

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

RP.No. 137 of 2015

JUDGMENT DATED 05-01-2015 IN WP(C) 7964/2012

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REVIEW PETITIONER(S)/THIRD PARTIES:

- MATHEW P. LUIS, ASSISTANT ENGINEER (ELE.),
ELECTRICAL SECTION, K.S.E.B. LTD.,
NELLIKUNNU, KASARAGOD - 671 123.
2. ANILKUMAR P.R., ASSISTANT ENGINEER (ELE.),
ELECTRICAL SECTION, K.S.E.B. LTD.,
PUNJA, PALLAM, KOTTAYAM - 686 007.
3. GOPAN V.G., ASSISTANT ENGINEER (ELE.),
110 KV SUB STATION, K.S.E.B.LTD.,
PARUTHIPARA, THIRUVANANTHAPURAM - 695 004.
4. SANAL J., ASSISTANT ENGINEER (ELE.),
110 KV SUB STATION, K.S.E.B.LTD.,
PARUTHIPARA, THIRUVANANTHAPURAM - 695 004.
5. E.RAJAN, ASSISTANT ENGINEER (ELE.),
66 KV SUB STATION, K.S.E.B.LTD.,
66 KV SUB STATION, VATTIYURKAVU,
THIRUVANANTHAPURAM - 695 013.
6. VINOD D., ASSISTANT ENGINEER (ELE.),
110 KV SUB STATION, K.S.E.B.LTD.,
T.E.R.L.S., THUMBA, THIRUVANANTHAPURAM - 695 021.
7. SAILEN BOSE REGULAS B.J.,
ASSISTANT ENGINEER (ELE.),
ELECTRICAL SECTION, K.S.E.B.LTD.,
PERINGAMMALA, THIRUVANANTHAPURAM - 695 563.
8. S.SHAJI, ASSISTANT ENGINEER (ELE.),
LINE MAINTENANCE SECTION, K.S.E.B. LTD. EDAMON,
PUNALUR, KOLLAM - 691 329.
9. VINODKUMAR V., ASSISTANT ENGINEER (ELE.),
66KV SUB STATION, K.S.E.B LTD.,
VELI, THIRUVANANTHAPURAM - 695 021.

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10. JOTHISH J., ASSISTANT ENGINEER (ELE.),
66 KV SUB STATION, K.S.E.B. LTD.,
PATHIRAPPALLY, ALAPPUZHA - 688 521.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

RESPONDENT(S):

1. SAJEEV S., AGED 41 YEARS,
S/O.SURENDRAN P, WORKING AS SUB ENGINEER (ELECTRICAL),
KERALA STATE ELECTRICAL BOARD,
KOTTIYAM ELECTRICAL SECTION,
KOLLAM, RESIDING AT POIKAVILA VEEDU,
NALLILA P.O., KOLLAM - 691 515.
2. UDAYABHANU C., S/O.AYYAPPAN, AGED 46 YEARS,
WORKING AS SUB ENGINEER (ELECTRICAL),
KERALA STATE ELECTRICITY BOARD,
CONTROL ROOM, KOZHIKODE, RESIDING AT
CHOLAKKAL HOUSE, KOLATHARA P.O.,
KOZHIKODE 673 655.
3. BENNY KURIAKOSE, S/O.KURIAKOSE K.M.,
AGED 46 YEARS, WORKING AS SUB ENGINEER
(ELECTRICAL), ELECTRICAL SECTION, VELLAMUNDA,
KERALA STATE ELECTRICITY BOARD, WAYANAD,
MANATHAVADY P.O., WAYANAD - 670 645.
4. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
KERALA STATE ELECTRICITY BOARD,
VYDHYUTHI BHAVAN, THIRUVANANTHAPURAM - 695 001.
5. THE CHIEF ENGINEER (HRM),
KERALA STATE ELECTRICITY BOARD,
VYDHYUTHI BHAVAN, THIRUVANANTHAPURAM - 695 001.
6. JOSEPH T.J., WORKING AS SUB ENGINEER (ELECTRICAL),
KERALA STATE ELECTRICITY BOARD,
KARIMANAL L.P. ERECTION DIVISION,
THATTEKKANI P.O.L, IDUKKI - 685 606.
7. AJITH B.,WORKING AS SUB ENGINEER (ELECTRICAL),
KERALA STATE ELECTRICITY BOARD,
K.G.SUB DIVISION KAKKYAM, KOZHIKODE - 673 615.

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8. **venu T.K., WORKING AS SUB ENGINEER (ELECTRICAL),
KERALA STATE ELECTRICITY BOARD,
ELECTRICAL SECTION, PUDUKKAD, THRISSUR - 680 301.**

**R1-R3 BY ADVS. SRI.PRAVINDRAN (SR.)
SRI.K.N.SASIDHARAN NAIR
BY ADV. SRI.LEO GEORGE
R4 & R5 BY ADV. SRI.K.S.ANIL, SC, KSEB**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
07-10-2015 ALONG WITH RP. 161/2015 AND CONNECTED CASES,
THE COURT ON 12-11-2015, PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A1: TRUE COPY OF ORDER DTD.29.11.2011 ISSUED BY THE CHIEF ENGINEER (HRM), KERALA STATE ELECTRICITY BOARD.

ANNEXURE A2: TRUE COPY OF ORDER DTD.29.1.2011 ISSUED BY THE CHIEF ENGINEER (HRM), KERALA STATE ELECTRICITY BOARD.

ANNEXURE A3: TRUE COPY OF ORDER DTD.31.7.2010 ISSUED BY THE CHIEF ENGINEER (HRM), KERALA STATE ELECTRICITY BOARD.

ANNEXURE A4: TRUE COPY OF ORDER DTD.24.2.2014 ISSUED BY THE CHIEF ENGINEER (HRM), KERALA STATE ELECTRICITY BOARD.

ANNEXURE A5: TRUE COPY OF ORDER DTD.10.12.2002 ISSUED BY THE KERALA STATE ELECTRICITY BOARD.

ANNEXURE A6: TRUE COPY OF JUDGMENT DTD.2.6.2009 IN WA.NO.540/2008 OF THIS HON'BLE COURT.

ANNEXURE A6: TRUE COPY OF JUDGMENT DTD.11.1.1993 IN WA.NO.312/1989 OF THIS HON'BLE COURT REPORTED IN ALL INDIA SERVICE LAW JOURNAL.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J

R.P.Nos.137, 161, 248 and 253
of 2015 in WPC No.7964/2012

Dated this the 12th day of November, 2015

Order

Under challenge in these review petitions is the judgment of this Court dated 5.1.2015 in WPC No.7964/2012.

2. While R.P.Nos.137/2015, 161/2015 and 248/2015 are filed by the third parties to the writ petition, R.P.No.253/2015 is filed by the Kerala state Electricity Board which was the first respondent in the writ petition.

3. By the impugned judgment, this Court found that respondents 3 to 5 in the writ petition on account of lesser qualification are getting preference over the writ petitioners which is a clear violation of Article 14 of the Constitution of India. It was observed that junior certificate holders get promotion in preference to the diploma holders defeating the very purpose, for which the quota was fixed. Accordingly, the writ petition was

disposed of declaring that the provision in the note attached to Ext.P5 Rules prescribing the qualification and method of appointment to the post of Assistant Engineer (Electrical) formerly Junior Engineer (Electrical) in the service of the Kerala State Electricity Board to the effect that the ratio provided therein would be maintained on the total cadre strength is applicable only between direct recruits and promotees and the same is not intended to be and cannot be applied between diploma holders and certificate holders while effecting promotion. Accordingly, Ext.P6 was quashed and respondents 1 and 2 were directed to promote the first petitioner to the post of Assistant Engineer (Electrical). Time limit was also fixed to pass formal orders. It is against this observation and verdict, these revisions have been filed.

4. The writ petitioners point out that the respondent Board has adopted the provisions contained in the KS & SSR and has made applicable to the same to the service of the Board as per B.O.(F.B.)No.1664/2002 dated 10.12.2002. According to the petitioners, by application of

Note 3 to Rule 5 *de hors* Ext.P5 order, the ratio 3:2 between Diploma holders and certificate holders prescribed in Exts.P3 and P4 orders for promotion to the post of Assistant Engineer has to be applied to the cadre strength. They also point out that the law that the prescription of ratio between superior and inferior, qualification for promotion has to be applied to the cadre strength has been declared by this Court in the decision reported in ***Kerala Water Authority v Augustin*** (2001 (3) KLT 746).

5. According to the petitioners, there is an error apparent on the face of the judgment and therefore, the judgment is liable to be reviewed.

6. Arguments have been heard.

7. Though attractive arguments have been raised by both sides on the question of law involved, the learned senior counsel for the respondents (writ petitioners) made a frontal attack on the maintainability of the revision petitions. It was argued by the learned senior counsel that the remedy open to the petitioners is to prefer a

regular appeal and not to file these review petitions.

8. Mr.Elvin Peter, Mr.Sebastian Paul and Mr.Rajith, the learned counsel appearing for the third party review petitioners, per contra, relied on the decision of a Division Bench of this Court in ***Ramachandran v Food Corporation of India*** (1989(2) KLT 112). They would point out that the persons were necessary parties to the writ petition and the impugned decision has been rendered without impleading them as necessary parties. Therefore, according to them, the proper course to be adopted is not to seek contrary directions at the hands of this Court under Article 226, but to make an appropriate petition to reopen the earlier judgment on the ground that the petitioners were necessary parties and that the adverse decision rendered affects them and to get themselves impleaded as parties and get the judgment rendered behind their back reviewed.

9. In answer to the said submission, the learned senior counsel appearing for the respondents would submit that a publication was taken at the instance of the

petitioners under Rule 148 of the Kerala High Court Rules and therefore, the review petitioners are bound by the same. The only remedy available to them is to prefer an appeal before the appropriate forum; so submitted the learned senior counsel.

10. However, the learned counsel for the petitioners relied on the decision of the Apex Court in **Siraj v High Court of Kerala** reported in (2006(2) KLT 923) to substantiate their argument that the petitioners ought to have been impleaded as they were necessary parties and an omnibus method of making a publication under Rule 148 of the Kerala High Court Rules is insufficient. However, a clear reading of paragraph-62 of the judgment would makes the position clear. Paragraph-62 of the said judgment reads as follows:

There are only a specified definite number of candidates who had to be impleaded, namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to R.148 of the Kerala High Court Rules" (emphasis added).

11. It is clear that in that case, the number of

candidates affected were ascertainable and therefore, it was mandatory on the part of the writ petitioners therein to implead all those who are affected. However, in these cases, the number of persons who are affected by the judgment were not known to the respondents (writ petitioners) and therefore, they resorted to the method of publication. Therefore, the decision in *Siraj's case* cannot be quoted as an authority for the proposition that the affected parties should be impleaded in all cases irrespective of the number of affected parties. As the publication envisaged has been affected by the respondents who were the writ petitioners and the petitioners have not responded to the said publication, the only option before the petitioners is to approach the appellate forum with a regular appeal. Therefore, I am of the view that it is not necessary to go in the questions of law argued before me, so that the petitioners can re-agitate the same before the competent forum.

12. The revision maintained by the Electricity Board is not maintainable for the reason that it is nothing, but an

appeal in disguise which cannot be entertained at all.

In the result, review petitions are dismissed. However, it is hereby made clear that the present state of affairs shall continue for one month from today, so that the petitioners can approach the appellate forum within that time, if they are aggrieved.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/

true copy

P.S.TO JUDGE