

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 16601 of 2014 (A)

PETITIONER(S):

**RAJESH A.S., HEAD CLERK,
CHIEF ENGINEER'S OFFICE, SOUTHERN REGION,
KERALA WATER AUTHORITY, THIRUVANANTHAPURAM-695 033.**

**BY ADVS.SRI.B.RADHAKRISHNA PILLAI,
SMT.S.AMBIKA DEVI.**

RESPONDENT(S):

- 1. KERALA WATER AUTHORITY,
REPRESENTED BY ITS MANAGING DIRECTOR, JALA BHAVAN,
VELLAYAMBALAM, THIRUVANANTHAPURAM-695 033.**
- 2. CHIEF ENGINEER (HRD & GL),
KERALA WATER AUTHORITY, JALA BHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 033.**
- 3. SENIOR ADMINISTRATIVE OFFICER,
KERALA WATER AUTHORITY, JALA BHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 033.**
- 4. ANITHA KUMARI B.S.,
HEAD CLERK, ACCOUNT SECTION, FINANCE WING,
KERALA WATER AUTHORITY, JALA BHAVAN, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 033.**
- 5. SECRETARY TO GOVERNMENT OF KERALA, (ADDL. 5TH RESPONDENT)
WATER RESOURCES (WS) DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

**R1 TO R3 BY ADV. SRI.JOSEPH JOHN, SC.
R5 BY SR. GOVT. PLEADER SRI.M.A. FAYAZ.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30/03/2015, ALONG WITH WP(C).NO.27599 OF 2012 AND
CONNECTED CASES, THE COURT ON 20/05/2015 DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 : COPY OF THE RELEVANT PAGES OF KERALA WATER AND WASTE WATER AUTHORITY (ADMINISTRATIVE MINISTERIAL AND LAST GRADE SERVANTS) RULES 1986.
- P2 : COPY OF THE RELEVANT PAGES OF THE KERALA WATER AUTHORITY, ADMINISTRATIVE MINISTERIAL AND LAST GRADE SERVICE RULES 2011.
- P3 : COPY OF THE PROVISIONAL SENIORITY LIST OF HEAD CLERKS AS ON 01.11.2009, DTD. 19.02.2010 BY THE 2ND RESPONDENT.
- P4 : COPY OF THE RELEVANT PAGES OF THE PROVISIONAL SENIORITY LIST OF HEAD CLERKS AS ON 01.04.2012 DTD. 24.05.2012.
- P5 : COPY OF THE INTERIM ORDER DTD. 20.12.2012 PASSED BY THIS HON'BLE COURT IN WP(C).NO.30618/2012.
- P5(A): COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST AND 2ND RESPONDENTS DTD. 22.05.2013 IN WP(C).NO.30618/2012.
- P5(B): COPY OF THE COUNTER AFFIDAVIT OF RESPONDENTS 1 AND 2 IN WP(C).NO.3712/2012, DTD. 22.10.2013.
- P6 : COPY OF THE ORDER OF PROMOTION DTD. 16.01.2014 OF THE 2ND RESPONDENT.
- P6(A): COPY OF THE ORDER DTD. 02.05.2014 OF THE 2ND RESPONDENT.
- P6(B): COPY OF THE ORDER DTD. 04.06.2014 OF THE 2ND RESPONDENT.
- P7 : COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT DTD. 02.04.2014 IN WP(C).NO.9754/2014 IN THE CASE OF JUNIOR SUPERINTENDENTS.
- P8: COPY OF THE LETTER DATED 11/08/2014 OF THE 1ST RESPONDENT TO THE ADDITIONAL 5TH RESPONDENT.
- P9: COPY OF THE ORDER NO.KWA/JB/E9/4293/2007 DATED 28/08/2014 PROMOTING 4TH RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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**W.P.(C).Nos.16601/2014, 27599/2012, 30618/2012,  
7729/2015, 3712/2013, 9754/2014 & 26691/2014**  
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Dated this the 20th Day of May, 2015

J U D G M E N T

These batch of writ petitions are relating to the promotion to the post of Senior Superintendent and Junior Superintendent in the Kerala Water Authority (for short, "KWA"). Some of the writ petitioners are test qualified employees eligible for promotion to the next higher cadre and, other categories of writ petitions are at the instance of persons, who are claiming that they need not acquire test qualification in the light of Rule 12 of the Kerala Water Authority (Administrative, Ministerial and Last Grade) Service Rules, 2011 (for short, the "Service Rules, 2011") framed by the Government by virtue of the power conferred on the Government under Section 64 of the Kerala Water Supply and Sewerage Act, 1986. The crux

W.P.(C).Nos.16601/2014 and connected cases

-:2:-

of the controversy in these writ petitions is in regard to interpretation of Rule 12 of the Service Rules, 2011. Therefore, these writ petitions are disposed of by a common judgment. The exhibits referred to in these cases are the exhibits produced in W.P.(C).No.16601/2014 and therefore, W.P.(C).No.16601/2014 is taken as the main case.

2. The case of the writ petitioners who have not passed test qualification is that qualification of pass in Account Test (Higher) is only applicable to new appointees in KWA and; those employees, who were employees of Public Health Engineering Department (for short, "PHED") or employees of KWA, who were governed by the Kerala Public Health Engineering Subordinate Services Special Rules are protected in matters relating to promotion and qualification.

3. The common case of the writ petitioners, who have acquired test qualification and also of the Kerala Water Authority is that protection for promotion and

W.P.(C).Nos.16601/2014 and connected cases

-:3:-

qualification are available only to the employees who were appointed in the erstwhile PHED or technical staff of the KWA.

4. In the above background of dispute, it is apposite to refer Rule 12(1) of the Service Rules, 2011. Rule 12(1) provides as follows:

“12. Protection of rights of employees appointed in the Public Health Engineering Department.- (1) The rights or benefits of the employees who had been appointed in the erstwhile Public Health Engineering Department or Kerala Water Authority before the coming into force of these Rules under the Kerala Public Health Engineering Subordinate Services Special Rules and covered by these rules, shall be protected in matters relating to promotion and qualification for promotions.”

5. Rule 8 of the aforesaid rules stipulates department tests and, for promotion to the post of Junior Superintendent, one must acquire Account Test (Higher). Therefore, the only question is whether by virtue of Rule 12(1) of the Service Rules 2011, persons

W.P.(C).Nos.16601/2014 and connected cases

-:4:-

who have not acquired test qualification are protected or not. Rule 12 would apply to the employees who have been appointed in erstwhile PHED or KWA who are governed by the Public Health Engineering Subordinate Services Special Rules.

6. The case of the writ petitioners, who have not acquired test qualification, is that they were governed by the Kerala Water and Waste Water Authority Administrative Ministerial and Last Grade Service Rules, 1986 (for short, "the prior Service Rules") and therefore, they are protected in the light of Rule 12 of the Service Rules, 2011 and the omission to refer the prior Service Rules in Rule 12 of the Service Rules, 2011 is of no consequence. It is pointed out that in terms of the prior Service Rules, the only qualification required for promotion to the post of Junior Superintendent is two years experience and therefore, by reckoning their seniority all the writ petitioners, who have not acquired test qualification,

W.P.(C).Nos.16601/2014 and connected cases

-:5:-

are entitled for promotion. They have also relied on a proposal initiated by the Managing Director of the KWA dated 11/08/2014 for amendment to Rule 12. This proposal is produced as Ext.P8 in W.P.(C).No.16601/2014 and it is submitted that omission to mention the prior Service Rules is a curable defect and they are also entitled for the benefit of protection of rights under Rule 12 of the Service Rules, 2011.

7. There is no dispute that Rule 12 envisages protection. This protection is to the benefit of the employees who had been appointed in the erstwhile PHED or KWA who are governed by Kerala Public Health Engineering Subordinate Services Special Rules. There is no dispute that the Kerala Public Health Engineering Subordinate Services Special Rules are not in relation to the administrative & ministerial staff of KWA. Kerala Public Health Engineering Subordinate Services Special Rules are only in relation to the technical staff of KWA. Thus, on a reading of Rule 12 of the

W.P.(C).Nos.16601/2014 and connected cases

-:6:-

Service Rules, 2011 it can be seen that administrative or ministerial staff of KWA governed by the prior Service Rules are not entitled for protection. The only question is whether based on a proposal for amendment of Rule 12(1) of the Service Rules 2011, the petitioners who have not gained test qualification can be given promotion. I am of the view that based on the Service Rules 2011, those petitioners who are not protected in terms of Rule 12 of the Service Rules 2011, cannot claim promotion without satisfying criteria as provided under Rule 8. However, in the light of the proposal for amendment, their interest also need be protected. In that view of the matter, these writ petitions are disposed with the following directions:

i. KWA is directed to promote qualified employees in terms of Rule 8 within one month;

ii. The Government is directed to finalise the proposal for amendment as requested by the Managing

W.P.(C).Nos.16601/2014 and connected cases

-:7:-

Director by Ext.P8 produced in W.P.(C).No.16601/2014 within six months.

iii. Promotion to be given to the test qualified employees will be subject to the decision of the Government based on Ext.P8.

iv. It is made clear that if amendment is accepted by the Government, all persons who have not acquired test qualification will be entitled for promotion based on seniority and also be entitled for all monetary benefits from the date on which they could have been promoted for the higher post. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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