

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 25650 of 2009 (A)

PETITIONER(S):

1. FRANCIS.P.D, PANAKKAL HOUSE, KOTTAPADI.PO,
THRISSUR.
2. ASLAM.P.S, KOCHUNJANGATTAPARAMBU,
PANAYIKULAM, ALUVA.
3. FAREEDA A KAREEM, AS-HAR GARDEN,
EDATHALA, ALUVA.

BY ADV. SRI.NAVEEN.T

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, POWER DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. KERALA STATE ELECTRICITY BOARD, REP.BY
ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.
3. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM.
4. DEPARTMENT OF ELECTRICAL INSPECTORATE,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM.
5. SREEJITH.S., 'SREE', MANIYOOR.PO,
PAYYOLI VIA, KOZHIKODE.

* **ADDL.R6 IMPEADED**

6. MUJEEB. A.K, ALACKAL HOUSE,
PEZHAKKAPPILLY P.O., MUVATTUPUZHA, ERNAKULAM DISTRICT.

ADDL.R6 IS IMPEADED AS PER ORDER IN IA.12051/2009 DATED 1/10/2009.

PJ

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* ADDL.R7 TO R9 IMPEADED

7. PRASAD KRISHNAN. N., S/O.RADHAKRISHNAN,
GHITHRA, KUTHUPARAMBA, KANNUR DISTRICT-670643.
8. HARIKUMAR V.P., S/O.VELAYUDHAN PILLAI,
GANNGA BHAVAN, KULATHOOR POST,
THIRUVANANTHAPURAM-695583.
9. SHAN.B.S., S/O.K.BALAKRISHNAN,
ARCHANA, ARASUMMOOD, KULATHOOR POST,
THIRUVANANTHAPURAM-65583.

ADDL.R7 TO R9 IS IMPEADED AS PER ORDER IN IA.12291/09 DATED 13-10-09

R1 BY GOVERNMENT PLEADER SRI.P.V.ELIAS
R2 4 BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB
R3 BY ADV. SRI.V.RAJENDRAN, SC, KPSC
R6 & 7 BY ADV. SRI.V.A.MUHAMMED
R8 BY ADV. SRI.V.V.SURESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-01-2015,
ALONG WITH WPC. 16862/2009 & WPC. 20069/2009, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE NOTIFICATION DT.31/7/2007 ISSUED BY THE PSC**
- P2: COPY OF THE CERTIFICATES OF THE PETITIONERS 1 AND 2 ISSUED BY THE UNIVERSITY OF KERALA**
- P3: COPY OF THE ORDER DATED 13/7/67 ISSUED BY THE KSEB**
- P4: COPY OF THE JUDGMENT DATED 4/9/2008 IN WPC.25729/2007 OF THIS HON.COURT.**
- P5: COPY OF THE ORDER DATED 6/3/80 ISSUED BY THE KSEB**
- P6: COPY OF THE RANKED LIST FOR APPOINTMENT TO THE POST OF ASST.ENGINEER (ELECTRICAL) PUBLISHED BY THE PSC**
- P7: COPY OF THE SYLLABUS OF III TO VIII SEMESTERS FOR B.TECH DEGREE IN ELECTRICAL AND ELECTRONICS ENGG. IN THE KERALA UNIVERSITY**
- P8: COPY OF THE SYLLABUS OF III TO VIII SEMESTERS FOR B.TECH DEGREE IN ELECTRONICS & COMMUNICATION ENGG.IN THE KERALA UNIVERSITY**
- P9: COPY OF THE INTERIM ORDER DATED 18/6/2009 IN WPC.16862/2009 OF THIS HON.COURT.**
- P10: COPY OF THE INTERIM ORDER DATED 26/8/2009 IN IA.NO.10577/09 IN WPC.20069/09 OF THIS HON.COURT.**

RESPONDENTS' EXHIBITS

- R7(A): COPY OF THE NOTIFICATION ISSUED BY THE UTTAR PRADESH RAJYA VIDYUT UTPADAN NIGAM LIMITED**
- R7(B): COPY OF RELEVANT PAGES OF THE NOTIFICATION ISSUED BY THIS CHATTISGARH STATE ELECTRICITY BOARD, UTTARAKHAND JAL VIDYUT NIGAM LIMITED, PUNJAB STATE ELECTIRICITY BOARD.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

C.K.ABDUL REHIM, J

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W.P.(C). No25650 OF 2009,

W.P.(C).No.16862 OF 2009

AND

W.P.(C).No.20069 OF 2009

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Dated this the 22nd day of January, 2015

JUDGMENT

A common issue with respect to the selection of candidates for appointment to the post of Assistant Engineer (Electrical) in the Kerala State Electricity Board (K.S.E.B.) is involved in all these three cases. Therefore they were considered together and disposed of through this common judgment. Reference to parties and exhibits contained in this judgment are in the order in which they are reflected in W.P.(C)No.25650/2009.

2. Challenge in all these cases is against Ext.P1 notification issued by the Public Service Commission (P.S.C.) inviting applications for appointment to the post of Assistant Engineer (Electrical), to the extent it prescribes an alternative qualification of Degree in Electronics and Tele-communication Engineering or any other qualification recognised as equivalent thereto. As a consequential relief

Ext.P6 rank list is also challenged to the extent it included candidates selected based on the qualification of Degree in Electronics and Tele-communication Engineering. In W.P.(C) No.25650/2009 there is also challenge against Ext.P5 order of the K.S.E.B, through which the Degree in Electronics and Tele-communication Engineering or any other equivalent qualification is approved as an alternative qualification for the post of Assistant Engineer (Electrical).

3. It is admitted case of all the parties that the qualification and the method of appointment for the post, which was early designated as Junior Engineer (Electrical) is prescribed through Ext.P3 order of the K.S.E.B., issued as early as on 13.7.1967. Where the qualification prescribed was a Degree in Electrical Engineering from any recognised University or any other qualification recognised as equivalent thereto. The equivalent qualification prescribed therein does not include a Degree in Electronics and Tele-communication Engineering. It is evident that, in Ext.P5

order of K.S.E.B. dated 6.3.1980 the alternative qualification as mentioned above was introduced. Ext.P1 notification was published by the P.S.C. only in the year 2007. Therefore nobody can dispute that the qualification prescribed in the said notification was against the qualification and method of appointment prescribed under the relevant orders issued by the K.S.E.B. When Ext.P1 notification was published, the 1st petitioner in W.P.(C) No.25650/2009 along with certain others have challenged the same in a writ petition filed as W.P.(C) No.25729/2007. But the said writ petition was withdrawn in September, 2008 with liberty reserved to challenge Ext.P5 order also. It is on that basis W.P.(C) 25650/2009 was filed challenging Exts.P5 and P6. In W.P. (C) No.20069/2009 also there is challenge raised against Ext.P5 order (Ext.P9 in the said writ petition). But there is no specific challenge against the Board order in W.P.(C) 16862/2009.

4. Inclusion of the alternate qualification of Degree

in Electronics and Tele-communication Engineering or any equivalent qualification, is challenged mainly on the ground that such qualification will result in violation of many of the provisions contained in the Indian Electricity Rules 1956. Learned Counsel for the petitioner in W.P.(C) 25650/2009 had drawn attention to the provisions contained in Section 185 (2)(c) of the Electricity Act, 2003 in order to content that the operation of Indian Electricity Rules 1956 was saved, despite the repeal, till Regulations under Section 53 of the Act are made. It is affirmed that no Regulation relating to the subject of safety and Electricity supply has been framed by the Central Electricity Authority, after enactment of the 2003 Act. Hence the Indian Electricity Rules 1956 is still in operation. Annexure 3 of the Indian Electricity Rules 1956 (herein after referred to as the 1956 Rules) which is framed under Rule XIV deals with the form of license to be granted to the licensees dealing with electricity. Referring to Clause 9 of Annexure 3 it is pointed

out that there is an obligation on the licensees to 'employ a Resident Electrical Engineer' in charge of the undertaking, possessing a recognised degree or diploma in Electrical Engineering obtained from a recognised University or College or possessing qualification equivalent to such Degree or Diploma. Contention of the petitioner is that, on the basis of the insistence for having a Resident Electrical Engineer in technical charge of the undertaking, the K.S.E.B. ought to have insisted that the Assistant Engineer (Electrical) should possess the qualification of Degree or Diploma in Electrical Engineering.

5. Learned counsel further pointed out that, Rule 3 (2)(A) of 1956 Rules insists that the licensee should not authorise any person to operate or undertaking maintenance in 'Generating Stations' having capacity of 100MW and above, together with the associated sub stations, unless he is adequately qualified and had undergone successful training as specified in Annexure XIV.

Referring to Clause (3) of Annexure XIV it is pointed out that, the minimum qualification stipulated for operating and supervisory staff is a second class Diploma in Mechanical or Electrical Engineering or Degree from a recognised Institute or University. Therefore it is contended that the Assistant Engineer (Electrical) in K.S.E.B. who are supposed to handle operation and maintenance in various sub stations throughout the State should have possessed the qualification as mentioned in Clause (3) of Annexure XIV.

6. Counsel for the petitioner had drawn further attention of this court to Rule 51(1)(a) of 1956 Rules wherein it is stipulated that all conductors other than overhead lines should be enclosed properly protected against mechanical damages and it should have accessibility only to authorised persons. According to him authorised persons include those persons mentioned in Rule (3) (2A) of the 1956 Rules.

7. Based on the above contentions it is argued that

inclusion of the alternate qualification of Degree in Electronics and Tele-communication Engineer, is repugnant and contradictory to provisions contained in 1956 Rules and it is unreasonable and arbitrary. Hence Ext.P5 and the consequential selection made by the P.S.C. by including candidates holding Degree in Electronics and Tele-communication Engineering, need to be nullified, is the contention.

8. In the counter affidavit of K.S.E.B. it is contended that the Board is an entity constituted under the provisions of the Electricity (Supply) Act 1948. The appointment of employees in the Board are regularised by the Kerala Public Service Commission (Additional Functions) Act, 1963. Therefore it is obligatory to have consultation with the P.S.C. in all matters relating to qualification and method of appointment of its employees. It is stated that, both Exts.P3 and P5 orders, prescribing qualification and method of appointment of Assistant Engineer (Electrical) were issued

only after making necessary consultation with the P.S.C., as required statutorily. Learned Standing Counsel appearing for the Board contended that the decision taken to include the alternate qualification is a decision which is taken by the K.S.E.B. in its wisdom, in exercise of its Rule making power and therefore interference of this court is not warranted. Further it is pointed out is that Ext.P5 was issued as early as in the year 1980 and the alternate qualification prescribed therein stood in force for years together and various selections were already made based on such qualification. Hence it is contended that the petitioners are not entitled to challenge the same at this point of time, after the lapse of considerable years.

9. The P.S.C. had filed a detailed affidavit alongwith an interim application seeking to vacate the order of stay granted. It is pointed out that the qualification prescribed in Ext.P1 notification is strictly in accordance with Exts.P3 and P5 orders issued by the Board from time to time. It is

further pointed out that after Ext.P5 the Board had issued Ext.R3(c) order dated 3.12.1998 wherein it is clarified that a B.Tech Degree in Applied Electronics and Instrumentation shall be treated as equal to B.Tech degree in Electronics and Tele-communications. Hence it is conceded that candidates possessing qualification of Degree in Applied Electronics and Instrumentations are also included in the rank list. According to the P.S.C. the liberty in recognising any qualification for appointment to any post is left to the competent authority concerned and it is not correct for the courts to interfere with such decision, in exercise of the power of judicial review. In this regard reliance is placed on a decision of the Hon'ble Supreme Court in Basic Education Board U.P. v Upendra Rai and Others (2008 (3) SCC 432) . It is held therein that grant of equivalence or revocation of equivalence is an administrative decision which is in the sole discretion of the authority concerned and the court has nothing to do with such matters. The matters of

equivalence is decided by experts appointed by the Government and the court does not have expertise in such matters. Hence it should exercise judicial restraint and not to interfere in such matters.

10. It is noted that pursuant to the steps taken by the petitioners under order 1 of Rule 8 CPC read with Rule 148 of the High Court Rules, certain persons whose names were included in the impugned rank list possessing the alternative qualification were got impleaded themselves as additional respondents. Learned counsel appearing for the additional respondents 6 and 7 had pointed out that the qualification which stood in existence since the year 1980 onwards cannot be interfered by this court at present and that there is no ground existing to interfere with the wisdom exercised by the authorities in prescribing such qualification, considering the requirement of expertise needed for the post in question. It is also pointed out that the validity of the impugned rank list stands expired as of

now.

11. A preliminary objection was also raised with respect to maintainability of the challenge against Ext.P1 notification. It is contended that the petitioners, having been participated in the selection process with full knowledge of the qualifications stipulated under Ext.P1 notification, is estopped from challenging the same after completion of the selection process. Learned counsel for the petitioner in W.P.(C) 25650/2009 had resisted such contentions pointing out that Ext.P1 notification was challenged earlier by the 1st petitioner, even before, participation in the selection process and the said writ petition was withdrawn with liberty reserved to challenge Ext.P5 order. Therefore it is contended that there is no bar for the petitioners to challenge Ext.P1 notification and also the consequent rank list, even after completion of the selection process.

12. Reliance is placed in this regard on a Full Bench decision of this court in Sourabh Jain v State of Kerala [2011 (1) KLT 888 (FB)]. It is held therein that estoppel is not a defence available to the state when its action is challenged on the ground of violation of any fundamental rights or provisions of the Constitution. There is a distinction between non-suiting a petitioner approaching the legal forum on the ground of either waiver of a legal right or estoppel by conduct and declining to interfere in the matter where the jurisdiction is discretionary on some well recognised principles governing such exercise of discretionary jurisdiction. According to learned counsel for the petitioner since the Board order is challenged on the grounds of unreasonableness and arbitrariness, this court is definitely within its powers in the discretionary jurisdiction to look into such contentions without embarking on the technicalities of estoppel.

13. Considering the contentions raised in challenge against Ext.P5, this court is inclined to examine sustainability of those contentions, notwithstanding dispute on the question of estoppel. Ext.P5 is challenged as unsustainable based on the contention that it is violative provisions of 1956 Rules. The 1st contention is that it violates clause 9 of Annexure 3 formulated under Rule XIV. But as pointed out above, the said clause insisted only that the licensees shall employ a Resident Electrical Engineer in technical charge of the undertaking, possessing qualification of Degree or Diploma in Electrical Engineering. But that itself will not create any obligation on the K.S.E.B. that all the Assistant Engineer (Electrical) appointed in the Board should possess the qualification of Degree in Electrical Engineering itself. So also the contention based on Clause (3) of Annexure XIV framed under Rule 3(2)(a) cannot be countenanced. Rule (3) itself is under the chapter dealing with authorisation. Sub Rule (2)(a) specifies only that

the persons authorised to operate and maintain 'Generating Stations' should have adequate qualification and should have undergone the type of training specified in Annexure XIV. Clause (3) of Annexure XIV stipulated that the operating and supervisory staff of 'Generating Stations' should have preferably holding a second class Diploma in Mechanical or Electrical Engineering or a Degree from any recognised Institute or University. Even the said provision cannot be construed as insisting a Degree in Electrical Engineering for the operating or maintenance staff of the 'Generating Stations'. Therefore the said provision cannot be made use of to insist that the K.S.E.B. should prescribe the qualification of Degree in Electrical Engineering itself for all the Assistant Engineer (Electrical) appointed under them. Thirdly Rule 51(1)(a) of the 1956 Rules also cannot be canvassed in support of the challenge, because it only deals with the safety and protection to be provided with respect to all conductors through adequate measures.

14. As contended by the respondents, the prescription of an alternative qualification is a matter which is coming within the administrative wisdom of the authority concerned. Petitioners have no case that K.S.E.B. is not within their delegated powers to specify qualification and method of appointment with respect to the post concerned. It is also not in dispute that the qualification prescribed under Ext.P1 is strictly in tune with the qualification prescribed by the K.S.E.B. through Exts.P3 and P5. As contended the Rule making authority vested on K.S.E.B. has got discretion to fix the qualification considering the expertise required for the post in question. Such administrative action is well within the discretion of the authority concerned and it falls within the realm the policy decision of the administrative authority. As held by the hon'ble apex Court in Basic Education Board's case (cited Supra) courts have to restrain interference in exercising judicial review in such matters.

15. Learned counsel for the petitioner contended that the decision taken by the administrative authority in this regard is not in tune with the expertise required for the post of Assistant Engineer (Electrical). In this regard he had drawn attention of this court to the counter affidavit of the 4th respondent, the Electrical Inspector. It is mentioned therein that the Electrical Inspectorate is of the opinion that qualification of Assistant Engineers dealing with Electricity should invariably be B.Tech degree in Electrical and Electronics Engineering as per Rule (3) of 1956 Rules. But as long as the Electrical Inspectorate is not the competent authority to prescribe the qualification and method of appointment with respect to employees of the licensee, it cannot be held that the decision taken by the K.S.E.B. making the Degree in Electronics and Tele-communication Engineering and Degree of Engineering Applied Electronics and Instrumentation as equivalent qualification to that of Degree in Electrical Engineering, is to be accepted as

decision taken with proper consideration with respect to the expertise required. Such a reasoning of the Electrical Inspectorate is not sufficient for this court to interfere with the decision taken in exercise of the Rule making power vested on the authority.

16. This court also takes note of the factual situation that the petitioners have participated in the selection process based on Ext.P1 notification and their names were included in Ext.P6 rank list. It is brought to notice of this court that, selection of numerous candidates included in the rank lists were already made and they are officials in the post of Assistant Engineer (Electrical) in the Board. Further it is noticed that the validity of the rank list was already expired. Under the above mentioned circumstances, considering the overall situation, this court do not find any reason to invoke the power of judicial review for interfering with Ext.P5 decision of the Board, which was taken as early as in the year 1980, and to interfere with the consequential

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selection made based on the basis of Ext.P1 notification and to interfere with the rank list prepared therein.

In the result, these writ petitions are devoid of merit and the same are hereby dismissed.

Sd/-
C.K.ABDUL REHIM, JUDGE.

SKV