

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).NO. 27019 OF 2012 (B)

PETITIONER(S):

**C.S.SARMA KUMAR
S/O.CHITRANGADHAN, EXECUTIVE ENGINEER (ELE.)
T.A.TO MEMBER (GEN), VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM, RESIDING AT SARAS
VISHNU NAGAR D-9, POWDIKONAM P.O.
THIRUVANANTHAPURAM - 695 587.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD**

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM - 695 004.**
- 2. THE CHAIRMAN,
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN
PATTOM P.O., THIRUVANANTHAPURAM - 695 004.**
- 3. THE CHIEF ENGINEER (H.R.M.),
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN
PATTOM P.O., THIRUVANANTHAPURAM - 695 004.**

R1-R3 BY ADV. SRI.K.S.ANIL, SC, KSEB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PETITIONER(S) EXHIBITS

EXHIBIT P1. TRUE COPY OF THE ORDER NO.EB1/001/96 DATED 11.09.1996 PROMOTING OF THE PETITIONER TO THE CADRE OF ASSISTANT EXECUTIVE ENGINEER.

EXHIBIT P2. TRUE COPY OF THE ORDER NO.EB1/LWA/97 DATED 11.06.1997 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P3. TRUE COPY OF THE ORDER NO.EB1/LWA/99 DATED 30.06.1999 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P4. TRUE COPY OF THE ORDER NO.EB/GR.3.AEE(ELE.)/99 DATED 07.07.2003 REVISING THE DATE OF PROMOTION AS ASSISTANT EXECUTIVE ENGINEER, THIRUVANANTHAPURAM.

EXHIBIT P5. TRUE COPY OF G.O.ME.NO.372/P (RULES) DEPARTMENT DATED 16.03.1959 PRESCRIBING QUALIFICATION AND METHOD OF APPOINTMENT UNDER KERALA ENGINEERING SERVICE.

EXHIBIT P6. TRUE COPY OF B.O.NO.A1/588/60 DATED 30.03.1962 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P7. TRUE COPY OF KERALA ENGINEERING SERVICE RULES AS AMENDED BY GOVERNMENT BY ISSUED OF G.O.(MS)NO.150/65/PW DATED 17.05.1965.

EXHIBIT P8. TRUE COPY OF PETITION SUBMITTED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT TO THE 1ST RESPONDENT.

EXHIBIT P9. TRUE COPY OF LETTER NO.ESTT.V/RIA/59/2012 DATED 19.07.2012 TO THE PETITIONER.

EXHIBIT P10. TRUE COPY OF JUDGMENT DATED 06.01.2012 IN W.P.(C)NO.1690/2010 OF THE HON'BLE HIGH COURT, ERNAKULAM.

EXHIBIT P11. TRUE COPY OF THE ORDER NO.LASI/870/2010 DATED 23.05.2012 OF THE 2ND RESPONDENT T.M.MANOCHARAN REJECTING THE REQUEST OF THE PETITIONER.

RESPONDENTS' EXHIBITS :NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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W.P.(C). No.27019 OF 2012

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Dated this the 29th day of June, 2015

JUDGMENT

The petitioner has filed this writ petition aggrieved by the denial of promotion to the post of Executive Engineer, in preference to his juniors.

2. Petitioner who commenced service as Assistant Engineer (Electrical) on 25.7.1986 in Kerala State Electricity Board ('KSEB' for short) by direct recruitment through Public Service Commission, availed leave without allowance, for employment abroad, for the period from 23.3.1990 to 22.7.1996. He rejoined duty on 23.7.1996 and got promotion as Assistant Executive Engineer, as per Ext P1. Immediately thereafter he again applied for leave and as per Ext P2, leave was sanctioned for the period from 20.9.1996 to 20.6.1999, for employment abroad. As per Ext P3, the leave was extended for a further period of 3 years from 20.9.1999. According to petitioner, he was eligible for further promotion as Executive Engineer immediately, on his

rejoining duty, when he had already completed of 3 years after his promotion as Assistant Executive Engineer and the denial of promotion in preference to the Assistant Executive Engineers who were his juniors, who actually worked in KSEB, is illegal.

3. Petitioner rejoined duty on 18.9.2002. On 31.12.2003, his juniors were promoted as Executive Engineers. Claiming that he was entitled to promotion in preference to the juniors, he submitted a representation on 22.9.2008 before the Chairman, KSEB. Thereafter he had approached this court also in W.P.(C). 1690/2010. Pursuant to the direction issued by this court, the Chairman, after considering his representation with reference to his service records as well as the relevant Special Rules, issued Ext.P11 order, rejecting the same. The Chairman, found that the petitioner who was on leave without allowance for employment abroad was not eligible for promotion at the time when his juniors were promoted, since he had not completed 3 years actual service in the post of Assistant Executive Engineer, as stipulated in Rule 3(b) of Kerala

Engineering Service Rules, 1959, because, immediately on promotion as Assistant Executive Engineer he had left for employment abroad and rejoined duty on 17.9.2010 only. The petitioner is challenging Ext.P11 order, on the ground that respondent Board has not adopted the Kerala Engineering Service Rules 1965 and that as per the 1959 Rules, an Assistant Engineer is eligible for promotion as Executive Engineer, on completion of 3 years service in that post.

4. The Electricity Board has filed a counter affidavit refuting the contentions raised by the petitioner. After explaining the service details including period availed by the petitioner on leave without allowance for the purpose of employment abroad, it is stated that the promotion to the post of Executive Engineer under the Board is governed by Rule 4(b) of the Kerala Engineering Service Rules 1965, according to which no person shall be eligible for promotion as Executive Engineer unless he has rendered satisfactory service as Assistant Executive Engineer for a period of not less than 3 years. It is stated therein that the service

conditions of Engineers under the Kerala Engineering service under the Government was originally regulated by the Special Rules issued in G.O.(MS) No.372/Public (Rules) Department dated 16.3.1959. The Board had adopted those rules as per B.O.No.A.I-588/60 dated 30.3.1965. Similarly, the Service conditions of employees under Kerala Engineering Subordinate Service in Government were regulated by the Special Rules issued in GO(MS) No.1390/Public Department (Service-D) dated 20.11.1958. Those rules were also adopted for implementation in the Board as per order dated 17.3.1959. When the 1959 Rules were replaced by 1965 Rules, the Board was following the 1965 Rules. As per the 1959 Special Rules, the Engineering Service consisted of the following categories of officers:-

1. Chief Engineer
2. Superintending Engineer
3. Executive Engineer
4. Assistant Engineer

5. Similarly the Kerala Engineering Subordinate

Service Rules, 1958 consisted of the following categories:-

1. Junior Engineer (including Head Draftsman)
2. 1st Grade Overseers (including 1st Grade

- Draftsman)
- 3. 2nd Grade Overseers(including 2nd Grade Draftsman) &
- 4. Tracers

6. The entry cadre for a graduate Engineer in the Engineering Subordinate Service was to the post of Assistant Engineer. The appointment to the post of Assistant Engineer in Kerala Engineering Service was being made by appointment by transfer from Junior Engineers in Kerala Engineering Subordinate Service. Consequent to the amendment in 1965, the post of Assistant Executive Engineer was introduced as the lowest category in the place of Assistant Engineer, The Engineering service was reconstituted with the following categories:-

- 1. Chief Engineer
- 2. Superintending Engineer
- 3. Executive Engineer
- 4. Assistant Executive Engineer

Similarly Kerala Engineering Subordinate Service Rule also underwent changes replacing the post of Junior Engineer with that of Assistant Engineer and the service was constituted by the following categories:-

- 1 Assistant Engineer
- 2.1st Grade Overseers
- 3.1st Grade Work Superintendent
- 4.2nd Grade Overseers etc.

7. Therefore, it is stated that the promotion available to petitioner who was appointed as Assistant Engineer in terms of 1965 Rules in the Engineering Subordinate Service was initially as Assistant Executive Engineer and only thereafter as Executive Engineer in terms of the provisions contained in 1965 Rules. As per 1965 Rules, 3 years satisfactory service in the post of Assistant Executive Engineer is necessary for promotion. As per the 1959 Rules, the Assistant Engineer was required to have 3 years service for promotion to the post of Executive Engineer. Consequent to the issuance of revised rules in 1965, an Assistant Executive Engineer has to complete 3 years satisfactory service for promotion as Executive Engineer.

8. It is further stated that the probation of the petitioner in the grade of Assistant Executive Engineer was not declared at the time when the juniors were promoted or

even at the time when he left for employment abroad. The petitioner had left service of the Board just after completing 9 days of service in the post of Assistant Executive Engineer. It is stated that the petitioner became entitled to be considered only against a vacancy of the Executive Engineer which arose after his rejoining duty on 18.9.2002, that too after declaration of probation in the cadre of Assistant Executive Engineer and after completing 3 years service. Accordingly the petitioner was given promotion to the grade of Executive Engineer on 15.10.2005 when he became eligible.

9. I heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel for the respondent Board. According to the petitioner the post of Assistant Executive Engineer is not available in Ext.P5 Rules of 1959. Since he was appointed as Assistant Executive Engineer and the Board has adopted only 1959 Rules, he alone is eligible for promotion as Executive Engineer on completion 3 years service in the post of Assistant Engineer, as provided in Rule 3 (2)(4)(b) of Ext.P5 – 1959 Rules. In

this case it is to be relevant to note that the petitioner was appointed as Assistant Engineer in the year 1986. In case Rules 1959 i.e, Ext.P4 Rules were in force the petitioner would not have been appointed as Assistant Engineer by direct recruitment. Because as per Ext.P5, the method of appointment to the post of Assistant Engineer is by recruitment by Transfer cum Junior Engineers in Kerala Engineering Subordinate Service. The post of Assistant Executive Engineer is also not available in Ext.P5 Rule 1959. It is based on these Rules that the petitioner should be promoted as Executive Engineer on completion of 3 years service.

10. As contended by the respondent Board, consequent to the introduction of new rules, the entry post in the Kerala Engineering Service, is Assistant Executive Engineer, in the place of Assistant Engineer. Accordingly, 1965 Rules, promotion to the cadre of Executive Engineer is made in terms of the said Rules from Assistant Engineers having the prescribed number of years of service. On a perusal of Ext.P5 as well as Ext.P7, 1959 Rules as well as

1965 Rules it can be seen that the method of appointment and eligibility criteria are almost the same except for a change in nomenclature. Respondent Board is following the Kerala Engineering Service 1965.

11. The petitioner was appointed directly as Assistant Engineer only on the basis of 1965 Rules – Ext.P7. He was on leave without allowance immediately on his promotion i.e, even before he completed 9 days of service as Assistant Executive Engineer. He left on leave without allowance for the purpose of employment. At the time when the petitioner left abroad on promotion as Assistant Executive Engineer, he had not completed his probation in the post.

He is not entitled to any promotion unless he satisfactory completes 3 years service. In the above circumstances, there is absolutely no circumstance to interfere with the impugned action.

The Writ Petition fails and hence dismissed.

Sd/-
P.V.ASHA, JUDGE