

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 11TH DAY OF DECEMBER 2020 / 20TH AGRAHAYANA,
1942

WA.No.143 OF 2019

AGAINST THE JUDGMENT IN WP(C) 37101/2016(K) OF HIGH COURT OF
KERALA DATED 19/12/2018

APPELLANTS/THIRD PARTIES:

- 1 JOHN VARGHESE,
AGED 44 YEARS
S/O.K.Y.VARGHESE, SUB ENGINEER, KERALA STATE
ELECTRICITY BOARD LTD., ELECTRICAL SECTION,
CHENNITHALA, PIN - 690 105, RESIDING AT MONCY
VILLA, CHENNITHALA SOUTH P.O.,
MAVELIKARA, PIN - 690 105.
- 2 PRAJU N.S.,
AGED 38 YEARS
S/O.K.N.SEKHARAN NAIR, METER READER, KERALA
STATE ELECTRICITY BOARD LTD., ELECTRICAL SECTION
NO.2, MUVATTUPUZHA - 686 661, RESIDING AT
NADUKKUDI PUTHANPURA HOUSE, INCHOOR, KOZHIPPILLY
P.O., KOTHAMANGALAM - 686 691.
- 3 SHOBYMON P.R.,
AGED 34 YEARS
S/O.P.K.RAVEENDRAN, SUB ENGINEER, KERALA STATE
ELECTRICITY BOARD LTD., ELECTRICAL SUB DIVISION,
THENGANA, KOTTAYAM - 686 536, RESIDING AT
PUTHUVALIL HOUSE, EDATHUA P.O.,
ALAPPUZHA - 689 573.

- 4 LUKOSE THOMAS ,
AGED 31 YEARS
S/O.LATE C.L.THOMAS , SUB ENGINEER , KERALA STATE
ELECTRICITY BOARD LTD. , ELECTRICAL SECTION ,
THALAYOLAPARAMBU , KOTTAYAM - 686 605 , RESIDING
AT CHETTIKAROTTU HOUSE , KOTHANALLOOR P.O. ,
KOTTAYAM - 686 632 .
- 5 ASWATHI A. ,
AGED 32 YEARS
W/O.GIRISH N.GOPAL , SUB ENGINEER , KERALA STATE
ELECTRICITY BOARD LTD. , ELECTRICAL SECTION
CENTRAL , RESIDING AT NEDUMALLATHIL HOUSE , MRA
35 , MASTER LANE , VADUTHALA - 682 023 .
- 6 BABEEDASAN P.V. ,
AGED 52 YEARS
S/O.P.K.VASU , NODAL OFFICER (LITIGATION) KERALA
STATE ELECTRICITY BOARD LTD. , ELECTRICAL
CIRCLE , IRINJALAKUDA - 680 121 , RESIDING AT
PANDARI HOUSE , P.O.PUTHENCHIRA SOUTH ,
THRISSUR - 680 682 .
- 7 ANUPRIYA M. ,
AGED 34 YEARS
W/O.BRIJITHKUMAR P.K. , SUB ENGINEER , KERALA
STATE ELECTRICITY BOARD LTD. , ELECTRICAL
DIVISION , KOTTARAKKARA , RESIDING AT PRIYA
NIVAS , NEDUVATHOOR , NEELESWARAM P.O. ,
KOTTARAKKARA , KOLLAM - 691 505 .
- 8 RAZEENA BEEGUM S.R. ,
AGED 38 YEARS
W/O.SIJU BASHEER , SENIOR ASSISTANT , OFFICE OF
LEGAL ADVISOR AND DISCIPLINARY ENQUIRY OFFICER ,
KERALA STATE ELECTRICITY BOARD LTD. , VYDHYTHI
BHAVAN , PATTOM - 695 004 , THIRUVANANTHAPURAM ,
RESIDING AT NOOR HOUSE , ARAPPURA ROAD ,
VATTIYOORKAVU , THIRUVANANTHAPURAM - 695 013 .

- 9 ANISH M.A. ,
AGED 38 YEARS
S/O.MANI P.V. , SUB ENGINEER,
KERALA STATE ELECTRICITY BOARD LTD. ,
ELECTRICAL SECTION, ATHIRAMPUZHA, RESIDING AT
ANISH BHAVAN, KURUPAMTHARA,
THALAYOLAPAAMBU P.O. , KOTTAYAM - 686 605.
- 10 MANESH K. ,
AGED 36 YEARS
S/O.S.KRISHNA WARRIER, SUB ENGINEER, KERALA
STATE ELECTRICITY BOARD LTD. , O/O.ASSISTANT
ENGINEER, ELECTRICAL SECTION, KOTTAYAM EAST,
RESIDING AT THEKKEDATHU WARRIAM,
PTHIYATHRIKKOVIL,
THIRUNAKKARA P.O. , KOTTAYAM - 686001.
- 11 THOMAS I.KAKKASSERY ,
AGED 41 YEARS
S/O.K.T.ITTIMANI, SUB ENGINEER, KERALA STATE
ELECTRICITY BOARD LTD. , O/O.ASSISTANT ENGINEER,
ELECTRICAL SECTION, PERUMBILAVU, KARIKKAD P.O. ,
RESIDING AT KAKKASSERY HOUSE, HILL BAZAR,
KUNNAMKULAM, THRISSUR - 680 503.

BY ADV. SRI.M.R.ANISON

RESPONDENTS/PETITIONERS/RESPONDENTS:

- 1 SUDHAKARAN K.A. ,
SUB ENGINEER, ELECTRICAL SECTION,
KOOHATTUKULAM, PIN - 686 662.
- 2 SNEHALAL K.C. ,
SUB ENGINEER, ELECTRICAL SECTION,
EZHIKKARA, PIN - 683 513.
- 3 PRADEEP KUMAR K.P. ,
SUB ENGINEER, 110 KV SUB STATION, KURUMASSERRY.
- 4 KERALA STATE ELECTRICITY BOARD LIMITED,
REPRESENTED BY ITS SECRETARY, VYDUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM - 695 004.

- 5 KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, K.P.S.C.,
DISTRICT OFFICE, PATTOM, THIRUVANANTHAPURAM -
695 004.
- **6 P.G.NIBEESH, (DELETED)
METER READER, KSEB ELECTRICAL SECTION,
CHALAKUDY, THRISSUR DISTRICT - 680 001.
- **7 MANU JOHN VARGHESE, (DELETED)
METER READER, KSEB ELECTRICAL SECTION,
GURUVAYOOR, THRISSUR DISTRICT - 680 001.
- **8 BIJOY M.S., (DELETED)
METER READER, KSEB ELECTRICAL SECTION,
KODUNGALLUR NO.1, THRISSUR DISTRICT - 680 001.
- **R6,R7 AND R8 ARE DELETED FROM THE PARTY ARRAY
AT THE RISK OF THE APPELLANTS AS PER ORDER
DATED 03/12/2020 IN I.A.4/2019 IN WA 143/2019.
- *9 NAVEEN KUMAR K.P.,
S/O.PAVANAN P.,AGED 31 YEARS,WORKING AS SUB
ENGINEER,KERALA STATE ELECTRICITY BOARD LTD.,
ELECTRICAL SECTION,ARTHUNKAL,ALAPPUZHA
DISTRICT,RESIDING AT KANDATHIL HOUSE,
N.ARYAD P.O.,ALAPPUZHA DISTRICT-688 538.
- *10 SMIJU D.,
S/O.A.N.DAMODHARAN,AGED 39 YEARS,WORKING AS SUB
ENGINEER,KERALA STATE ELECTRICITY BOARD
LTD.,.ELECTRICAL
SECTION,KIZHAKKAMBALAM,ERNAKULAM DISTRICT,
RESIDING AT ANAKALLIL(H),PATTIMATTOM
P.O.,CHENGARA,ERNAKULAM DISTRICT-684 562.
- *ARE IMPEADED AS ADDL.R9 AND ADDL.R10 AS PER
ORDER DTD.13/11/2020 IN I.A.1/2020 IN
WA 143/2019.

***11 SHAJEER P.M. ,
S/O.MAMMAN K. ,AGED 33 YEARS ,
WORKING AS SUB-ENGINEER(ELECTRICAL) ,
KERALA STATE ELECTRICITY BOARD LTD. ,
O/O. THE ASSISTANT ENGINEER,110 KV SUB
STATION,VADAKARA,PUTHOOR P.O. ,
PIN- 673104. RESIDING AT MINA(H) ,BEHIND
CHC ,PERUMPALPURAM ,
THIKKODY P.O. ,PIN-673 104 .

***IS IMPLEADED AS ADDITIONAL RESPONDENT R11 AS
PER ORDER DATED 03/12/2020 IN I.A.3/2020 IN WA
143/2019.

R1-3 BY ADV. SRI.P.M.PAREETH
R4 BY ADV. A.G.ANEETHA(B/O)
R5 BY ADV. P.C.SASIDHARAN
BY ADV. SRI.A.V.VIVEK
BY ADV. SHRI.GODWIN JOSEPH
BY ADV. SMT.APARNA CHANDRAN
BY ADV.SMT.DEEPA RAJESH

OTHER PRESENT:

SMT. V.P. SEEMANTHINI-SR.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-12-
2020, THE COURT ON 11-12-2020 DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 11th day of December, 2020

Shaffique, J.

Third parties had preferred this appeal after seeking leave of Court. They challenge judgment dated 19/12/2018 in WP(C) No.37101/2016. The petitioners in the writ petition are respondents 1 to 3 herein. They approached the learned Single Judge challenging the attempt on the part of the Board to fill up vacancies which arose after the date of Ext.P3, i.e., amendment to the Special Rules, from among the candidates selected pursuant to Ext.P1 notification dated 29/11/2011.

2. Petitioners were working as Sub Engineers (Electrical) in the Kerala State Electricity Board. 10% of vacancies in the post of Assistant Engineers (Electrical) is reserved for Sub Engineers (Electrical) having Engineering Degree. The selection is being conducted by way of direct recruitment through the Kerala Public Service Commission (KPSC). The upper age limit of candidates in the cadre of Sub Engineers (Electrical) for applying to the post of

Assistant Engineers (Electrical) under the 10% quota was fixed at 45 years. 10 vacancies had arisen in the cadre of Assistant Engineers (Electrical) in the aforesaid 10% quota which was reported to the KPSC and they issued Ext.P1 notification dated 29/11/2011. The last date of submission of applications was 4/1/2012. Written test was conducted on 15/11/2014, interview was conducted on 31/8/2016 and a ranked list came to be published on 30/12/2016. In the meantime, the Special Rules were amended as per Ext.P3 dated 5/6/2012, thereby the maximum age for appointment by transfer under the aforesaid 10% quota was fixed at 50 years instead of 45 years. The writ petition came to be filed on 17/11/2016 prior to the preparation of the ranked list. It was contended that once the Special Rules have been amended increasing the age limit up to 50, those vacancies which had arisen after 5/6/2012 have to be re-notified and a fresh rank list is to be prepared. They also contended that they were not eligible to apply as per Ext.P1 notification and hence they did not apply. They contended that 58 vacancies of Assistant Engineers (Electrical) in the 10% quota had arisen after the amendment to Special Rules and therefore only vacancies

that had arisen prior to 5/6/2012 could be filled up from the said ranked list.

3. Counter affidavit was filed by the 1st respondent *inter alia* stating that petitioners were persons who were eligible to apply as per the age criteria on the last date of application. But they did not apply. That apart, Ext.P3 order had been issued as early as on 5/6/2012, but the challenge is made only on 17/11/2016 after a long gap of four years. It is stated that if they have been qualified in terms of both upper age limit and educational qualifications, they could have applied pursuant to Ext.P1 notification.

4. The learned Single Judge having observed that when the Special Rules have been amended, those vacancies which arose after the amendment can be filled only in accordance with the amended rules after giving an opportunity to all such qualified hands. Reliance is made to judgments in **Ramesh Babu C. and Others v. State of Kerala and Others** [2013 KHC 3353] and **Mohanan K.R. v. Director of Homeopathy and Others** [2006 KHC 855]. However, this Court having observed that the writ petition was filed only in the year 2016 and it was

not proper to unsettle such appointments, the following direction had been issued:

“Therefore, I am of the view that the Board shall invite fresh application to fill such 10% quota for all future vacancies and no appointment shall be made pursuant to Ext.P1 without giving chance to all such qualified aspirants based on Exts.P2 and P3. If there are vacancies, the Board shall invite notification without any delay at any rate within two months from the date of receipt of a copy of this judgment. It is made clear that this court had not interfered with the appointment so far made. It is also made clear that the Board shall not make any further appointment pursuant to Ext.P1.

The writ petition is disposed of as above.”

5. Learned Senior counsel appearing for the appellants would submit that though there is no quarrel about the legal position on the basis of which the learned Single Judge had decided the case, what is to be considered is whether the petitioners had a legal grievance to approach this Court at the relevant time. First of all, it is submitted that at the time when the rules were amended, petitioners were not qualified as they did not have the Engineering Degree. Nowhere in the writ petition have they stated as to when they have acquired the Engineering Degree. It is apparent that they had obtained a degree only

before the filing of the writ petition. That apart, there is delay and laches in filing the writ petition. It is also contended that several persons are included in the ranked list and none of them had been impleaded. She also placed reliance on the judgment of the Apex Court in **Kulwant Singh and Others v. Daya Ram and Others** [(2015) 3 SCC 177]. Reference is also made to judgment in **Devicolam Distilleries Ltd. v. State of Kerala and Others** [2018 (4) KHC 703] in order to contend that if a litigant invokes the jurisdiction of the High Court, they must approach the Court with clean hands and clean objects. If there is suppression or concealment of material facts, they are liable to be imposed with heavy costs.

6. In fact, taking into account the delay in filing the writ petition, the learned Single Judge did not interfere with the appointments made from the ranked list but confined the appointments till the date of judgment.

7. Though it is contended by the learned Senior counsel that the writ petitioners are not entitled for any relief on account of the fact that they had no locus standi and that material particulars have been concealed, when the law laid down by this

Court in **Mohanan** (supra) clearly indicates that when there is an amendment to the Special Rules, vacancies arising after the said date have to be filled up based on the amended rules, despite the infirmities pointed out by the learned senior counsel, when such matters are brought to the notice of the Court regarding a patent illegality, there is no impediment on the part of the Constitutional Court to take cognizance of such facts and issue appropriate directions. A public authority like the Kerala State Electricity Board is bound to comply with the rules and the law laid down by this Court in the matter relating to appointments. Of course, it is not mentioned in the writ petition as to when the petitioners acquired the qualification in terms of the Special Rules and there is also delay on the part of the petitioners in approaching this Court. But when a statutory authority does not comply with the rules and the law laid down by this Court and the matter is brought to the notice of this Court, being a public law remedy, this Court is entitled to issue appropriate directions. The learned Single Judge also took cognizance of the fact that there has been violation of the Special Rules. But still, the learned Single Judge did not interfere with the appointments made by the Board until

then, especially on account of the fact that there was delay in challenging the action taken by the respondents.

8. Writ petitioners had contended that they did not apply pursuant to Ext.P1 notification as they were not eligible. However, when the upper age limit was enhanced from 45 years to 50 years, their contention is that further recruitment has to be made only on the basis of the amended rules. Their specific contention was that the vacancies that had arisen after the enhancement of age by the amended rules can be filled up only by a fresh selection. It is true that they have not mentioned anything about their qualification for participating in the selection to be conducted based on amended rules. But they have specifically pleaded that they did not apply as they were not eligible to apply as per the unamended rules. The appellants have taken up a contention that the petitioners acquired the qualification for the post only after Ext.P1 notification. There is of course concealment of the fact as to when the petitioners acquired the qualification. But even according to the appellants, at least two of them had become eligible to participate in the selection process if a notification was issued after the Special

Rules had been amended. Therefore, it cannot be stated that the petitioners did not have a legal grievance in the matter and therefore the contention that they had no locus standi to approach the court seeking the reliefs sought for is totally out of place.

9. Yet another contention urged is that the persons in the rank list have not been made parties to the lis. First of all, the writ petition was filed even before the rank list came into existence and the specific contention urged is not challenging the rank list as such, but on the ground that the vacancies that had arisen prior to the amendments to the Special Rules alone could be filled up from the said ranked list. Therefore, not impleading all the persons in the ranked list will not render any justification to interfere with the impugned judgment.

10. Learned senior counsel submits that from among the ranked list, only 16 persons are to be appointed and all others were appointed. We do not think that we will be justified in issuing directions permitting further appointments to be made from the said ranked list especially when several other persons from the ranked list who were qualified as per the earlier rules

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-:14:-

were appointed.

In the result, we do not find any ground to interfere with the judgment of the learned Single Judge. Appeal is dismissed.

sd/-

A . M . SHAFFIQUE

JUDGE

sd/-

GOPINATH P .

JUDGE

Rp

True Copy

PS to Judge