

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WP(C).No. 23720 of 2004 (W)

PETITIONER(S):

**SRI. G. THANU PILLAI, ASSISTANT ENGINEER
WATER SUPPLY SECTION NO.1, KERALA WATER AUTHORITY
SASTHAMKOTTA, KOLLAM DISTRICT.**

BY ADV. SRI.M.C.GOPI

RESPONDENT(S):

- 1. THE MANAGING DIRECTOR, KERALA WATER
AUTHORITY, JALA BHAVAN, VELLAYAMBALAM
THIRUVANANTHAPURAM-33.**
- 2. THE CHIEF ENGINEER, SOUTHERN REGION,
KERALA WATER AUTHORITY, JALABHAVAN
THIRUVANANTHAPURAM-33.**

R1-R2 BY ADV. SRI.GEORGE MATHEW, SC, KERALA WATER AUTHORITY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE CERTIFICATE DATED 01.01.1973
- P2 : COPY OF HTE APPOINTMENT ORDER DATED 12.07.1973
- P3 : COPY OF THE PROCEEDINGS OF THE CHIEF ENGINEER DATED
21.06.1999
- P4 : COPY OF THE RELEVANT PAGE OF ANNEXURE II PAY REVISION ORDER
G.O.(P) NO.66/95/LAD DATED 24.04.1995
- P5 : COPY OF HTE JUDGMENT DATED 19.01.2004 IN W.P. NO.1867 OF 2004
- P6 : COPY OF THE ORDER DATED 28.04.2004 ISSUED BY THE M.D., KERALA
WATER AUTHORITY

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.23720 of 2004

Dated this the 4th day of June, 2015

JUDGMENT

The petitioner, who was working as Assistant Engineer in the Water Supply Section No.1 of the Kerala Water Authority at Sasthamkotta in Kollam District, has filed this writ petition seeking a writ of certiorari to quash Ext.P6 order passed by the 1st respondent and seeking a declaration that he is eligible to get grade promotion and the scale of pay of Assistant Executive Engineer and that the finding to the contra in Ext.P6 is legally unsustainable.

2. Going by the averments in the writ petition, the petitioner, who is a National Trade Certificate Holder in the trade of Draftsman (Mechanical) entered service pursuant to Ext.P2 Government Order by which the Government has accorded sanction to the Chief Engineer of the Public Health Engineering Department to appoint the petitioner as Tracer on compassionate ground under dying-in-harness scheme. Ext.P1 is the certificate issued by the National Council for Training in

Vocational Trades certifying that the petitioner has passed the trade test in the trade of Draftsman (Mechanical) held on July 1972. Pursuant to Ext.P2 order, the petitioner entered service as Tracer and later he was promoted as Draftsman Grade-I on 11.12.1980. In the year 1995, he was promoted as Assistant Engineer and at the time of filing the writ petition, he was continuing as such. According to the petitioner, he has completed 25 years of service in the Department on 17.08.1998 and has also passed the required departmental tests.

3. As per G.O.(P) No.66/95 LAD dated 24.4.1995, the '1995 pay revision' was implemented and according to the petitioner he is entitled for higher grade on completion of 25 years of service. As the petitioner had completed such qualifying service on 17.08.1998 and was qualified for promotion to the next higher post of Assistant Executive Engineer, he was eligible for higher grade in the scale of pay of Assistant Executive Engineer, which was granted by Ext.P3 order dated 21.06.1999 of the 2nd respondent. In Ext.P3, though it was found that the petitioner is eligible for promotion to the post of Assistant Executive Engineer and eligible for higher grade, he was given a scale of pay of Rs.2270-3570/- which is the scale of pay of Administrative Assistant in the Department; which is a different category of

ministerial staff. According to the petitioner, as he was holding a technical post, he is entitled for the scale of pay of Rs.2440-3700, in terms of Ext.P4 pay revision order. As per Ext.P4 order, the scale of pay of Assistant Executive Engineer was Rs.2440-3700/-, but that scale of pay was not given to the petitioner, instead, he was given the scale of pay of Rs.2270-3570/- of Administrative Assistant in the ministerial wing.

4. Aggrieved by non-grant of appropriate scale of pay, the petitioner submitted various representations before the respondents with a request to rectify the above mistake. The petitioner has also submitted a representation dated 22.07.2002 before the Minister in-charge with copy to the respondent, but that representation was not considered and in such circumstances, he had approached this Court in WP(C) No.1867/2004. The said writ petition was disposed of by Ext.P5 judgment, by which the 1st respondent was directed to examine the grievances highlighted by the petitioner in his representation dated 22.07.2002 with notice to him and take a decision in accordance with law, within a period of one month from the date of receipt of a copy of the judgment. Pursuant to the direction contained in Ext.P5 judgment, the 1st respondent issued Ext.P6 order declining the request made by the petitioner. It is

aggrieved by Ext.P6, the petitioner is before this Court in this Writ Petition.

5. Heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel appearing for the Kerala Water Authority.

6. The learned counsel for the petitioner would contend that the reasoning in Ext.P6 order passed by the 1st respondent is patently illegal in view of Ext.P3 order in which there is a finding that, "the petitioner has completed 25 years of service as Draftsman Grade-II, Draftsman Grade-I and Assistant Engineer on the F.N. of 17.08.1998 and that he is qualified for the post of Assistant Executive Engineer." Therefore, according to the learned counsel for the petitioner, the findings in Ext.P3 order passed by the 1st respondent alone is sufficient to draw an inference that the reasoning to the contra in Ext.P6 is legally unsustainable.

7. Per contra, the learned Standing Counsel for the Kerala Water Authority would contend that, valid reasons have been stated in Ext.P6 for rejecting the request made by the petitioner and that order cannot be interfered with merely for the reason that in Ext.P3 there is a finding that the petitioner having qualified service for grade promotion and also having the

requisite qualification for promotion to the post of Assistant Engineer.

8. I have considered the rival submissions made by the Bar.

9. The sole issue that arises for consideration in this writ petition is as to whether the petitioner is entitled for Higher Grade in the scale of pay of Assistant Executive Engineer.

10. A reading of Ext.P6 order passed by the 1st respondent would show that the Kerala Water Authority is following Special Rules for the Kerala Public Health Engineering Subordinate Service, issued vide G.O.(P).No.612 dated 16.09.1960. The qualification for promotion to the post of Assistant Executive Engineer (formerly it was Assistant Engineer) as per the aforesaid rules is degree or diploma or S.M.T. Overseers Certificate and one must have a total service of 25 years in the Department out of which 12½ years must be in one or more posts namely Junior Engineer (Now re-designated as Assistant Engineer) or Mechanical Superintendent/Chief Mechanical Superintendent. It is not in dispute that the petitioner got promotion as Assistant Engineer from the post of Draftsman Grade-I only on 07.06.1995. If that be so, the petitioner does not have the qualifying service of 12½ years prescribed for

promotion to the post of Assistant Executive Engineer as per the special rules.

11. Further, in G.O.(P) No.66/95/LAD dated 24.04.1995, it was ordered that in respect of entry posts on the scales of pay of Rs.2100-3310 and above, only the time bound higher grade specified in the standard scale table will be granted and the scale of pay of promotion posts are not admissible in these cases. Employees on scales of pay of Rs.2100-3310/- and above, either by regular promotion or by time bound higher grade, will also be given time bound higher grade as per the scales prescribed in the table. Since the petitioner has been promoted as Assistant Engineer on 07.06.1995 and the scale of pay admitted in Government Order dated 24.04.1995 is Rs.2185-3440/-, it was found in Ext.P6 that, he is eligible for the scale of pay of Rs.2270-3570/- for grant of 3rd time bound higher grade on completion of total service of 25 years, with effect from 17.08.1998.

12. As noticed in Ext.P6, the scheme for sanction of 3rd time bound higher grade on completion of total period of 23 years of service was introduced only with effect from 01.11.1998, vide G.O.(P) No.54/99/IrD dated 19.08.1999. If that be so, it being a new scheme for time bound higher grade

introduced by the Government with effect from 01.11.1998, the same cannot be made applicable with effect from 17.08.1995, as contended by the petitioner. It was in such circumstances, the request made by the petitioner was turned down by the 1st respondent in Ext.P6. Therefore, the reasoning of the 2nd respondent in Ext.P6 order is perfectly legal and strictly in accordance with the relevant Government orders in force.

13. The learned counsel for the petitioner would contend further that, since there is a finding in Ext.P3 order passed by the 1st respondent that the petitioner is having 25 years of qualifying service as Draftsman Grade-II, Draftsman Grade-I and Assistant Engineer and that he is qualified for promotion to the post of Assistant Executive Engineer, a stand to the contra taken in Ext.P6 cannot be sustained unless and until Ext.P3 is reviewed or revoked.

14. Admittedly, the petitioner has no case that he is having the required qualifying service for the grade promotion claimed by him. Going by the Special Rules, the certificate qualification required for the post of Assistant Executive Engineer (formerly Assistant Engineer) is S.M.T. Overseers Certificate and Ext.P1 certificate produced by the petitioner is not one prescribed under the said rules. In such circumstances, merely for the

reason that there is such a finding in Ext.P3 order passed by the 1st respondent, he cannot claim grade promotion and the scale of pay of Assistant Executive Engineer, especially when such grade promotion and scale of pay claimed by the petitioner in his representation dated 22.07.2002, which was directed to be disposed of by Ext.P5 judgment, were not granted in Ext.P3 order.

In the result, the writ petition fails and the same is dismissed. No order to cost.

JV

sd/-
ANIL K. NARENDHAN,
JUDGE