

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 3390 of 2015 (W)

PETITIONER(S):

- 1. BABU K GOPAL AGED 54 YEARS
ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD
ELECTRICAL SUB DIVISION, CHANGANASSERY
P.O.CHANGANASSERY, KOTTAYAM DISTRICT-686 101.**
- 2. BIJU PRINCE ABRAHAM
ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD
OFFICE OF THE CHIEF ENGINEER, TRANSMISSION(NORTH)
KOZHIKODE.**
- 3. B.VIJAYAN
ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD
TRANSMISSION SUB DIVISION, EDAPPON
ALAPPUZHA DISTRICT.**
- 4. GEORGE JOSEPH
ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD
OFFICE OF THE DEPUTY CHIEF ENGINEER
ELECTRICAL CIRCLE, PALA, KOTTAYAM DISTRICT.**
- 5. C.AJAYAN
ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD, SUB REGIONAL STORES
KANNUR, KANNUR DISTRICT.**

BY ADV. SRI.P.M.PAREETH

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY SECRETARY, VIDYUTHI BHAVANAM, PATTOM
THIRUVANANTHAPURAM-695 004.**
- 2. CHIEF ENGINEER (HRM)
K.S.E.B, VIDYUTHI BHAVANAM, PATTOM
THIRUVANANTHAPURAM-695 004.**

3. JAMES GEORGE
EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD
ELECTRICAL DIVISION, PALLOM
KOTTAYAM DISTRICT-686 007.
4. BENKUMAR BABU
EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD
ELECTRICAL DIVISION, VADAKARA
KOZHIKODE DISTRICT-673 103.
5. BABU P K
EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD
ELECTRICAL DIVISION, KALPATTA
WAYANAD DISTRICT-673 122.
6. REJINI K.S
ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD
TRANSMISSION SUB DIVISION, SHORANUR
PALAKKAD DISTRICT-679 121.
7. HAREESAN MOTTAMMAL
ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD
COMMUNICATION SUB DIVISION, KANNUR
KANNUR DISTRICT-670 002.
8. SANTHI K
ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD, SUB REGIONAL STORE
VADAKARA, KOZHIKODE DISTRICT-673 103.
9. SAJEEV G
ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD, S.O.CIRCLE
VIDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM-695 004.

R4-R9 BY ADV. SRI.BIJU BALAKRISHNAN
R4-R9 BY ADV. SMT.V.S.RAKHEE
R5,R6,R7,R8,R9 BY ADV. SMT.PRINCY XAVIER
R1-R2 BY ADV. SRI.K.S.ANIL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P1- A TRUE PHOTOCOPY OF THE PROCEEDINGS NO.EB. GR.3/ASSISTANT ENGINEER(ELECTRICAL)/COMBINED SENIORITY DATED 19.5.2012 ALONG WITH THE PROVISIONAL LIST.
- EXT. P2- A TRUE PHOTOCOPY OF THE RELEVANT PORTION OF THE SENIORITY LIST OF ASSISTANT EXECUTIVE ENGINEERS (75% GRADUATES) DATED 30.11.2009.
- EXT. P3- A TRUE PHOTOCOPY OF THE SELECT LIST ISSUED UNDER COVER OF B O (FTD) NO.1557/2014(ESTT III/CR-RULES 2006) DATED 2.6.14.
- EXT. P4- A TRUE PHOTOCOPY OF THE JUDGMENT DATED 22.8.14 IN W.P[C] NO.21929/14.
- EXT. P5- A TRUE PHOTOCOPY OF THE ORDER NO.ESST.III/4426/14 DATED 30.12.14 ISSUED BY THE 1ST RESPONDENT.
- EXT. P6- A TRUE PHOTOCOPY OF THE ORDER B.O(FTD)NO.1977/14 DATED 21.7.14 PROMOTING THE RESPONDENTS 3 AND 4.
- EXT. P7- A TRUE PHOTOCOPY OF B.O(CMD)NO.2101/14 DATED 2.8.14 ISSUED BY THE 1ST RESPONDENT PROMOTING THE RESPONDENT NO.5.
- EXT.P8- A TRUE COPY OF THE ORDER No.EBI/T&P/707(A)/01-02 DATED 20.02.2002 ISSUED BY THE 2ND RESPONDENT.
- EXT.P9- A TRUE COPY OF THE PROCEEDINGS No.EBI/AE-AEE(ELE) / PRO/2007 DATED 25.07.2007.
- EXT.P10- A TRUE COPY OF THE JUDGMENT DATED 07.05.2013 IN WP(C) No.11829/13.

RESPONDENT(S)' EXHIBITS

- EXT.R9(a) COPY OF THE BOARD ORDER NO.EV-IV-17426/70 DATED 09.12.1970.
- EXT.R9(b) COPY OF THE BOARD ORDER NO.RL.L-12548/75, DT. 25.09.1975
- EXT.R9(c) COPY OF THE ORDER No.EB/GR.3/CADRE STRENGTH/03 DATED 26.12.2004.
- EXT.R9(d) COPY OF THE ORDER No.EB/GR.3/GRADE STRENGTH/03, DT.04.05.2004.
- EXT.R9(e) COPY OF THE ORDER No.EB/GR.3/GRADE STRENGTH/03, DT. 27.11.2004 AND THE SENIORITY LIST OF ASSISTANT ENGINEERS (ELECTRICAL)ANNEXED THERETO.

EXT.R9(f) COPY OF THE ORDER No.EB.GR.3/AEE(ELE.)/SENIORITY, DT.30.11.2009 AND THE SENIORITY LIST OF ASSISTANT EXECUTIVE ENGINEERS (ELECTRICAL)

EXT.R9(g) COPY OF THE ORDER DATED 10.02.2006 IN WP(C) No.4027 OF 2006

EXT.R9(h) COPY OF THE ORDER DATED 02.03.2006 IN WP(C) No.4027 OF 2006

EXT.RP(i) COPY OF THE ORDER DATED 07.03.2006 IN WP(C) No.4027 OF 2006

EXT.R9(j) COPY OF THE ORDER DATED 26.03.2007 IN WP(C) No.22687 OF 2006

EXT.R9(k) COPY OF THE ORDER DATED 24.06.2007 IN WA No.1029 OF 2007

EXT.R9(l) COPY OF THE JUDGMENT DATED 11.07.2013 IN WP(C)No.4027 OF 2006 AND WP(C) No.22687 OF 2006 AND OTHER CONNECTED CASES.

EXT.R9(m) COPY OF OF THE JUDGMENT DATED 07.10.2008 IN WP(C) No.21527 OF 1997 OF THIS HON'BLE COURT.

EXT.R9(n) COPY OF THE ORDER No.12133/BS/88/PD, DATED 03.05.1989.

EXT.R9(o) COPY OF THE COMMUNICATION No.EST.B/20994/88, DATED 01.06.1989

EXT.R9(p) COPY OF THE BO No,EST.II/6283/89, DATED 30.12.1989

EXT.R9(q) COPY OF THE JUDGMENT DATED 28.11.2006 IN WP(C) No.16118 OF 2003 OF THIS HON'BLE COURT.

EXT.R9(r) COPY OF THE JUDGMENT DATED 04.01.2014 IN WP(C) No.34018 OF 2010 OF THIS HON'BLE COURT.

EXT.R9(s) COPY OF THE BO(FTD) No.290/2015 (ESTT.III/DPC/2015), DATED 03.02.2015.

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 3390 of 2015

Dated this the 8th day of June, 2015

JUDGMENT

The petitioners in the writ petition are working as Assistant Executive Engineers in the Kerala State Electricity Board. The petitioners entered into service as Sub Engineers and were promoted as Assistant Engineers against the 10% quota that was earmarked for in-service candidates. They joined service as Assistant Engineers on various dates in 1993 and 1996 respectively. Respondents 3 to 9 in the writ petition are persons, who were directly recruited from the open market against the 40% quota that was reserved, in the cadre of Assistant Engineer, for graduate engineers. The grievance of the petitioners in the writ petition is essentially one regarding the inter se seniority between them and respondents 3 to 9. It is their contention that respondents 3 to 9 were promoted as Assistant Executive Engineers overlooking the seniority of the petitioners. The facts in the writ petition would reveal that the post of Assistant Executive Engineers in the respondent Board is filled up by promotion from among Assistant Engineers in the ratio of, 75% from the stream of graduate engineers and 25% from the stream of diploma engineers. It is the case of the petitioners that, while considering 75% of the vacancies, that were filled up from graduate engineers, the

petitioners have been put to a disadvantage because, the quota of graduate engineers in the posts of Assistant Engineers itself has been filled through two streams namely, 10% filled from among Assistant Engineers, who had come up through the 10% quota earmarked for in-service candidate and 40% of graduate engineers, who came up through the quota earmarked for direct recruitment, without first drawing up an integrated seniority list of Assistant Engineers including both the said categories of Graduate Engineers. In other words, it is the contention of the petitioners that, in the cadre of Assistant Engineer, there was no integrated seniority list that was drawn up, by following the ratio prescribed for appointment through two streams of graduate engineers, read with the provisions of Rule 27 A of the KS&SSR. The petitioners contend that, inasmuch as there was an erroneous seniority list prepared in the cadre of Assistant Engineers, respondents 3 to 9, who should have been juniors to the petitioners in the cadre of Assistant Engineers, stole a march over them, while obtaining promotion to the post of Assistant Executive Engineer, and now stand included in the select list for promotion to the next higher post of Executive Engineer. Ext.P3 is produced in the writ petition as the select list that was drawn up for the post of Executive

Engineer and the petitioners' grievance in the writ petition is with regard to their exclusion from the said list, consequent to an exclusion of their names from the seniority list prepared in the cadre of Assistant Executive Engineer (produced as Ext.P2 in the writ petition). It is the specific case of the petitioners that, pursuant to the directions of this Court, in various writ petitions that were filed by graduate engineers under the 10% quota earmarked for in-service candidates in the cadre of Assistant Engineer, Ext.P1 draft combined seniority list has been drawn up in the cadre of Assistant Engineer on 19.05.2012, and once this list is finalised, the petitioners will have to be given their notional promotion to the higher posts of Assistant Executive Engineers and Executive Engineers respectively. It is therefore that the petitioners pray that promotion to the post of Executive Engineer be completed only after Ext. P1 draft seniority list is finalised by the respondent Board. The petitioners' also contend that, if the benefit of Ext.P1 combined seniority list in the cadre of Assistant Engineer is not made available to them, they will lose out on their timely promotion to the higher posts of Assistant Executive Engineers and Executive Engineers respectively.

2. Counter affidavits have been filed on behalf of the respondent Board and also on behalf of respondents 4 to 9. In the counter affidavit of the respondent Board, it is stated that appointments to the post of Assistant Engineer under the Board are governed by the Board orders dated 13.07.1967 and 17.02.1973. It is their contention that as per the special rules, appointment to the cadre of Assistant Engineer in the Board has to be done by following the 10% quota in respect of in-service graduates and 40% quota through direct recruitment of graduate engineers. The 40% graduate engineers, who come through direct recruitment are pursuant to a selection done by the PSC. It is further pointed out that appointment to the cadre of Assistant Executive Engineer is done in the ratio of 75% : 25% between degree holders and diploma holders and is governed by Kerala Engineering Service Rules. For this purposes, separate seniority list of degree, diploma and certificate holding Assistant Engineer has to be maintained for the purposes of promotion to the cadre of Assistant Executive Engineer. The combined seniority list under the 10% and 40% quota for degree holders in the cadre of Assistant Engineers is stated to have been prepared based on the Board order dated 25.09.1975. It is also pointed out that the

averments of the petitioners, that the promotion to the cadre of Assistant Executive Engineers was effected only from Assistant Engineers recruited under 40% quota is not correct, but in fact, promotions are made from a combined seniority list, which was prepared pursuant to a Board order dated 25.09.1975. It is further pointed out that, even the petitioners were beneficiaries of the said combined seniority list, which is prepared in accordance with the Board order dated 25.09.1975 inasmuch as they have been subsequently promoted as Assistant Executive Engineers. With regard to the averments in the writ petition regarding the promotion to the post of Executive Engineer, it is clarified that the select list for promotion to the post of Executive Engineer was prepared from the seniority list of Assistant Executive Engineers, that was finalised on 13.11.2009 with the approval of the Board. It is contended that inasmuch as the petitioners had not challenge the said seniority list, which is published as early as on 13.11.2009, the present challenge of the petitioners, to the said seniority list was belated.

4. In the counter affidavit filed on behalf of the respondents 4 to 9, the said respondents would place reliance on

the fact that the petitioners themselves were promoted based on a seniority list, that was prepared based on the Board order dated 9.12.1970. It is their contention that, inasmuch the petitioners had obtained the benefit of the said combined seniority list, they cannot be seen as challenging the same, having already obtained benefits thereunder. It is also vehemently contended that Ext.P2 seniority list, the full text of which is produced as Ext.R9(f) in the counter affidavit filed by the said respondents, has become final and, inasmuch as it was not challenged by the petitioners for over five years, the sit back theory, which mandates that settled seniority lists cannot be altered, will operate to non-suit the petitioners in the instant case. The respondents would in particular point to Ext.R9(r) judgment, where in almost similar circumstances, when a challenge was sought to be made against the settled seniority list, this Court had refused to entertain the writ petition on finding that the writ petition was hit by latches.

5. I have heard the learned counsel for the petitioner, the learned Standing Counsel for the respondent Board and also the learned counsel for the respondents 3 to 9.

6. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the grievance of the petitioners is essentially one that relates to the erroneous fixation of the seniority in the seniority list prepared in the cadre of Assistant Engineers. The gist of the arguments of the learned counsel for the petitioner is to the effect that the erroneous fixation of seniority in the cadre of Assistant Engineers has led to the exclusion of the petitioners in the seniority list prepared in the cadre of Assistant Executive Engineers and consequently, in the select list of candidates, that was drawn up for the purposes of promotion to the post of Executive Engineers. It is seen from the averments in the writ petition that the petitioners' contention all along has been that the integrated seniority list in the post of Assistant Engineer, by following the correct ratio as prescribed under the Board order read with Rule 27 A of the KS& SSR, was never drawn up by the respondent Board and, it was this inaction on the part of the Board that resulted in respondents 3 to 9 getting promoted as Assistant Executive Engineers prior to the petitioners, and the said respondents 3 to 9 being included in the seniority list of Assistant Executive Engineers, that was drawn up on 30.11.2009. It is the

case of the petitioners that, pursuant to the said error that crept in while drawing up the seniority list in the cadre of Assistant Engineers, the petitioners are now being excluded from a consideration for promotion to the post of Executive Engineers, where once again, respondents 3 to 9 have been included in the select list. On a consideration of the submissions of counsel for the petitioners, I find that, while it is a fact that pursuant to the representations preferred by the petitioners, the respondent Board has since drawn up a combined seniority list for the cadre of Assistant Engineers on 19.05.2012, it is not in dispute that the said list has not been finalised till date. As and when the said list is finalised by the Board, the petitioners may be entitled to the benefit of the revised seniority list, that is finalised after hearing the affected parties.

7. The question, however, arises as to whether the petitioners can impugn the promotions effected, and proposed, of respondents 3 to 9, based on Ext.P2 seniority list in the cadre of Assistant Executive Engineers, which has been holding the field since 30.11.2009. I find that the petitioners have not mounted any challenge against Ext.P2 seniority list in the last five years and to

allow them to do so now would do violence to the doctrines of sit back and laches, which have been upheld, by this Court and the Supreme Court, through a plethora of judgments. The judgments of the Hon'ble Supreme Court in **Rabindra Nath Bose and Others v. Union of India and Others - [1970 KHC 379]** and **Shiba Shankar Mohapatra and Others v. State of Orissa and Others - [2010 KHC 6112]**, as also the judgment of the Full Bench of this Court in **Sajeev N.J. v. Union of India and Others - [2009 (4) KHC 627]** would operate against the petitioners in effectively insulating Ext.P2 settled seniority list, in the cadre of Assistant Executive Engineers, from a challenge in these proceedings under Article 226 of the Constitution of India. Thus, I am of the view, the writ petition in its challenge against Ext.P2 seniority list in the cadre of Assistant Executive Engineers cannot be maintained at the instance of the petitioners, at this distance of time. As a consequence, the challenge in the writ petition against the promotions proposed, or effected, to the post of Executive Engineers, from persons included in Ext.P2 seniority list, also fails and is rejected. The petitioners are free to work out their remedies in respect of future promotions based on a finalisation of Ext.P1 combined seniority list, by the respondent

Board, as and when the Board finalises the same. Taking note of the contentions of the petitioners that the draft combined seniority list was published as early as on 19.05.2012, I direct the respondent Board to complete the process of finalising Ext.P1 combined seniority list within a period of four months from the date of receipt of a copy of this judgment. Save for the above direction to the respondent Board in respect of Ext.P1 combined seniority list, the writ petition in its challenge against Ext.P2 seniority list, and the promotions of respondents 3 to 9, is otherwise dismissed.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE