

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

RP.No. 96 of 2015 ()

WA 904/2012 of THIS HON'BLE COURT

REVIEW PETITIONER/RESPONDENT :

**A.G.UDAYASANKAR
EXECUTIVE ENGINEER , P.W.D (RTD), ARAYAMPARAMBIL HOUSE,
A.S. GOPINATHAN ROAD P.O, VALAPAD BEACH, THRISSUR**

BY ADV. SRI.B.SAINU

RESPONDENTS/APPELLANTS :

- 1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY TO
GOVERNMENT PWD DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM 695 001**
- 2. THE CHIEF ENGINEER,
P.W.D ADMINISTRATION, TRIVANDRUM 695 001**
- 3. THE ACCOUNTANT GENERAL
KERALA BRANCH OFFICE P.B NO 507,
KARUNAKARAN NAMBIAR ROAD,
THRISSUR 680 567**

R1 TO R3 BY GOVERNMENT PLEADER SRI. GIRIJA GOPAL

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD
ON 10/02/2015, THE COURT ON 18-03-2015 PASSED THE
FOLLOWING:**

bp

RP.No. 96 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE A1: COPY OF THE JUDGMENT IN WA NO. 904/2012 DT 17/12/2014.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

**ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.**

R.P.No.96 of 2015
in W.A.No.904 of 2012

Dated this the day of March 2015

ORDER

Shaffique,J

This review petition has been filed by the respondent in W.A.No.904 of 2012. The writ appeal filed by the respondents herein were allowed setting aside the judgment of the learned Single Judge, thereby dismissing the writ petition.

2. While allowing the Writ Appeal, this Court found that since the petitioner was not promoted under the seven tier system, the findings of the Division Bench in W.P.C.No. 27585/2006 applies to the facts of the case and consequently, not eligible to get the benefit of the seven tier system which was reviewed as per Government Order dated 07/10/2003. The petitioner herein retired from service as Executive Engineer on 31/12/2001. We have found that he was not promoted as per Government Order dated

20/06/1998. We have also found that the judgment in O.P.No.11211/2003 relied upon by the petitioner was dated 01/04/2003, and the Government revoked the seven tier system by order dated 17/10/2003 and therefore the said judgment could not have been made applicable to the facts of the case. We have also relied upon the judgment of the Division Bench in W.A.No.2503/2005 (W.P.C.No.27585/2006) wherein it was held that a person, who is not promoted as per notification dated 09/02/1996, cannot get the benefit of the seven tier system.

3. The learned counsel for the review petitioner contends that there is error apparent on the face of the record and submits that the writ petitioner was also promoted under the seven tier system as evident from Annexure R1 which is the Government Order dated 16/04/1999 by which he was promoted from the post of Assistant Engineer to the post of Assistant Executive Engineer. It is stated that he was also promoted along with the petitioners in O.P.No.11211/2003 wherein this Court

found that the petitioners in the said case belonged to the seven tier system. Further reference is made to Annexure R2 seniority list. It is argued that these materials were not verified by this Court while allowing the Writ Appeal. The learned counsel also placed reliance on another judgment dated 28/03/2014 in O.P(KAT) No.4317/2013 wherein this Court, relying upon the judgment in W.A.No.2503 of 2005, had given certain benefits to the respondents. A copy of O.P (KAT) No.4317 of 2013 is also brought to our notice to indicate that the petitioner was similarly placed as that of the employees therein.

4. The short question to be considered is whether the judgment calls for review on the grounds urged by the learned counsel for the review petitioner. As far as the findings regarding applicability of the judgment in W.A.No.2503/2005 and connected cases, the said findings cannot be challenged in the review. The only question is whether Annexures R1 and R2 seniority list prepared by the Government can have any effect on the judgment in the Writ

Appeal.

5. Annexure R1 dated 16/04/1999 is a select list for promotion to the post of Assistant Executive Engineer for the years 1997, 1998 and 1999. Petitioner claims that he was included in the said select list as Sl.No.38. Annexure R2 is the seniority list which is updated in the Digest published by the Kerala PWD Graduate Engineers' Association as on 31/05/1999. But the relevant factor to be noted is whether any promotions had been affected in terms of Government Order dated 09/02/1996. The only document available by which restructuring of the PWD Engineering Service has been done is Government Order dated 20/06/1998. In so far as the petitioners have not been promoted based on the said Government Order, no benefit can accrue to them. Annexures R1 and R2 have no relevance to consider whether the petitioners are entitled for any benefit based on the findings in the judgment in W.A.No.2503/2005.

6. We have, in fact, narrated the entire sequence of events which happened while the seven tier system was in

force. A Division Bench of this Court had granted an interim order dated 05/11/2001, by which the seven tier system was stayed until it was revoked by Government Order dated 17/10/2003. In fact, by the seven tier system, two additional grades were created namely Special Grade Executive Engineer and Special Grade Assistant Executive Engineer. The petitioner was not promoted to any such grade. Merely for the reason that seniority list had been prepared subsequent to the Government Order under which the seven tier system was introduced by itself will not give any right to the petitioner to claim the said benefit. That apart, when the seven tier system was withdrawn as per order dated 07/10/2003, in the absence of any challenge to the said Government Order, the petitioner cannot claim any benefit on the basis of an order which was revoked and the benefit of seven tier system was confined only to certain employees who had obtained orders from Court.

7. As far as the employees in O.P(KAT) No.4317 of 2013, the said judgment does not disclose any ratio which

could be relied upon. In the said case, the Division Bench relied upon the judgment in W.A.No.2503 of 2005 and had dismissed the original petition filed by the State. Petitioner submits that the said finding has to be made applicable to him also. In fact, none of the factual circumstances involved in the matter was considered. In so far as we have already decided the Writ Appeal after referring to the entire factual scenario including the fact that the petitioner was not promoted to the Special Grade created as per the seven tier system, no mandamus could be issued contrary to Government order dated 07/10/2003. Hence, we are of the view that no grounds are made out for interference and accordingly the review petition is dismissed.

(sd/-)
**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(sd/-)
(A.M.SHAFIQUE, JUDGE)

jsr

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