

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WA.No. 1874 of 2012 () IN WP(C).36709/2008

AGAINST THE JUDGMENT IN WP(C) 36709/2008 of HIGH COURT OF KERALA DATED
14-09-2012

APPELLANTS/NOT PARTIES IN WPC.:

1. MANIKANDAN M.A.
SAYOOJYAM, MADAPPALLY, MUKUNDAPURAM P.O.
CHAVARA, KOLLAM DISTRICT.

2. SHABI B.S.
S/O.LATE A.BADARUDEEN, SHABI MANZIL, MARAVAKUZHI
THATTATHUMALA P.O., THIRUVANANTHAPURAM-695614.

BY ADVS.SRI.B.RADHAKRISHNA PILLAI
SMT.S.AMBIKA DEVI

RESPONDENTS/PETITIONERS 1-5 & RESPONDENTS 2 AND 1 & 3 AND 4 &
ADDITIONAL RESPONDENTS 5 TO 58:

1. SURESH KUMAR B
KIZHAKKUMKARA PUTHEN VEEDU, KATHIKKAMPARA, MUTHIYACODE
MARANGADU P.O., ARYANAD, THIRUVNANTHAPURAM 695004.

2. ANEESH G.S.
S/O. SREEDHARAN PILLAI S, CHOTHI KADUVAIL
ATTINGAL P.O., THIRUVANANTHAPURAM 695 101.

3. JAYACHANDRAN K.
S/O. KRISHNANKUTTY CHETTIAR, DESINGANADU NAGAR 127
KAMBIPURAYIDOM, ASRAMAM P.O., KOLLAM 691 002.

4. ABDUL NIZAR T.,
S/O. ISMAIL KUNJU, VAYALISSERIL, MARU SOUTH
ALUMKADAVU P.O., KARUNAGAPPALLY - 690 578.

5. KISHORE A.S.,
S/O. K.ARJUNAN, KISHOR BHAVAN, KUREEPUZHA P.O.
KOLLAM - 691 604.

6. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF WATER RESOURCES, SECRETARIAT
THIRUVANANTHAPURAM-695001.

7. THE KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY
KERALA PUBLIC SERVICE COMMISSION, PATTOM
THIRUVANANTHAPURAM-695004.

8. THE MANAGING DIRECTOR
KERALA WATER AUTHORITY, JALABHAVAN
THIRUVANANTHAPURAM-695542.

9. GIRIJA K.
PANDANCODE HOUSE, ANCHUMOORTHY P.O.
PALAKKAD DISTRICT - 678682.

10. RAJESH K.M.,
AGED 27 YEARS, S/O.K.M.MUKUNDAN, KALATHRAVELI HOUSE
PERUMPALAM P.O., ALAPPUZHA - 688570.

11. SHIJO K.B.,
AGED 27 YEARS, S/O.K.K.BALAKRISHNAN, KALATHIPARAMBIL
THEVARKKAD, VARAPPUZHA P.O., ERNAKULAM-683517.

12. MUHAMMED NIYAS M.H.
MURAYINCHIRA HOUSE, PATTIMATTOM P.O.
ERNAKULAM - 686351.

13. SUNESHKUMAR M.P.
"SINDHU NIVAS", PATHIRIYAL P.O., MANJERI-3 (VIA)
MALAPPURAM DISTRICT - 676505.

14. PRASAL C.,
THADATHIL, MAYYANNUR P.O., VADAKARA
KOZHIKODE-673001.

15. SHIBU P.,
PALLIYIL HOUSE, POOKOTTUR P.O.
MALAPPURAM DISTRICT-676505.

16. SHAFI A.S.
HILAL MANZIL, NEDUMPANA P.O., NEDUMPANA
KOLLAM DISTRICT - 691001.

17. ABDUL SAMEEL M.
MOOCHITHODAN HOUSE, KARAPARAMBA, PULPATTA P.O.
PIN-676126.

18. SUNIL KUMAR P.K.
PARACKAL HOUSE, MOOTHEDAM P.O., EDAKKARA
MALAPPURAM DISTRICT - 676505.

19. ABHILASH S.
VARKALAVILA VEEDU, CHEERANCAVU, EZHUKONE P.O.
KOLLAM DISTRICT - 691001.
20. JAYAN JOSE,
VADAKKAKAT HOUSE, T.SQUARE ROAD, PACHALAM P.O.
KOCHI-12.
21. JOSEPH C.V.
CHACKALAMALAYIL HOUSE, MANTHONDUKUNNU
SULTHAN BATHERY P.O., WAYANAD DISTRICT - 673592.
22. SAJITH V.C.
VEPPANCHERI HOUSE, VATAYAM POST, KOZHIKODE-673518.
23. BINSHU K.P.
KAKKANADAN PARAMBATH HOUSE, PAYANDOOOR P.O.
NANMINDA (VIA), KOZHIKODE, PIN-673001.
24. SUJITH V.K.
VAZHAYIL HOUSE, PUDUPANAM P.O., VATAKARA
KOZHIKODE-673001.
25. SURABIL K.
KARIMBAYIL VILASAM, PUTHIYARA P.O., KOZHIKODE
PIN-673001.
26. JAGADEESH G.,
KRISHNA VILASAM, POOKKOOTUMPADAM P.O.
NILAMBUR-679329.
27. SAJUMON N.,
NADAKKAVIL HOUSE, THOZHUVANNUR, VIA. VALLANCHERRY
MALAPPURAM DISTRICT - 676505.
28. ANEESHKUMAR L.
NEDUMBALAYIL HOUSE, AYANIVELIKULANGARA
S.V.MARKET P.O., KARUNAGAPPALLY
KOLLAM DISTRICT - 691001.
29. RAJESH S
PUTHENVEETIL THARAYIL VENGARA THODIYOOR NORTH P.O
KARUNAGAPPALLY KOLLAM 691001
30. ABDUL GAFOOR
MATHOAT HOUSE MANIPURAM P.O KODUVALLY
31. RAJESH KUMAR
R.R NIVAS PUNUKANNOOR PERUMPUZHA KUNDARA KOLLAM 691001
32. RENJITH V
CHARUVILA PUTHENVEEDU EDAKADAM P.O EZHUKONE, KOLLAM 691001

33. LALJI G
KUTTIYIL HOUSE PUTHOOR P.O KOLLAM 691 001

34. IBRAHIM K.T
KAIKULAM THODIKAYIL HOUSE P.O MAVOOR PARAMMEL KOZHIKODE 673 001

35. JITHESH G.M
JEE NILAYAM VILLIAPPALLY P.O VADAKARA KOZHIKODE 673 001

36. SHABEER ALI MS
EDAYILE VEEDU NETTAYAM P.O KOLLAM 691001

37. NISARUDEEN K
KUNNAKKALAM HOUSE CHENGARERI MANNARGHAT PALAKKAD 678 001

38. ANEESH V.K
VATTAPPARAMBIL HOUSE OALANAD VARAPPUZHA ERNAKULAM DISTRICT
683517

39. ANU B
ARATHIL PUTHEN VEEDU MYLAKKADU P.O KOTTIYAM KOLLAM 691571

40. PRINCE FRANCIS
PANCHAKUNNEL HOUSE PALA P.O 12TH MILE PALA, KOTTAYAM 686001

41. SYAM K.V
KANIYARKUDY HOUSE POOLANY MELUR P.O THRISSUR 680001

42. SUNIL KUMAR
SAYANTHANAM NOCHIMA NAD P.O ALUVA 683 101

43. THE DIRECTOR OF TECHNICAL EDUCATION
THIRUVANANTHAPURAM 695001

44. JAYARAJ K
JAYARAJ NIVAS PAZHAVEEDU P.O ALAPPUZHA 688001

45. ASSIS A.M
APPAKKAL HOUSE CHERUVATTOOR P.O KOTHAMANGALAM 686691

46. K.L VISWANATHAN
KESUPARAMBIL CHIRACKAKAM VARAPUZHA 683517

47. CYRIL KUMAR
KOCHUVELI KAYIPPURAM MUHAMMA P.O ALAPPUZHA 688001

48. TONYLAL T, T AND C BUILDING
UDIYANKULLANGARA AMARAVILA P.O TVM 22

49. SHAJA V.A
VELIYIL HOUSE CMC 7 CHERTHALA PO 688056

50. VIJAYAKUMAR D.A.
AMBALAVILAYIL VEEDU KUNNAM P.O MAVELIKKARA 690101

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51. SUMESH P
DEVASWOMNIKARTHIL THATHAMPALLY P.O ALAPPUZHA 688001

52. SATHEESH KUMAR EMPRANTHIRI

OPERATOR P.H DIVISION KERALA WATER AUTHORITY
THRISSUR (RESIDING AT THEKEPUTHENMADAM
PERINJANAM MOONEPEEEDIKA 680686)

53. SANOOJ S
OPERATOR P.H DIVISION KERALA WATER AUTHORITY THIRUVALLA
(RESIDING AT THANNIMOOLAMELATHIL VETTUVILA PERUNADU P.O KOLLAM
691001

54. JOSEPH C.V
OPERATOR P.H DIVISION KERALA WATER AUTHORITY SULTHAN BATHERY
WAYANNAD (RESIDING AT CHAKAMALAYIL HOUSE
MATHONDIKUNNU SULTHAN BATHERY P.O WAYANAD 673 592

55. REXIN P.S
OPERATOR P.H DIVISION KERALA WATER AUTHORITY KOLLAM (RESIDING
AT ARADHANA KOTTIYAM P.O KOLLAM 691001

56. DEEPU B
S/O.R BABU OPERATOR KERALA WATER AUTHORITY
ATTINGAL DIVISION, VARKALA
SUB DIVISION SECTION II THIRUVANANTHAPURAM 695001

57. SHIJU MAJEED P
S/O. P.A ABDUL MAJEED OPERATOR KERALA WATER AUTHORITY
IRINJALAKUDA DIVISION
CHALAKUDY SUB DIVISION CHALAKUDY SECTION
THRISSUR DISTRICT 680001

58. BIJU S
OPERATOR KERALA WATER AUTHORITY
P H DIVISION KOTTIYAM KOLLAM DISTRICT 691 001

* R59. PRAVEEN K, S/o. P.M.KRISHNAN
AMBALAPARAMBIL HOUSE
PANNIYAMNPADAM, MUTTIKULANGARA P O
PALAKKAD 678 594

* R60. RAVIKUMAR V, S/o.VELAYUDHAN
THOTTENKAR HOUSE, PALLASSANA POST
PALAKKAD - 678 505

R8 BY ADV. SRI.JOSEPH JOHN, SC, KERALA WATER AUTHORITY
RADDL 59 BY ADV. SRI.KALEESWARAM RAJ
BY SRI.N.N.SUGUNAPALAN
BY SRI.T.NAVEEN
BY SRI.V.RAJENDRAN
BY SRI.S.P.ARAVINDAKSHAN PILLAY
BY GOVERNMENT PLEADER: SRI P.P. PADMALAYAN
BY SRI.K.RAMAKUMAR (SR.)

(* R59 AND * R60 ARE IMPEADED AS ADDITIONAL RESPONDENTS 59 AND 60
VIDE ORDER DATED 3/12/12 IN I.A.945/12)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04-08-2015
ALONG WITH W.A.NO.2193/2012, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1 : THE PHOTOCOPY OF THE RELEVANT PAGES OF THE RANKED LIST
(PRODUCED AS EXT.P13)

ANNEXURE A2 : THE PHOTOCOPY OF THE APPOINTMENT CHART SHOWING the UP
TO DATE DETAILS OF APPOINTMENT OF OPERATORS IN KERALA WATER AUTHORITY
FROM the RANKED LIST

ANNEXURE A3 : THE PHOTOCOPY OF the APPOINTMENT CHART DATED
23.08.2012 SHOWING THE LAST PERSON ADVISED AS RANK NO.1096

ANNEXURE A4 : THE TRUE PHOTOCOPY OF THE JUDGMENT OF THIS HONOURABLE
COURT IN W.P.C.7688/2007 DATED 16th AUGUST 2007

ANNEXURE A5 : THE TRUECOPY OF the JUDGMENT OF THIS HONOURABLE COURT
DATED 01.10.2007 IN W.A.1230/2007

ANNEXURE A6 : THE TRUE PHOTOCOPY OF THE RELEVANT PAGES OF THE
MINUTES OF THE EQUIVALENCY COMMITTEE MEETING OBTAINED FROM STATE PUBLIC
INFORMATION OFFICER DATED 31.07.2012.

ANNEXURE A7: THE TRUE PHOTOCOPY OF THE RELEVANT PAGES OF the
PROSPECTUS FOR ADMISSION TO DIPLOMA PROGRAMMES (EVENING) UNDER THE
DIRECTORATE OF THE TECHNICAL EDUCATION FOR THE YEAR 2012-2013

RESPONDENTS' EXHIBITS:NIL

True Copy /

P.A to Judge

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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W.A.Nos.1874 and 2193 of 2012

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Dated this the 4th day of August, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Heard the learned counsel for the appellants in both the appeals and the learned counsel for the contesting respondents who are the petitioners in the writ petition from which these appeals arise.

2. W.A.No.1874 of 2012 is filed by two candidates included in the rank list which was challenged in the writ petition that led to the impugned judgment. They plead that they are adversely affected by the judgment impugned, though they were not parties to the writ petition. They have been granted leave to appeal against the judgment in the writ petition.

3. W.A.No.2193 of 2012 is by the Kerala Public Service Commission challenging the judgment in so far as the principles attempted to be settled through the impugned judgment are pleaded as erroneous.

4. The Public Service Commission notified vacancies for selection to the category of Operator in the Kerala Water Authority, hereinafter referred to as 'KWA'. The service in the KWA is governed by the provisions of the Kerala Public Health Engineering

Service Rules in so far as State service categories are concerned and Kerala Public Health Engineering Subordinate Service Rules which relate to the subordinate service. Those rules have been adopted by the KWA.

5. The qualification prescribed for the post in question is as follows:

- “ (1) Pass in S.S.L.C Examination or equivalent qualification.
- (2) National Trade Certificate in the Trade of Mechanic (Motor Vehicle/Electrician)”

The PSC notified the aforesaid qualification in its notification. In the selection process, it also considered candidates who had Diploma or Degree in some branches of Engineering. When the short list was prepared, a writ petition was filed challenging the action of PSC. After the publication of the rank list, the writ petition was amended, however without impleading all the selected candidates, in particular, those who have instituted W.A.No.1874 of 2012. The learned single Judge concluded that Diploma or Degree cannot be treated as qualifications which are higher qualifications to the trade certificate which was prescribed and there was no way for the PSC to go by a principle of equivalence in bringing persons also within the field of choice. The writ petition was so ordered

however directing that appointments already made would not be disturbed and that the declaration would affect the appointments to be made in future from the rank list.

6. At the outset, we may note that it is trite law that without impleading necessary parties to a writ petition, such a question could not have been decided, particularly, when rights of persons in W.A.No.1874 of 2012 would stand abridged without being heard. The appellants in that case are included in the rank list. Their identity was certain. Their eligibility to be appointed was found by the PSC and they had therefore the vested right to be offered appointments from the rank list. So much so, the impugned judgment cannot, in any manner, affect their right to be appointed in terms of the rank list. The judgment impugned in W.A.No.1874 of 2012 does not affect their such eligibility and the said judgment shall not be operated in any manner adverse to the interest of the appellants in W.A.No.1874 of 2012. It is so ordered.

7. Onto the larger question raised by the PSC and the appellants in W.A.No.1874 of 2012, vis-a-vis, the contentions of the writ petitioners who succeeded before the learned single Judge, we need to note that the different categories in subordinate service stand with prescribed qualifications of National Trade Certificate,

Diploma and Degree. Coming to the State service, we see that the different categories under that service stand with qualifications of Diploma and Degree being prescribed. We also see a provision whereby, there is proportionate advancement by way of promotion or by transfer appointments from lower categories to higher categories until those in the subordinate service reach the State service. Taking into consideration the structure of the hierarchy in both the services together and the different qualifications prescribed, we cannot, but, apply the precedent laid down by the Honourable Supreme Court of India in **Jyoti K.K. & Ors. v. Kerala Public Service Commission & Ors. [JT 2002 (Suppl.1) SC 85]** which laid down, among other things, that if a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. We are not persuaded to apply the ratio of the decisions in **Janardhanan K & Others v. State of Kerala & Others [2008(3) KHC 299]** and **Abdul Salam v. Executive Officer [2011(3) KLT 204]** since the issues dealt with therein are not appropriate to be applied to the case in hand, while the precedential value of **Jyoti** (supra) runs to support the case of the appellants.

8. We may also at this juncture refer to the affidavit filed on behalf of the additional 38th respondent before the learned single Judge. The Director of Technical Education was required during the course of consideration of the writ petition to file an affidavit on issues involved in the case. That direction was issued after suo motu impleading the Director of Technical Education as an additional respondent. The Deputy Director, Curriculum Development Centre filed a detailed affidavit before the learned single Judge on behalf of the Director stating, among other things, as follows:

“ 2. This Honourable Court on 14th January 2011, directed the additional 38th respondent who was suo motu impleaded in the writ petition(C) to file an affidavit on the issues involved in the case.

3. Issues in the writ petition pursuant to the interim order, were placed before the Equivalence Committee meeting held on 03.02.2011 at the Directorate of Technical Education, Thiruvananthapuram. The Committee includes:-

a. Prof.C.Sam, Senior Joint Director (Engineering College Stream), Directorate of Technical Education.

- b. Sri.K.P.Salim Kumar, Senior Joint Director (Polytechnic Stream) Directorate of Technical Education.
- c. Sri.N.K.Rajan, Joint Director, Curriculum Development Centre, Kalamassery.
- d. Sri.N.Madhu, Deputy Director (Placement & Training) Directorate of Technical Education.
- e. Sri.K.P.Ajaya Kumar, Deputy Director (General), Directorate of Technical Education
- f. Sri.Saji T., Deputy Director, Curriculum Development Centre, Kalamassery
- g. Sri.L Rajendran, Project Officer, Directorate of Technical Education.

The prescribed qualifications for the post is National Trade Certificate in Mechanic (Motor Vehicle/Electrician). This Honourable Court has directed the Director of Technical Education to give expert opinion whether the alternate qualifications suggested pre-suppose the acquisition of the prescribed qualification, National Trade Certificate in Mechanic (motor Vehicle/Electrician). The committee discussed the issue in the Academic perspective and came to the following conclusion considering the Academic Level of these courses and the nature of duties of the Operator at Water Authority.

The following decisions were made regarding the acceptance of qualifications.

- a. Diploma/Degree in Electrical Engineering of Electrical and Electronics Engineering are Higher qualification which pre-supposes the acquisition of National Trade Certificate in Mechanic (Electrician).
- b. Diploma/Degree in Mechanical Engineering or Automobile Engineering are Higher qualification which pre-supposes the acquisition of National Trade Certificate in Mechanic (Motor Vehicle).
- c. National Trade Certificate in Diesel Mechanic can be considered equivalent to the National Trade Certificate in Mechanic (Motor Vehicle) for appointment as Operator in Water Authority.
- d. National Trade Certificate in Industrial Electrician can be considered equivalent to the National Trade Certificate in Mechanic (Electrician) for appointment as Operator in Water Authority.

4. In view of the above decision taken by the Committee, it is humbly submitted that, the higher qualifications mentioned in (a) and (b) above pre-suppose the acquisition of basic qualification prescribed for the post. The qualifications mentioned in (c) and (d) are equivalent to qualifications for the same post.....”

The aforesaid is the view of a competent body dealing with technical education. The expertise of those persons who constituted the committee which decided the matter is indisputable. Under such circumstances, we do not find our way to disagree with the stand taken by the Director of Technical Education with the assistance of the committee, after having adverted to the relevant facts and factors. In this way also, we do not find our way to sustain the judgment of the learned single Judge.

9. For the aforesaid reasons, these writ appeals succeed.

In the result, these writ appeals are allowed setting aside the impugned judgment, however, preserving the appointment of any among the writ petitioners, if already made.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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