

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 1686 of 2006 (A)

PETITIONER(S):

1. V.S. RAMAKRISHNAN
RETIRED ASSISTANT EXECUTIVE ENGINEER (KSEB)
VADAYIL HOUSE, VASANTHA NAGAR, PATTURAICKAL
THRISSUR-1.

2. B. SOMAN ASARI,
RETIRED ASSISTANT EXECUTIVE ENGINEER (KSEB)
THIRUVATHIRA, KOLOYOOR, MUTTOCADU P.O.
VANGANOOR, T, HIRUVANANTHAPURAM-695 523.

ADDL.P3 PRASANNAKUMARI R W/O. SOMAN
THIRUVATHIRA HOUSE, KOLIYOOR
MUTTAKKAD PO THIRUVANANTHAPURAM 695 523

ADDL.P4 ABBHILASH P.S S/O SOMAN
THIRUVATHIERA HOUSE, KOLIYOOR
MUTTAKKAD PO THIRUVANANTHAPURAM 695 523

ADDL.P5 ABHIJITH P.S S/O SOMAN
THIRUVATHIRA HOUSE, KOLIYOOR
MUTTAKKAD PO THIRUVANANTHAPURAM 695 523

(ADDL.P3 TO P5 ARE IMPEADED AS PER ORDER IN I.A 11002/13 DATED 5.9.13)

BY ADVS.SRI.P.SANKARANKUTTY NAIR
SRI.T.V.AJAYAKUMAR
SRI.K.SANDESH RAJA
SRI.KRB.KAIMAL (SR.)

RESPONDENT(S):

1. THE KERALA STATE ELECTRICITY BOARD
VYDHYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM
REPRESENTED BY THE SECRETARY.

2. THE CHIEF ENGINEER (HRM),
KERALA STATE ELECTRICITY BOARD, VYDHYUTHI BHAVAN
PATTOM, THIRUVANANTHAPURAM.

R,R.1,2 BY ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B
R,R1,2 BY ADV. SRI.K.S.ANIL, SC, KSEB
R,R1-2 BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB
R BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB
R BY SRIJOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: B.O NO.EL-I/3826/73(3) DT 18.4.1975 OF THE 1ST RESPONDENT

EXT.P2: G.O NO.70/83/W & P DT 23.11.1983

EXT.P3: NOTE DT 16.6.1982 OF 2ND RESPONDENT TO 1ST RESPONDENT

EXT.P4: LETTER DT 26.7.1982 TO THE SECRETARY K P S C

EXT.P5: NOTE DATED 3.5.1986 OF THE 2ND RESPNDENT TO 1ST RESPONDENT

EXT.P6: REPRESENTATION DT 23.4.1986 OF 1ST PETITIONER TO CHAIRMAN

EXT.P7: ORDER DT 29.3.1989 OF 2ND RESPONDENT

EXT.P8: CIRCULAR DT 19.6.1990 OF 2ND RESPONDENT

EXT.P9: REPRESENTATION DT 11.10.1991 OF THE 1ST PETITIONER

EXT.P10: REPRESENTATION DT 13.2.1997 OF PETITIONERS TO CHAIRMAN KSEB

EXT.P11: OBJECTION DT 16.3.1982 SENIORITY LIST, BY THE 1ST PETITIONER

EXT.P12: RELEVANT EXTRACT OF PROV. GRADUATE LIST OF A.E. © ON 1.2.1992

EXT.P13: COUNTER AFFIDAVIT DT 4.3.1993 OF 2ND RESPONDENT IN CMP NO. 256 IN OP NO.1384/1993

EXT.P14: JUDGMENT DT 30.1.2002 IN OP NO.12789/1992

EXT.P15: REPRESENTATION DT 6.6.2003 OF 1ST PETITIONER TO THE 1ST RESPONDENT

EXT.P16: REPRESENTATION DT 4.5.2003 OF 2ND PETITIONERS

EXT.P17: PAY DETAILS OF 1ST PETR. DT 8.7.2003 SUBMITTED BY THE 1ST PETR.

EXT.P18: DECLARATION DT 17.4.2004 OF 1ST PETITIONER

EXT.P18(a): DECLARATION DT 17.4.2004 OF 2ND PETITIONER

EXT.P19: REPRESENTATION DT 6.4.2005 OF PETITIONERS BEFORE MEMBER FOR ELECTRICITY

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EXT.P20: ORDER DT 31.08.2001 OF THE 1ST RESPONDENT

EXT.P21: NOTE DT6.7.1987 OF 2ND RESPONDENT

EXT.P22: B.O. DT16.4.1988 OF 1ST RESPONDENT

EXT.P23: ORDER DT 10.3.1989 OF THE 2ND RESPONDENT

EXT.P24: LETTER DATED8.6.1989 TO THE PSC

EXT.P25: ORDER DATED 2.5.1996 OF 1ST RESPONDENT.

EXT.P26: GRADUATION LIST OF A.E.(c) ON 1.10.1985 OF THE 2ND RESPONDENT

EXT.P27: ORDER DATED 15.7.1997 OF 1ST RESPONDENT

EXT.P28: TRUE COPY OF THE LETTER NO. KDC4/2637/88 DT 15.4.1989

EXT.P29: TRUE COPY OF THE CIRCULAR DT 28.10.1986

EXT.P30: TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NOS.9090, 9091/1996 DT 11.9.2000

EXT.P31: TRUE COPY OF THE NOTE DATED 26.7.1980 ISSUED BY THE SECRETARY OF KSEB TO THE 1ST RESPONDENT BOARD

RESPONDENTS EXHIBITS:

EXT.R1(a): A TRUE COPY OF THE ORDER OF GOVERNMENT OF KERALA DT 12.5.1982

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 1686 of 2006

Dated this the 16th day of December, 2015

J U D G M E N T

The petitioners were Assistant Executive Engineers who respectively retired on 30.06.1994 & 31.07.1994. The second petitioner died, subsequent to the filing of the writ petition, on 30.06.2012 and the legal heirs have been impleaded. The petitioners 1 & 2 were respectively appointed as Tracer and Second Grade Overseer in the year 1965 and were promoted as First Grade Overseers, which post was re-designated as Sub-Engineers. The promotion of the respective petitioners were on 19.09.1972 and 03.08.1971. The petitioners have, while continuing in service, acquired Engineering Degree in the year 1982 and 1981 respectively. The claim raised herein is for promotion to the 10% vacancies reserved for direct recruitment, in the post of Assistant Engineer (Civil), from graduate Engineers from amongst the

in-service candidates; from the date of acquisition of their graduate qualification and consequential promotions. Strangely the petitioners in the writ petition seek promotion to the post of Executive Engineer at least from the date of their retirement.

2. The petitioners were promoted as Assistant Engineers in 1989, they contend that they were assigned seniority only from 1990; an unsubstantiated contention. It is to be specifically noticed that they did not make any challenge to the alleged denial of promotion either at a proximate time, after they acquired the engineering qualification or claimed retrospective effect, when they were actually promoted to the post of Assistant Engineer in the quota itself. The entire writ petition now filed is built on the consideration directed in Ext.P14 judgment.

3. At the outset it is to be noticed that the deceased 2nd petitioner was never a party in the writ petition which was

disposed of by Ext.P14. Ext.P14 was also filed in the year 1992 after the petitioners were promoted to the post of Assistant Engineer as is evident from the cause title. The allegation in the said writ petition was that while making promotions of in-service graduates from the 10% quota, the petitioners therein were pushed down in the seniority list prepared in the promoted post, for reason of the persons appointed under the sports quota and under the compassionate appointment having been placed above the promotions. The petitioners therein contented that they having acquired the engineering degree long before, they were entitled to seniority above those persons appointed in the Assistant Engineers cadre after the acquisition of graduation by the petitioners. Immediately it is to be noticed that the mere existence of vacancy would not entitle any one to be promoted and a right could arise only on recruitment being made that too only the right to be considered for such

promotions.

4. The earlier writ petition was filed in the year 1992-1993, and without entering into the merits, the writ petition was disposed of directing consideration of representations in the year 2003. While the writ petitions were pending both the petitioners herein were promoted as Assistant Executive Engineers and by the time of the judgment at Ext:P-14, both retired from service.

5. It is to be reiterated with emphasis that at the time of disposal of Ext.P14, the petitioners in the instant writ petition were retired;both in the year 1994. It is also to be emphasized that the issue therein was only on the aspect of seniority in the promoted post and not a claim for retrospective promotion. On the basis of Ext.P14 judgment a consideration was made by the Board and Ext.P20 order was passed. In the aforesaid order, it was found that 11 candidates were appointed in the 10% quota during the period from 12/76 to 8/79 who had to be

accommodated in the 10% quota. The consideration of the staff strength during 12/84 found that 52 Assistant Engineers were surplus and they were fully adjusted only in 5/1989. It was hence the Board was not in a position to appoint or promote any candidate to the post of Assistant Engineer (Civil) during this period, for want of vacancy, was the finding.

6. Even going by the contention of the petitioners, the 10% vacancy earmarked for engineering graduates was to be filled up by direct recruitment from in-service candidates, through selection conducted by the Public Service Commission as is seen at Ext.P1. However, later the Kerala State Electricity Board took upon itself the responsibility to make the recruitment so as to expedite the same. The selection was taken out of the purview of the Public Service Commission as is indicated at Ext.P3.

7. The petitioner's counsel in fact, would rely on

Ext.P3 which indicates that there are three vacancies available in the cadre of Assistant Engineers at that point of time and by Ext.P5 dated 03.05.1986 there were earmarked 8 vacancies. It is to be noticed that even Ext.P5 was passed specifically on the representation of the 1st petitioner herein. Despite such vacancy arising in 1986, the 1st petitioner did not take any steps to claim promotion, before this Court. They assert that they were going on, making representations before the authorities to redress their grievance of denial of promotion. Ext:P-5 was dated 03.05.1986. The petitioners never sought to assert their claim for promotion before a court of law and eventually were promoted in 1990.

8. Then the 1st petitioner by Ext:P-11 dated 16.03.1992 sought for re-fixation of seniority in the cadre of Assistant Engineer. A reading of Ext.P11 would indicate that, even then there was no claim for retrospective promotion. It is also an

admitted fact that the petitioners were promoted long prior to Ext:P-11. This Court is of the opinion that the petitioners are merely attempting to rake up issues, which cannot at all be considered at this point of time, or even when this writ petition was filed, in 2006. The claim raised by both the petitioners is for retrospective promotion from a date prior to 1990, in which year they were admittedly promoted to the post of Assistant Engineer. The petitioners had not taken up any proceeding prior to this writ petition for retrospective effect to be granted to such promotions on the basis of available vacancies in the 10% quota. The 1st petitioner filed Ext:P-11 seeking revision of seniority and the 2nd petitioner did absolutely nothing.

9. Pursuant to Ext:P-14, the 1st petitioner made Ext:P-15 representation. At the risk of repetition, it has to be stated that the direction in Ext:P-14 judgment was to consider the issue of inter-se seniority of the in-service graduates and the graduate

engineers who were appointed under the sports quota and dying-in-harness scheme and to consider if the former should be granted notional promotion from an earlier date. Ext:P-15 representation again was only by the 1st petitioner alone and claimed notional promotion too, along with revision of seniority. By that time the petitioners had retired. The revision of seniority would have had no effect for them, that too if it were done notionally. The petitioners do not have a case that they would have been entitled to any further promotion on they being granted notional seniority, since from the cadre of Assistant Engineers they were already promoted to the cadre of Assistant Executive Engineers before retirement. As noticed earlier, strangely they seek that they be promoted to the cadre of Executive Engineer at least from their date of retirement. The Court while disposing of the writ petitions by Ext:P-14 was also not informed by the petitioners that they had retired from

service.

10. The attempt is to rake up issues which were never agitated and divert the course of the litigation itself based on a mere direction to consider representations. The claim raised in the litigation's of 1992-1993 was regarding the inter-se seniority in the cadre of Assistant Engineers. The dispute also was between regular employees and those appointed under sports quota and dying-in-harness scheme, in the category of Assistant Engineers. The writ petitions were pending before this Court for 11years and by the time it was disposed of, the 1st petitioner who was a party to the litigation had retired. The 2nd petitioner who never raised the claim also retired and joined the 1st petitioner only in this writ petition to raise the claim for the first time, with a representation produced as Ext:P-16. Again the petitioners did not file a representation as directed in Ext:P-14 and made a

delayed one, seen at Ext:P-15 & P-16, where also they claimed revision of seniority and notional promotion, which would not have enured any benefit to them since by that time they retired. In the present writ petition they claim retrospective promotion for the first time and claim consequential monetary benefits too, which claims are grossly delayed. They contend that the monetary benefits if at all would be minimal. That alone cannot be a reason to allow their claims if not otherwise legally entitled.

11. This Court ought to impose costs for the manner in which the claims are made which indicate a clear abuse of process of Court. It would not be done only since the petitioners are retired and one of them is no longer alive. The cause of action sought to be urged being the disposal of a representation as per Ext.P20 cannot revive the stale claim of the petitioners to be granted promotion prior to 1989. The writ petition of 1993 disposed of in 2003, was also only regarding the fixation of

seniority as against the party respondents impleaded therein. The Court was not informed the fact that the 1st petitioner who was a party therein had retired at the time of disposal of the case. In such circumstance, this Court does not find any reason to consider the claim of the petitioners at this point of time, which has been found to have been raised for the 1st time in this writ petition, that too 12 years after retirement.

Writ petition would stand dismissed. No order as to costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge