

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

W.P.(C).No.27564 of 2005 (F)

PETITIONER(S):-

1. V.SURESHLAL, S/O.P/K.VIDYADHARAN,
LINEMAN GRADE-I, ELECTRICAL SECTION, PATHANAPURAM,
KOLLAM DISTRICT.
2. M. SIRAJUDEEN, S/O.MOIDANNA RAWTHER,
LINEMAN GR.I, ELECTRICAL SECTION, PATHANAPURAM,
KOLLAM DISTRICT.
3. R. VENUGOPAL, S/O. C.P.R. PANICKER,
LINEMAN GR.I, ELECTRICAL SECTION, KOTTAYAM EAST,
KOTTAYAM DISTRICT.
4. ANILKUMAR M.G., S/O. P. GANGADHARAN NAIR,
METER READER, ELECTRICAL SECTION, KOTTAYAM EAST,
KOTTAYAM DISTRICT.
5. SAJI GEORGE, S/O. C.M. GEORGE,
LINEMAN GR-I, ELECTRICAL SECTION, KOTTAYAM CENTRAL,
KOTTAYAM DISTRICT.
6. M.B. PRASAD, S/O. M.V. BHASKARAN,
LINEMAN GR-I, ELECTRICAL SECTION, PAMPADY,
KOTTAYAM DISTRICT.
7. A.K. ANILKUMAR,
LINEMAN GR-I, 66 KV SUB STATION, GANDHI NAGAR,
KOTTAYAM DISTRICT.
8. M. BIJU, S/O. C.P.MAHADEVAN,,
LINEMAN GR-I, ELECTRICAL SECTION, VAKATHANAM,
KOTTAYAM DISTRICT.
9. JAYARAJAN T.N.,
LINEMAN GR-I, TMR DIVISION, KOLLAM,
PALLIL (P.O), IDUKKI DISTRICT.

10. SURESH R.,
LINEMAN GR-I, TMR DIVISION, PALLOM, PAKKIL (P.O),
KOTTAYAM DISTRICT.
11. M.P. CHACKO, S/O. PHILIPOSE,
LINEMAN GR-I, KSEB SECTION, VAKATHANAM,
KOTTAYAM DISTRICT.
12. K.T. DEVAKUMAR, S/O.V.A.THANKAPPAN,
LINEMAN GR-II, T.M.R. DIVISION, PAKKIL (P.O),
PALLAM, KOTTAYAM-4.
13. V.T. VIJAYAN, S/O. K.K.THANKAPPAN,
LINEMAN GR-I, ELECTRICAL SECTION, NATTAKOM,
KOTTAYAM DISTRICT.
14. T. MOHANAN, S/O. THAMPY,
LINEMAN GR-I, ELECTRICAL SECTION, MANARCAD,
KOTTAYAM DISTRICT.
15. K.N. SREEKUMAR, S/O. NARAYANAN NAIR,
LINEMAN GR-I, ELECTRICAL SECTION, KANJIRAPPALLY,
KOTTAYAM DISTRICT.
16. RASHEED S., S/O. SHERKHAN SAHIB,
LINEMAN GR-I, ELECTRICAL SUB DIVISION CONTONMENT, KOLLAM,
KOLLAM DISTRICT.
17. K.K. SAMUEL, S/O. Y. KUNJAPPY,
LINEMAN GR-II, ELECTRICAL SECTION, KANNANALLOOR,
KOLLAM DISTRICT.
18. RAJEEV S., S/O. N. SISUPALAN,
LINEMAN GR-I, ELECTRICAL SECTION, AVANANCHERY,
ATTINGAL, THIRUVANANTHAPURAM DISTRICT.
19. JAYAKUMAR M.S.,
LINEMAN GR-I, TRANSMISSION CIRCLE STORE, EDAMON,
KOLLAM DISTRICT.
20. JOHNSON. A.V., S/O. JOSEPH ALEXANDER,
METER READER, ELECTRICAL SECTION, EZHUKONE,
KOLLAM DISTRICT.
21. PRADEEPKUMAR M.J., S/O. JANARDHANAN PILLAI,
LINEMAN GR-I, ELECTRICAL SECTION, MAYANAD, KOLLAM DISTRICT.

22. JOY JOSEPH. I., S/O. ISSAC. L.,
LINEMAN GR-I, ELECTRICAL SECTION, NALLILA, KOLLAM DISTRICT.
23. THAMPI K., S/O.K.M.KOCHUKUNJU ACHARY,
LINEMAN GR-I, ELECTRICAL SECTION, CHATHANNOOR,
KOLLAM DISTRICT.
24. RAJESH G.R., S/O. RAJAPPAN M.K.,
METER READER, ELECTRICAL SECTION, AIYAMANAM,
KOTTAYAM DISTRICT.

BY ADV. SRI.M.V.THAMBAN.

RESPONDENT(S):-

1. CHIEF ENGINEER (HRM),
KERALA STATE ELECTRICITY BOARD, PATTOM,
THIRUVANANTHAPURAM.
2. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM.
- * Addl.3. C.K.SIVADASAN,
LINEMAN, KERALA STATE ELECTRICITY BOARD, TIRUR WEST.
- * [ADDITIONAL 3RD RESPONDENT IS IMPEADED AS PER ORDER ON
I.A.NO.14589 OF 2009 DATED 24.11.2009].
- ** Addl.4. PROMOD.B , S/O.N.M.BHASKARAN NAIR,
OVERSEER, ELECTRICAL SECTION, PONKUNNAM P.O.,
KERAL STATE ELECTRICITY BOARD-685001.
- ** [ADDITIONAL 4TH RESPONDENT IS IMPEADED AS PER ORDER
ON I.A.NO.12842 OF 2011 DATED 09.08.2011]
- *** Addl.5. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF POWER, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- *** Addl.6. THE KERALA PUBLIC SERVICE COMMISSION,
PATTOM PALACE P.O., THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, PATTAM PALACE P.O.,
THIRUVANANTHAPURAM.
- *** [ADDITIONAL RESPONDENTS 5 AND 6 ARE IMPEADED AS PER
ORDER ON I.A.NO.17774 OF 2011 DATED 09.11.2011.

**** Addl.7. SHAMSUDEN, AGED 41 YEARS,
OVERSEER, ELETRICAL SECTION,
KERALA STATE EECTRICALITY BOARD, ALUVA NORTH,
ERNAKULAM DISTRICT.

**** Addl.8. JIJITHOMAS, AGED 43 YEARS,
OVERSEER, ELECTRICAL SECTION,
KERALA STATE ELECIRICIY BOARD, MANJAPRA,
ERNAKULAM DISTRICT.

**** [ADDITIONAL RESPONDENTS 7 AND 8 ARE IMPEADED AS PER
ORDER DATED 09.11.2011 IN I.A.NO.17911 OF 2011.

***** Addl.9. ADAMI, AGED40 YEARS, S/O K.K.KOCHUNNI,
KOORKALAYIL, KILIROOR, NORTH P.O., KOTTAYAM-686020;
OVERSEER, KERALA STATE ELECTRICITY BOARD (KSEB),
110 KV SUB STATION, CHENGALAM.

***** [ADDITIONAL 9TH RESPONDENT IS IMPEADED AS PER
ORDER ON I.A.NO.17927 OF 2011 DATED 09.11.2011].

***** Addl.10. RAJASEKHARAN NAIR, AGED 54, S/O.AYYAPPANNAIR,
"SREE NARAYANA MANGALAM",
KADUTHURUTHY, KOTTAYAM DISTRICT.

Addl.11. PARAMESWARAN NAIR,
S/O MECHERIL PUTHENPURAYIL PARAMESWARAN NAIR,
MEENACHIL TALUK, KOTTAYAM DISTRICT.

***** [ADDITIONAL RESPONDENTS 10 AND 11 ARE IMPEADED
AS PER ORDER ON I.A.NO.18578 OF 2011 DATED 02.12.2011].

R1 & R2 BY STANDING COUNSEL SRI.PULIKOOL ABUBAKER.

ADDL.R3 BY ADVS. SRI.T.C.SURESH MENON

SRI.JIBU P THOMAS

SRI.P.S.APPU

SRI.A.R.NIMOD

SRI.C.A.ANOOP

ADDL.R4 BY ADV. SRI.V.R.GOPU

ADDL.R5 BY GOVERNMENT PLEADER SRI.S.JAMAL.

ADDL.R6 BY STANDING COUNSEL SRI.P.C.SASIDHARAN

ADDL.R7 & R8 BY ADV.SRI.SIRAJ KAROLY

ADDL.R9 BY ADV. SRI.A.P.SUBHASH

ADDL.R10 & R11 BY ADVS. SRI.G.SREEKUMAR (CHELUR)

SRI.K.RAVI (PARIYARATH)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

-
- | | |
|---------|--|
| EXT.P1 | TRUE COPY OF THE CIRCULAR NO.EB2/727/SE/99
DT.24.11.1999. |
| EXT.P2 | TRUE COPY OF THE LETTER NO.ESTT.II/15218/89
DATED 31.12.1999. |
| EXT.P3 | TRUE COPY OF THE CIRCULAR NO.EBC.1-11/SE/10%/2000
DT.30.08.2000. |
| EXT.P4 | TRUE COPY OF THE ORDER
NO.BO(FM) NO.1458/2002 (ESTT.11/15218/89) DT.24.10.2002. |
| EXT.P5 | TRUE COPY OF THE REPRESENTATION DT. 2.6.2005
SUBMITTED BY THE 1ST PETITIONER BEFORE THE
1ST RESPONDENT. |
| EXT.P6 | TRUE COPY OF THE JUDGMENT DT.8.2.2005 IN W.P.(C)
NO.4485/2005. |
| EXT.P7 | TRUE COPY OF THE ORDER NO.EB/LAW/WP 4485/05
DT.6.6.2005. |
| EXT.P8 | TRUE COPY OF THE ORDER (FM) NO.2900/2005(ESTT.II/8122/05
DATED 14.10.2005 [PRODUCED ALONG WITH I.A.16131/2005]. |
| EXT.P8 | TRUE COPY OF THE APPLICATION SUBMITTED BY THE
8TH PETITIONER [PRODUCED ALONG WITH I.A.15142/2008]. |
| EXT.P9 | TRUE COPY OF THE BOARD ORDER NO.EBC-1-II-SD/10%/2000
DATED 30.08.2000. |
| EXT.P10 | TRUE COPY OF THE BO.NO.EC.IV/1703/71 DATED 1.11.1971. |
| EXT.P11 | TRUE COPY OF THE B.O.NO.ARIII.36591/78 DATED 23.1.1981. |
| EXT.P12 | TRUE COPY OF THE G.O.70/9=873/W&P DATED 23.11.1983. |
| EXT.P13 | TRUE COPY OF THE ORDER NO.EB2/727/90/SE DT.12.6.1995. |
| EXT.P14 | TRUE COPY OF THE BOARD ORDER NO.EB2/727/90/SE
DATED 29.10.1998. |

- EXT.P15 TRUE COPY OF THE BOARD ORDER NO.EB2/727/98/SE
DATED 21.12.1998.
- EXT.P16 TRUE COPY OF THE NOTIFICATION DT.21.06.1994.
- EXT.P17 TRUE COPY OF THE RELEVANT PORTION OF THE
NOTIFICATION DT.02.12.2003 AS CATEGORY NO.176/2003, FOR
THE POST OF SUB ENGINEER (ELECTRICAL).
- EXT.P18 TRUE COPY OF THE NOTIFICATION DT.31.12.2011.
- EXT.P19 TRUE COPY OF THE JUDGMENT DT.05.02.2002 IN
W.A.NO.326/2002 OF THIS HON'BLE COURT.

1ST RESPONDENT'S EXHIBITS:-

- EXT.R1 TRUE COPY OF JUDGMENT DATED 9.1.2001 IN
OP.14733/2000 & 25880/2000 OF THE HIGH COURT OF KERALA.

2ND RESPONDENT'S EXHIBITS:-

- EXT.R2(a) TRUE COPY OF THE ORDER IN CMP.23818/00
IN OP.14733/2000 DT.26.5.2000.
- EXT.R2(b) TRUE COPY OF THE ORDER IN CMP.4091/2002 IN O.P.
NO.2331/02, DT.4.2.2002.
- EXT.R2(c) TRUE COPY OF THE BOARD ORDER NO.B.O.82/02 DT.21.1.2002.
- EXT.R2(d) TRUE COPY OF THE BOARD ORDER NO.EBC 1/11/96 DT.27.2.96.
- EXT.R2(e) TRUE COPY OF THE BOARD MEMO NO.EBC 1/11/96 DT.15.5.96.
- EXT.R2(f) TRUE COPY OF THE BOARD ORDER NO.EBC 1/11/96 DT.21.6.96.
- EXT.R2(g) TRUE COPY OF THE BOARD ORDER NO.EBC 1/11/96 DT.23.7.96.
- EXT.R2(h) TRUE COPY OF THE BOARD ORDER NO.EBC 1/11/SE/10%/2000
DT.24.10.2000.

3RD RESPONDENT'S EXHIBITS:-

- EXT.R3(a) TRUE COPY OF THE COMMUNICATION ISSUED TO THE
PETITIONER HEREIN BY THE KERALA PUBLIC SERVICE
COMMISSION DT.12.08.2009.

ADDL.4TH RESPONDENT'S EXHIBITS:-

(PRODUCED ALONG WITH THE COUNTER AFFIDAVIT)

- EXT.R4(a) TRUE COPY OF THE LETTER NO.ESTT.II/15218/89 ISSUED BY THE SECRETARY TO THE 2ND RESPONDENT DT.7.4.2000.
- EXT.R4(b) TRUE COPY OF THE LETTER NO3613/A2/2000/PD DATED 2.2.2001.
- EXT.R4(c) RELEVANT PAGE OF THE PUBLIC SERVICE COMMISSION (CONSULTATION BY THE KERALA STATE ELECTRICITY BOARD) REGULATIONS, 1967 DATED 29.1.1968.

(PRODUCED ALONG WITH THE IMPEADING PETITION)

- EXT.R4(a) TRUE COPY OF THE CERTIFICATE ISSUED BY THE EXECUTIVE ENGINEER, ELECTRICAL DIVISION, PONKUNNAM DATED 16.07.2011.
- EXT.R4(b) TRUE COPY OF THE CERTIFICATE IN DIPLOMA IN ELECTRICAL ENGINEERING IN FAVOUR OF THE PETITIONER DT.1.9.1989.
- EXT.R4(c) TRUE COPY OF THE PROCEEDING NO.EBC 1/1J/96 DATED 20.07.1996.

ADDL.9TH RESPONDENT'S EXHIBITS:-

(PRODUCED ALONG WITH THE IMPEADING PETITION)

- EXT.R5(a) TRUE COPY OF CERTIFICATE OF DIPLOMA IN ELECTRICAL ENGINEERING DATED 23.10.2000.
- EXT.R5(b) TRUE COPY OF CERTIFICATE ISSUED BY EXECUTIVE ENGINEER, KSEB DATED 21.07.2011.
- EXT.R5(c) TRUE COPY OF PROCEEDINGS OF THE CHIEF ENGINEER (CIVIL) GENERAL & DESIGNS, KSEB, DATED 20.07.1996.

vkul/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.27564 of 2005-F

Dated this the 25th day of November, 2015

JUDGMENT

The petitioners in the above writ petition are concerned with their promotion to the post of Assistant Sub Engineer (Electrical) in the Kerala State Electricity Board [for brevity "KSEB"]. The petitioners were aggrieved by the fact that, the 10% quota reserved for in-service candidates, for promotion to the post of Assistant Sub Engineers (Civil) were made from the in-service candidates, while the Electrical Division was discriminated insofar as no promotions being made therefrom.

2. At the outset it is to be noticed that many persons got impleaded themselves also claimed the said benefit. None are from the Civil Wing and all are from the Electrical Wing, supporting the petitioners. The petitioners also have not chosen to implead any person who would be affected by the reliefs sought for in the writ petition being allowed; either in the Electrical or Civil Wing.

3. Be that as it may, the petitioners' contention primarily is based on Exhibits P1 and P12. According to the petitioners, earlier, even in-service candidates could be promoted to the 10% quota only through the Public Service Commission [for brevity "PSC" or "Commission"]. The Government by Exhibit P12 had, on 23.11.1983 itself, taken a decision to reject the action of the PSC, in refusing to concur with the decision of the Government/Board to make appointments from the in-service candidates; from the feeder category without reference to the PSC. As per Exhibit P12, the KSEB is said to have issued Exhibit P1 notification also, clearly specifying that, the promotions would be made from Diploma holders to the post of Sub Engineer. The petitioners also rely on the Kerala Public Service Commission [Consultation by the Kerala State Electricity Board] Regulations, 1967 [for brevity "Regulations of 1967"], produced as Exhibit R4(c) along with the counter affidavit of the 4th respondent.

4. A reading of the Regulations of 1967 indicates that when an advice of the Commission is sought to be rejected or deviated from, the matter shall be placed in a meeting of the KSE Board in which all the members of the Board are present and

orders taken and the action of the Board had to be communicated to the Commission. A reading of Exhibit P12 would indicate that it is not a Full Board's decision; but the decision of the Government to deviate from the recruitment procedure of in-service candidates without reference to the PSC. In such circumstance, no reliance can be placed on Exhibit P12 nor can the KSEB deviate from the essential condition of recruitment; with respect to in-service candidates also, being effected by reference to the PSC.

5. Earlier this Court had, due to the specific contention raised by the petitioners that the promotions were granted only to the feeder category, who had qualification in Civil Branch, passed an order on 05.02.2013 specifically directing the Secretary to Government, Power Department to file an affidavit. An affidavit dated 25.06.2013 has been placed on record. A reading of the affidavit would indicate that much later to Exhibit P12, the Board had proposed to the Government through letter No.Estt.II/15218/89/dated 31.12.1999 that 10% quota earmarked for the Departmental candidates in the Board, both in the Civil and Electrical Wing, had to be filled by the Board itself. However, in reply to that letter, Government rejected the proposal by letter

No.3613/A2/2000/PD dated 02.02.2001.

6. Hence, it cannot be said that before Exhibit P1 was issued concurrence from the PSC was decided to be deviated from by the Board. The Board, in its wisdom, had sought for concurrence from the Government prior to a decision being taken. In reply to the proposal and the letter No.Estt.II/15218/89, the Government had issued a letter dated 02.02.2001 that the recruitment rules requiring that the in-service candidates recruitment, made through PSC can be deviated by the Full Board, which is competent to take a decision either to reject or to deviate from the advice of the PSC. The Government also by letter No.3853/A2/01/PD dated 13.06.2002 informed the Board that the Government did not agree with the proposal of the Board. It was the opinion of the Government that it is only just and proper that the employees are subjected to an assessment of suitability just like the open market candidates who are selected for recruitment against the vacancies available for such recruitment. The Board is also said to have accepted the decision of the Government, as per Board Order No.B.O.(FM).1458/2002(Estt.II/15218/89) dated 24.10.2002. No further proposal for effecting recruitment by the

Board itself in the 10% quota is placed before the Government; nor is there a contention that the deviation had been decided by the Full Board of the KSEB, as permitted in the Regulations of 1967. Hence, the recruitment even of in-service candidates could be made only through the PSC.

7. As to the contention regarding promotions made to the feeder category employees in the Civil wing, it is categorically stated in paragraph 7 of the affidavit that the promotions made were not regular promotions and only provisional appointments to the post of Sub Engineer (Civil). It is also said to be based on the Board's own decision. The provisional appointments were made during the period between 1999 and 2001. It is also stated that the Board by its order dated 24.10.2002 had taken action to report the vacancy to the PSC. Subsequent to that, Exhibit P4 order has been passed by the Board on 24.10.2002 handing over the recruitment of in-service candidates in the 10% quota to the Board, after which, the learned Standing Counsel appearing for the Board submits, that, notifications were made and appointments were effected; none of whom are made parties here.

8. The learned counsel for the petitioners on the basis

of the interim order dated 05.02.2013, urge that the affidavit directed to be filed by the Board as to why the Electrical Diploma holders were discriminated has not been filed. The Board has filed a counter affidavit dated 26.06.2013 that the promotion made from the Civil wing was temporary and provisional. For regular appointment, vacancies in both the Civil and Electrical wings are said to have been reported to the PSC. The learned Standing Counsel for the PSC submits that such recruitment has also been initiated.

9. In the circumstance of the ensuing events after the writ petition as also the fact that many who were appointed to the post of Sub Engineer (Civil) and Sub Engineer (Electrical) are not impleaded herein, this Court is of the opinion that the writ petition itself cannot be entertained at this point of time. The petitioners also have not cared to put forth the subsequent events occurred, after the filing of the writ petition in 2005.

The writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]