

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WA.No. 1004 of 2014 () IN WP(C).30122/2012

AGAINST THE JUDGMENT IN WP(C) 30122/2012 of HIGH COURT OF KERALA
DATED 22-05-2014

APPELLANT/PETITIONER:

P.AJAYAKUMAR,
OVERSEER (ELECTRICAL), KERALA STATE ELECTRICITY BOARD
ELECTRICAL SECTION, AZHIYOOR P.O, AZHIYOOR
RESIDING AT KRISHNA KRIPA, VALLIKULANGARA
ONCHIYAM P.O, KOZHIKODE DISTRICT

BY ADV. SRI.P.M.PAREETH

RESPONDENTS/RESPONDENTS:

1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VIDYUTHI BHAVANAM
PATTOM, THIRUVANANTHAPURAM 695001
2. THE CHIEF ENGINEER (HRM),
KERALA STATE ELECTRICITY BOARD, VIDYUTHI BHAVANAM
PATTOM, THIRUVANANTHAPURAM 695001
3. EXECUTIVE ENGINEER,
ELECTRICAL DIVISION, KSEB, VADAKARA
KOZHIKODE DISTRICT 673020
4. NATIONAL COUNCIL FOR VOCATIONAL TRAINING,
REPRESENTED BY ITS SECRETARY
DIRECTORATE GENERAL OF EMPLOYMENT AND TRAINING
SHRAM SHAKTHI BHAVAN, 2 & 4 RAJI AMRG
NEW DELHI 110001
5. REGIONAL DIRECTOR,
REGIONAL DIRECTORATE OF APPRENTICESHIP TRAINING
SOUTHERN REGION, GUINDY, CHENNAI 600032
6. THE CENTRE FOR TRADE TESTING AND CERTIFICATION OF SKILLED
WORKERS, (A DIVISION OF INDIAN SOCIETY
FOR TRAINING AND DEVELOPMENT)
THIRUVANANTHAPURAM 695014

BY ADV.SRI.N.NAGARESH,ASG OF INDIA
BY SRI.LATHEESH SEBASTIAN
BY SRI.K.S.ANIL, SC, KSEB

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-06-2015,
ALONG WITH WA.1100/2014, THE COURT ON 30/07/2015 DELIVERED THE
FOLLOWING:

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.Nos.1004, 1094 & 1100 of 2014

and

W.A.No.572 of 2015

Dated this the 30th day of July 2015

J U D G M E N T

Shaffique, J

These appeals are filed against the common judgment dated 22/05/2014 by which writ petitions filed by the petitioners were disposed of by the learned Single Judge issuing certain directions to the Kerala State Electricity Board (hereinafter referred to as 'the Board') to take a decision regarding qualification of Overseers for promotion to the cadre of Sub Engineers after quashing Ext.P10 produced in W.P.C.No.29243/2011 by which the representation submitted by the petitioners challenging promotion given to certain persons was rejected, thereby not interfering with the order dated 09/02/2011. It was also observed that the promotion already made will be subject to the decision of the Board and the interim order passed will continue till a final decision is taken in the matter regarding qualification.

2. The facts involved in these writ petitions discloses as under:

The qualification and method of appointment to the post of Overseer Grade I (Electrical) in the service of the Board was prescribed as per Board Order dated 23/01/1981. One of the qualifications was that the candidate concerned shall obtain certificate after passing the examination conducted by the competent authority in the trade of Lineman/Wireman Electrician after undertaking 18 months course and 6 months inplant training in an Industrial Training Institute (ITI). They should also have a minimum of five years service as Lineman/Second Grade Overseer (Electrical) in the Board. In the year 1986, the post of Overseer Grade I (Electrical) was re-designated as Sub Engineer (Electrical) and the post of Overseer (Grade II) was re-designated as Overseer (Electrical) as per the long term settlement entered into between the Board and its workers.

3. The method of appointment to the post of Sub Engineer (Electrical) as mentioned in the Board order dated 23/01/1981 was changed as per Board Order dated 13/07/2007 by which 60% of the vacancies arising in the category of Sub Engineer (Electrical) was to be filled up by promotion from the

category of Metre Reader. As per the 1981 order, 40% of vacancies in the post of Sub Engineer (Electrical) was earmarked for direct recruitment and 60% for promotion from among categories of Overseer (Electrical) and Workman holding Degree/Diploma in Electrical Engineering.

4. Subsequently, by Board order dated 02/8/2010, the method of appointment was again revised by providing 10% of the vacancies to be filled up by promotion from the category of Overseer (Electrical). According to the petitioners, the qualification as prescribed in the Board Order dated 23/01/1981 remained without any change.

5. Petitioners submitted that on account of Board Order dated 02/08/2010, they became qualified to be considered for promotion to the post of Sub Engineer (Electrical) from the 10% quota provided for employees in the category of Overseer (Electrical).

6. Applications were invited from eligible candidates for promotion to the post of Sub Engineer (Electrical) in terms of Circular dated 17/08/2010. The select list has been prepared and candidates were promoted as per Board Order dated 09/02/2011. The select list was prepared for 35 vacancies which arose after

04/01/2010 which were to be filled up by promotion from the category of Overseer (Electrical). Respondents 3 to 35 are among the 35 employees included in the select list. Two others whose names were included were not promoted, as they were not qualified.

7. The contention urged by the petitioners is that respondents 3 to 35, who claim to be holding certificates, having passed examinations conducted by the competent authority in the trade of Lineman/Wireman/Electrician. They have not undergone a course of study in an ITI having 18 months course of study and 6 months inplant training. Instead, they had only obtained certificates from NCVT without undergoing any course study in any ITI. Therefore, according to the petitioners, promotion to respondents 3 to 35 to the post of Sub Engineer (Electrical) are illegal and liable to be revoked. Petitioners submitted a representation to the Chief Engineer on 02/05/2011 and since their representations were not considered, they filed W.P.C.No.14111/2011 which was disposed of with the direction to the 2nd respondent to pass an order. However, the 2nd respondent rejected their claim and hence the petitioners have approached this Court challenging Ext.P10.

8. The main contention urged is that respondents 3 to 35, though have obtained NCVT certificates, were not qualified in terms of the qualification prescribed as per Board Order dated 23/01/1981 and therefore the Board was not justified in sustaining the promotion granted in their favour. Petitioners, therefore, sought for quashing Ext.P5, the order dated 09/02/2011 by which a select list was prepared for promoting 35 persons in the cadre of Overseer (Electrical) being promoted to the cadre of Sub Engineer (Electrical) under the 10% quota under the long term settlement 2011 and the respective Board orders.

9. In W.P.C.No.29509/2012 also, the petitioner challenged Ext.P10 dated 14/11/2012 by which a communication had been issued by the Chief Engineer (HRM) to all Chief Engineers stating that the qualification and experience for considering promotion to the cadre of Sub Engineer (Electrical) in the vacancy set apart for 20% quota would be S.S.L.C or equivalent with ITI (Electrician/Wireman/Electronics) / Certificate in KGTE/MGTE. Petitioner submits that the qualification has to be based on Board order dated 23/01/1981, which has not been amended so far and therefore the circular issued by the Chief Engineer has no relevance at all and it has to be discarded.

10. In W.P.C.No.29182/2012, petitioner seeks for a relief to issue a fresh notice citing the Board order dated 23/01/1981 read with its Annexure as the qualification after cancelling Ext.P4 notice dated 14/11/2012 issued by the Chief Engineer (Ext.P10 in W.P.C.No.29509/2012).

11. In W.P.C.No.30122/2012, petitioner seeks for a writ of mandamus to command the Board as well as the Chief Engineer (HRM) not to promote any Overseer to the post of Sub Engineer (Electrical) in the 20% quota earmarked for the post of Overseers who have not undergone the course of study as mentioned in Ext.P6 Board Order dated 23/01/1981 and for a direction to the 2nd respondent to extend the benefits of Ext.P11 proceedings to the Chief Engineer (HRM) dated 03/02/2009 with the qualified Overseers like the petitioner, who had put in three years service as Overseer and to engage them temporarily as Sub Engineer (Electrical).

12. Having regard to the contentions urged on behalf of the appellants, W.A.No.1094/2014 is taken as the leading case and the documents relied upon are as referred in W.P.C.No.29243/2011, unless otherwise stated.

13. Counter affidavit has been filed by the Board in W.P.C.No.29182/2011 which has been adopted in W.P.C.No.29243/2011. It is submitted that the promotion and posting of Sub Engineer are based on the conditions of the bilateral agreement signed between the Board and the recognised trade unions. The feeder category of Sub Engineer is Meter Reader and the qualification for Meter Reader is ITI (Electrical/Wireman/Electronics) only. It is stated that there is no necessity for inplant training, as alleged by the petitioners. The certificates produced by respondents 3 to 35 are issued by the same authority. Further, it is indicated that method of appointment of Sub Engineer (Electrical) was modified as 50% from among the qualified Meter Readers with 5 years experience, 20% from among qualified Overseers with 5 years experience. Again, as per the long term settlement of 2011, the quota earmarked for promotion to qualified Overseer (Electrical) to the cadre of Sub Engineer (Electrical) was enhanced from 10% to 20% with effect from 01/04/2011. The quota earmarked for Meter Readers was reduced from 50% to 40%. This has been done in terms of Board order dated 02/08/2010 produced as Ext.R1(d). Ext.R1(e) is the long term settlement of 2011. It is also stated

that this 20% quota promotion of Overseers is from the quota of Meter Reader which was 60%. As per the settlement of 2000, Meter Reader was the feeder category of Sub Engineer. The qualification for appointment of Meter Reader was ITI and therefore the promotion of Overseers under the 20% quota to the post of Sub Engineer (Electrical) should have the same qualification of the 40% quota of Meter Reader to Sub Engineer (Electrical).

14. Counter affidavit has been filed by respondents 8,10, 11,14,16,17,18,24,29 and 34. It is contended that they were promoted as per Board order dated 09/02/2011 based on the judgment in W.P.C.No.22396/2010. They denied the allegations raised in the writ petition and contended that they have superior qualification than the petitioners. They have participated in the examination along with regular candidates who had undergone the course and the common examination. They were found to be eligible for issuance of the ITI certificate and therefore they are fully qualified.

15. Counter affidavit is filed by the 36th respondent supporting the stand taken by the Board. It is stated that NCVT had undergone serious changes in the late 70's and instead of

part-time courses, private registrations were permitted and inplant trainings were abolished for all courses. All those who clear the examination were given similar certificates on the Trade. It is taking into consideration the same, that while framing recruitment rules to the post of meter reader, 24 months course study and in plant training was not insisted which is evident from Board order dated 05/10/1990. Similar contentions were taken as that were raised by the Board. They also relied upon Chief Engineer's letter dated 15/11/2011 by which necessary clarification has been issued in this regard.

16. Learned Single Judge formed an opinion that no materials have been placed by the Board to indicate that the qualification for Overseer is the same as that of Meter Reader and therefore, the learned Single Judge did not agree with the view taken by the Board. However, having observed that the promotion among the quota of Overseers has been dispensed with atleast for a certain period and restoration of the quota does not necessarily lead to conclusion that the qualification originally prescribed would also be restored, it is found that, in fairness, the original qualification would have governed the issue. However, proceeding further, the learned Single Judge observed that it shall

be open for the Board to prescribe qualification with retrospective effect especially when it will not affect any vested or accrued rights of the employees. Reference is also made to the judgment of the Supreme Court in **T.R.Kapur and Others v. State of Haryana** [AIR 1987 SC 415]. It is in that background, the learned Single Judge issued the directions, which are impugned by the appellants.

17. Heard the learned counsel for the appellants and the learned counsel for the respondents.

18. The first question to be considered is whether Ext.P1 qualification prescribed for the post of Sub Engineer (Electrical) has undergone any change from what has been stated in the Board Order dated 23/01/1981.

The qualification prescribed in the Board order dated 23/01/1981, which is the subject matter in issue, reads as under:

“certificates obtained after having passed an examination conducted by the competent authority in the Trade of Lineman/Wireman/Electrician after 18 months course in ITI and six months in plant training and with not less than five years of service as Lineman/Second Grade Overseer (Elec) under the Board.”

By Ext.P2 Board order dated 13/07/2007, it is indicated as

under:

“The Board has also decided to accord sanction to modify the Board order read as 2nd paper (Board order dated 23/1/1981) above to the effect that the post of Meter Reader shall be treated as feeder category for promotion to the post of Sub Engineer (Ele.) against the 60% quota and the post of Overseer Grade II shall cease to be the feeder category for promotion to the post of Sub Engineer (Ele). In compliance of the advice tendered by the Commission and the terms and condition of LT settlement 2000.”

In Ext.P3 Board order dated 02/08/2010, it was decided that from the modified date of settlement i.e. 04/01/2010, 60% quota for promotion to the post of Sub Engineer (Ele.) will be apportioned among Meter Readers and Overseers having general and technical qualifications with experience prescribed for promotion to the post of Sub Engineer (Ele). In respect of Overseers, it is recorded as under:

“10% - From among qualified overseers with 5 years experience”.

Ext.P4 is the circular dated 17/8/2010 by which Chief Engineer (HRM) had called for application from persons working as Overseer (Electrical) stating the method of appointment and qualification:

<i>Method of Appointment</i>	<i>Qualification</i>
10% from among eligible Overseers with 5 years of service as Overseer (Electrical)	S.S.L.C or its equivalent with ITI Electrical/Wireman/Electronics certificate in KGTE/MGTE

Ext.P4 further states that *“the proforma may be forwarded only after ensuring that they have completed five years experience as Overseer (Electrical) and possess the qualification prescribed in the Board order under reference 1st above (board order dated 23/1/1981).”*

19. From these factual circumstances, it is clear that there has not been any change in the qualification prescribed in Ext.P1 dated 23/01/1981 as far as Overseers were concerned. In the said circumstances, without any change in the qualification criteria as specified therein, there was no reason for the Board to have taken the qualification akin to that of Meter Readers and prepared the select list.

20. Once it is found that the select list has not been prepared in accordance with the rules governing the same especially in regard to qualification, we do not think that the Board was justified in preparing Ext.P5 select list.

21. Though the learned Single Judge did not approve the contention urged on behalf of the Board regarding the

qualification of Overseers (Electrical), direction was issued to prescribe qualification retrospectively. Whether such an action was justified or not is the only question to be considered in these appeals.

22. It is evident that even though Overseer (Electrical) was removed from the feeder category, when it has been re-introduced, no change in qualification had been prescribed other than what is stated in the Board order dated 23/01/1981. Further, even in the letter issued by the Chief Engineer (HRM) as Ext.P4, though the qualification was prescribed as S.S.L.C or its equivalent with ITI Electrical/Wireman/Electronics certificate in KGTE/MGTE, still it was indicated that Overseer (Electrical) has to possess the qualification prescribed in the Board order dated 23/01/1981. Under such circumstances, it is clear that no deviation has been made from the qualification prescribed in the Board order dated 23/01/1981 and those candidates, who do not possess the said qualification, are not entitled to be selected for the post of Sub Engineer (Ele). The Board, having selected such candidates in terms of Ext.P5 select list, the same is liable to be set aside. **T.R.Kapur's** case (supra) may not have application to the facts and circumstances involved in the present case. In the

case on hand, 1981 Rules was in force at the time when notification was issued for preparing the select list of candidates having the requisite qualification. What exactly was the qualification is the only issue which is germane for consideration. As a general principle, it might be correct in stating that an authority competent to lay down qualification for promotion is competent to change the qualification. But, we cannot sustain Ext.P5 select list for the reason that the Board adhered to the qualification as prescribed in the Board order dated 23/01/1981. **T.R.Kapur's** case (supra) was decided in a petition filed under Article 32 of the Constitution assailing the validity of a notification issued by the State Government of Haryana in the Public Works Department (Irrigation Branch) purporting to amend the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964 with retrospective effect from July 10, 1964. It is in the said background, that the Supreme Court held that the power to frame rules to regulate the conditions of service carries with it the power to amend or alter the rules with retrospective effect. It is further held that the same will be subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by way of an amendment with

retrospective effect and that it should not affect or impair vested rights. Therefore, **T.R.Kapur's** case (supra) cannot be made applicable to the facts of the present case.

23. Another contention urged on behalf of the learned counsel for the respondents is regarding the absence of any appeal against two writ petitions which form part of the common judgment. Learned counsel for the respondents relied upon the judgment of the Supreme Court in **Premier Tyres Ltd. v. K.S.R.T.C** [1993(2) KLT 130] to contend that in the absence of an appeal against the judgment in W.P.C.Nos.29144/2012 and 3628/2013, these appeals are to be rejected. In fact, the subject matter in those two cases are slightly different. In W.P.C.No.29144/2012, the petitioners were Meter Readers. They challenged the select list by contending that unqualified Overseers were being selected. In fact, they were not affected by such selection process as they fall under a different category. In respect of W.P.C.No.3628/2013, the petitioners, who challenged the promotion given to the persons from Meter Reader post alleging that there was discrimination regarding qualification between Overseers and Meter Readers. This writ petition was not connected to the questions involved in the present writ petition .

Under such circumstances, we are of the view that non filing of appeals against these writ petitions have not debarred the present appellants to challenge the judgment. That apart, when the petitioners who are aggrieved, had preferred the appeals and merely for the reason that certain petitioners did not challenge the judgment, by itself, cannot take away the right of the present appellants to ventilate their grievance especially when they are invoking a public law remedy which cannot be equated to a suit and counter claim which has been dealt with by the Supreme Court judgment in **Premier Tyres** Ltd.'s case (supra). In the present case, the writ petitions were filed by different parties and therefore it cannot be contended that non-filing of appeal by other writ petitioners will be a bar for the aggrieved writ petitioners to prefer appeal.

24. Having regard to the aforesaid view taken by us in the above proceedings and having found that the decision taken by the Board in treating the qualification of Overseer (Electrical) in the feeder category as similar to that of Meter Reader in the feeder category is erroneous, the learned Single Judge ought to have allowed the writ petition.

In the said circumstances, these appeals are allowed setting aside the judgment of the learned Single Judge and Exts.P5 and P10 are quashed. It is made clear that the Board is entitled to effect the promotion on the basis of a list prepared in terms of the qualification, as prescribed in Ext.P1 Board order dated 23/01/1981.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr