

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WA.No. 2611 of 2015 () IN WP(C).27019/2012

**AGAINST THE ORDER/JUDGMENT IN WP(C) 27019/2012 of HIGH COURT OF KERALA
DATED 29-06-2015**

APPELLANT(S)/PETITIONER:

**C.S.SARMA KUMAR AGED 54 YEARS
S/O.CHITRANGADHAN, EXECUTIVE ENGINEER (ELE)
T.A.TO MEMBER (GEN), VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM, RESIDING AT SARAS
VISHNU NAGAR D-9, POWDIKONAM P.O.
THIRUVANANTHAPURAM-695587).**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD**

RESPONDENT(S)/RESPONDENTS:

- 1. THE KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM-695004.**
- 2. THE CHAIRMAN
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN
PATTOM P.O., THIRUVANANTHAPURAM-695004.**
- 3. THE CHIEF ENGINEER (HRM)
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN
PATTOM P.O., THIRUVANANTHAPURAM-695004.**

BY SRI.K.S.ANIL, SC, KSEB

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 2611 of 2015

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Dated this, the 9th day of December, 2015

J U D G M E N T

Shaffique, J.

This writ appeal has been filed by the petitioner challenging judgment dated 29/6/2015 in WP(C) No.27019/2012.

2. The writ petition has been filed challenging Ext.P11 and for a declaration that amended rule brought in by Ext.P7 G.O. insisting 3 years service as Assistant Executive Engineer for promotion to the cadre of Executive Engineer is not applicable to the Board in the light of Ext.P9 and for a further declaration that the petitioner is entitled to be promoted as Executive Engineer w.e.f. 31/12/2003, the date on which his juniors were promoted to the cadre of Executive Engineer.

3. The short facts involved in the writ petition would disclose that the petitioner entered into the service of Kerala State Electricity Board (KSEB) as an Assistant Engineer on 25/7/1986. Later, he availed leave without allowance for the

period from 23/3/1990 to 22/7/1996. He rejoined duty on 23/7/1996 and got promotion as Assistant Executive Engineer in terms of Ext.P1. Thereafter, he applied for leave, which was sanctioned for the period from 20/9/1996 to 20/6/1999. The leave was extended for a further period of three years from 20/6/1999. Petitioner contended that he was eligible for further promotion as Executive Engineer immediately on his rejoining duty as he had completed three years service after his promotion as Assistant Executive Engineer and therefore the denial of promotion was totally illegal. He contended that he joined duty on 18/9/2002 and on 31/12/2003, his juniors were promoted as Executive Engineers. Claiming that he should also get the benefit of promotion from the date when his juniors were promoted, he submitted representation to the Chairman. Since the same was not considered, he filed writ petition before this Court, wherein this Court directed the Chairman to consider his representation which resulted in Ext.P11 by which his claim has been rejected.

4. In Ext.P11, it is stated that the service conditions of Engineers under the Kerala Engineering Service in Government were originally regulated by Government Order dated 16/3/1959.

The said Government Order was implemented as per Board order dated 30/3/1962. Further, it was held that when the rules underwent amendment by Government Order dated 17/5/1965, which was adopted by the Board, the petitioner ought to have completed his probation in the said post for a period of three years. It is held that petitioner was entitled to be considered only to a vacancy in the post of Executive Engineer which arose after his rejoining duty on 18/9/2002 and that too after declaration of probation in the cadre of Assistant Executive Engineer and completing three years mandatory period of service as Assistant Executive Engineer. On this finding, the representation of the petitioner was rejected.

5. Learned Single Judge after an elaborate consideration of the factual and legal aspects of the matter had come to a conclusion that the petitioner was appointed directly as Assistant Engineer on the basis of 1965 Rules, which is Ext.P7. Under such circumstances, he ought to have completed probation in the post of Assistant Executive Engineer which was not completed by him. Therefore, he was not entitled for the benefit of promotion as claimed.

6. Though the learned counsel for the appellant relies upon Ext.P5, learned Single Judge had clearly indicated that, as per Ext.P5, method of appointment to the post of Assistant Engineer is by recruitment by transfer from Junior Engineers in Kerala Engineering Subordinate Service. The post of Assistant Executive Engineer is also not available in Ext.P5, which was the rule existing in 1959. Under such circumstances, we do not find any error in the judgment of the learned Single Judge for not relying upon Ext.P5.

7. Learned counsel for the petitioner submits that Ext.P7 Government Order dated 17/5/1965 has not been adopted by the Board and as far as the petitioner is concerned, Ext.P5 special rules is applicable. We do not think that the said argument can be accepted. It has been clearly explained by the Board that the entry cadre of Graduate Engineer was Junior Engineer in the Kerala Engineering Service Rules, 1959, which post was re-designated as Assistant Engineer as per Kerala Engineering Service Rules, 1965. For promotion to the grade of Executive Engineer, a minimum service of three years in the feeder category, viz., Assistant Executive Engineer, was made

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mandatory after the 1965 Rules. Petitioner entered service as Assistant Engineer in 1986 after the revision of Rules in 1965 and got promotion as Assistant Executive Engineer in 1996 after completing three years service as Assistant Engineer. Learned Single Judge found that the very appointment of the petitioner was on the basis of the 1965 Rules. In such circumstances, it is not open for him to contend that 1965 Rules had not been adopted by the Board.

No grounds are made out to interfere with the judgment of the learned Single Judge and accordingly, this appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp9/12/2015

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PS to Judge