

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 17<sup>TH</sup> DAY OF OCTOBER 2022 / 25TH ASWINA, 1944

WA NO. 2423 OF 2019

AGAINST THE JUDGMENT DATED 16.11.2019 IN WP(C) 5663/2016 OF HIGH  
COURT OF KERALA

APPELLANT/PETITIONER:

DR. NICKY K. XAVIER,  
AGED 46 YEARS  
KOLLANNUR HOUSE, PATTURAIKKAL, THRISSUR - 680 022.

BY ADVS.  
ELVIN PETER P.J.  
SRI.K.R.GANESH  
SMT.N.R.REESHA  
SMT.T.S.LIKHITHA

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY ITS PRINCIPAL SECRETARY, SCIENCE,  
TECHNOLOGY AND ENVIRONMENT DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.
- 2 THE KERALA STATE COUNCIL FOR SCIENCE  
TECHNOLOGY AND ENVIRONMENT, REPRESENTED BY ITS  
EXECUTIVE VICE PRESIDENT, SASTRA BHAVAN, PATTOM P.  
O., THIRUVANANTHAPURAM - 695 004.
- 3 THE KERALA FOREST RESEARCH INSTITUTE  
REPRESENTED BY ITS DIRECTOR, PEECHI,  
THRISSUR - 680 653.
- 4 THE DIRECTOR  
KERALA FOREST RESEARCH INSTITUTE, PEECHI,  
THRISSUR - 680 653.

:2:

W.A.Nos. 2423 & 2475 of 2019

- 5 DR. P. BALAKRISHNAN  
AGED 39 YEARS  
S/O. P. GANGADHARAN, RESIDING AT PEROTH HOUSE,  
PALAKKALVETTA P. O., TUVVUR, MALAPPURAM,  
PIN - 679330.
- 6 DR. K. S. ANOOP DAS  
ANUPALLAVI, KARUMAMPOYIL HOUSE, CHUNGATHARA POST,  
NILAMBUR, MALAPPURAM DISTRICT, KERALA - 679 334.

BY ADVS.  
SRI.KALEESWARAM RAJ (B/O)  
BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN  
SRI.C.K.PRASAD, SC  
SRI.P.C.SASIDHARAN, SC  
SRI.G.AMBILI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
17.10.2022, ALONG WITH WA.2475/2019, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

:3:

W.A.Nos. 2423 & 2475 of 2019

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 17<sup>TH</sup> DAY OF OCTOBER 2022 / 25TH ASWINA, 1944

WA NO. 2475 OF 2019

AGAINST THE JUDGMENT DATED 16.11.2019 IN WP(C).NO.12994/2016 OF  
HIGH COURT OF KERALA

APPELLANT/5<sup>th</sup> RESPONDENT:

DR. NICKY K. XAVIER  
AGED 43 YEARS  
KOLLANNUR HOUSE, PATTURAIKKAL, THRISSUR-680 022.

BY ADVS.  
ELVIN PETER P.J.  
SRI.K.R.GANESH  
SMT.N.R.REESHA  
SMT.T.S.LIKHITHA

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 4 & 6:

- 1 DR. P. BALAKRISHNAN  
AGED 39 YEARS  
S/O P GANGADHARA NAIR, RESIDING AT PEROTH HOUSE,  
PALAKKALVETTA P.O.TUVVUR, MALAPPURAM-679 327.
- 2 STATE OF KERALA,  
REPRESENTED BY ITS PRINCIPAL SECRETARY, SCIENCE  
TECHNOLOGY AND ENVIRONMENT DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.

- 3 THE KERALA STATE COUNCIL FOR SCIENCE,  
TECHNOLOGY AND ENVIRONMENT, REPRESENTED BY ITS  
EXECUTIVE VICE PRESIDENT, SASTHRA BHAVAN, PATTOM  
(PO), THIRUVANANTHAPURAM-695 004.
- 4 THE KERALA FOREST RESEARCH INSTITUTE,  
REPRESENTED BY ITS DIRECTOR, PEECHI, THRISSUR-680  
653.
- 5 THE DIRECTOR,  
KERALA FOREST RESEARCH INSTITUTE,  
PEECHI THRISSUR-680 653.
- 6 DR. K.S ANOOP DAS,  
ANUPALLAVI, KARUMAMPOYIL HOUSE, CHUNGATHARA POST,  
NILAMBUR, MALAPPURAM DISTRICT, KERALA-679 334.

BY ADVS.  
SRI.KALEESWARAM RAJ (B/O)  
BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN  
SRI.C.K.PRASAD, SC  
SRI.P.C.SASIDHARAN, SC  
SRI.G.AMBILI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
17.10.2022, ALONG WITH WA.2423/2019, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**(CR)**

## **JUDGMENT**

### **A.K.Jayasankaran Nambiar, J.**

The petitioner in WP(C).No.5663 of 2016, who was the 5<sup>th</sup> respondent in WP(C).No.12994 of 2016 is the appellant herein aggrieved by the common judgment dated 16.11.2019 of a learned Single Judge.

2. The brief facts necessary for the disposal of these Writ Appeals are as follows:

The appellant herein had responded to a notification dated 15.03.2012 (Ext.P23) for appointment to one of five vacancies notified for the post of Scientist E-1 in the Kerala Forest Research Institute (KFRI), which is an institution under the control of the Kerala State Council for Science, Technology and Environment. As per the said notification, the candidates applying for the post had to be possessed of the education qualifications required for the same and had to conform to the age limit prescribed, which was upto 40 years as on 10.04.2012. The appellant, whose date of birth was 25.05.1972, satisfied the age

requirement for the post advertised and accordingly applied for the same. It would appear, however, that the selection process envisaged by the notification did not go ahead, and was cancelled. Thereafter, by a fresh notification dated 01.02.2013 (Ext.P24), the five vacancies to the post of Scientist-E1 were once again notified. The appellant admittedly did not apply to any of the vacancies notified through the said notification since the notification clearly stated that the candidates had to satisfy the age criteria of not more than 40 years as on the last date of preferring applications under the said notification. It would appear that there was no selection process carried out pursuant to the said notification either, and the proceedings initiated under that notification also stood cancelled. Thereafter, through yet another notification dated 11.09.2015 (Ext.P25), the KFRI once again notified the same five vacancies to the post of Scientist-E1. Once again, the age limit prescribed was 40 years as on 15.10.2015, but this time around, there was a Clause in the notification that mentioned that those who had applied earlier need not apply afresh. Taking recourse to the said Clause in Ext.P25 notification, the appellant, who had earlier applied pursuant to Ext.P23 notification, applied for the post of Scientist-E1. When he was not called for the interview, he approached this Court through W.P(C).No.5663 of 2016, and based on an interim order granted by a learned Single Judge, he was permitted to appear for the

interview. It would appear that the Selection Committee, which met to consider the *inter-se* merit of the candidates, observed that while the appellant had satisfied the qualification requirements for the post, he could not be considered for appointment to the post on account of his not having satisfied the age criteria mentioned in Ext.P25 notification. The issue that eventually came up for consideration before the learned Single Judge, therefore, was whether, in the light of the Clause in Ext.P25 notification, which dispensed with the requirement of a fresh application for those candidates who had responded to an earlier notification, the appellant could seek a consideration of his candidature pursuant to the application that he had preferred in response to Ext.P25 notification.

3. The learned Single Judge found that the expression “earlier” mentioned in Ext.P25 notification was only a concession that was given to those who had submitted applications based on Ext.P24 notification, which was the one immediately prior to Ext.P25 notification. It was also found that the candidates who were within the age limit as on the last date fixed for the receipt of the application based on the previous notification (Ext.P24) alone were exempted from preferring fresh applications in response to Ext.P25 notification. The contention of the appellant was therefore rejected, and his Writ Petition was dismissed.

As a consequence, WP(C).No.12994 of 2016 preferred by a rival candidate was disposed by directing the KFRI to finalise the selection from among the candidates who were within the age limit as on the last date fixed in Ext.P24 notification and make appointment to the post without any delay.

4. In the appeals before us, it is the submission of Sri.Elvin Peter, the learned counsel appearing on behalf of the appellants in both these Writ Appeals, that the learned Single Judge erred in confining the benefit of the concession granted in Ext.P25 notification to only those candidates who had responded to Ext.P24 notification while excluding the benefit to those like the appellant who had responded to Ext.P23 notification, further proceedings pursuant to which were cancelled by the KFRI. It is his contention that when Ext.P25 notification clearly mandated that those who had applied earlier need not apply afresh, the concession had to be seen as extended to all candidates who had responded to earlier notifications inviting applications from candidates to the posts notified. It is his further contention that inasmuch as Ext.P25 notification refers, *inter alia*, to the vacancies that had already been notified in Ext.P23 notification, that was a clear indication that a candidate who had applied pursuant to Ext.P23 notification was also contemplated for the benefit of concession granted in Ext.P25



notification.

5. Per contra, it is the submission of Sri.C.K.Prasad, the learned Standing counsel appearing for the KFRI and Sri.Kaleeswaram Raj, the learned counsel appearing for the party respondents in both these Writ Appeals, that the findings of the learned Single Judge regarding the entitlement of the appellant for consideration requires no interference.

On a consideration of the rival submission, we are of the view that the contentions of the learned counsel for the appellant cannot be accepted. As was rightly noticed by the learned Single Judge, the Clause in Ext.P25 notification, which exempted those who had applied earlier from applying afresh in response to the said notification, could have application only to those candidates who had applied pursuant to Ext.P24 notification and who satisfied the eligibility requirements including the age requirements in Ext.P25 notification. It is relevant to note that Ext.P24 notification did not contain a Clause, which exempted persons who had applied in response to Ext.P23 notification from applying afresh in response to Ext.P24 notification. This would mean that the appellant who had responded to Ext.P23 notification, lost his opportunity for consideration to the post in question with the cancellation of the said notification and the re-notification through

:10:

W.A.Nos. 2423 & 2475 of 2019

Ext.P24 notification. 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. Thus, in any view of the matter, we find that the appellant's candidature could not be considered in response to Ext.P25 notification. Hence, for the reasons mentioned in the impugned judgment of the learned Single Judge as supplemented by the reasons in this judgment, these Writ Appeals fail and are accordingly dismissed.

Sd/-  
**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Sd/-  
**MOHAMMED NIAS C.P.**  
**JUDGE**

mns