Scientist-Senior Scale (terminated by order dated 20.3.2003),
Central Plantation Crops Research Institute/ICAR,
P.O. Kudlu, Kasaragode),
Residing at "Devika",
SRA-115, Sastha Nagar, Pangode, Thirumala P.O.,
Thiruvananthapuram – 695 006, Kerala. **Applicant**

(By Advocate – Mr. P.V. Mohanan)

V e r s u s

- 1 The Indian Council of Agricultural Research,
Represented by Secretary,
The Indian Council of Agricultural Research,
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi – 110 001.
- 2 The President,
Indian Council of Agricultural Research,
Krishi Bhawan, Dr. Rajendra Prasad Raod,
New Delhi – 110 001.
- 3 Union of India,
Represented by Secretary,
Ministry of Agriculture,
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi – 110 001.
- 4 The Director,
Central Plantation Crops Research Institute (ICAR),
Post Kudlu – 671 124,
Kasaragod. **Respondents**

**(By Advocate – Mr. P. Santhoshkumar (R1, R2 & R4))
Mr. S. Ramesh, ACGSC (R3))**

This Original Application having been heard on 13.04.2018, the

Tribunal on the same day delivered the following:

ORDER

Per: Dr. K.B. Suresh, Judicial Member

Heard. The matter is on a very short point. The applicant would seek that she originally belongs to Muslim community and later on she fell in love with a Scheduled Caste person and married him. Thereafter the Government of India in their wisdom brought in as per Letter No.8-2/18-PER.IV dated 14.7.1981 the Rule was amended. Actually the notification issued earlier on 17.9.1977 for ARS examination for 1978 and notification dated 6.9.1980 for ARS examination for the year 1981 had stipulated that there will be no upper age limit.

2 The person who could have objected to the statement is the Government of India who is the originator of the Recruitment Rules. I have therefore specifically asked Smt.Kavya repreenting Mr.S.Ramesh,ACGSC as to what is her view on this. She would say that she has no instructions in the matter and she has not filed any reply also. Relating to this issue there is no comment on the part of the other respondents also in their reply filed on 3.1.2018. The Hon'ble High Court in Annexure A-5 judgment in WPC No.7721/2008 (S) dated 29.1.2009 has considered this matter extensively. In its para 11 it is considered as thus :

“ 11. The learned counsel for the 1st respondent mainly relied on the rules contained in the publication made by National Academy of Agricultural Research Management, Hyderabad. In view of the rules contained therein, there was relaxation of age limit to all, the candidates, irrespective of their community for the 1982 examination. So even, if, the 1st respondent claimed that she belongs to the caste of her husband, her selection was not based on that caste status, it is submitted. It is also submitted that the selection was not against any reserved post also. In any view of the matter, it is submitted that a sympathetic view may be taken and equity demands that her termination at this distance of time may be avoided. What has been

relaxaed is only age limit and not any norms regarding selection. She cleared the written examination like any other candidate and got appointment. There is no question of any scheduled caste now being appointed in her place. So, she may not be terminated, it is submitted. “

3. But it appears that in the following paragraphs it is stipulated that the plea of the present applicant that there was no age limit for all the candidates is a new point developed by the 1st respondent while the matter was pending before the Tribunal. On the rules which the ICAR produced the Hon'ble High Court noted that the age relaxation in two examinations for all candidates was available only for the first two examinations held after the introduction of the Rules in 1975. The Hon'ble High Court found that this relaxation was not available in the examination held in 1982 in which the applicant herein participated and admittedly she was over-aged also. Therefore, the Hon'ble High Court found that if at all the applicant could have got a relaxation as she was admittedly over aged it could only as a Scheduled Caste candidate.

4 Apparently the matter went up to the Hon'ble Apex Court in S.L.P.No.7697/2009 dated 4.4.2011 wherein even though the matter was dismissed the Hon'ble Apex Court held that the salary and other emoluments paid to the applicant earlier cannot be recovered from her.

5 Therefore, the question is whether the applicant became eligible to write the examination as a General candidate or as a Scheduled Caste candidate. If the rules produced by the applicant is correct than she appeared as a General candidate. Even though on a later stage she may have been put in the roster as a Scheduled Caste candidate. But the Hon'ble High Court has already found that the rule as produced by the applicant is not the correct version of the rule and held that the two

year exemption was available only for 1975 which was the year of genesis of the said rule than the applicant cannot claim that she is a General candidate. This is buttressed by the view that in Ext.P-1 which is her application she has claimed her community as Scheduled Caste. Most possibly that is the reason why without insisting even for the certificate that this benefit of relaxation was given to her. Taken in that sense the applicant seems to committed an infraction for which she was removed from service.

6 Learned counsel for the applicant submitted that there is no element of fraud involved in it as she obtained her caste certificate only after the selection was over on 29.10.1983. That may be so. But in her application she has claimed to be a Scheduled Caste candidate and only on that basis she was allowed to write the examination as she was admittedly over aged. If the rule produced by the applicant is not the correct version of the rule the finding of the Hon'ble High Court will take great weight that the applicant will not have got the general relaxation and it had originated for a period of two years from 1975 onwards. Therefore, the person who have wrote the examination in 1982 cannot get the benefit of general relaxation. That being so, the claim of the applicant will not lie.

7 At this stage learned counsel for the applicant would insist to look into the 1981 amendment. I have gone through the pleadings of the respondents in their reply and find that there is no specific averments regarding this amendment. But would say that the 1982 examination did not have any such general relaxation. Therefore the stand taken by the applicant seems to be correct that if the 1982 examination cannot be held to have any general relaxation. The fact of the matter is entirely in a different prospectus. Therefore, going by the Hon'ble Apex Court judgment and the very descriptive Hon'ble High Court judgment there cannot be

any right but at the same time have there was any such amendment in the 1981 which only the ICAR and Government of India can answer and since their reply in this respect is inadequate I have decided to remit the matter back to ICAR with the following mandates :

8 ICAR will examine whether such an amendment was issued in 1981 indicating that for two years there will be a general relaxation for the employees of the organization.

9 If that be so the applicant would be eligible for a reconsideration of her status which despite all these relaxation the respondents will be eligible to undertake. For the very simple reason that for all the proceedings we have gone through because of the assumption that there is no relaxation provided to employees in the general selection. As apparently the applicant is admittedly selected on general merit and not on any specific roster point given to Scheduled Caste.

10 And in that case if it is found that in 1981 amendment it was brought that there has to be a general relaxation for the two examinations than the applicant will be eligible to the benefits claimed in the O.A.

11 When authorities in the Government makes a statement to adjudicate it should be specific and clear. If there is such a rule as given by the applicant in 1981 or 1982 it was incumbent upon the respondents to give a clear reply. I note with regret that the Union of India had showed utmost disregard to the adjudicatory function by not filing a reply and advising their counsel as to the correct state of the matter in view of the fact that they are the originator of the rule. Whether there was a rule at one point or not it is for the Government of India to determine and express

themselves. They have failed in their duty.

12 At this point of time, learned counsel for the respondents points out that the matter is covered by several judgments. It may be so. But at the same time, if the applicant had applied under the amended rules in 1981 which provided for general relaxation for its own employees for the next two examinations and she has passed through as a general candidate than taking another view will be a fraudulent attitude and in case of fraud as stated by the Hon'ble Apex Court in the case reported in 1987 (1) SCC 1 than even a civil declaration which is the most concrete of pronouncement will be set aside if vitiated by fraud. In that case we expect the Government and the ICAR to take a reasonable and sensible stand. If the applicant could have been considered for appointment regularly and correctly at that point of time than at whatever stage it is, she has every right to be considered if it is discovered later that she has been wrongly sent out, notwithstanding, the order of the Hon'ble Apex Court also in this regard. Because all these orders are based on the fact that the Government made an assertion in the Court that after 1975 there has been no change in the Rule whereas the applicant claim that there has been an amendment in 1981. At this point of time it is difficult to say which one is correct because that is known only to the respondents as their participation was not adequate or required. Therefore going by the assertion of the Apex Court and the finding that the rule brought by the learned counsel for the respondents at that point of time was the correct version all these matters have concluded. But if it is found otherwise on facts than it is for the Government to come up and honour otherwise the word *Satyamev Jayate* in our Constitution will be nullity. Therefore the O.A is remitted back to the respondents to see and find out whether there has been an amendment in the Recruitment Rules in 1981 which would allow the applicant to write the examination as a member of staff enjoying a general relaxation in age. If

it is so the consequence of that will necessarily follow in its full ambit. The O.A is disposed of as above. No costs.

(Dr. K.B. SURESH)
JUDICIAL MEMBER

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List of Annexures of the Applicant

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| Annexure A-1 | - | True copy of the page 3 of the SSLC Certificate. |
| Annexure A-2 | - | True copy of the copy of the order
F.No. 29(SS)1/2000-Per.II dated 3.3.2003. |
| Annexure A-3 | - | True copy of the order in O.A. No. 210/2003 dated
24.2.2005. |
| Annexure A-4 | - | True copy of the order in O.A. No. 210/2003 dated
18.12.2007. |
| Annexure A-5 | - | True copy of the judgment in WPC No. 7721/2008
dated 29.1.2009. |
| Annexure A-6 | - | True copy of the order in Special Leave to Appeal
(Civil) No. 7697/2009 dated 4.4.2011. |
| Annexure A-7 | - | True copy of the Medical Certificate dated
23.06.2017. |
| Annexure A-8 | - | True copy of the representation dated 25.1.2013. |
| Annexure A-9 | - | true copy of the representation dated 26.2.2016. |

List of Annexures of the Respondent No. 4

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| Annexure R4(a) | - | True copy of the Office Memorandum
No. 36011/1/2012-Estt.(Res.) dated 10-01-2013. |
| Annexure R4(b) | - | True copy of letter No. 7/2/98-Res dated
06.02.2003. |
