

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

OP(KAT).No. 69 of 2015 (Z)

AGAINST THE ORDER DTD.28.10.14 IN TA.228/14 &
ORDER DTD.16.2.15 IN RA.34/14 IN TA.228/14 of
KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER(S)/REVIEW APPLICANTS/NOT PARTIES IN THE T.A:

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1. SHIJU.C.S., S/O.C.K.SIVAN AGED 37 YEARS
ASSISTANT ENGINEER, LSGD SECTION OFFICE
ARAKKULAM GRAMA PANCHAYATH, IDUKKI
RESIDING AT SREENANDANAM CHOTTANIKKAL HOUSE
EAST OF MANGATTU JUNCTION THODUPUZZHA EAST PO
IDUKKI.
 2. MAXWELL K.C., S/O.P.S.CHACKO AGED 30 YEARS
ASSISTANT ENGINEER, LSGD SECTION OFFICE
KUDAYATHU GRAMA PANCHAYATH, IDUKKI
RESIDING AT KUPPEPARAMBIL PIRAVOM PO, PIRAVOM
ERNAKULAM DISTRICT-686 664.
 3. SHERIN MARY SAM, D/O.N.P.SAMUEL AGED 28 YEARS
ASSISTANT ENGINEER, LSGD DIVISION OFFICE
DISTRICT PANCHAYATH OFFICE, IDUKKI
RESIDING AT NATTUKALLUNKAL HOUSE, CHOVOOR PO, MANKOMPU
KOTTAYAM DISTRICT 686586
 4. ARIF MUHAMMED M. AGED 39 YEARS
S/O.M.MEERA SAHIB, ASSISTANT ENGINEER
CHENGANNUR MUNICIPALITY, ALAPPUZZHA DISTRICT
RESIDING AT RAMLETH MANZIL, VALAMCHUZZHY
PATHANAMTHITTA -689 645.
 5. SUDEEP A.S. AGED 37 YEARS
S/O.A.K.SUDEENDRAN, ASSISTANT ENGINEER
LSGD SECTION OFFICE, VATHIKKUDY GRAMA PANCHAYATH
IDUKKI DISTRICT RESIDING AT ARAPPANAL HOUSE
KUNNATHADY PO, MARAKKUNNAM, IDUKKI - 685 563.

BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN

RESPONDENT(S)/APPLICANTS & RESPONDENTS 1 TO 13:

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1. N.SULFIKKAR
ASSISTANT ENGINEER, LSGD SECTION, KOTTAKKAL
MALAPPURAM 676 503.

2. P.J. THANKACHAN
ASSISTANT ENGINEER, LSGD SECTION, VENGOLA
PERUMBAVOOR ERNAKULAM - 683 542
3. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT
GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM-695 001.
4. THE CHIEF ENGINEER
OFFICE OF THE CHIEF ENGINEER
LOCAL SELF GOVERNMENT DEPARTMENT
THIRUVANANTHAPURAM-695 001.
5. P.P.RAMESAN
ASSISTANT ENGINEER, LSGD SECTION
KALYASSERY GRAMA PANCHAYATH, KALYASSERY
KANNUR-670 562.
6. PRASAD D,
ASSISTANT ENGINEER
VALLIKKUNNAM GRAMA PANCHAYATH VALLIKKUNNAM
ALAPPUZHA - 690 501.
7. C.M. JANCY
ASSISTANT ENGINEER, MATTANNUR MUNICIPALITY
MATTANNUR KANNUR - 670 702.
8. SHIBU L. NALPAT
NALAPAT HOUSE, CHANGAMPUZHA NAGAR PO
KOCHI-33 (PRESENTLY WORKING AS ASSISTANT ENGINEER AT MUNICIPAL
CORPORATION OF KOCHI , ERNAKULAM - 682 011)
9. SUMA P. SURENDRAN
RESIDING AT 49/997-82, GAYATHRI
AC EMERALD PONEKKARA EDAPPALLY
KOCHI-682 024 (PRESENTLY WORKING AS ASSISTANT
ENGINEER AT MUNICIPAL CORPORATION
THRISSUR 680001).
10. NISSAR A.
MALAYIL KIZHAKETHU, PUTHIYAVILA
KAYAMKULAM-690 531 (PRESENTLY WORKING AS ASSISTANT ENGINEER
ALUVA MUNICIPALITY,ALUVA, ERNAKULAM-683 101)
11. SHEEJA S.S.
ROSE COTTAGE, M-14, CHITRA NAGAR
VATTIYOORKAVU THIRUVANANTHAPURAM-695 013
(PRESENTLY WORKING AS ASSISTANT ENGINEER
CHALAKKUDY MUNICIPALITY, PIN-680307)
12. K.T.MANJUBALA
D/O.A.K.THEVAN KOYIPARAMBATH, PERUMBALAM PO
CHERTHALA-688524 (PRESENTLY WORKING AS
ASSISTANT ENGINEER
MUNICIPAL CORPORATION OF KOCHI,
ERNAKULAM 682011)

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13. K.G. SAHUJI
A/8 CHAITANYA, JAI NAGAR
MEDICAL COLLEGE PO THIRUVANANTHAPURAM-695 011
(PRESENTLY WORKING AS DEPUTATION AS TECHNICAL OFFICER
ENVIRONMENT, KERALA SUSTAINABLE URBAN DEVELOPMENT PROJECT
TRANS TOWERS 5TH FLOOR, VAZHUTHACAUD
THIRUVANANTHAPURAM-19, KERALA
14. G. RADHAKRISHNAN NAIR
ANUPAMA TC 19/2115, MUDAVANMUGAL
POOJAPPURA THIRUVANANTHAPURAM-12.
15. RENJI, ASSISTANT ENGINEER
LOCAL SELF GOVERNMENT SECTION, RANNI
PAZHAVANGADI SECTION, PATHANAMTHITTA-689 672.

R3,R4 BY SR GOVERNMENT PLEADER SRI.M.K.ABOOBACKER

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 13-03-2015, ALONG WITH OP(KAT).70/15 AND 72/15, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN OP(KAT).69/15

PETITIONER'S EXHIBITS:

ANNEXURE A: TRUE COPY OF TA.228/14 ALONG WITH EXHIBITS P1 TO P6(C) FILED BEFORE THE KAT, TRIVANDRUM.

ANNEXURE B: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT IN TA.228/14 BEFORE THE KAT.

ANNEXURE C: TRUE COPY OF THE REPLY AFFIDAVIT ALONG WITH EXTS.P7 AN DP8 FILED BY RESPONDENTS 1 AND 2 TO THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT IN THE TA.

ANNEXURE D: TRUE COPY OF THE ORDER DATED 28.10.14 IN TA.228/14 OF THE HON'BLE KAT.

ANNEXURE E: TRUE COPY OF THE REVIEW APPLICATION NO.34/14 FILED BY THE PETITIONERS BEFORE THE TRIBUNAL WITH LEAVE.

ANNEXURE F: TRUE COPY OF THE ORDER DATED 16.2.2015 OF THE KAT DISMISSING REVIEW APPLICATION NO.34/14.

/TRUE COPY/

PS TO JUDGE

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

O.P(KAT).Nos.69, 70 & 72 of 2015

Dated this the 13th day of March, 2015

JUDGMENT

Antony Dominic, J.

1.These original petitions are filed by persons who were not parties to the proceedings before the Kerala Administrative Tribunal but later, unsuccessfully sought review of the orders of the Tribunal. They are challenging the orders of the Tribunal which was declined to be reviewed.

2.Briefly stated, the case is that the applicants before the Tribunal initially joined their parent department as Diploma holders. After entering into service, they acquired Degree and got appointed as Assistant Engineers. While they were continuing in their parent department, by order dated 13.12.2007, Local Self Government Department Engineering Service was constituted. After the constitution of the service as above, the applicants before the Tribunal, who were thus working as Assistant Engineers, were absorbed into the Local Self Government Engineering Service from their parent department, viz.,

Irrigation Department, Public Works Department and Municipal Common Service.

3. Subsequently, by Government Order dated 27.11.2007, special Rules were framed for Local Self Government Engineering Service with effect from 1.1.2008. In this Rule, Assistant Engineer falls in category No.5. Rule 3 provides for the method of appointment to higher posts as promotion from this category and Rule 4 provides that the qualification for the post of Assistant Executive Engineer is Degree or Diploma, coupled with the prescribed period of service in the category of Assistant Engineer. Subsequently, the Government issued order dated 16.7.2009, amending the special Rules and adding a note which provided that promotion to the category of Assistant Executive Engineer shall be made from among direct recruits and diploma holders in the feeder category in the ratio of 3:1. Based on the note thus introduced, a provisional seniority list of direct recruits, diploma holders and certificate holders in the category of Assistant Engineer was published by the Chief Engineer.

4.It was at that stage, the applicants before the Tribunal filed writ petitions before this Court and obtained an interim order of stay of the amendment of the Special Rules introducing the note. On the constitution of the Kerala Administrative Tribunal, the writ petitions were transferred to the Tribunal. By the impugned orders in these original petitions, the Tribunal held the amendment unconstitutional and consequentially, the seniority list also. Petitioners herein were not parties to the proceedings before the Tribunal. Therefore, they filed review application and that application also was heard and rejected by the Tribunal. It is in this background, these writ petitions are filed.

5.We heard learned senior counsel for the petitioners and considered the submissions made.

6.We note from the orders of the Tribunal that before it, two contentions were raised. One was that the note as introduced by the amendment was unworkable and the second was that the amendment was unconstitutional. The first contention was rejected

and the second contention was upheld by the Tribunal. In these original petitions, we are concerned with the second finding of the Tribunal, the validity of the amendment.

7. We have already seen that by the Government Order dated 27.11.2007, Special Rules were introduced and degree holders and diploma holders in the category of Assistant Engineer were eligible for promotion to the post of Assistant Executive Engineer without any distinction whatsoever. It was thereafter that the amendment was introduced, by which, the feeder category for promotion to the category of Assistant Executive Engineer included only direct recruits and diploma holders in the ratio of 3:1. This necessarily means that even those diploma holders who entered service as such and acquired Degree thereafter are discriminated in the matter of promotion to the higher post of Assistant Executive Engineer irrespective of their birth mark as diploma holders. Such a classification which is not based on the qualification, experience or any other relevant considerations, is totally vitiated by the vice of

Article 14 and it was therefore, that the Tribunal has rightly interfered with the amendment in question.

Having considered the submission made at the Bar, we are not inclined to find anything vitiated in the view taken by the Tribunal. Original petitions fail. They are accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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