

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. 7964 of 2012 (U)

PETITIONER(S):

1. **SAJEEV.S, AGED 41 YEARS**
SON OF SURENDRAN.P, AGED 41 YEARS
WORKING AS SUB ENGINEER (ELECTRICAL)
KERALA STATE ELECTRICITY BOARD
KOTTIYAM ELECTRICAL SECTION
KOLLAM, RESIDING AT POIKAVILA VEEDU, PULIYILA,
NALLILA P.O., KOLLAM-691 515.
2. **UDAYABHANU.C, S/O.AYYAPPAN, AGED 46 YEARS**
WORKING AS SUB ENGINEER (ELECTRICAL)
KERALA STATE ELECTRICITY BOARD
CONTROL ROOM, KOZHIKODE, RESIDING AT CHOLAKKAL HOUSE
KOLATHARA P.O., KOZHIKODE-673 655.
3. **BENNY KURIAKOSE**
S/O.KURIAKOSE.K.M, AGED 46 YEARS
WORKING AS SUB ENGINEER (ELECTRICAL)
ELECTRICAL SECTION
VELLAMUNDA KERALA STATE ELECTRICITY BOARD, WAYANAD
RESIDING AT KUMBALAPALLY HOUSE, KANIYARAM
MANANTHAVADY P.O., WAYANAD-670 645.

BY ADVS. SRI.LEO GEORGE
SRI.K.N.SASIDHARAN NAIR

RESPONDENT(S):

1. **KERALA STATE ELECTRICITY BOARD**
REPRESENTED BY ITS SECRETARY
KERALA STATE ELECTRICITY BOARD, VAIDHYUTHI BHAVAN
THIRUVANANTHAPURAM-695 001.
2. **THE CHIEF ENGINEER (HRM)**
KERALA STATE ELECTRICITY BOARD, VAIDHYUTHI BHAVAN
THIRUVANANTHAPURAM-695 001.

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WP(C).No. 7964 of 2012 (U)

3. JOSEPH.T.J,
WORKING AS ASSISTANT ENGINEER (ELECTRICAL)
KERALA STATE ELECTRICITY BOARD
KARIMANAL L.P.ERECTION DIVISION, THATTEKKANI P.O.
IDUKKI-685 606.
 4. AJITH.B,
WORKING AS ASSISTANT ENGINEER (ELECTRICAL)
KERALA STATE ELECTRICITY BOARD
K.G.SUB DIVISION, KAKKAYAM, KOZHIKODE-673 615.
 5. VENU.T.K
WORKING AS ASSISTANT ENGINEER (ELECTRICAL)
KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION
PUDUKKAD, THRISSUR-680 301.
- R1,2 BY ADV. SRI.K.S.ANIL, SC, KSEB
R3 TO 5 BY ADVS. SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/6/2014
THE COURT ON 05-01-2015, DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1- TRUE COPY OF THE GRADATION LIST OF SUB ENGINEER (ELECTRICAL) PUBLISHED BY THE BOARD FOR THE PERIOD FROM 27.2.1993 TO 1/1/2004 FROM SERIAL NO.1677 TO 2347 DATED 21.2.2004.**
- EXHIBIT P2- TRUE COPY OF THE GRADATION LIST OF SUB ENGINEER (ELECTRICAL) PUBLISHED BY THE BOARD FOR THE PERIOD FROM 2.1.2004 TO 31/12/2007 UPTO SERIAL NO.319 DATED 29.4.2010.**
- EXHIBIT P3- TRUE COPY OF THE BOARD ORDER NO.M.IV-11552/67 DATED 13.7.1967.**
- EXHIBIT P4- TRUE COPY OF THE BOARD ORDER NO.EC.IV-17428/70 DATED 9.12.1970.**
- EXHIBIT P5- TRUE COPY OF THE BOARD ORDER NO.RL1.28309/72 DATED 16.8.1973.**
- EXHIBIT P6- TRUE COPY OF THE ORDER ISSUED BY THE SECOND RESPONDENT DATED 29.11.2011.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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'CR'

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 7964 of 2012

Dated this the 5th day of January, 2015

J U D G M E N T

The petitioners, who are diploma holders in Electrical Engineering and working as Sub Engineers (Electrical) in the service of Kerala State Electricity Board, have come up before this Court with this writ petition for the following reliefs;

[i] to declare that the quota of 3:2 prescribed as per Exhibits P3 to P5 orders among the Diploma Holders and Certificate Holders for promotion to the post of Assistant Engineer (Electrical) formerly Junior Engineer (Electrical) in the service of the Kerala State Electricity Board for the benefit of Diploma Holders has become unworkable and hence arbitrary and unenforceable.

Or in the Alternative

[ii] to declare that the provision in the note attached to Exhibit P5 Rules prescribing the qualification and method of appointment to the post of Assistant Engineer (Electrical) formerly Junior Engineer (Electrical) in the service of the Kerala State Electricity Board to the effect that the ratio provided therein will be maintained on the total cadre strength is applicable only between direct recruits and promotees and the same is not intended to be and cannot be applied between Diploma Holders and Certificate Holders while effecting promotion.

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[iii] to issue a writ of certiorari or any other appropriate writ, direction or order calling for the records leading to Exhibit P6 order of the second respondent and quashing the same.

[iv] to issue a writ of mandamus or any other appropriate writ, direction or order commanding respondents 1 and 2 to promote the first petitioner to the post of Assistant Engineer (Electrical) within a time limit to be prescribed by this Honourable Court.

2. The petitioners allege that they are qualified to be considered for promotion to the post of Assistant Engineer (Electrical). The petitioners point out that the qualification and method of appointment to the post of Assistant Engineer (Electrical), which was formerly Junior Engineer (Electrical), have been prescribed by the Board as per Exts.P3 to P5 orders. As per the said orders, the method of appointment to the post is by direct recruitment and also by promotion from the category of Sub Engineer (Electrical) in the ratio 1:1. The Rules also provide that the ratio of 3:2 is to be maintained among the diploma holder Sub Engineers and certificate holder Sub Engineers while effecting promotion to the post of Assistant Engineer (Electrical). The note appended to Ext.P5 Rules provide that the ratio prescribed between

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direct recruits and promotees will be maintained on the total cadre strength of Junior Engineer (Electrical) and not on arising vacancies. According to the petitioners, the very object of prescribing a quota for promotion to the post of Assistant Engineer (Electrical) from among the diploma holders and certificate holders, who get promoted/directly recruited to the post of Sub Engineer (Electrical), is to improve the efficiency of the service by giving preference to the diploma holders in the matter of claiming promotion to the post of Assistant Engineer (Electrical). According to the petitioners, it is a classification based on their educational qualification in favour of diploma holders. They allege that the quota enables the diploma holders Sub Engineers to claim promotion in preference to their senior certificate holders Sub Engineers so as to achieve the object. According to them, the note added to the Rules as per Ext.P5 order that the ratio will be maintained based on the total cadre strength, is intended only to be applied between direct

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recruits and promotees and the said note was never intended to be applied among the diploma holders and certificate holders, who get promoted and directly recruited to the feeder category viz., Sub Engineer (Electrical) from same sources as otherwise, the same would enable a junior certificate holder to claim promotion over a senior diploma holder. They would further point out that the prescription in the note, in the circumstances, was never applied also by the Board till 2003 among the certificate holders and diploma holders. However, after 2003, at the instance of certificate holders, the Board misinterpreted the said note and took the stand that the ratio prescribed for promotion among the promotee certificate holders and promotee diploma holders is also to be maintained on the basis of the cadre strength, and consequently, started filling up vacancies arose in the cadre of Assistant Engineer (Electrical) on account of the retirement/promotion of certificate holders by certificate holders; it is alleged. The petitioners further

point out that most of the certificate holders who get promoted to the post of Assistant Engineer (Electrical) are certificate holders, who are recruited as Electricity Worker, Lineman etc.; and as such, most of them retire as Assistant Engineer (Electrical). Consequently, when ratio is maintained on the basis of the cadre strength, vacancies due to them arose in a faster pace. The petitioners point out that when the Board started filling up the vacancies of the certificate holders by certificate holders on account of the misapplication of the note attached to the Rules as per Ext.P5, sufficient number of certificate holders were not available to be promoted to the post of Assistant Engineer (Electrical) in the category of Sub Engineer (Electrical) without violating the seniority of diploma holders. Consequently, the Board started promoting junior certificate holders to the post of Assistant Engineer (Electrical) in preference to senior diploma holders in the guise of complying with the provisions contained in the note. According to the

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petitioners, the interpretation given to the note referred to above by the Board is misconceived and defeating the very purpose of the prescription of the quota among diploma holders Sub Engineers and certificate holders Sub Engineers. Therefore, the petitioners are seeking a declaration that the provision in the note attached to Ext.P5 Rules prescribing the qualification and method of appointment to the post of Assistant Engineer (Electrical) to the effect that the ratio provided therein will be maintained on the total cadre strength, is applicable only between direct recruits and promotees and the same is not intended to be and cannot be applied between diploma holders and certificate holders while effecting promotion.

3. The 2nd respondent filed a counter affidavit contending as follows;

4. The 1st petitioner having Diploma in Electrical Engineering was appointed as Sub Engineer on 27.10.2003, whereas the 2nd and 3rd petitioners also having Diploma in Electrical Engineering were appointed as Meter Reader on 25.5.1995 and 8.4.1996 respectively and they were subsequently promoted to the post of Sub Engineer on 20.1.2005.

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5. The qualification for appointment to the post of Sub Engineer (Ele.) by direct recruitment is only Diploma in Electrical Engineering.

6. The qualification and method of appointment to the post of Assistant Engineer (Ele.), formerly Junior Engineer is governed by the B.O.No.MIV-11552/67 dated 13.7.1967, B.O.No.EC.IV-17428/70 dated 9.12.1970 and B.O.No.RL.1/28309/1972 dated 16.8.1973. The appointment/promotion to the cadre of Assistant Engineer (Ele.) is being carried out in the ratio of 50:50 between direct recruitment through Kerala Public Service Commission and promotion from Sub Engineers having requisite qualification. Out of 50% post for promotion, 30% are earmarked for Sub Engineers holding Diploma in Electrical, Electrical and Electronics and Electrical and Communication Engineering and 20% are earmarked for Sub Engineers holding ITI Certificates. Moreover, it is specifically stated vide the note in the Board Order dated 16.8.1973, which prescribes the revised qualification for promotion to the post of Assistant Engineer, formerly Junior Engineer, that the ratio is to be applied on cadre strength as a whole and not on the arising vacancies. Thus, vacancies under 30% diploma quota is filled from Sub Engineer (Ele.) having diploma qualification. Likewise vacancy under 20% certificate quota is filled up by Sub Engineer having ITI qualification.

7. A common seniority list is prepared in the cadre of Sub Engineer based on the date of promotion as far as promotees are concerned and based on the date of advice by Kerala Public Service Commission as far as direct recruits are concerned.

8. As a policy decision, Kerala State Electricity Board has decided that 50% B.Tech Holder (40% + 10%), 30% diploma holders and 20% ITI holders is a fair combination in the cadre of Assistant Engineer for satisfactory management of sections as well as reasonable career prospects for the different categories of incumbents.

9. It is specifically stated vide the note in the Board Order dated 16.8.1973, which prescribes the revised qualification for promotion to the post of Assistant Engineer, formerly Junior Engineer, that the ratio is to be applied on cadre strength as a whole and not on the arising vacancies. Further, the Board Order does not stipulate any clause that a senior diploma holder should not be superseded by a junior certificate holder. Hence, the allegation that the provision in the note added to the Board Order dated 16.8.1973 is intended only to be applied between direct recruits and promotees is not

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correct. There is no misinterpretation of the Board Order.

10. The 4th respondent and the 5th respondent as pointed out by the petitioner entered the Board service as Meter Reader on 5.7.1995 and 8.4.1996 respectively and were promoted to the post of Sub Engineer on 20.1.2005 and to the post of Assistant Engineer on 31.7.2010. Since they are Certificate holders they are eligible for promotion as Assistant Engineer against the 20% quota set apart for Certificate holders. Hence, they were promoted to the post of Assistant Engineer on 31.7.2010 against the vacancy set apart for Certificate holders. The 2nd and 3rd petitioners being diploma holders can be considered for promotion to the post of Assistant Engineer only against the quota set apart to the diploma holders i.e., 30%, subject to the availability of vacancy. Neither a diploma holding Sub Engineer can claim promotion to the vacancies under 20% certificate quota nor a certificate holding Sub Engineer can claim promotion to the vacancies under 30% diploma quota.

11. Sri. Gopan.V.G., who is assigned Sl.No.300 in Exhibit P2 gradation list, was promoted to the post of Assistant Engineer on 29.11.2011, which is against the quota set apart for certificate holders since he possessed the ITI qualification and satisfied all other conditions stipulated in the Board Order, at the time of promotion. In the case of Sub Engineers holding diploma/degree, when are promoted to the post of Assistant Engineer in the ITI quota, a declaration to the effect that they will not put forth any claim for further promotion in the Diploma/Degree quota, is obtained from them.

12. In the Board Order dated 16.8.1973, it is specifically sated that the ratio is to be applied on cadre strength as a whole and not on the arising vacancies.

13. Fifty six certificate holders were promoted to the post of Assistant Engineer vide order dated 29.11.2011. Since the petitioners 1, 2 and 3 were diploma holders they can be considered for promotion only against the 30% quota which is set apart for them. Further, it is noted that none of the junior to the petitioners holding diploma in Electrical Engineer, has been promoted as Assistant Engineer under 30% quota.

4. Respondents 3 to 5, who are impleaded in a representative capacity to represent all the persons who

are affected by the relief sought for in the writ petition, have not chosen to file any counter affidavit.

5. Though notice was published pursuant to the orders in IA No.4940/2012 permitting the petitioners to institute the writ petition against respondents 3 to 5 in a representative capacity on behalf of all the persons affected by the relief sought for, nobody turned up to get themselves impleaded.

6. Arguments have been heard.

7. The 1st petitioner entered the service of the Board as Sub Engineer (Electrical) on 02.05.2003. Petitioners 2 and 3 entered the service of the Board as Meter Readers on 25.05.1995 and on 08.04.1996 respectively. Later, they were promoted to the post of Sub Engineer (Electrical) on 20.01.2005 on the basis of their seniority in the category of Meter Reader. Ext.P1 is the true copy of the gradation list of Sub Engineer (Electrical) published by the Board for the period from 27.02.1993 to 01.01.2004 from serial No.1677 to 2347

dated 21.02.2004. The 1st petitioner is assigned Sl.No.2309 in Ext.P1 gradation list. Ext.P2 is the gradation list issued in continuation to Ext.P1 gradation list. Petitioners 2 and 3 are assigned Sl.Nos.46 and 72 in Ext.P2 gradation list. The next higher post in the hierarchy in the service of the Board is the post of Sub Engineer (Electrical). As per the Rules in force, the method of appointment to the post of Sub Engineer (Electrical) is by direct recruitment and also by promotion from the category of Meter Reader and Overseer. 40% of the vacancies are earmarked for direct recruitment and the rest is filled up by promotion. The next higher post in the hierarchy in the service of the Board is the post of Assistant Engineer (Electrical). The qualification and method of appointment to the post of Assistant Engineer (Electrical), which was formerly Junior Engineer (Electrical), have been prescribed by the Board as per Board Order No.M.IV-11552/67 dated 13.07.1967. Ext.P3 is the true copy of the aforesaid Board Order and

Exts.P4 & P5 are the true copies of Board Circulars. As per Exts.P3 to P5, the method of appointment to the post of Assistant Engineer (Electrical) is by direct recruitment and also by promotion from the category of Sub Engineer (Electrical) in the ratio 1:1. The Rules also provide that a ratio of 3:2 is to be maintained among the diploma holder Sub Engineers and certificate holder Sub Engineers while effecting promotion to the post of Assistant Engineer (Electrical) formerly Junior Engineer (Electrical). A note is also added to the Rules as per Ext.P5, which reads as follows;

“Appointment to the post of Junior Engineer (Electrical) will be in the ratio of 5:3:2 among Degree holders (direct recruits) Diploma & Certificate holders (Promotees). The ratio will be maintained on the total cadre strength of Junior Engineers (Electrical) and not on arising vacancies.”

8. The petitioners point out that as diploma holders and certificate holders in the category of Meter Readers and Overseers are promoted to the category of Sub Engineer (Electrical) solely based on their seniority and as diploma holders and certificate holders are

recruited directly to the post of Sub Engineer (Electrical), a common seniority list is prepared in the category of Sub Engineer (Electrical) based on the date of promotion as far as promotees are concerned and based on the date of advice by the Public Service Commission as far as direct recruits are concerned. The grievance of the petitioners is regarding the interpretation of the provision given by the respondent Board in the note added to the Rules as per Ext.P5. According to the petitioners, the provision in the note that the ratio would be maintained based on the total cadre strength is intended only to be applied between direct recruits and promotees and the said note was never intended to be applied among the diploma holders and certificate holders, who get promoted and directly recruited to the feeder category viz., Sub Engineer (Electrical) from same sources as otherwise; and the same would enable a junior certificate holder to claim promotion over a senior diploma holder, which was never intended by prescribing the ratio. The petitioners

point out that in view of the misinterpretation of the provision in the note, the certificate holder Meter Reader/Overseer in the common seniority list is at present able to claim promotion to the post of Assistant Engineer (Electrical) within a few years from the date of promotion to the post of Sub Engineer (Electrical), whereas a senior diploma holder Meter Reader/Overseer in the common seniority list will have to wait for years to claim promotion to the post of Assistant Engineer (Electrical). If the said practice is continued, this gap will increase in future as sufficient number of certificate holders are not available in the cadre of Sub Engineer (Electrical) to fill up the vacancies in the manner; and a situation will come, where a certificate holder will be able to claim promotion to the post of Assistant Engineer (Electrical) on the very same day, on which he gets promoted to the post of Sub Engineer (Electrical); so submitted the learned counsel for the petitioners. I see valid force in the said submission.

9. The resultant situation on account of the interpretation now given by the respondent Board to the note was never intended by the statute at all. The averments in para 8, 9 and 10 in the writ petition are relevant and it is profitable to extract the averments hereunder;

“8. Further, even if the ration prescribed between Diploma Holders and Certificate Holders for promotion to the post of Assistant Engineer (Electrical) is applied on the basis of the occurrence of vacancies as intended as per the note appended to Ext.P5 order, the situation in the Board at present is such that a junior Certificate Holder is able to claim promotion to the post of Assistant Engineer (Electrical) in preference to a senior Diploma Holder. For instance, the first petitioner would never get promotion to the post of Assistant Engineer (Electrical) during his tenure, if the ratio prescribed among the Diploma Holders and Certificate Holders is applied on the basis of the cadre strength. Had the ratio been applied on the basis of occurrence of vacancies, he would have got promotion during 2011. Had there been no ratio for promotion for the benefit of the Diploma Holders, first petitioner would have got promotion to the post of Assistant Engineer (Electrical) in the year 2010. It is thus evident that the ratio prescribed between Diploma Holders and Certificate Holders for promotion to the post of Assistant Engineer (Electrical) for the benefit of the Diploma Holders is now working as a ratio in favour of Certificate Holders and thus the same has become unworkable and hence arbitrary and unenforceable.

9. It is respectfully submitted that in view of the misinterpretation of the provision in the note, a Certificate Holder Meter Reader/Overseer in the common seniority list is at present able to claim promotion to the post of Assistant Engineer (Electrical) within a few years from the date of promotion to the post of Sub Engineer (Electrical), whereas a senior Diploma Holder Meter Reader/Overseer in the common seniority list will have to wait for years to claim promotion to the post of Assistant Engineer (Electrical). If the said practice is continued, this gap will increase in future as sufficient

number of Certificate Holders are not available in the cadre of Sub Engineer (Electrical) to fill up the vacancies in the manner in which the provision in the note is interpreted by the Board and a situation will come where a Certificate Holder will be able to claim promotion to the post of Assistant Engineer (Electrical) on the very same day on which he gets promoted to the post of Sub Engineer (Electrical). It is relevant to note that the second petitioner who is a Diploma Holder entered service of the Board as Meter Reader on 25/5/1995 and fourth respondent, who is a Certificate Holder entered the service of the Board as Meter Reader only on 5/7/1995. Both of them got promoted to the post of Sub Engineer (Electrical) on the same day. Fourth respondent got promoted to the post of Assistant Engineer (Electrical) on 31/7/2010, whereas if the present state of affairs continues, the second petitioner who is senior to the fourth respondent in the common seniority list will never get promotion to the post of Assistant Engineer (Electrical) in his tenure. Likewise, the third petitioner who is a Diploma Holder and the fifth respondent who is a Certificate holder entered the service of the Board as Meter Reader on 8/4/1996 and both of them got promoted to the post of Sub Engineer (Electrical) on the same day. Fifth respondent got promoted to the post of Assistant Engineer (Electrical) on 31/7/2010, whereas the third petitioner who is senior to the fourth respondent in the common seniority list will retire in the present cadre.

10. It is respectfully submitted that the situation in the Board at present is such that the only alternative available to Diploma Holders to get promotion to the post of Assistant Engineer (Electrical) before the promotion of their junior Certificate Holder is to acquire Certificate in Electrical Engineering which is a lower qualification. The qualified Diploma Holders are now adopting such a course to get promotion in preference to their juniors. The case of Gopan V.G., the Sub Engineer who is assigned Serial No.300 in Exhibit P2 gradation list is one such instance. The said person who entered the service of the Board on 11/2/1997 and got promoted to the post of Sub Engineer (Electrical) on 20/1/2005 got promoted to the post of Assistant Engineer (Electrical) on 29/11/2011 on the strength of Certificate of Electrical Engineering obtained by him during February 2011. But for acquiring the said lower qualification, he would not have been promoted to the post of Assistant Engineer (Electrical) till his retirement. Further, despite the quota provided to enable the Diploma Holders to get promotion in preference to Certificate Holders, persons appointed as Sub Engineer (Electrical) in the service of the Board retire in the entry cadre itself. The case of Raveendran V. who is assigned Sl.No.2039 in Exhibit P1 Gradation list is one of such instance. At the same time,

Certificate Holders are getting faster promotions in view of the quota prescribed for the benefit of the Diploma Holders. Thus, the quota introduced at the level of Assistant Engineer (Electrical) for the benefit of the Diploma Holders is not only not serving the purpose for which the quota is introduced, but the same is working out against the interest of Diploma Holders for whose benefit the same was introduced and but for the quota and but for the misinterpretation of the note attached to Exhibit P5 rules, first petitioner would have got promotion to the post of Assistant Engineer (Electrical) by now.”

10. It is crucial to note that the respondent Board in their counter affidavit has not denied the aforesaid averments. There cannot be any doubt that the object of prescribing a quota for promotion to the post of Assistant Engineer (Electrical) from among the diploma holders and certificate holders, who get promoted/directly recruited to the post of Sub Engineer (Electrical), is to improve the efficiency of the service by giving preference to the diploma holders in the matter of claiming promotion to the post of Assistant Engineer (Electrical). As it is a classification based on their educational qualification in favour of diploma holders, the quota enables the diploma holders Sub Engineers to claim promotion in preference to their senior certificate holders Sub Engineers so as to achieve the object. If the

interpretation given by the respondent Board is accepted, the same would work out against the interest of the diploma holders, for whose benefit, the same was introduced.

11. As rightly pointed out by the learned counsel for the petitioners, the note added to the Rules as per Ext.P5 order that the ratio would be maintained based on the total cadre strength, is intended only to be applied between direct recruits and promotees and the said note was never intended to be applied among the diploma holders and certificate holders, who get promoted and directly recruited to the feeder category viz., Sub Engineer (Electrical) from same sources. If the note is applied on the basis of the cadre strength, the certificate holder Sub Engineer (Electrical) would be able to claim promotion to the post of Assistant Engineer (Electrical) in preference to a senior diploma holder Sub Engineer promoted from the very same source, viz., Meter Reader/Overseer, which was never intended at all. The

decision of the Board to apply the ratio prescribed for promotion among the promotee certificate holders and promotee diploma holders on the basis of the cadre strength is misconceived and defeating the very purpose of the prescription of the quota among diploma holders Sub Engineers and certificate holders Sub Engineers.

12. The apex court, in **Indian Express Newspaper (Bombay) Pvt. Ltd. & Others** v. **Union of India & Others** [AIR 1986 SC 515], has observed that a piece of subordinate legislation does not carry the same degree of immunity, which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds, on which plenary legislation is questioned.

13. In the instant case, the prescription of quota to the post of Assistant Engineer (Electrical) from among diploma holders and certificate holders is to give preference to diploma holders Sub Engineers for promotion. There is a specific averment in the writ

petition that the prescription was not applied by the Board till 2003 among the certificate holders and diploma holders. It was only after 2003 that the Board has misinterpreted the said note and took the stand that the ratio prescribed for promotion among the promotee certificate holders and the promotee diploma holders is also to be maintained on the basis of the cadre strength, and consequently, started filling up vacancies arose in the cadre of Assistant Engineer (Electrical) on account of the retirement/promotion of certificate holders by certificate holders. The unreasonableness of the said interpretation by the Board would take this Court to the conclusion that it is manifestly arbitrary and beyond the powers conferred under the Rules. No authority would have intended to give authority to interpret in such a way as done by the respondent Board in the present case. In fact, this is a question of competence of authority apart from the violation of the fundamental rights of the petitioners.

14. In the instant case, respondents 3 to 5, on account of lesser qualification, are getting preference over the petitioners, which is a clear violation of Article 14 of the Constitution of India. Junior certificate holders get promotion in preference to the diploma holders defeating the very purpose, for which the quota was fixed. Though it was argued by the learned counsel for the party respondents that the practice was being followed consistently, the said practice shall not be allowed to continue on account of the unreasonableness pointed out above. On a consideration of the entire materials now placed on board, this Court is of the definite view that the petitioners are entitled to succeed.

Therefore, the writ petition is disposed of as follows;

a)it is hereby declared that the provision in the note attached to Ext.P5 Rules prescribing the qualification and method of appointment to the post of Assistant Engineer (Electrical) formerly Junior Engineer (Electrical) in the service of the Kerala State Electricity

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Board to the effect that the ratio provided therein will be maintained on the total cadre strength, is applicable only between direct recruits and promotees and the same is not intended to be and cannot be applied between diploma holders and certificate holders while effecting promotion;

b)Ext.P6 is quashed; and

c)respondents 1 and 2 are directed to promote the 1st petitioner to the post of Assistant Engineer (Electrical). Formal orders to this effect shall be issued within a period of one month from the date of receipt of a copy of this judgment.

No costs.

Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE

bka/-