

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WA.No. 243 of 2015
IN
WP(C).27481/2014

AGAINST THE ORDER IN WP(C) 27481/2014 of HIGH COURT OF KERALA DATED
13-11-2014

APPELLANTS/RESPONDENTS 1 TO 3:

1. THE CHARIMAN,
KERALA STATE ELECTRICITY BOARD, VAIDYUTHI BHAVANAM
THIRUVANANTHAPURAM - 695 001.
2. THE CHIEF ENGINEER (HRM)
KERALA STATE ELECTRICITY BOARD, VAIDYUTHI BHAVANAM
THIRUVANANTHAPURAM - 695 001.
3. THE SECRETARY (ADMINISTRATION)
KERALA STATE ELECTRICITY BOARD, VAIDYUTHI BHAVANAM
THIRUVANANTHAPURAM - 695 001.

BY ADV. SRI.RAJU JOSEPH (SR.)

RESPONDENTS/PETITIONERS & RESPONDENTS 4&5:

1. A SURESH
S/O.SWAMI, ALAMPET HOUSE, KADALUNDI P.O.
CALICUT - 673 302.
2. K.C. SHANOJ, AGED 35 YEARS
S/O.RAGHAVAN, KALLUNDICHALIL, PUNNOOCHERPALAM P.O.
CALICUT - 673 585.
3. K.K. BIJU, AGED 36 YEARS
S/O.DHAMODHARAN, KULANGARATH, KUNILIL
PUTHOOR P.O., VADAKARA, CALICUT - 673 014.
4. M. SASIKUMAR, AGED 50 YEARS
S/O.KUNHIKANNAN, "VIJAYALAM", IYYAD P.O.
UNNIKULAM, CALICUT - 673 574.
5. P.RUPESH, AGED 37 YEARS
S/O.CHANDRAMAULI, "GRACE VILLA", RAMANATTUKARA P.O.
CALICUT - 673 633.

6. PETERKUTTY T., AGED 44 YEARS
S/O.THOMAS LUIS, "ANAKHAPURI", MAKKADA P.O.
KAKKODE, CALICUT - 673 617.
 7. K.K. ABDUL RAUF, AGED 42 YEARS
S/O.ABDUL KHADAR, KIZHAKKAKAPPADAM KANDI
CHELANNUR P.O., CALICUT - 673 616.
 8. V. ASOKAN, AGED 49 YEARS
S/O.KRISHNAN, VALLIKKAD THACHADI VAYAL, WEST HILL POST
CALICUT - 673 005.
 9. P.M. MUJEEB RAHMAN, AGED 43 YEARS
S/O.MOIDEEN, "AMINABEE NILAYAM", MORIKKARA P.O.
KAKKODY, CALICUT - 673 611
 10. T.P. ABDUL RAHMAN, AGED 40 YEARS
S/O.ASHAN, "THEKKEPARAYIL", PARANOOR P.O.
NARIKUNNI, CALICUT - 673 585.
 11. THE DEPUTY LABOUR COMMISSIONER
THIRUVANANTHAPURAM - 695 001.
 12. THE ADDITIONAL LABOUR COMMISSIONER
THIRUVANANTHAPURAM - 695 001
- R1-R10 BY ADV. SRI.U.BALAGANGADHARAN
R11 & 12 BY GOVERNMENT PLEADER SRI P.M. SANEER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-06-2015,
ALONG WITH WA. 8/2012, WA. 9/2012, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

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**W.A. No. 243 of 2015 &
W.A. Nos. 8 & 9 of 2012**

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Dated this the 9th day of June, 2015

JUDGMENT

P.R. Ramachandra Menon,J.

The interim order passed by the learned single Judge in W.P.(C) No.27481 of 2014 on 13.11.2014, directing the respondents to give appointment to the writ petitioners on a provisional basis pursuant to the ongoing steps with reference to the finalisation of the award passed by the Industrial Tribunal, Palakkad, granting regularisation is under challenge at the instance of the Board on various grounds. Pleadings and proceedings are referred to, with

reference to W.A. No. 243 of 2015.

2. Heard Mr. Raju Joseph, the learned senior counsel appearing for the appellants in W.A.No.243 of 2015, learned counsel appearing for the appellants in W.A.Nos. 8 & 9 of 2012, learned counsel for Respondents 1 to 10 in W.A. No.243 of 2015, learned Standing Counsel for the PSC as also the learned Government Pleader. We have also heard the learned counsel appearing for respodents 1 to 10 in W.A. No. 9 of 2012.

3. The sequence of events revealed from the pleadings and materials on record shows that, the 'petty contractors' and 'contract line workers' engaged by the Electricity Board sought for regularization of service in the Electricity Board, contending that they were working continuously for several years. The industrial dispute raised in this regard was referred by the Government, leading to the proceedings before the Industrial Tribunal, Palakkad by way of I.D. No.

27 of 2002. On culminating the proceedings, the Tribunal passed an Award on 15.12.2004 directing regularization of service of the employees who had worked for 1200 days or more. So as to facilitate such exercise, it was also stipulated in the Award, that 25% of the existing vacancies as on the date of the Award and the vacancies which were likely to occur within a span of 'five' years thereafter, shall be earmarked to be filled up by absorbing the workers as aforesaid. The modality to be pursued with regard to the necessity to issue notice, the need to submit application, the preparation of list by the authority/Labour department etc. were also dealt with in the Award. It is pointed out that the said process is a time consuming one and that steps are going on.

4. The Award passed by the Tribunal as aforesaid was sought to be challenged by the Board by filing W.P.(C) No. 28836 of 2005, wherein interference was declined.

However, a rider/clarification was added to the effect that the field of selection shall be confined with reference to **Exts.W23 and W24 lists** appended to the Award. This led to two appeals, such as W.A. No.615 of 2008 filed by the Union and W.A.No.627 of 2008 filed by the Board. The appeal filed by the Board was disposed of on 10.07.2008, observing that the field of choice need not be confined to Exts.W23 and W24 lists, whereas in the case of W.A. No.615 of 2008, the direction was to confine the selection to the persons named in the aforesaid two lists. The decision in the appeals, though was challenged before the Apex Court, no interference was made and the S.L.Ps. were dismissed.

5. In the course of further proceedings, some other 'petty contractors' filed W.P.(C) No.20264 of 2010 contending that the matter was being simply protracted and the Award was not yet implemented. The said writ petition was disposed of with a direction to prepare seniority list with

reference to Exts.W23 and W24, which was sought to be challenged by some persons, who were not parties to the writ petition, by filing W.A. No.1618 of 2011.

6. It was at this point of time, that the material contradiction between the two verdicts passed by the two different Benches of this Court in W.A.No.615 of 2008 and W.A.No.627 of 2008 came to the notice. This led to reference of the matter to a Full Bench, so as to solve the stalemate. An interim order was also passed by the Bench which made the reference, to the effect that appointment shall not be confined to Exts.W23 and W24. While so, a preliminary list was prepared by the Deputy Labour Commissioner confining the field of choice with reference to Exts.W23 and W24, which was under challenge in W.P.(C) No.22180 of 2011. The preliminary list was set aside as per judgment dated 1.11.2011, leading to filing of W.A. No.8 of 2012. In view of similar sequence and outcome, some other

Writ Appeals were also filed as in the case of W.A. No.9 of 2012 and all these matters were heard along with W.A. No.1618 of 2011 by a Full Bench, which passed the final verdict on 14.09.2012, answering the reference to the effect that the zone of consideration need not be confined to Exts.W23 and W24.

Some of the aggrieved parties as well as the Trade Union have filed S.LPs. before the Apex Court. The SLPs.have been admitted and they have been numbered as Civil Appeal Nos.320 of 2013 and 1505 of 2013, which are still pending consideration. The writ petitioners herein had approached this Court earlier, by filing W.P.(C) No. 4536 of 2013, so as to cause the representation preferred by them for redressal of their grievances to be cosidered and disposed of, which was ordered as per Ext.P7 judgment dated 18.06.2014. Pursuant to the same, the matter was considered by the Board and passed Ext.P8 order, the crux

of which reads as follows:

“In view of the above, it is decided to take up the matter again with the Deputy Labour Commissioner and Additional Labour Commissioner by way of a D.O.letter for preparing the final seniority list in accordance with the orders issued by the respective courts since the list already prepared doesn't satisfy the statutory requirements regarding communal reservation/rotation. On receipt of the same, KSEB Limited shall take immediate and appropriate decision to finalise the recruitment procedure, subject to the decision that may be taken by the Hon'ble High Court and Supreme Court.

The representations filed along with the WP(C) No.4536/2014 are disposed of accordingly.”

8. Since no tangible benefit has been extended to the writ petitioners despite the long lapse of time, they approached this Court again by filing of the present writ petition. Instructions were called for. Later, finding that

the eligibility having already been declared by virtue of the Award passed by the Labour Court, which has become final, an interim order was passed to appoint the petitioners on a provisional basis, which made the Board to challenge it by way of the present writ appeal, i.e. W.A. No. 243 of 2015. The other writ appeals (W.A. Nos. 8 and 9 of 2012) are before this Court, pursuant to the orders passed by the Full Bench answering the reference, to have the merits considered and discussed as raised in the connected appeal, W.A. No. 1618 of 2011, preferred by those parties, who were not parties to the writ petition. It is in the said circumstances, that all these matters are taken up and heard together.

9. Learned Senior Counsel appearing for the Board submits that the writ petitioners have obtained an undue advantage as per the interim order, to have them appointed on a provisional basis, in so far as they admittedly stand on

a much lower pedestal, having been placed somewhere after the serial No.900 in the 'preliminary list' of candidates, which, in fact, has already been set aside by this Court. There are more meritorious candidates who have obtained placement much above the writ petitioners and as such, the interim order directing provisional appointment of the writ petitioners, before granting such relief to more eligible persons standing in the queue is liable to be intercepted. It is also pointed out that, various procedural formalities have to be completed in tune with the declaration made by the Full Bench of this Court while answering the reference and that steps are going on war footing. The concerned labour authority has to identify the candidates, prepare the select list and thereafter the same has to be forwarded to the P.S.C., who in turn has to conduct necessary test and verification of documents, so as to certify whether the candidates do satisfy all the requirements, also following the

rules for communal reservation/rotation. The list has to be forwarded to the Board by the PSC after their approval and only thereafter, can the Board give appointment to the eligible candidates. That apart, the matter has not become final in view of the pendency of Civil Appeal Nos.320 of 2013 and 1505 of 2013 before the Apex Court.

10. When the matter came up for consideration before this Court on 10.2.2015, an interim stay was granted for a period of one month, which was extended subsequently on 10.3.2015. After hearing both the sides, this Court finds that the procedural formalities have to be completed by the Competent authority, Labour department as also by the PSC in tune with the declaration and directions already given by the Full Bench, unless the same is varied by the Apex Court in the Civil Appeals as mentioned above. It is also brought to the notice of this Court that several writ petitions are pending, claiming similar relief as sought for by the writ

petitioners in the instant case, and all these matters are listed before the concerned Bench, as per roster.

11. The learned Government Pleader further submits that the Single Bench before whom the writ petitions are pending, has granted time till 20.6.2015, to complete the steps and to prepare the list. It is stated that steps are going on war footing and that some more time is necessary to complete the formalities, adding that steps are being pursued to move the Single Bench for granting extension of time.

12. The only question to be considered is, whether any variation of the interim order passed by this Court on 10.2.2015 is required at this stage, which stands answered in the negative. In view of the sequence of events mentioned above, all these appeals are disposed of, making the interim order of stay granted by this Court on 10.2.2015 absolute, with liberty to the parties concerned to move the

matter before the Single Bench where the concerned writ petitions are pending and to have the proceedings taken to the logical conclusion at the earliest. If any of the parties in the appeals is not represented in the pending proceedings, it is open for them to file appropriate proceedings in accordance with law, to get impleaded and contest the matter.

13. Before parting with the case, this Court finds it fit and proper to direct that the concerned authority of the Labour Department, while preparing the 'List' of the eligible candidates, shall also show **the place of origin, i.e. whether they are from Ext.W23 list/Ext.W24 list or such other source**, so as to identify the candidates concerned and mark it under a separate column. This is to facilitate the further course of action easy, if the matter pending before the Supreme Court gets decided in favour of the appellants therein. If the verdict passed by the Full

Bench is intercepted and the zone of consideration is confined to Ext.W23/W24 list, the others shown in the list to be prepared by the authorities of the Labour Department as aforesaid can easily be identified and deleted and the remaining candidates will get a vertical elevation. This will help to save time in the matter of finalization of the proceedings and in giving regularization as already ordered.

The writ appeals are disposed of accordingly.

Sd/-

P.R. RAMACHANDRA MENON
JUDGE

Sd/-

BABU MATHEW P. JOSEPH
JUDGE

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True copy

P.S. (Hr.Gr.)To Judge