

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 24166 of 2014 (U)

PETITIONER:

**G.SUDHAKARAN,
DRAFTSMAN GR.I, KERALA WATER AUTHORITY
WATER WORKS HEAD QUARTERS SECTION, VELLAYANBALAM
THIRUVANANTHAPURAM**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

- 1. KERALA WATER AUTHORITY,
REPRESENTED BY ITS MANAGING DIRECTOR
KERALA WATER AUTHORITY, JALABHAVAN, VELLAYAMBALAM
THIRUVANANTHAPURAM**
- 2. THE CHIEF ENGINEER (PS & GENERAL),
KERALA WATER AUTHORITY, JALABHAVAN, VELLAYAMBALAM
THIRUVANANTHAPURAM**
- 3. DEPUTY CHIEF ENGINEER (GL),
KERALA WATER AUTHORITY, JALABHAVAN, VELLAYAMBALAM
THIRUVANANTHAPURAM**

BY SRI.JOSEPH JOHN, SC, KERALA WATER AUTHORITY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-11-2015,
ALONG WITH WPC 1039/2015 AND OTHERS THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 26-11-2008 IN OP NO 879/2002

EXHIBIT P2 TRUE COPY OF THE INTERIM ORDER DATED 06-02-2009 IN W.A NO 151/2009

EXHIBIT P3 TRUE COPY OF THE RELEVANT PART OF THE PROVISIONAL SENIORITY LIST DATED 23-07-2012

EXHIBIT P4 TRUE COPY OF THE CIRCULAR DATED 25-08-2012

EXHIBIT P;5 TRUE COPY OF THE LETTER DATED 13-05-2013

EXHIBIT P6 TRUE COPY OF THE ORDER DATED 17-05-2013

EXHIBIT P7 TRUE COPY OF THE JUDGMENT DATED 07-11-2013 IN CON CASE (C) NO 766/2013

EXHIBIT P8 TRUE COPY OF THE JUDGMENT DATED 27-06-2014 IN WA NO 192/2009

EXHIBIT P9 TRUE COPY OF THE REPRESENTATION DATED 12-03-2013 SUBMITTED BEFORE THE 1ST RESPONDENT

EXHIBIT P10 TRUE COPY OF THE JUDGMENT DATED 23-03-2011 IN WPC NO 9186/2011

EXHIBIT P11 TRUE COPY OF THE ORDER DATED 10-06-2011

EXHIBIT P12 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) Nos. 24166 of 2014,
1039, 1914 & 1922 of 2015

Dated this the 27th day of November, 2015

J U D G M E N T

Read Interim Order dated 12.11.2015 in W.P.(C)
No.23785/2015 and another.

“The short controversy raised herein is as to how the temporary promotions in the respondent authority to the post of Assistant Engineer has to be made from the feeder category of Draftsman Grade-I.

2. The Draftsman Grade-I posts are filled up by promotion from in-service diploma holders and certificate holders as also direct recruitment in the ratio of 5:2:3. The petitioners are all direct recruits, having been so appointed on 20.9.2006 by advice from the Public Service Commission and their seniority definitely has to be reckoned from the date of advice. The party respondents herein are all promoted as Draftsman Grade-I, subsequent to the appointment of the petitioners, however, in the departmental quota.
3. There was a controversy with respect to the seniority list issued on 1.11.2000, which took note of the amendment made, with retrospective

effect from 1964, providing for the aforesaid ratio. The challenge culminated in Ext.P6 judgment wherein though the retrospective amendment was upheld, the list was set aside finding it to be not in consonance with Rule 27(a) to (c) of the KS & SSR. The Water Authority was also directed to prepare a fresh seniority list. The fresh seniority list published was challenged in a batch of writ petitions connected with O.P. No.879/2002 in which the list was set aside.

4. On appeal, by Ext.P7 judgment the Division Bench set aside the judgment of the learned Single Judge and remanded the matter. While the matter was pending before the Division Bench, there was a provisional seniority list published. The Division Bench by Ext.P7 directed that the matter would be placed before the learned Single Judge and that the interim order passed in the Writ Appeals would be of no consequence. There was an open remand and any orders in the Original Petitions were said to regulate the issue till the matter is heard. It is admitted by all parties that the only interim order in the Original Petition was that the promotions would be subject to the result of the Original Petitions. It is also submitted by the learned Standing Counsel for the respondent Authority

that Ext.P7 has been challenged before the Hon'ble Supreme Court by the private parties; in which there is status quo order passed as on 10.4.2015.

5. While matters stood thus, there was a necessity for the Water Authority to fill up the posts lying vacant in the cadre of Assistant Engineer for reason of sheer necessity, in public interest. Hence, Exts.P8 and P9 circulars were issued wherein the provisional seniority list, drawn up during the pendency of the Writ Appeal, was sought to be pressed into service. Those circulars were stayed by Ext.P10. Later, there was a modification of Ext.P10 directing to follow the principle followed in the seniority list of 1.11.2000
6. The Authority, hence, started making temporary appointments to the cadre of Assistant Engineer from the seniority list of 1.11.2000. Having exhausted the same, the learned Standing Counsel for the Water Authority submits, that they were constrained to make promotions from the provisional seniority list. The Circulars adopting the provisional seniority list having been stayed by this Court, the said procedure adopted by the Water Authority was not proper.

7. It is also submitted by the learned counsel for the 19th respondent that the party respondents herein have already been promoted temporarily to the post of Assistant Engineer. In such circumstance, it may not be proper for this Court to interfere with the promotions already made without hearing the said respondents. The learned counsel for the 19th respondent also has a case that the very appointment of the petitioners were in excess of the quota of direct recruitment, which question is also said to be pending before the respondent Board. That, however, need not be looked into at this stage.
8. However, it would be perfectly legal for the Water Authority to follow the principle in the seniority list of 1.11.2000 in making further appointments. In following such principle, if any temporary promotions already made are to be upset, definitely a hearing should be afforded to such persons. Any further temporary promotions should be only on the principle of the seniority list of 1.11.2000. In making such promotions, definitely Rule 27(a) and (c) of the KS & SSR have to be followed scrupulously where the seniority would be on the basis of the first appointment made, in the case of promotees, and with respect to the direct recruitees, date of

effective advice. The interim order shall be valid till further orders are passed.”

2. The interim order would suffice with respect to the grievances of the petitioners for the moment, with respect to the provisional promotions to be effected and revision of seniority, which definitely would be subject to the result of the S.L.P. filed before the Hon'ble Supreme Court on the very same subject.

3. In such circumstance, the writ petitions shall stand disposed of, making the interim order absolute till the disposal of the S.L.P. before the Hon'ble Supreme Court.

Sd/-
K.VINOD CHANDRAN,
JUDGE