

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 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WA.No. 1913 of 2014 ()

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AGAINST THE JUDGMENT IN WP(C).NO.4564/2012 DATED 20-10-2014.**

APPELLANT/3RD RESPONDENT:-

**KERALA PUBLIC SERVICE COMMISSION,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.**

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC.

RESPONDENTS-PETITIONERS AND RESPONDENTS 1, 2 AND 4 - 7:-:

- 1. UDAYAKUMAR P.K., S/O.KUMARAN,
OVERSEER, ELECTRICAL SECTION,
CHERAI, NOW RESIDING AT POTAYIL HOUSE,
EZHIKKARA P.O., NORTH PARAVOOR.**
- 2. UNNIKRISHNAN S.C., S/O. K.C. THAMPI,
OVERSEER, ELECTRICAL SECTION,
PERINYANAM, RESIDING AT SIVAVILAS,
EZHIKKARA P.O., NORTH PARUR, ERNAKULAM.**
- 3. CHANDRASEKHARAN K.R.,
S/O RAMAKRISHNA MARAR,
OVERSEER (ELECTRICAL) SECTION,
VELLOORKUNNAM, RESIDING AT KUTTIKKATTIL HOUSE,
THRIKKALATHOOR P.O - 683 577.**
- 4. V.S. UNNIKRISHNAN, S/O. SREEDHARAN,
OVERSEER, ELECTRICAL SECTION,
THRIPUNITHURA, NOW RESIDING AT
VATHUVETIL, KUMBALAM.**
- 5. V. MANOKUMAR, S/O VELAPPAN NAIR,
OVERSEER, ELECTRICAL SECTION,
THRIPUNITHURA, NOW RESIDING AT KOONATTUR HOUSE,
ERUMBANAM P.O. THRIPUNITHURA.**
- 6. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM-695 004.**

7. THE CHIEF ENGINEER (H.R.M),
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM-695 004.
8. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF POWER, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
9. PRAMOD T.S., WORKING AS OVERSEER,
ELECTRICAL CIRCLE, KOTTAYAM,
K.S.E.B., ELECTRICAL CIRCLE,
KOTTAYAM, (RESIDING AT THADATHIL HOUSE,
NATTAKAM, KOTTAYAM - 686 001.
10. AUGUSTIN A.J., OVERSEER,
ELECTRICAL SECTION, KOOTICKAL,
(RESIDING AT ALAKAPPARAMBIL, VELANILAM P.O.,
KOTTICKAL, KOTTAYAM).
11. ROY MATHEW, OVERSEER,
ELECTRICAL SECTION, UPPUTHARA,
PATTUPURA HOUSE, AYYAPPANKOVIL P.O.,
MARYKULAM, IDUKKI.
- * ADDL. R12 TO R14 IMPEADED
12. K.V. BINOJI, OVERSEER (ELECTRICAL),
KERALA STATE ELECTRICITY BOARD LTD.,
GENERATION DIVISION, KALLARKUTTY,
IDUKKI DISTRICT-685 562.
13. T.R. THANKACHAN, OVERSEER (ELECTRICAL),
KERALA STATE ELECTRICITY BOARD LTD.,
GENERATION CIRCLE MEENCUT, IDUKKI DISTRICT.
14. VINOD KUMAR. G., OVERSEER (ELECTRICAL),
KERALA STATE ELECTRICITY BOARD LTD.,
ELECTRICAL SECTION KAKKATTIL, KOZHIKODE DISTRICT.
- * ADDL. R12 TO R14 ARE IMPEADED AS PER ORDER DATED 13/08/2015
IN I.A. NO.118/2015.

R1 TO R5 BY SRI.C.P.SUDHAKARA PRASAD, SENIOR ADVOCATE.
ADV. SRI.A.J.VARGHESE.
R6 & R7 BY ADV. SRI.K.S. ANIL, SC, KSEB.
R8 BY SR. GOVT. PLEADER SRI.P.I DAVIS.
R10 & R11 BY ADV. SRI.GEORGE ZACHARIAH ERUTHICKEL.
ADDL. R12 TO R14 BY ADVS. SRI.BIJU MARTIN,
SRI.M.M.SALIM,
SRI.D.M.NOWFAL.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07/07/2015,
ALONG WITH W.A. NO.1950 OF 2014 AND W.A. NO.1999 OF 2014, THE
COURT ON 13/08/2015 DELIVERED THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S ANNEXURES:- **NIL.**

RESPONDENT'S ANNEXURES:-

- ANNEXURE R1(1)** **COPY OF THE COMMUNICATION DATED 12/05/2014 FOR REPORTING OF 181 VACANCIES ALONG WITH PROFORMA SENT BY THE BOARD TO THE APPELLANT PSC.**
- ANNEXURE R1(2)** **COPY OF THE LETTER SENT BY THE APPELLANT'S ZONAL OFFICE TO AN INCUMBENT ALONG WITH ENGLISH TRANSLATION.**

//TRUE COPY//

P.S. TO JUDGE

rs.

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.Nos.1913, 1950 &
1999 of 2014

Dated this the 13th day of August 2015

J U D G M E N T

Shaffique, J

W.A.No.1913/2014 is filed by the third respondent in W.P.C No.4564 of 2012 challenging the judgment dated 20/10/2014 and W.A.Nos.1950 of 2014 and 1999 of 2014 are filed by the appellants who were not parties, after seeking leave from this Court.

2. By the judgment impugned, the learned Single Judge allowed the writ petition quashing Ext.P18 to the extent of allowing certificate holders to take part in the selection to the post of Sub Engineer (Electrical) under the 10% quota and the Kerala Public Service Commission (for short 'KPSC') is directed to issue modified notification as requested in Ext.P26 and in terms of Ext. P32. KPSC was also directed to proceed with the selection in accordance with the modified notification.

3. The short facts involved in the writ petition would disclose that the writ petitioners, who are hereinafter referred to as petitioners, challenged Ext.P18 notification issued by KPSC for selection to the post of Sub Engineer (Electrical) in the 10% in-service quota on the specific ground that the said quota is available only for diploma holders and is not available for certificate holders, and hence contended that clause 7.2(b) and (c) of Ext.P18 notification which permits certificate holders to apply for the post, is liable to be quashed. It is contended that Ext.P1 dated 01/11/1971 only permitted diploma holders in Electrical Engineering to be selected under 10% quota to the post of Sub Engineer (Electrical). The contention is that Ext.P4 order dated 28/12/1967 was amended as per Ext.P1. Ext.P4 provided qualification for direct selection in respect of appointment to the post of the I Grade Overseer (Electrical) in which Diploma in Electrical Engineering or Certificate in Electrical Engineering with five years in-service was considered as qualification. It is stated that when a requisition was made by the Board to KPSC, the Board suppressed Ext.P1, which resulted in Ext.P18 notification.

4. Counter affidavit is filed by Kerala State Electricity Board (for short 'KSEB'), the second respondent, inter alia stating that as per Board order dated 28/12/1967, appointment to the post of 1st Grade Overseer (Electrical), later re-designated as Sub Engineer, was in the ratio 1:1, between direct recruits and promotees and the qualification prescribed was either Diploma in Electrical Engineering or Certificate in Electrical Engineering. The Board order was amended on 01/11/1971, whereby 10% was reserved for direct recruitment of in-service candidates from among Overseer (Ele.), Lineman, Clerk etc. holding Diploma in Electrical Engineering and 40% by direct recruitment of Diploma holders in Electrical Engineering from open market and the remaining by promotion from eligible 2nd Grade Overseers. It is further stated that the Board order dated 23/01/1981 was issued as an amendment to Board order dated 16/08/1979 (16/8/1973) which prescribed the revised the qualification for promotion. It is stated that as per the said Board order, the direct recruitment quota from open market was reduced from 40% to 30% and the method of appointment to the post of 1st Grade Overseer was modified as 30% by direct recruitment through KPSC and 10%

from in-service through KPSC and 60% by promotion from among 2nd Grade Overseer. KSEB therefore supported the stand taken in Ext.P18 in so far as it is published as per Board order dated 28/12/1967. Petitioner filed additional documents as Exts.P19 to P28 and a reply affidavit reiterating their contentions in the matter.

5. The learned Single Judge observed that out of the 50% vacancies earmarked for direct recruitment in the 1:1 ratio, 10% is for direct recruitment from in-service candidates possessing Diploma qualification. It was observed that Ext.P5 Board order dated 23/01/1981 was issued amending the method of appointment to the post of 1st Grade Overseer (Electrical) and also making changes in Ext.P29 Board order dated 16/08/1973. It is further stated that by issuing Ext.P5, the ratio for direct recruitment was reduced from 50% to 40% and it was specified that 40% is reserved for direct recruitment and 10% for in-service candidates. The learned Single Judge observed that the qualification shown in the Annexure contained in Ext.P29 was changed by Ext.P5. Therefore, after the issuance of Ext.P5, the qualification for regular appointment continued to be Diploma in

Electrical Engineering. Thereafter, reference is made to Ext.P32 issued by the Chief Engineer clarifying that 10% quota for in-service candidates are to be selected from Diploma holders only. The learned Single Judge observed that when the proforma for advising the vacancies was forwarded, Ext.P5 Board order was excluded and Ext.P1 Board order alone was brought to the notice of KPSC. The finding therefore is that Ext.P18 notification happened to be issued mistakenly which was sought to be corrected as per Ext.P32 letter issued by the Chief engineer (HRM). It is, in this background that the writ petition was allowed.

6. The learned counsel appearing for the appellants submits that the aforesaid finding of the learned Single Judge was baseless as the rules governing the promotion cannot be bypassed based on a letter issued by the Chief Engineer (HRM). The rules governing the qualification has not been properly dealt with while deciding the case by the learned Single Judge, which itself is sufficient to set aside the said judgment.

7. On the other hand, Sri C.P.Sudhakara Prasad, learned senior counsel appearing on behalf of the petitioners, supported the judgment of the learned Single Judge and contended that

certificate holders are not entitled for being considered for the 10% quota from among in-service candidates, to the post of Sub Engineer.

8. Having regard to the aforesaid factual situation, the question to be considered is whether the learned Single Judge was justified in interfering with the qualification prescribed in Ext.P18 notification, taking into consideration the relevant rules relating to the qualification for the said post.

9. Ext.P4 dated 28/12/1967 provides for the method of appointment to the post of First Grade Overseer (Electrical) which is re-designated as Sub Engineer. The qualification prescribed for direct recruitment is either Diploma in Electrical Engineering or a Certificate in Electrical Engineering from the recognised Technical Schools with five years service under the Board. Another form of recruitment was by promotion from II Grade Overseer in the ratio of 1:1 between direct recruits and promotees.

10. By Ext.P1 Board order dated 01/11/1971, an amendment has been made to the Board order dated 28/12/1967 by which a 'Note' has been added indicating that appointment to the post of 1st Grade Overseer (Electrical) will be in the ratio of 1:1

between direct recruitment and promotions. Clause (ii)(a) of the Note is relevant which reads as under:

“(ii) (a) In making appointment to this post by direct recruitment of Diplomates in Electrical Engineering, 40% of the vacancies will be filled up by direct recruitment of qualified candidates from the open market and 10% of the vacancies by direct recruitment of the Diplomates in Electrical Engineering who are in the service of the Board as II Gr.Overseer (Electrical); lineman, Clerk etc.”.

By virtue of the above amendment, 10% of the vacancies, out of the 50% were to be filled up from Diplomates in Electrical Engineering who are in the service of the Board.

11. Board order dated 18/04/1975 is an amendment being made to the Board order dated 01/11/1971. The following is the amendment made:

“ii (a). In making appointment to the post of direct recruitment of diplomates in Electrical Engineering 40% of the vacancies will be filled up by direct recruitment of qualified candidates from the open market and 10% of the vacancies by direct recruitment of persons who are in the service of the Board possessing the prescribed qualifications for direct recruitment and have put in not less than three

years service in the next lower category namely II Grade Overseer (Electrical) (including Draftsman).

12. From the above narration of facts based on various Board orders, it is rather clear that the qualification prescribed for direct recruitment to the post of Sub Engineer from 2nd Grade Overseer (Electrical) was Diploma in Electrical Engineering or Certificate in Electrical Engineering with the required experience as evident from Board order dated 28/12/1967. By Board Order dated 01/11/1971, note was added indicating that the ratio between direct recruitment and promotion which is the ratio, 1:1 as per note (ii) (a), in so far as direct recruitment is concerned, 40% will have to be given to diplomates in Electrical Engineering and 10% of vacancies "by direct recruitment of diplomates in Electrical Engineering" who are in the service of the Board. Board order dated 01/11/1971 underwent an amendment as per another Board order dated 18/04/1975 in which note (ii) (a) was amended and while stating that in making appointment to the post of direct recruitment of diplomates in Electrical Engineering, 40% of the vacancies will be filled up by direct recruitment of qualified candidates from the open market. 10% of the vacancies shall be

by direct recruitment of persons who are in the service of the Board possessing the “prescribed qualifications for direct recruitment and had put in not less than three years service in the next lower category.” Therefore it is evident that Board order dated 01/11/1971, by which a note had been added by an amendment to the Board order dated 28/12/1967, has been further amended by changing item (ii) (a) as stated above. Thereafter the only question is what exactly is the prescribed qualification in respect of 10% of the vacancies to be filled up by direct recruitment from in-service candidates. The qualification apparently is mentioned in the Board order dated 28/12/1967. Therefore it is clear that the prescribed qualification in terms of Board Order dated 28/12/1967 read with Board Order dated 18/04/1975 includes Diploma holders as well as Certificate holders. In that view of the matter, KPSC was justified in issuing Ext.P18 notification.

13. The learned Single Judge relied upon Board order dated 16/08/1973 as amended by Board order dated 23/01/1981. In the Board order dated 16/08/1973, revised qualification has been mentioned to regulate promotion to the category of 1st

Grade Overseer. It is mentioned that promotion to the category of 1st Grade Overseer (Electrical) in respect of those who were appointed in Board service before 15/08/1971 will continue to be governed by the existing rules laid down in the Board Order dated 28/12/1967. The said Board order only provided the qualification for promotion from category of 2nd Grade Overseer to 1st Grade Overseer.

14. By Board order dated 23/01/1981, certain changes were effected by the Board in the method of appointment/recruitment to the cadre of 1st Grade Overseer (Elec.) in compliance with the provisions of the long term settlement with the recognised Unions on 25/11/1978. Accordingly the appointment/recruitment prescribed in the Board Order dated 16/08/1973 was amended as specified in the Annexure. In the Annexure, it is indicated that 40% of the vacancies will be filled up by direct recruitment and rest by promotion. In regard to the 60%, 80% was to be by promotion from eligible II Grade Overseer, 20% from workmen from lower categories possessing Degree/Diploma in Electrical Engineering based on length of service in the Board. It is also mentioned that

vacancies arising thereafter will be filled up in the following manner:

30% by direct recruitment through KPSC. 10% by appointment through KPSC from among qualified Board employees and 60% by promotion from among eligible 2nd Grade Overseers.

This Board order also dealt with promotions and not direct recruitment.

15. Though the learned Single Judge proceeded on the basis that the Chief Engineer (HRM) having mentioned in Ext.P32 letter dated 29/01/2014 that for direct recruitment, Diploma in Electrical Engineering is the required basic qualification, it has no bearing to the factual situation. It is apparent from Ext.P32 that the amendment made to the Board order dated 01/11/1971 by virtue of Board Order dated 18/04/1975 was not even mentioned in the proforma. At any rate, the letter issued by the Chief Engineer (HRM) cannot bypass the Board orders which regulate the qualifications.

16. In the light of the aforesaid finding of facts, we are of the view that the learned Single Judge was not justified in

quashing the provision in Ext.P18 which permitted Certificate holders to participate in the selection process and confining the same only to Diploma holders. The amendment effected to Ext.P1 Board order was not considered by the learned Single Judge. In Ext.P1 Board order, there is specific reference to the 10% quota to diplomates in Electrical Engineering which is amended by the subsequent Board Order dated 18/04/1975 which indicated that the 10% of the vacancies by direct recruitment from in-service candidates should be as per the prescribed qualification for direct recruitment which apparently includes Certificate holders also.

In the light of the above discussion, these appeals are liable to be allowed setting aside the judgment of the learned Single Judge and dismissing the writ petitions. Accordingly we do so.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

W.A.Nos.1913 of 2014 & conn.cases

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W.A.Nos.1913 of 2014 & conn.cases

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W.A.Nos.1913 of 2014 & conn.cases

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