

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936**

**WP(C).No. 26498 of 2014 (J)**  
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**PETITIONER(S):**  
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1. RAVEENDRAN PILLAI, AGED 55 YEARS,  
S/O. SREEDHARAN PILLAI, CASHIER,  
ELECTRICAL SECTION (K.S.E.B), ARANMULA P.O.,  
RESIDING AT PALLICKAL VEEDU, NARIYAPUYRAM P.O.,  
PATHANAMTHITTA DISTRICT.
2. A.RAJAN, AGED 55 YEARS,  
S/O. KRISHNAN, CASHIER,  
ELECTRICAL SECTION (K.S.E.B), KADAMPAZHIPURAM,  
RESIDING AT ARUTHALA VEETIL, PULAPPETTA P.O.,  
PALAKKAD DISTRICT.
3. MATHAIKUTTY V., AGED 55 YEARS,  
S/O. VARGHESE, CASHIER,  
ELECTRICAL SECTION (K.S.E.B), VILAKUDI, CHENGAMMANADU,  
RESIDING AT SHARON VILLA, KURA P.O., KOLLAM DISTRICT.

**BY ADVS.SRI.V.SETHUNATH  
SRI.V.R.MANORANJAN (MUVATTUPUZHA)**

**RESPONDENT(S):**  
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1. THE KERALA STATE ELECTRICITY BOARD,  
REPRESENTED BY ITS SECRETARY, VAIDYUDTHI BHAVAN,  
PATTOM P.O., THIRUVANANTHAPURAM, PIN:695 004.
2. THE CHIEF ENGINEER (HRM),  
KERALA STATE ELECTRICITY BOARD, VAIDYUDTHI BHAVAN  
PATTOM P.O., THIRUVANANTHAPURAM, PIN:695004.
3. THE STATE OF KERALA,  
REPRESENTED BY THE SECRETARY, POWER (A) DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM, PIN:695 001.
4. THE KERALA PUBLIC SERVICE COMMISSION,  
REPRESENTED BY ITS SECRETARY, PATTOM P.O.,  
THIRUVANANTHAPURAM, PIN:695 004.

**R1 & R2 BY ADV. SRI.K.S.ANIL, SC  
R3 BY SENIOR GOVERNMENT PLEADER SRI.V.VIJULAL  
R4 BY SRI.P.C.SASIDHARAN, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
20-02-2015, ALONG WITH WPC. 31079/2011 & WPC. 14538/2014,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

WP(C).No. 26498 of 2014 (J)  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**EXHIBIT P1: THE TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT  
DATED 14.7.1995.**

**EXHIBIT P2: TRUE COPY OF THE RELEVANT PORTION OF THE LONG TERM  
SETTLEMENT (LTS 2000) IN THE YEAR 2000 ADOPTED AS PER THE B.O.  
NO.2150/2000, PSI 1400/98 DATED 29.8.2000, ARTICLE-X, CLAUSE-G(26).**

**EXHIBIT P3: THE TRUE COPY OF THE HON'BLE HIGH COURT OF KERALA IN  
WPC NO.12824/2005(B).**

**EXHIBIT P4: TRUE COPY OF THE G.O.(RT). NO.135/2008/PD DATED 22.5.2008 BY THE  
POWER (A) DEPARTMENT.**

**EXHIBIT P5: THE TRUE COPY OF THE SALARIES BILLS OF THE PETITIONERS  
SHOWING AS CASHIERS AND NOW AS LINEMAN.**

**EXHIBIT P6: THE TRUE COPY OF THE DEGREE CERTIFICATE ISSUED BY THE  
UNIVERSITY OF KERALA.**

**EXHIBIT P7: THE TRUE COPY OF THE APPOINTMENT ORDER/ADVICE MEMO ISSUED  
TO THE 1ST PETITIONER FROM C.J.M. COURT, FOREST DEPARTMENT,  
K.S.R.T.C.**

**EXHIBIT P8: THE TRUE COPY OF THE G.O(P)NO.1/2014/P&ARD (RULES)  
DATED 3.1.2014.**

**EXHIBIT P9: THE TRUE COPY OF THE ORDER NO.BO (CMD)NO.1818/2014  
(ESTT.II.4406/2014) DATED 2.7.2014.**

**RESPONDENT(S)' EXHIBITS:**  
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**NIL**

**//TRUE COPY//**

**P.S.TO JUDGE**

**Msv/**

**A.MUHAMED MUSTAQUE, J.**  
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**W.P(C).No.26498 of 2014, 14538 of 2014 & 31079 of 2011**  
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**Dated this the 20<sup>th</sup> day of February, 2015**

**JUDGMENT**

These Writ Petitions are at the instance of lineman who were promoted as Cashier provisionally in the service of Kerala Electricity Board subject to passing suitability test. W.P(C). No.26498 of 2014 is filed by persons who are due to retire within few months. As far as W.P(C).No.26498 of 2014 is concerned, the first petitioner was promoted on 21.05.1997. The second petitioner was promoted as Cashier on 02.06.1997 and third petitioner was promoted as Cashier in the year, 1997. They approached this Court apprehending their reversion to the post of lineman on account of non-clearing of suitability test. W.P (C).Nos.14538 of 2014 and 31079 of 2011 are filed by employees who were paid increments in the cadre of Cashier overlooking the fact that they were promoted only provisionally subject to passing suitability test. As far as W.P(C).No.14538 of 2014 is concerned, first petitioner was promoted as Cashier on 01.10.2007 and second petitioner was promoted as Cashier on 10.10.2007. Petitioner in W.P(C).No.31079 of 2011 was promoted as Cashier on 04.12.2007.

2. Admittedly, these petitioners are continuing in the post of Cashier for a very long time and it is submitted that Public Service Commission is not conducting suitability test so as to enable them to appear for examination. It is further submitted that as per the long term settlement between the Board and employees union, suitability test is not mandatory for promoting lineman as to Cashier.

3. In this matter a detailed counter affidavit has been filed by the Board in W.P(C).No.26498 of 2014. it is stated in paragraph 6 as follows:

“Board had issued order vide order B.O No.1439/95 (Estt-11-2185/90) dated 14.07.1995, stipulating the conditions for appointment as cashier from the lower category employees under 20% quota. Suitability test for appointment is insisted and conducted by the KPSC. The modified order vide dated 25.03.1993 and 15.05.1996 was issued for exempting certain categories from suitability test. Those who secured 40% marks in SSLC in English and 40% in aggregate are exempted from passing the suitability test. It is noticeable that this examination is applicable only to those employees of the Board who entered the Board service on or before 15.07.1995.”

4. It is the case of the Board that exemption is only applicable to those employees who are in the service of the Board before 15.07.1995 and petitioners are entered in the service only after 15.07.1995.

5. Petitioners case is that they are also entitled to be considered as exempted employees in the light of exemption give to those employees who entered service before 15.07.1995. Writ Petitioner in W.P(C).No.26498 of 2014 has been relied on the Government Order G.O(Rt.)No.135/2008/PD dated 22.05.2008 and submits that Government has given exemption to certain other employees from passing suitability test. It is submitted that at the fag end of their service as Cashier, they should not be reverted for the reason that they have not passed suitability test.

6. It is submitted by learned Standing Counsel for the Board that petitioners are not similar to candidates in Ext.P4 and Government granted exemption to those candidates as a special case. In **U.P State Electricity Board Vs. Pooram Chandra Pandey (2007(4) KLT 513(SC))** Supreme Court held that Umadevi's case cannot be applied mechanically without seeing the facts of a particular case and further

submits that employees who have put in a long service cannot be denied benefit of regularization and made to face same selection which fresh recruits have to face. Employees who have put in a long service in sanctioned benefit of regularization especially when it is sought for in pursuance of Article 14.

7. The suitability test is one of the condition for promotion as Cashier. Petitioners have been promoted as Cashier provisionally. The exemption has been granted by the Government for those employees who entered in service before 15.07.1995. Considering the fact that petitioners have put long service in the promoted cadre and some of them are due to retire in the near future, I am of the view, Government can take a decision in this matter whether exemption can be granted to these petitioners from passing suitability test. Therefore, petitioners shall make a representation before the Government within a period of two weeks from the date of receipt of a copy of this judgment. Thereafter Government, after adverting to exemption order dated 14.07.1995 and also other materials being placed by the petitioners including Ext.P4, take appropriate decision in the matter within a period

of two months on receipt of such representation. Petitioners in W.P(C).Nos.14538 of 2014 and 31079 of 2011 were paid increments in the scale of pay of Cashier. I am of the view, considering the monetary benefits given to them as increments in the scale of pay of Cashier, it would be iniquitous to recover the same after a long period. However, it does not create any right to claim increment. The payment so far made shall not be recovered from those petitioners.

In the light of the above, Writ Petitions are disposed of.  
No cost.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE.**