

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

**WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937**

**WP(C).No. 17631 of 2009 (Y)**  
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**PETITIONER(S) :**  
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**B.SANKARA NARAYANAN BHAT, AGED 42 YEARS  
S/O.B.GOPALAKRISHNA BHAT,  
PERAKAYA KOCHI HOUSE, YETHADKA.PO, KASARAGODE.**

**BY ADVS.SRI.BECHU KURIAN THOMAS  
SRI.PAUL JACOB (P)  
SMT.INDU SUSAN JACOB  
SMT.NISHA JOHN**

**RESPONDENT(S) :**  
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**KERALA STATE ELECTRICITY BOARD,  
VAIDYUTHI BHAVAN, THIRUVANANTHAPURAM,  
REPRESENTED BY ITS SECRETARY.**

**BY ADV. SRI.K.S.ANIL, SC, KSEB  
BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB  
BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB  
BY SRI.P.P.THAJUDEEN, SC, K.S.E.B**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**AMV**

: 2 :

WP(C).No. 17631 of 2009 (Y)

**APPENDIX**

**PETITIONER(S) EXHIBITS :**

- EXT.P1. : COPY OF THE CERTIFICATED DTD.17.10.94 ISSUED BY THE ASST. EXECUTIVE ENGINEER, ELECTRICAL MAJOR SECTION, CHERKALA.**
- EXT.P2. : COPY OF THE EXPERIENCE CERTIFICATE DTD.05.05.04 ISSUED BY THE KERALA STATE ELECTRICITY BOARD.**
- EXT.P3. : COPY OF THE REPRESENTATION DTD.14.12.06 SUBMITTED BEFORE THE RESPONDENT.**
- EXT.P4. : COPY OF THE JUDGMENT DATED 23.02.2007 IN W.P.(C) NO.6160/2007 ON THE FILES OF THIS HON'BLE COURT IS.**
- EXT.P5. : COPY OF THE G.O.(M.S.) NO.40/06/HEALTH & FAMILY WELFARE DEPT. DTD.18.02.2006.**
- EXT.P6. : COPY OF THE LETTER DTD.10.04.07.**
- EXT.P7. : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER AGAINST DENIAL OF JOB.**
- EXT.P8. : COPY OF THE ORDER ISSUED BY THE RESPONDENT DTD.24.10.2007.**

**RESPONDENTS EXHIBITS : NIL**

**/TRUE COPY/**

**P.A.TO JUDGE**

**AMV**

**A.M.SHAFFIQUE, J.**

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**W.P.(C) No.17631 of 2009**

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Dated this the 28<sup>th</sup> day of October, 2015

**JUDGMENT**

The petitioner challenges Ext.P8 order, by which K.S.E.B has rejected his application for regularisation of his employment.

2. The facts involved in the above writ petition would disclose that the petitioner claimed to be working for the 1<sup>st</sup> respondent as a meter reader on contract basis since 13.09.1993. He worked till 12.09.2004. According to the petitioner, he submitted Ext.P3 representation on 14.12.2006, seeking regularisation and since the same was not considered, he filed W.P.(C) No.6160 of 2007 before this Court, which was disposed of by judgment dated 23.02.2007 wherein a direction had been issued by this Court to consider his claim in the light of G.O.(M.S)No.40/06/Health & Family Welfare Department dated 18.02.2006 and the observations of the Apex Court in **State of Karnataka v. Umadevi [(2006) 4 SCC 1]**. Pursuant to the same, no orders were passed and the petitioner had again given representations. However, by order dated 24.10.2007 produced as Ext.P8, the petitioner's claim has been rejected.

3. The main contention urged by the petitioner is that the Board

had not considered his claim even in the light of the judgment of the Supreme Court in Umadevi's case (cited supra).

4. The learned counsel for the petitioner relying on the judgment of the Supreme Court in **Hariharan v. Balachandran Nair [2000 (3) KLT 585 (SC)]** wherein the Supreme Court while considering the case relating to appointment of certain persons in K.S.E.B, has observed at paragraph No.7, which reads as under :

“7.Now coming to Cls.(a) and (b) of sub-s.(1) of S.3 of the Act, it is no doubt true that Cl.(a) provides for consultation on all matters pertaining to method of recruitment to services. A perusal of Cl.(b) of sub-s.(1) of S.3 of the Act, shows that Cl.(b) is in two parts. The first part of Cl.(b) runs as under :

“on the principles to be followed in making appointments to services and posts under the Electricity Board and in making promotions and transfers from one service to another.”

The second part of Cl.(b) runs as under :

“and on the suitability of candidates for such appointments, promotions or transfers.”

So far as the first part of Cl.(b) is concerned, we are in agreement with the contention of learned Counsel for the appellant that it pertains to laying down the principles to be followed in making appointments to the service and does not provide for consultation with regard to appointments in service. But the same is not the position in the case of second

part of Cl.(b), extracted above. The language employed in Cl. (b) is plain and simple and there is no ambiguity in it. Both the parts of Cl.(b) operate on different fields. The first part of Cl. (b) requires consultation by the Public Service Commission on the principles followed in making appointments, promotions and transfers, whereas the latter part of Cl.(b) casts duty on the Board to consult the Public Service Commission on the matters pertaining to appointments, promotions and transfers of the employees of the Board, meaning thereby, that the Public Service Commission is required to be consulted on the suitability of the candidates for appointments, promotions or transfers. It is true that there is no substantive provision like Cl.(1) of Art.320 of the Constitution in S.3 of the Act. However, the latter part of Cl.(b) is complete and substantive provision in itself and as such S.3 of the Act does not require enactment of any further provision like Cl.(1) of Art.320 of the Constitution providing for judging the suitability of candidates by the Public Service Commission in the matter of appointments. This interpretation of ours is in consonance with the object of the Act for which the Act has been enacted. If we put any other interpretation and hold that the Public Service Commission is not required to be consulted in the matters of appointments, promotions or transfers, the same would be repugnant to the object of the Act which means that the provisions of the Act are meaningless and without any purpose. Further, the Rules framed by the State Government in exercise of its powers, under S.4 of the Act, has already provided the situations where appointments in the Board would require no consultation with

the Public Service Commission. There is no mention in the Rules that there would be no consultation with the Public Service Commission in respect of appointments of Assistant Engineers in the Board. It is a settled principle of interpretation that the Court shall lean towards an interpretation which advances object of the Act. We are, therefore, of the view that second part of Cl.(b) of sub-s.(1) of S.3 provides for consultation with the Public Service Commission in the matter of appointments of Assistant Engineers in the Board. This view of our also finds support from a decision of this Court in State of Jammu and Kashmir v. Mrs.Raj Dulari Razdan and Others [1979 1 SCC 461], wherein a Constitution Bench of this Court held that Cl.(b) of Sub-s.(1) of S.3 of the Act, requires consultation with the Public Service Commission in the matter of suitability of candidates for appointments, promotions and transfers in the service.”

5. In the aforesaid judgment, the Supreme Court observed that the Board has to consult Public Service Commission in terms of Second part of Cl.(b) sub-sec.1 of Section 3 of the Public Service Commission (Additional Functions) Act, 1963 (Kerala).

6. Apparently the facts of the said case related to re-fixation of seniority of certain employees of the Board. The said facts have no relationship with the case on hand and therefore, the above judgment can have no application to the facts of the present case.

7. The learned counsel for the petitioner submits that since the petitioner was working for a period of ten years, the Board ought to have taken a lenient view in the matter and absorbed the petitioner in regular service.
8. Counter affidavit has been filed by the 1<sup>st</sup> respondent, inter alia, stating that the petitioner was working as an Apprentice from 13.09.1993 to 12.09.1994. On the basis of quoting the lowest rate for taking Meter reading works under the Electrical section, Badaika, he was engaged for the work from June, 1997, which was discontinued in January, 2003. It is stated that he was not even a contract worker or a casual employee whereas, he was working on a contract basis and the concession extended in Umadevi's case (cited supra) has no application to the case of the petitioner.
9. In Ext.P8 order, it is clearly indicated that the Government Order dated 18.02.2006, referred in the judgment of the learned single Judge in W.P.(C) No.6160 of 2007 has application only to paramedical workers, who worked on contract basis, during 1995 to 2000. They were regularized as part time sweepers. No other material had been produced to indicate as to whether similarly placed persons have been absorbed in the K.S.E.B.

That apart, in Ext.P8, it was clearly indicated that the petitioner was not appointed in a regular vacancy and the appointment was not made on the basis of any approved/accepted procedure. Under such circumstances no relief can be claimed by the petitioner and the Board was justified in issuing Ext.P8. I do not find any error in Ext.P8 warranting interference under Article 226 of the Constitution of India. Accordingly, this writ petition fails and it is dismissed.

AMV/31/10/

sd/-  
**A.M.SHAFFIQUE, JUDGE**