

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 06TH DAY OF JANUARY 2021/16TH POUSHA, 1942

WP(C).No.16666 OF 2020(G)

PETITIONER:

DR. V. VISHNU SAVANTH, S/O. DR.V.VIJAYAKUMARAN,
AGED 34 YEARS, VIPANCHIKA, LENIN NAGAR,
MANNUTHY P.O., MADAKKATHARA, THRISSUR-680 651.

BY ADVS.

SRI.S.PRASANTH (AYYAPPANKAVU)
SMT.VARSHA BHASKAR

RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
BACKWARD CLASSES DEVELOPMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE TAHSILDAR, THRISSUR TALUK OFFICE,
TOWN HALL, W PALACE RD, CHEMBUKKAV,
THRISSUR, KERALA-680 020.
- 3 THE VILLAGE OFFICER, OLLUKKARA VILLAGE OFFICE,
SREYAS NAGAR, OLLUKKARA, THRISSUR, KERALA-680 655.

R1-R3 BY GOVERNMENT PLEADER SMT. DEEPA NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 6th day of January, 2021

The petitioner is holding B.V.Sc., M.V.Sc. and Ph.D. in Livestock Production Management. The petitioner is seeking issuance of Non Creamy layer Certificate for the purpose of appointment as Assistant Professor pursuant to Ext.P1 notification, in Kerala Veterinary and Animal Sciences University. Non creamy layer certificate has been denied to the petitioner on the ground that his father was initially appointed in Group B Cadre which dis-entitle the petitioner to get Non Creamy layer Certificate.

2. Ext.P3 order dated 17.06.1976 would show that petitioner's father was appointed as Veterinary Surgeon in the pay scale of ₹445-835 in Indo Swiss Project, Mattupatti under Rule 9(a)(1) of the Kerala State and Subordinate Services Rules. His services were retrospectively regularised with effect from 01.03.1976. Thereafter he

joined the Kerala Agricultural University as Junior Assistant Professor in the pay scale of ₹510-995.

3. The learned Government Pleader would justify the refusal to issue Non Creamy layer Certificate on the ground that the Entry Cadre of Junior Assistant Professor in Kerala Agricultural University will fall under Group B. The appointment of the petitioner in Indo Swiss Project cannot be taken into consideration for the purpose of issuance of Non Creamy layer Certificate. The appointment of the petitioner's father in the Indo Swiss Project was as temporary employment, project employment for a limited period. Therefore appointment of the father of the petitioner in the Project cannot be considered at all for the purpose of Non Creamy layer Certificate.

4. The learned Government Pleader would further submit that the petitioner did not disclose the earlier service of the petitioner's father in the Indo Swiss Project, to the concerned authorities for the purpose of getting Non

Creamy layer Certificate. In the circumstances, the stand taken by the respondents in refusing to issue Non Creamy layer Certificate cannot be found fault with and the writ petition is liable to be dismissed. In the event of this Court findings that appointment of petitioner's father under Ext.P3 is to be considered, competent among the respondents may be directed to reconsider the issue, contended the learned Government Pleader.

5. I have heard the learned counsel for the petitioner and the learned Government Pleader.

6. Appointment of the father of the petitioner in Indo Swiss Project, Mattupatty is evident from Ext.P3. There is no serious dispute that the said Indo Swiss Project was under Government Collaboration and the appointment of the petitioner's father was made under Rule 9(a)(1) of the Kerala State and Subordinate Services Rules. The said Project was later brought under the Kerala Livestock Development and Milk Marketing Board Ltd. The contention

of the respondents is that such appointment cannot be considered for the purpose of deciding the Entry Cadre for the purpose of issuance of Non Creamy layer Certificate.

7. Ext.P7 extract produced by the petitioner from the Revenue Guide, 2019 would show that the Rules and Regulations framed by the respondents for the purpose of issuance of Non Creamy layer Certificate would apply to all Public Sector Undertakings, Banks, Insurance Companies, Universities etc.

8. Ext.P11 G.O. dated 14.06.2010 issued by the SC/ST Development Department relating to reservation of OBCs in appointment to the services and posts under the Government of Kerala and issuance of Non Creamy layer Certificate, would show that if the father of the applicant is directly recruited in Class III/Group C or Class IV/Group D employee and he gets into Class I/Group A at the age of 35 or earlier, his sons and daughters shall not be treated to be falling in creamy layer. Clause 8 of Ext.P11 reads as

follows:

“8. The sons and daughters of parents of whom only the father is a directly recruited Class II/Group B officer who gets into Class I/Group A at the age of 35 or earlier are treated to be in creamy layer. If the father is directly recruited Class III/Group C or Class IV/Group D employee and he gets into Class I/Group A at the age of 35 or earlier, his sons and daughters shall not be treated to be falling in creamy layer.”

9. The terms used in Ext.P11 G.O. is “gets into Class I/Group A”. Therefore the appointment into a higher Class/Group need not be by promotion or deputation. In the case of the petitioner, the petitioner's father was appointed in Indo Swiss Project, which is a Government Project. It is evident from Ext.P12 that the said project was subsequently brought under Kerala Livestock Development and Milk Marketing Board Ltd. which is a Government of Kerala undertaking.

10. The facts as evident from the pleadings and arguments would therefore amply show that the Entry Cadre

of petitioner's father was neither Group A or Group B. His Entry Cadre is to be taken as Veterinary Surgeon in the pay scale of ₹445-835. The said Cadre would not fall under either Class I/Group A or Class II/Group B. Therefore denial of Non Creamy layer Certificate to the petitioner on that ground cannot stand the scrutiny of law.

In the circumstances, the writ petition is disposed of holding that the petitioner's claim for Non Creamy layer Certificate cannot be declined on the basis of Entry Cadre of petitioner's father. In the circumstances, the Non Creamy layer Certificate issued pursuant to the interim order of this Court should be treated as final. All consequences will follow.

Sd/-
N. NAGARESH
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF NOTIFICATION NO.KVASU/GA/A6/11726/2020 DATED 8.7.2020 ISSUED BY THE KERALA VETERINARY & ANIMAL SCIENCES UNIVERSITY.
- EXHIBIT P2 TRUE COPY OF THE SCREENSHOT OF THE SMS COMMUNICATION SENT BY THE 3RD RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE APPOINTMENT ORDER NO.B1.5142/&5/ESTT DATED 17.6.1976 ISSUED BY THE INDIAN DIRECTOR, INDO SWISS PROJECT.
- EXHIBIT P4 TRUE COPY OF CERTIFICATE NO.GA/C2/22095/2019(i) DATED 11.5.2020 ISSUED BY THE REGISTRAR, KERALA AGRICULTURAL UNIVERSITY.
- EXHIBIT P5 TRUE COPY OF CERTIFICATE NO.GA/C2/22095/2019(ii) DATED 11.5.2020 ISSUED BY THE REGISTRAR, KERALA AGRICULTURAL UNIVERSITY.
- EXHIBIT P6 TRUE COPY OF REPRESENTATION DATED 13.7.2020 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE RELEVANT PAGES OF REVENUE GUIDE 2019.
- EXHIBIT P8 TRUE COPY OF THE NOTIFICATION NO.21/2/74-ESTT.(D) DATED 11.11.1975 ISSUED BY THE DIRECTOR, DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS, GOVERNMENT OF INDIA.
- EXHIBIT P9 TRUE COPY OF THE APPLICATION FOR CREAMY LAYER CERTIFICATE SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.
- EXHIBIT P10 TRUE COPY OF G.O.(P) NO.81/09/SCSTDD

DATED 26/09/2009 ISSUED BY THE PRINCIPAL
SECRETARY GOVERNMENT, SC/ST DEVELOPMENT
(F) DEPARTMENT.

EXHIBIT P11 TRUE COPY OF CIRCULAR
NO.27396/F3/07/SCSTDD DATED 14/06/2010
ISSUED BY THE PRINCIPAL SECRETARY TO
GOVERNMENT, SC/ST DEVELOPEMNT (F)
DEPARTMENT.

EXHIBIT P12 TRUE COPY OF THE RELIEVING ORDER NO.1/79
DATED 9-4-1979 ISSUED BY THE KERTALA
LIVESTOCK DEVELOPMENT AND MILK MARKETING
BOARD LTD.

RESPONDENTS' EXHIBITS:

EXHIBIT R2(a) TRUE COPY OF THE COMMUNICATION DATED
15.07.2020 FROM KERALA AGRICULTURE
UNIVERSITY.