

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

O.P.No.10258 of 2001 (U)

PETITIONER(S):-

M.K.SUNNY, LINEMAN GR.II,
K.S.E.BOARD, ELECTRICAL SECTION OFFICE,
OLAVAKKODE, PALAKKAD DISTRICT.

BY ADVS.SRI.C.P.SUDHAKARA PRASAD (SENIOR ADVOCATE)
SRI.ELVIN PETER P.J.

RESPONDENT(S):-

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1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
PATTOM, THIRUVANANTHAPURAM.
 2. THE CHIEF ENGINEER (HRM), K.S.E.BOARD,
PATTOM, THIRUVANANTHAPURAM.
 3. R.V.SURESH, OVERSEER (CIVIL),
INVESTIGATION FIELD SUB DIVISION,
NENMARA, PALAKKAD DISTRICT.
 4. B.SELVARAJ, OVERSEER (CIVIL),
S.S.SUB DIVISION, SEETHATHODE, IDUKKI DISTRICT.
 5. S.LALU, OVERSEER (CIVIL),
OFFICE OF THE CHIEF ENGINEER (CIELA),
K.S.E.BOARD, VAIDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM.

R1 & R2 BY ADV.SRI.P.SANTHALINGAM (SENIOR ADVOCATE) &
STANDING COUNSEL SRI.S.SHARAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON
03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

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| EXT.P1 | TRUE CPOY OF ORDER DATED 07.06.1997 ISSUED BY THE KSE BOARD. |
| EXT.P2 | TRUE COPY OF ORDER DATED 30.06.1997, ISSUED BY THE KSE BOARD. |
| EXT.P2(a) | TRUE COPY OF RELEVANT EXTRACT OF THE LIST OF MAZDOORS PROMOTED AS LINEMAN GR-II IN PALAKKAD DISTRICT. |
| EXT.P3 | TRUE COPY OF THE ORDER DATED 19.2.1999 ISSUED BY THE K.S.E.BOARD. |
| EXT.P3(a) | RELEVANT EXTRACT OF THE ANNEXURE ATTACHED TO EXT.P3. |
| EXT.P4 | TRUE COPY OF JUDGMENT DATED 31.05.1990 IN W.A. NO.236/88 OF THIS HON'BLE COURT. |
| EXT.P5 | TRUE COPY OF CIRCULAR DATED 23.09.1999 ISSUED BY THE KSE BOARD. |
| EXT.P6 | TRUE COPY OF CIRCULAR DATED 30.09.2000 ALONG WITH THE SELECT LIST. |

RESPONDENT'S EXHIBITS:-

----- NIL.

vku/-

[true copy]

K. Vinod Chandran, J

O.P.No.10258 of 2001-U

Dated this the 03rd day of December, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner, who was promoted as per Exhibit P2 and P2(a) on the basis of Exhibit P1 to the post of Lineman Grade-II, was not considered for further promotion to the post of Overseer (Civil), while the respondents 3, 4 and 5 were so considered.

2. The petitioner admits that as per the advice of the Kerala Public Service Commission [for brevity "PSC"], the petitioner's advice to the post of Mazdoor was later to the advice of respondents 3 to 5. However, it is contended that seniority cannot be fixed on that basis, since the appointment of Mazdoors were district-wise and though the petitioner and the respondents 3 to 5 figured in the list together, the respondents 3 to 5 could obtain advice earlier, for reason of vacancies arising in their district, viz., Thiruvananthapuram, earlier to the occurrence of vacancies in Palakkad, the petitioner's district. The petitioner also contends that there was

never a state-wide seniority list issued in the post of Mazdoors and in such circumstance, without issuance of a provisional seniority list and calling for objections, the official respondents could not have carried out the promotions.

3. At the outset it is to be noticed that the petitioner's contention with respect to the seniority being assigned on mere fortuitous circumstances is fallacious, insofar as clause (c) of Rule 27 of Part II of Kerala State & Subordinate Services Rules, 1958 [for brevity "KS&SSR"], clearly stipulates that the seniority of a person appointed to a class, category or grade in a service on the advice of the PSC shall be determined by the date of first effective advice made for his appointment. The petitioner's alleged promotion to the post of Lineman Grade-II as per Exhibits P2 and P2(a) would not stand in the way of determination of seniority especially since Exhibit P2 indicates that the same is only a provisional promotion effected for reason of expediency of need of personnel to be deployed in the post of Lineman Grade-II especially in the context of the State-wise seniority list of Mazdoors having not been effected.

4. A provisional promotion is a temporary one coming under Rule 31 of Part II KS&SSR and the petitioner cannot rely on Rule 27(a) to contend that the date of first appointment should be the date for determining the seniority, since the proviso clearly excludes appointments under Rule 9 and Rule 31. Further it is to be noticed that the subject promotions challenged by the petitioner is a selection of in-service candidates to the post of Overseer (Civil), based only on seniority. The Board, in contemplation of such a selection, had issued Exhibit P6 select list dated 30.09.2000, to which the petitioner had not objected. The petitioner joined service as Mazdoor, on the basis of the advice of the PSC, on 16.05.1996; while the respondents 3 to 5 joined service respectively on 10.04.1995, 17.04.1995 and 17.04.1995 . The selection to the post of Overseer (Civil), as per the counter affidavit, is based strictly on the number of years of service and there is no assessment of merit and the senior hands are posted to the 10% vacancies occurring in the cadre, while the balance is filled up by direct recruitment. In such circumstance, the petitioner's contention that the petitioner, on

the basis of his temporary promotion as Lineman Grade-II, has to be considered as senior to respondent 3 to 5 is unsustainable and, hence, rejected.

The Original Petition is devoid of merit and the same is dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]