

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 13979 of 2004 (L)

PETITIONER(S):

- 1. P.SUJANAPRASAD, PUMP OPERATOR,
KERALA WATER AUTHORITY, P.H.SECTION-1,
KODUVALLY, THALASSERRY, KANNUR DISTRICT.**
- 2. E.V.RAVINDRAN, PUMP OPERATOR,
P.H.SECTION, KERALA WATER AUTHORITY, PAYYNNUR,
KANNUR DISTRICT.**

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S):

- 1. THE MANAGING DIRECTOR,
KERALA WATER AUTHORITY, WATER WORKS CAMPUS,
THIRUVANANTHAPURAM.**
- 2. THE CHIEF ENGINEER, KERALA WATER AUTHORITY,
PUBLIC HEALTH DIVISION, THIRUVANANTHAPURAM.**
- 3. THE EXECUTIVE ENGINEER, KERALA WATER AUTHORITY,
PUBLIC HEALTH DIVISION, KANNUR.**
- 4. THE EXECUTIVE ENGINEER,
KERALA WATER AUTHORITY, PUBLIC HEALTH DIVISION,
MATTANNUR, KANNUR DISTRICT.**

**R1 TO R4 BY SRI.JOSEPH JOHN, SC, KERALA WATER AUTHORITY
SRI.M.V.MATHAI MUTHIRENTHY, SC, KWA
SRI.JOY GEORGE, SC, KWA
SRI.C.UNNIKRISHNAN, SC, KWA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-11-2014 , THE COURT ON 05-01-2015 DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE ORDER NO.PHE2(A) 5555/79 DATED 24/3/1979 OF THE 2ND RESPONDENT CHIEF ENGINEER.**
- P2 COPY OF THE LETTER NO.E2-5567/85 DATED 18/10/1985 OF THE 3RD RESPONDENT EXECUTIVE ENGINEER ALONG WITH COPY OF THE PROVISIONAL LIST OF UNSKILLED NMR HANDS.**
- P3 COPY OF THE ORDER NO.E2-5567/85 DATED 8/1/1988 OF THE 3RD RESPONDENT EXECUTIVE ENGINEER, KANNUR PROMOTING THE PETITIONERS AS PUMP OPERATOR PROVISIONALLY**
- P4 COPY OF THE ORDER NO.E2-5567/85 DATED 3/2/1988 OF THE 3RD RESPONDENT EXECUTIVE ENGINEER, KANNUR GIVING PLACE OF POSTINGS**
- P5 COPY OF THE ORDER NO.KWA/HO/LS3. 10956/86 DATED 2/5/1991 OF THE 1ST RESPONDENT MANAGING DIRECTOR**
- P6 COPY OF THE ORDER NO.E2-3054/86 DATED 11/7/91 OF THE 3RD RESPONDENT EXECUTIVE ENGINEER, KANNUR ORDERING ABSORPTION OF 27 NMR HANDS INTO REGULAR ESTABLISHMENT**
- P7 COPY OF THE REPRESENTATION DATED 24/12/91 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT MANAGING DIRECTOR, KERALA WATER AUTHORITY**
- P8 COPY OF THE REPRESENTATION DATED 23/12/91 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT MANAGING DIRECTOR, KWA**
- P9 COPY OF THE LETTER NO.KWA/HO/GL/1/10040/93 DATED 15/10/93 OF THE 1ST RESPONDENT MANAGING DIRECTOR ADDRESSED TO THE ASSISTANT EXECUTIVE ENGINEER, PH SUB DIVISION, THALASSERY**
- P10 COPY OF THE DETAILS OF SERVICE PARTICULARS OF 1ST PETITIONER DATED 7/8/95 AND ATTESTED BY THE ASSISTANT ENGINEER, PH SECTION-1, KWA, THALASSERY-1**
- P11 COPY OF THE DETAILS OF SERVICE PARTICULARS OF 2ND PETITIONER, DATED 17/6/95 AND ATTESTED BY THE ASSISTANT ENGINEER, PH SECTION, KWA, PAYYNNUR**
- P12 COPY OF THE CERTIFICATE ISSUED BY THE MANAGING DIRECTOR, KWA, THIRUVANANTHAPURAM**
- P13 COPY OF THE CERTIFICATE DATED 5/2/1998 ISSUED BY THE MANAGING DIRECTOR, KWA TO THE 1ST PETITIONER.**
- P14 COPY OF THE CERTIFICATE DATED 5/2/1998 ISSUED BY THE MANAGING DIRECTOR KWA TO THE 2ND PETITIONER.**

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- P15 COPY OF THE ORDER NO.E2-5567/85 DATED 17/12/85 OF THE EXECUTIVE ENGINEER, KW & WWA DIVISION, KANNUR**
- P16 COPY OF THE ORDER NO.KWA/HO/E5(B) 10040/93 DATED 8/6/95 OF THE 1ST RESPONDENT**
- P17 COPY OF THE JUDGMENT DATED 7/11/2003 OF THE HON'BLE HIGH COURT IN O.P.NO.12443/95**
- P18 COPY OF THE ORDER NO.KWA/JB/E-3/52/04 DATED 12/4/04 ISSUED BY 1ST RESPONDENT TO THE 1ST PETITIONER.**
- P19 COPY OF THE ORDER NO.KWA/JB/E-3/52/04 DATED 12/4/04 ISSUED BY 1ST RESPONDENT TO THE 2ND PETITIONER.**
- P20 COPY OF THE ORDER NO.KWA/JBE 3-10911/03 DATED 28/10/05 PASSED BY THE 1ST RESPONDENT MANAGING DIRECTOR OF KERALA WATER AUTHORITY.**

/TRUE COPY/

P.S.TO.JUDGE

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A.V.RAMAKRISHNA PILLAI, J

WPC No.13979 of 2004

Dated this the 5th day of January, 2015

JUDGMENT

Exts.P5, P18 and P19 orders passed by the respondents are under challenge.

2. The petitioners seek a direction commanding the respondents to regularise the service of the petitioners in the skilled category of pump operators with effect from 16.6.1980 or from 3.12.1987 or at least with effect from 8.1.1988, i.e. the date of actual promotion with all consequential benefits thereof after quashing Exts.P5, P18 and P19.

3. The petitioners at the time of filing the writ petition were working as Pump Operators in the Public Health Engineering Division of the respondent Water Authority. They entered service as unskilled workers in the year 1977 and subsequently, they were absorbed as NMR unskilled workmen with effect from 16.6.1980. The

petitioners allege that in view of Ext.P1 relaxation of the educational qualification and the fact that the petitioners had passed practical test on 3.12.1987, they are entitled to be absorbed in skilled category in the regular establishment. According to them, as per Exts.P3 and P4, they were promoted as Pump Operators provisionally. The petitioners allege that though vide Ext.P5, the first respondent had ordered to regularise other similarly placed employees in skilled categories, the petitioners were discriminated. The petitioners allege that along with Ext.P5 order, a list of unskilled category prepared on 16.6.1985 was annexed and had the same been issued taking note of the subsequent development in the case of the petitioners, their promotion to the post of pump operators, the petitioners should have been definitely absorbed in the skilled category. The petitioners further point out that vide Ext.P6, similarly placed persons who had acquired the practical test after 17.12.1985 were absorbed in the skilled category of pump operators. Aggrieved by Ext.P5, they approached the respondents

with Exts.P7 and P8 representations. However, vide Ext.P16, the request of the petitioners were rejected by the first respondent. The petitioners approached this Court with Ext.P17 writ petition wherein this Court has directed the first respondent to consider the matter afresh. Accordingly, Exts.P18 and P19 were issued by the first respondent rejecting the claim of the petitioners again. The petitioners allege that while passing Exts.P18 and P19, the contentions raised by the petitioners in their representations were not at all considered. Therefore, they have challenged Exts.P18 and P19 in this writ petition and they also pray that the benefit of absorption as skilled category pump operators from the date of acquisition of practical test be granted to them along with consequential benefits.

4. In the counter affidavit, the respondents contended that the petitioners commenced service in the erstwhile PHED in the category of unskilled workers. As they were entitled to be absorbed in the NMR category, they were absorbed into that category with effect from

16.6.1985. As per Ext.P1, the NMR unskilled workers having 5 years would be absorbed in the regular establishment service in the respective category in relaxation of educational and technical qualifications. It is on the basis of the same, both the petitioners were absorbed into regular establishment service. The respondents contend that the absorption of NMR categories in the regular establishments were done in the category in which they had worked larger. According to the respondents, the first petitioner had put NMR service as watcher and the second petitioner as unskilled worker. Therefore, they were absorbed in the regular establishment in which they had worked. As the petitioners did not possess the requisite qualification prescribed in the PHED special rules for the post of pump operators, the promotion granted to the petitioners were cancelled. The petitioners were not qualified for the post of pump operators as stipulated in the special rules. The respondent Water authority is bound to follow the special rules unless otherwise ordered under authority of law.

More over, the regularisation of unqualified NMR's could be done only without affecting the seniority of PSC recruits. The authority in its resolution No.6525 dated 30.12.2003 resolved to recommend the Government for proposal to regularise the unqualified NMR hands with all attendant benefits with prospective effect only from the date of Government order by regularising the service. Before passing orders in the light of Ext.P17 judgment, personal hearing was offered to the petitioners. The matter has been examined in detail and it was found that the petitioners did not possess the requisite qualification. They were promoted to skilled category without observing the conditions stipulated in the circular. Accordingly, the request of the petitioners were rejected vide Ext.P18. Thus, the respondents prayed for a dismissal of the writ petition.

5. Arguments have been heard.

6. The learned counsel for the petitioners would point out that Ext.P1 order and subsequent orders were issued by the department to regularise NMR unskilled workers in

relaxation of recruitment rules, evidently, in exercise of the powers conferred under Rule 39 of the KS & SSR. It was pointed out that more than 410 NMR workers have been regularised in the regular establishment with effect from 16.6.1985 on completion of 5 years from 16.6.1980. The petitioners point out that they obtained practical test conducted by the department and thus qualified to the post of pump operators. By Ext.P5, petitioners were regularised in the unskilled category. This, according to the petitioners, would amount to hostile discrimination and violation of Article 14 of the Constitution of India.

7. The main argument advanced by the learned counsel for the respondents is that the petitioners were not qualified to hold skilled post and there is no evidence to show that they were having prescribed qualification. It was also pointed out that there is no G.O. enabling the promotion of unqualified workers. According to them, the petitioners would be absorbed as unskilled workers only.

8. It is an admitted fact that the petitioners have been continuously officiating in the substantive post of

Pump Operator with effect from 8.1.1988. Juniors to the petitioners who obtained the qualification of the practical test were even permitted to continue in the post of skilled category; it was pointed out by the learned counsel for the petitioners. However, the petitioners alone were ordered to be retained in the unskilled category. The petitioners were appointed as workers in the erstwhile Public Health Engineering Department as early as in 1977. Thereafter they were transferred to the Kerala Water Authority with effect from 1.4.1984. In the erstwhile Public Health Engineering Department, there was no post of Pump Operator. Thus, the question of qualification being acquired in the Kerala Public Health Engineering Subordinate Service does not arise. Therefore, the reasoning contained in Exts.P16, P18 and P19 is wrong. The learned counsel for the petitioners would point out that in view of the relaxation of educational and technical qualification as stipulated in Ext.P1 in letter No.PHE 2(A) 25884/1983 dated 25.10.1983 of the Chief Engineer, Ext.P5 order of the first respondent and on account of the

fact that the petitioners had passed the practical test as on 3.12.1987 and thereafter having been promoted as Pump Operators with effect from 8.1.1988 and have been continuing in that category and discharging the duties and functions of pump operators, they are fully entitled for the relief of regularisation of their service as pump operators. The fact that the petitioners were discharging the duties and functions of pump operators with effect from 8.1.1988 is not specifically denied in the counter affidavit.

9. The petitioners point out that in relaxation of the rigor of the recruitment rules, more than 400 persons were absorbed in the Kerala Water Authority in the skilled category. As evident from Exts.P1 to P5, a conscious policy decision was taken by the respondents as well as the Government to discontinue the stalemate otherwise faced by the employees entering service and continuing for long without any avenues of promotion. In Ext.P5 circular, it is stated that NMR workers should be absorbed only in the category shown against their names in the list appended. Along with Ext.P5, details of NMR personnel

who completed 5 years of service as on 16.6.1985 and eligible to be absorbed in regular establishment were given. Ext.P5 was issued on 2.5.1991 and by that time, the petitioners had acquired the practical test and like the 12 other persons mentioned in Ext.P15 were fully qualified and eligible to be absorbed in the skilled category of pump operator. From Ext.P5, details of persons shown against pump operator and other skilled category, it will be seen that many persons who were lesser qualified and having no technical qualification were absorbed in regular service. Therefore, the rejection of the claim of the petitioners alone is the result of non-application of mind in the matter. The reasons stated in Exts.P18 and P19 are that since the petitioners were absorbed as unskilled category and since they did not have the requisite qualification prescribed in the rules, they are not entitled to be regularised in the skilled category. The other reason mentioned is that the Executive Engineer is incompetent to issue an order of regularisation issued in the case of 12 persons mentioned in Ext.P15 and therefore, the order

stands cancelled. However, from the order issued by the Executive Engineer, it can be seen that it was following the order of the Chief Engineer and in compliance of the directions of the higher officials that the Executive Engineer had issued Ext.P15 order.

10. As rightly pointed out by the learned counsel for the petitioners, after a span of 20 years, it is not now fair on the part of the respondents to take such a contention to reject the claim of the petitioners. As evident from Ext.P1 and subsequent Government circular No.PHED(A) 25884/83 dated 25.10.1983 of the Chief Engineer, PHED, Thiruvananthapuram, the rigor of the special rules was relaxed. Going by the relaxed special rules, the petitioners are fully qualified like ever so many equally placed persons whose names were mentioned in the writ petition ordered to be promoted in the skilled category. The petitioners were promoted as pump operators with effect from 3.2.1988 which is a skilled category under the respondent department.

11. The learned counsel for the petitioner would point

out that the first petitioner demitted his office in November 2013 and the second petitioner in September 2013. It was also pointed out that even after a period of more than 9 months, they were not getting pension and other retirement benefits. For getting their pensionary benefits released, they have filed I.A.No.7375/2014 which is also being considered along with this writ petition. It is not in dispute that similarly placed persons have been regularised in service.

On a consideration of the entire materials now placed on record, I am of the definite view that the petitioners are entitled to succeed.

In the result, this writ petition is allowed. Exts.P5, P18 and P19 are quashed. The direction in Ext.P5 to the extent it ordered regularisation of service of the petitioner in the unskilled category is quashed. Respondents are directed to regularise the service of the petitioners in the skilled category of pump operators with effect from 8.1.1988, i.e. the date of actual promotion with all consequential benefits thereof. Formal orders to this

effect shall be issued to the petitioners within a period of two months from the date of receipt of a copy of this judgment.

The respondents are also directed to release all monetary benefits including pension and all other eligible retirement benefits to the petitioners within the aforesaid time. I.A.No.7375/2014 is ordered accordingly.

Sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

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P.S.TO JUDGE