

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 13508 of 2015 (K)

PETITIONER:

**VIPIN.V., AGED 31 YEARS
S/O. LATE VAMANAN, MUNJANATTU (H), PAJNAVALLY P.O.
CHERTHALA, ALAPPUZHA DISTRICT-688 566.**

**BY ADVS.SRI.C.S.AJITH PRAKASH
SRI.PAUL C THOMAS
SRI.P.S.SYAMKUTTAN**

RESPONDENTS:

- 1. TRANSFORMERS AND ELECTRICALS KERALA LIMITED
ANGAMALLY SOUTH, ERNAKULAM DISTRICT-683 573
REPRESENTED BY IT SMANAGING DIRECTOR.**
- 2. GENERAL MANAGER
TRANSFORMERS AND ELECTRICALS KERALA LIMITED
ANGAMALLY SOUTH, ERNAKULAM DISTRICT-683 573.**
- 3. ASSISTANT GENERAL MANAGER (PRODUCTION & HR)
TRANSFORMERS AND ELECTRICALS KERALA LIMITED
ANGAMALLY SOUTH, ERNAKULAM DISTRICT-683 573.**
- 4. MERLIN A.F., OPERATOR GRADE-I
DIPLOMA IN CS
TRANSFORMERS AND ELECTRICALS KERALA LTD.
ANGAMALLY SOUTH, ERNAKULAM DISTRICT.**
- 5. ANOOP. A.R., OPERATOR GRADE-I
DIPLOMA IN INSTRUMENT TECHNOLOGY
TRANSFORMERS AND ELECTRICALS KERALA LTD.
ANGAMALLY SOUTH, ERNAKULAM DISTRICT.**
- 6. BOBY ELDHO BABU, OPERATOR GRADE-I
DIPLOMA IN IN ELECTRICAL & ELECTRONIC ENGINEERING
TRANSFORMERS AND ELECTRICALS KERALA LTD.
ANGAMALLY SOUTH, ERNAKULAM DISTRICT.**

[CONTD....]

7. BABURAJ C.M., OPERATOR GRADE-I
DIPLOMA IN MECHANICAL ENGINEERING
TRANSFORMERS AND ELECTRICALS KERALA LTD.
ANGAMALLY SOUTH, ERNAKULAM DISTRICT.
8. BIJO VARGHESE, OPERATOR GRADE-II
DIPLOMA IN ELECTRICAL ENGINEERING
TRANSFORMERS AND ELECTRICALS KERALA LTD.
ANGAMALLY SOUTH, ERNAKULAM DISTRICT.

BY ADVS. SRI.SAJI VARGHESE
SMT.MARIAM MATHAI
SRI.DEEPU THANKAN
SRI.P.V.JAYALAKSHMY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:-

- | | | |
|--------------------|----------|---|
| EXHIBIT P1 | - | COPY OF THE IDENTITY CARD ISSUED BY THE RESPONDENT COMPANY TO THE PETITIONER. |
| EXHIBIT P2 | - | COPY OF THE NOOBJECTION CERTIFICATE DATED 20.7.2012 BEARING REF:NO.HR/45/12/1434 ISSUED BY THE RESPONDENT COMPANY. |
| EXHIBIT P3 | - | COPY OF THE PROVISIONAL ADMISSION TICKET ISSUED BY THE DIRECTOR OF TECHNICAL EDUCATION, KERALA STATE DATED 13.3.2015 TO THE PETITIONER. |
| EXHIBIT P4 | - | COPY FO THE SALARY SLIP OF THE PETITIONER FOR THE MONTH OF APRIL, 2015. |
| EXHIBIT P5 | - | COPY OF THE RELEVANT PAGES OF THE LONG TERM SETTLEMENT DATED 6.6.2007. |
| EXHIBIT P6 | - | COPY OF TH ERELEVANT PAGES OF THE NEW LONG TERM SETTLEMENT DATED 9.6.2012. |
| EXHIBIT P7 | - | COPY OF THE RECRUITMENT NOTICE NO.HR/126/15/390 DATED 25.4.2015 PUBLISHED BY THE RESPONDNET COMPANY. |
| EXHIBIT P8 | - | COPY OF THE LETTER NO.7103/H1/88/ID DATED 17.10.1988 ISSUED BY THE GOVERNMENT OF KERALA. |
| EXHIBIT P9 | - | COPY OF THE MINUTES OF THE 297TH MEETING OF THE BOARD OF DIRECTORS OF THE RESPONDENT COMPANY HELD ON 25.03.2014. |
| EXHIBIT P10 | - | COPY OF THE COMMUNICATION DATED 05.06.2014 ISSUED BY THE RESPONDENT COMPANY TO THE PRINCIPAL SECRETARY TO THE GOVERNMENT, INDUSTRIES AND IT DEPARTMENT WHEREBY THE LONG TERMS SETTLEMENT WAS FORWARDED FOR APPROVAL. |
| EXHIBIT P11 | - | COPY OF THE RELEVANT PAGES OF THE PROMOTION POLICY OF THE EXECUTIVES BEARING OFFICE ORDER NO.1285 DATED 15.12.2011. |
| EXHIBIT P12 | - | COPY OF THE NOTICE NO.HR/126/14/488 DATED 04.06.2014. |
| EXHIBIT P13 | - | COPY OF THE STATEMENT SHOWING THE FINANCIAL STATUS OF THE RESPONDENT COMPANY FOR THE PERIOD 2014-15. |
| EXHIBIT P14 | - | COPY OF THE SENIORITY LIST OF JUNIOR ENGINEERS IN THE RESPONDENT COMPANY AS ON 01.07.2014. |

[CONTD....]

- EXHIBIT P15 - COPY OF THE NOTICE NO.HR/126/496 DATED 08.06.2015
ISSUED BY THE RESPONDENT COMPANY.
- EXHIBIT P16 - COPY OF THE RESULT ALONG WITH PROVISIONAL MARK
DETAILS OF THE 6TH SEMESTER EXAMINATION OF DIPLOMA
IN ELECTRICAL ENGINEERING.
- EXHIBIT P17 - COPY OF THE RELEVANT PAGES OF THE OFFICE ORDER NO.
1285 DATED 15.12.2011, WHICH CONTAINS ITS CHAPTER 5.

RESPONDENTS' EXHIBITS:-

- EXT.R6(A) - COPY OF THE GO[MS] NO.17/2014/ID DATED 03.02.2014.
- EXT.R6(B) - COPY OF THE COMMUNICATION ISSUED BY THE
GOVERNMENT OF KERALA TO THE 1ST RESPONDENT,
COMPANY DATED 23.09.1988.
- EXT.R6(C) - COPY OF THE COMMUNICATION ISSUED BY THE
GOVERNMENT OF KERALA TO THE 1ST RESPONDENT,
COMPANY DATED 17.10.1988.

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.13508 of 2015

Dated this the 18th day of November, 2015.

JUDGMENT

The petitioner, working as an Operator Grade-I in the first respondent Company, challenges Ext.P7 notification on various grounds. The petitioner, admittedly, was not qualified to apply under Ext.P7 notification and he acquired the qualification only in July, 2015, subsequent to the said notification. At the outset, it is to be noticed that the said contention of the respondent Company and the additional respondents, is met by the petitioner on the ground that Ext.P7 calls for appointment to anticipated vacancies.

2. The argument of the petitioner against Ext.P7, primarily is that it is in violation of the Long Term

Settlement. The petitioner contends that the Long Term Settlement entered in the year 2012, specifically on 09.06.2012, has not yet been approved by the Government. Hence, the terms, which govern the matter has to be under the Long Term Settlement of 2007-2012. The provisions of the earlier settlement do not permit any person, who had acquired the qualification prior to the joining in the Company or who had completed the course prior to the joining of the Company and acquired the qualification later to the joining; to apply for direct recruitment along with the persons, who while in service, with the permission of the Company, acquired such higher qualification. The further challenge against Ext.P7 is that the relevant subject for the qualification has not been specified in Ext.P7. Ext.P17 Office Order of the Company specifies the qualification with respect to the Junior Engineer to be First Class Diploma in the relevant Engineering Discipline. The petitioner contends that Ext.P7 notification is with respect to Junior Engineers in the Electrical Division and the non-specification of such

qualification would go against the specific Rules of the Company, which it has framed for itself.

3. The further contention is that the notification, which intends in-service candidates to be inducted to the post of Junior Engineers should be in compliance with the promotion policy of the Company produced at Ext.P3. Further, it is also contended on the basis of Ext.R1(e) itself that, a reading of the same would indicate that only anticipated vacancies were notified in Ext.P7. It is also submitted that the said notification issued prior to the petitioner's qualification has been done with the ill-motive to keep the petitioner out of such recruitment.

4. The respondent Company contends on the basis of Ext.R6(a) that the Long Term Settlement entered into on 09.06.2012 has been approved by the Government on 03.02.2014. Further, it is submitted that the impugned notification is not with respect to a promotion and involves direct recruitment from open merit. The Government had specified a ratio of 1:1 with respect to direct recruitments,

giving the benefit of 50% vacancies to be reserved for in-service candidates, without looking at the feeder category. The respondent Company also relies on Ext.R1(e) to contend that these are not appointments to specific posts of Engineers, but are appointments to the posts of 'Junior Engineering Trainees' with consolidated monthly stipend, the decision for which and the number required, has been decided by the Board of Directors as is indicated in Ext.R1 (e). Only on completion of the training, the persons now taken as trainees would be regularised in service, is the specific contention.

5. The addl. respondents contend that any term which excludes a person, who has the required qualification, which he acquired even before joining of the Company, but includes persons who acquired such qualification while in the service of the Company; would be arbitrary and would be liable to be struck down.

6. The contention with respect to the arbitrary nature of the provision, need not be considered at this stage, since

even as per Ext.R6(a), the Government has approved the Long Term Settlement, entered into between the representative Unions and the Management of the Company; on 03.02.2014. The learned counsel for the respondent would refute such contention on the basis of Ext.P19 dated 24.08.2015, where there is a request made by the Company for approving the Long Term Settlement; found in the last paragraph of Ext.P19, which according to him, goes against the contention that it has already been approved.

7. To understand the contention, the last paragraph of Ext.P19 is to be extracted, which is as hereunder:

"In view of the above, we humbly request for taking necessary action for approving the Long Term Settlement for workmen with above stated modifications. Copy of LTE signed on 09.06.2012 is attached as Annexure V."

A reading of Ext.P19 indicates that the modification sought for, are all with respect to the pay packet, provided to the workers. The extracted portion also indicates that what was

requested was only an approval of the Long Term Settlement of workmen, with the above stated modifications. It cannot at all be said that the Long Term Settlement was not approved, which is evident at Ext.R6(a). What the Company requested by Ext.P19 was only approval of certain modifications. The modifications do not at all deal with Clause 4.37(a) of the Long Term Settlement, which is extracted in paragraph 4 of the writ petition. The Long Term Settlement with respect to all matters referred to therein stands approved by Ext.R6(a). Ext.P19 is only a request for approval of the modifications suggested therein.

8. A reading of paragraph 4.37(a) indicates that the Management agreed with the workmen, that those who pursued and acquired higher qualification, while in service of the Company would be considered for recruitment to the higher posts, along with other candidates. There is no dispute that the other candidates referred to are the candidates from open merit. The earlier settlement also contains this specification, under Clause 4.23. The

contention raised on the basis of the earlier Long Term Settlement is that the respondent Company could not have considered for direct recruitment, those persons who acquired qualification earlier to the joining of the Company.

9. This Court is inclined to accept the contention of the additional respondents that the same is arbitrary. Be that as it may, this Court would not attempt any interference on the same, since the provision is one contained in the Long Term Settlement, which is agreed on between the representative Unions and the Management. If there is any question of arbitrariness, going by the accepted principles of industrial disputes, that cannot be urged before this Court under Article 226 of the Constitution of India. In any event, that question need not be gone into, because by the Long Term Settlement of 2012, the representative Unions as also the Management have agreed to the modification of the earlier provision, permitting those persons who had such qualification prior to joining in the Company, but however only those who had 6 years' continuous service up to

01.09.2011 to aspire for the higher posts on direct recruitment. All the additional respondents, satisfy the said condition is the contention. Definitely, the Management could only, on the basis of the said settlement take those candidates, who satisfy the condition under Clause 4.37(a) of the Long Term Settlement, however arbitrary the condition may be.

10. The next question is as to the promotion policy being applicable. The promotion policy is produced at Exts.P11 & P17. It has to be noticed that the same refers to the promotion policy for TELK Executives and does not in fact deal with direct recruitment. The specific Clause as found in the Long Term Settlement of 2007 and 2012 also refers to the consideration of persons, who had higher qualifications, along with other candidates, for recruitment; as distinguished from promotion. In such circumstance, this Court cannot accept the contention raised by the petitioner that the list of vacancies, for which promotion is to be notified to all employees one month prior to the

commencement of the promotion process [usually the first week of June] as contained in Ext.P11, is applicable for the recruitment proposed as per Ext.P7 notification. It is to be reiterated that Ext.P7 is a notification for direct recruitment and not one for promotion.

11. The next contention is with respect to Ext.P7 having called for recruitment to anticipated vacancies. A reading of Ext.R1(e) would show that the Management was concerned with the lack of man power in the Company, which was occasioned only for reason of the deteriorating financial condition, which did not permit the Management to make recruitments for many years, preceding the present selection. However, considering the requirement, the Board of Directors decided to recruit 10 numbers each of Engineer Trainees and Junior Engineer Trainees and 60 numbers of Operator Grade-III Trainees to the Company on a consolidated monthly stipend. The fact that the present notification is only with respect to the recruitment of Trainees, also goes against the contention of the petitioner,

that it is a promotion post and that the recruitment would in fact be regulated by the promotion policy. A promotion post as is well-established would carry a higher scale of pay and none can be said to be promoted to a post, in which there is only a consolidated monthly stipend granted. The recruitment of the Junior Engineer Trainees and the Engineer Trainees is also not to any anticipated vacancies, as the decision of the Board of Directors specifically indicate the need and requirement, as also the decision to create such posts of trainees.

12. The learned counsel for the petitioner, however would specifically point to Annexure R1(e), where the present strength of Engineers and Junior Engineers are stated to be the vacancies in each category as on 01.04.2016. This, on a cross reference to Ext.P14 seniority list of Officers, according to the petitioner would amply demonstrate that it is only to anticipated vacancies that the present selection is made. Here again, it is to be emphasised that the selection is as 'Trainees' against the

specific posts created by the Board of the Company. They would in all probability be appointed to the regular posts of vacancies of Engineer and Junior Engineer, which vacancies would be created as on 01.04.2016. By Ext.P7, the posts of trainees created by Ext.R1(e) decision of the Board, is attempted to be filled up. It cannot also be said that the same is a promotion, as understood in service jurisprudence and is definitely a direct recruitment from in-service candidates.

13. This Court cannot also find that the petitioner has been deliberately excluded nor can the petitioner have any claim based on the qualification acquired prior to Ext.P7 notification. It is also not indicated in the writ petition as to what motivated the Company to purposefully exclude the petitioner. The contention has to be rejected as based on a mere assertion of self importance and not substantiated by any material or supported by averments.

14. Definitely, if anticipated vacancies are to be filled up, the petitioner would have had a claim. But a specific

decision has been taken by the Board of Directors of the Company, to appoint Trainees, in various disciplines coming to a total of 10 in the post of Junior Engineer Trainees. Five of which was set apart for open recruitment and five for recruitment of in-service candidates. Those are posts of Trainees, created in the Company by the Board of Directors. In such circumstance, the petitioner, who acquired the qualification subsequent to Ext.P7, would not be entitled to challenge Ext.P7 notification.

15. One other contention is with respect to the discipline of Engineering qualification, not being prescribed under Ext.P7. Petitioner relies on Note 2 of Ext.P7 notification, which reflects the recruitment to be only of First Class Diploma holders in Electrical Engineering to contend that the Company intends to recruit Junior Engineers in other disciplines. It is an admitted fact that the Company employs Engineers having qualification in various disciplines. Clause 4.37(a) & (b) is pointed out to bring into focus the distinct classes that are dealt with thereunder.

According to the Company while persons who acquired qualification or undertook a course, before joining the Company, were agreed to be considered for recruitment to higher posts deliberately two classes were created. Sub-clause (a) refers to such employees with higher qualification and who had 6 years service upto 01.09.2011, who could be recruited without reference to the discipline in Engineering since they are persons who have long service in the Company and are conversant with the various procedures. Sub-clause (b) deals with the other employees having higher qualification, but who have six years service in the Company, as on the date of notification, who could only be selected with reference to the discipline in which they acquired the qualification.

16. It has to be stated that the language of Clause 4.37 (a) & (b) is not very happily worded. But that is the understanding of the Company as well as the employees; the addl. Respondents. Ext.P7 also lends credence to the claim of such distinction, since the qualification for Junior

Engineering Trainees is shown only as Diploma in Engineering with two 'asterisks'. The 'asterisks' supplement the qualification by Note 1 & 2; the former of which is sub-clause (a) and the latter sub-clause (b) of Clause 4.37 of the Long Term Settlement. Then again, Article 226 of the Constitution of India is not the remedy to set right such anomalies and in any event the petitioner being not qualified as on the date of Ext.P7, is not entitled to raise such contentions.

For all the above reasons, the writ petition is found to be devoid of merit and the same is dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

sp/18/11/15