

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 7TH DAY OF DECEMBER 2022 / 16TH AGRAHAYANA, 1944

WP(C) NO. 8870 OF 2021

PETITIONERS:

- 1 MUHAMMED NAEEM.V.T
AGED 35 YEARS
S/O.V.T. SHEREEF, THOPPIL HOUSE, KILIMANGALAM
P.O., THRISSUR DISTRICT.

- 2 NIZAMUDDIN KOCHIMANAPPUZHA,
PUTHENCHANTHA CHAVARA,
KOLLAM.
BY ADVS.
K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SRI.H.PRAVEEN (KOTTARAKARA)
SMT.T.V.NEEMA
SMT.D.S.THUSHARA

RESPONDENTS:

- 1 STATE OF KERALA
REP.BY SECRETARY TO GOVERNMENT, POWER DEPARTMENT,
THIRUVANANTHAPURAM 695 001.

- 2 KERALA PUBLIC SERVICE COMMISSION
REP.BY SECRETARY, MG ROAD NEAR PATTOM JUNCTIO,
PALACE PATTOM, THULASI HILLS, THIRUVANANTHAPURAM
695 004.

- 3 KERALA STATE ELECTRICTY BOARD LIMITED.
REP.BY ITS SECRETARY, THIRUVANANTHAPURAM 695 012

- 4 CHIEF ENGINEER
KERALA STATE ELECTRICITY BOARD LIMITED, VHYDHYTHI
BHAVAN, PATTOM, THIRUVANANTHAPURAM 695 004.
- 5 GEETHIKA O.K.
PARAYULLATHIL HOUSE, PUTHUR PO, VATAKARA (VIA),
KOZHIKODE DISTRICT 673 104 (RANK NO.14)
- 6 ADDL.R6.RATHEESH.K.N
AGED 37 YEARS
AGED 37 YEARS, S/O.NARAYANAN K.V., KIZHAKKETHIL
HOUSE, MANGALAM, WADAKKANCHERY, THRISSUR DISTRICT.
- 7 ADDL.R7.VYSHAK
AGED 32 YEARS
AGED 32 YEARS. S/O.MOHANAN PUTHENPURAYIL HOUSE,
ELANAD P.O., CHELAKKARA, THRISSUR DISTRICT. AS PER
ORDER DATED 24-08-2021 IN IA 2/2021.
- 8 ADDL. R8 : RENJITH G
AGED 38, S/O. GOPALAKRISHNAN, SHILPA HOUSE, NEAR SBI
STAFF COLONY, CHEVAYUR P.O, KOZHIKODE-679017
- 9 ADDL. R9 : PRASOBH O.P
AGED 33, S/O R. PRAKASAN, ODASSERY HOUSE,
MADAPLAMTHURUTH, MOOTHAKUNNAM P.O, ERNAKULAM
DISTRICT-683 516
ADDL.R8 AND ADDL.R9 ARE IMPEADED AS PER ORDER DATED
12-01-2022 IN I.A 1/2022

BY ADVS.
P.C.SASIDHARAN
SRI.ASOK M.CHERIAN
C.A.NAVAS
M.R.ANISON
T.K.SASIKUMAR
P.A.RINUSA
V.P.SEEMANDINI (SR.)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.11.2022, ALONG WITH WP(C).3383/2022, THE
COURT ON 07.12.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 7TH DAY OF DECEMBER 2022 / 16TH AGRAHAYANA, 1944

WP(C) NO. 3383 OF 2022

PETITIONERS:

- 1 MUHAMMED NAEEM.V.T.,
AGED 35 YEARS
S/O.V.T.SHEREEF, THOPPIL HOUSE, KILIMANGALAM P.O.,
THRISSUR DISTRICT.

- 2 NISSAMUDEEN,
KOCHUMANAPPUZHA, PUTHENCHANTHA, CHAVARA, KOLLAM
DISTRICT.

BY ADVS.
K.MOHANAKANNAN
H.PRAVEEN (KOTTARAKARA)

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, POWER
DEPARTMENT, THIRUVANANTHAPURAM-695 001.

- 2 KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY SECRETARY, MG ROAD, NEAR PATTOM
JUNCTION PALACE PATTOM THULASI HILLS,
THIRUVANANTHAPURAM-695 004.

- 3 KERALA STATE ELECTRICITY BOARD LIMITED,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM-
695 012.

4 CHIEF ENGINEER, HRM,
KERALA STATE ELECTRICITY BOARD, VHYDHYTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM-695 004.

ADDL.5 RENJITH.G
S/O.GOPALAKRISHNAN, SHILPA HOUSE,
NEAR SBI STAFF COLONY,
CHEVAUR P.O, KOZHIKODE 679 017.

ADDL.6 PRASOBH.O.P.,
S/O.R.PRAKASAN, ODASSERY HOUSE, MADAPLAMTHURUTH,
MOOTHAKUNNAM P.O, ERNAKULAM DISTRICT - 683 516.
BY ADVS.
P.C.SASIDHARAN
SRI.K.S.ANIL, SC, KSEB
M.R.ANISON
P.A.RINUSA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.11.2022, ALONG WITH WP(C).8870/2021, THE
COURT ON 07.12.2022 DELIVERED THE FOLLOWING:

ANU SIVARAMAN, J.

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W.P.(c).Nos.8870 of 2021 and 3383 of 2022

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Dated this the 7th day of December, 2022

JUDGMENT

1. W.P.(C).No.8870 of 2021 is filed seeking the following reliefs:-

i)To issue a writ of certiorari or any other appropriate writ or order or direction calling for the records leading to Ext.P8 and quash the same;

ii)To declare that Engineering degree holders and Diploma holders without having National trade certificate in Electrician or wireman or Electronics trade as specified in Exhibit P2 notification are not eligible to be included in Ext.P8 rank list published pursuant to Exhibit P2.

1) To declare that rule 10(a) (ii) of Part II KS and SSR is not applicable to the technical qualification prescribed in Exhibit P2 notification for the post of Meter Reader in the Kerala State Electricity Board;

iv)To declare that any decisions or orders if any of the Public Service Commission to Include those degree and Diploma holders who do not have specific qualification as specified in Exhibit P2 notification for the post of Meter Reader is illegal, arbitrary and unreasonable.”

2. W.P.(C).No. 3383 of 2022 is filed seeking the following reliefs:-

“i) to issue a writ of certiorari or any other appropriate writ or order or direction calling for the records leading to Ext.P11 and quash the same.

ii)To declare that Ext.P11 Government Order does not have any retrospective operation and it will not in any manner effect Ext.P2 notification or the rank list Ext.P8 and the appointments contained therein.”

3. Heard the learned counsel for the petitioners, the learned Government Pleader and the learned standing counsel appearing for the Kerala Public Service Commission, the learned standing counsel appearing for the Kerala State Electricity Board and the learned counsel appearing for the contesting party respondents.

4. The learned counsel for the petitioners submits that the petitioners are applicants to the post of Meter Reader/ Spot Biller in the Kerala State Electricity Board (hereinafter referred to as KSEB) pursuant to Exhibit P2 notification issued by the Kerala Public Service Commission (hereinafter referred to as “PSC”). It is submitted that the qualifications prescribed for the post are as follows:

“(1) General
Pass in 8th standard (IV forum) or its equivalent qualification

(2) Technical_

National Trade Certificate in Electrician/ Wireman/Electronics trade.

Or

KGCE electrical from an institution recognized by the Government of Kerala,

Or

MGTE/ KGTE Group Certificate covering the following four subjects:

a) Electrical Light and Power(Higher)

b) Applied Mechanics (Lower)

c) Heat Engines (Lower)

d) Machine Drawing (Lower)"

5. It is submitted that the petitioners, who have the qualification of National Trade Certificate in Electrician/ Wireman/ Electronics trade, have submitted their applications. It is contended that the certificate course leading to the National Trade Certificate is qualitatively and functionally different from the Diploma course in Engineering or a Degree in Engineering. It is further submitted that the qualifications fixed for the post and notified by Exhibit P2 specifically excludes Diploma and Degree holders from submitting applications to the post. However, it is contended that the PSC had been considering applications submitted by Degree holders and Diploma holders as well, and the shortlist published contained persons having the said qualifications, which were not contemplated in Exhibit P2. The petitioners

along with others filed W.P.(C).No.38864/2017 seeking directions to publish a shortlist excluding Degree and Diploma holders and including only such persons who were qualified in terms of the notification. The said writ petition was disposed of along with connected cases by Exhibit P7 judgment wherein this Court expressed the hope that PSC will be careful enough only those candidates who are eligible as per the notified educational and other qualifications will be included in the ranked list. It is submitted that when Exhibit P8 ranked list was published on 19-03-2021, the ineligible persons had not been excluded for which it is the reason why this writ petition has been preferred. The learned counsel for the petitioners relied on a decision reported in **Suma A. v. Kerala Public Service Commission and Others** [2011 (1) KHC 16 (FB)] and **Abdul Salam v. Executive Engineer** [2011(3) KLT 204].

6.A counter affidavit has been filed by the 2nd respondent, stating that the notification specifically provided that the higher qualifications which pre-supposes the existence of the prescribed qualifications would also be considered as

sufficient qualification for appointment to the post. The decisions relied on by the petitioners have absolutely no application in the facts of the case. It is contended that the decision in **Suma A. v. Kerala Public Service Commission and Others, and Abdul Salam v. Executive Engineer**, were specifically with regard to equivalence of qualifications and are totally irrelevant in the facts of the instant case. It is submitted that the question raised in this writ petition stands specifically covered by the judgment of the Apex court in **Jyoti K.K & Others. v. Kerala Public Service Commission & Others** [JT 2002 (Suppl.1) SC 85] and contends that the qualification of Diploma and Degree are specifically such qualifications which pre-suppose the existence of the prescribed qualifications. Therefore, there is absolutely no illegality in the selection or the ranked list published by the PSC.

7. The specific contention of the petitioners is that the qualifications prescribe in Exhibit P2, being a National Trade Certificate in the concerned trade, the acceptance of persons

with other qualifications, is unjustifiable. It is contended that the qualifications are distinct and separate and that there can be no equivalency with regard to the same. It is further contended that orders passed by the Government later in point of time, can have no application to the selection already in progress and that therefore, the ranked list is illegal.

8.I notice that W.P.(c)8870 of 2021 was filed with the State, Public Service Commission, the Electricity Board and one candidate included in the ranked list, as the parties. The challenge is against Exhibit P8 ranked list and the inclusion of Degree and Diploma holders therein. If that be so, the filing of the writ petition with only the 5th respondent in the party array itself would make the writ petition not maintainable, since all those persons, who are likely to be affected by orders to be passed in the writ petition are necessary parties to the writ petition. Respondents 6 and 7 who have got themselves impleaded in the writ petition seek to support the petitioners, while respondents 8 and 9 have filed detailed counter affidavits opposing the prayers.

9.The contesting party respondents have also filed detailed counter affidavits. It is stated that the writ petition filed without impleading all the Degree and Diploma holders included in Exhibit P8 ranked list, is not maintainable and is liable to be dismissed on that very short ground. It is submitted that the decision relied on by the petitioners i.e., **Suresh Kumar v. KPSC** has been reversed by Exhibit R9(a) judgment dated 4-08-2015. It is further submitted that the Higher Education Department of the State has issued Exhibit R9(c)order dated 1.2.2021, declaring that Diploma in Automobile Engineering is a higher qualification for ITI, Diesel Mechanic and Motor Mechanic course.

10.The contentions of the petitioner with regard to the nature of the qualifications are also specifically controverted in the counter affidavit filed by the 9th respondent. Exhibits R9(c) to R9(f) orders and Exhibit R9(g) letter of the Director of Technical Education dated 27-10-2016, are also relied on. By Exhibit R9(h), order of the Kerala State Electricity Board Ltd. dated 7-10-2021, decided to request the Kerala Public Service

Commission to include persons with Diploma and Degree qualifications also. Exhibit R9(h) order of the KSEB dated 7-10-2021 is also specifically referred to and relied on.

11.Having considered the contentions advanced, I notice that Exhibit P2 notification specifically provided that Rule 10(a)(ii) of Part II KS and SSR is applicable in respect of the prescribed qualifications. Rule 10(a)(ii) of Part II KS and SSR, reads as follows:-

“Notwithstanding anything contained in these rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post, in the Special Rules or found acceptable by the Commission as per rule 13 (b) (i) of the said rules in cases where acceptance of equivalent qualifications is provided for in the rules and such of those qualifications which pre-suppose the acquisition of the lower qualification prescribed for the post, shall also be sufficient for the post.”

12.The Apex court in **Jyoti K.K & Others. v. Kerala Public Service Commission & Others**, has specifically considered the question of the effect of possession of higher qualification which pre-supposes the acquisition of lower qualification

prescribed for the post. The question was raised specifically with regard to the qualification for the post of Sub- Engineer (Electrical) in the Kerala State Electricity Board. It was found that Degree in Electrical Engineering or other equivalent qualification is a prescribed qualification under the relevant Rule for appointment to the post of Assistant Engineer, which is a higher post. The qualification of Degree in Electrical Engineering was, therefore, held to presuppose the acquisition of the lower qualifications of certificate or Diploma in that subject and it was directed to be considered to be sufficient for the post. In the instant case also, Exhibit R9 (h) proceedings of the Board dated 7-10-2021 specifically considered the issue and found that as per the CEA Regulations, qualification for appointment/promotion to the cadre of Sub-Engineer (Electrical) is either Diploma or Degree in the concerned discipline. However, the qualification prescribed for the post of Meter Readers is ITI with only VIII standard. Therefore, the Meter Readers, who are directly recruited with the presently stipulated ITI qualification would be confined to the post of Meter Readers throughout their service with absolutely no

chances for promotion resulting in a situation where 40% posts of Sub-Engineer (Electrical) which is set apart for promotion of Meter Readers would remain unfilled permanently which would be detrimental to the functioning of the KSEB. It is, therefore, clear that the qualification of Diploma in Engineering is an essential qualification for appointment to the next higher post of Sub-Engineer in KSEB and Degree in Engineering is a necessary qualification for promotion to the still higher posts.

13. In the above factual situation and in the light of the reasoning adopted by the Apex court in **Jyoti K.K & Others. v. Kerala Public Service Commission & Others**, I am of the opinion that the contentions raised by the petitioners that the qualification of Diploma and Degree in Engineering would not presuppose the acquisition of the lower qualification of National Trade Certificate, as prescribed in Exhibit P2 notification cannot be accepted. The writ petitions fail and the same are accordingly dismissed.

sd/

Anu Sivaraman, Judge

APPENDIX OF WP (C) 3383/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE NATIONAL TRADE CERTIFICATE IN THE TRADE OF ELECTRICIAN ISSUED TO THE 1ST PETITIONER.
- Exhibit P2 TRUE COPY OF THE NOTIFICATION PUBLISHED BY THE 2ND RESPONDENT FOR THE POST OF METER READER IN KERALA STATE ELECTRICITY BOARD IN THE GAZETTE DATED 28.01.2015.
- Exhibit P3 TRUE COPY OF THE RTI APPLICATION SUBMITTED BY ARUN.V. DATED 22.10.2016.
- Exhibit P4 TRUE COPY OF THE REPLY DATED 10.11.2016 RECEIVED UNDER RIGHT TO INFORMATION ACT.
- Exhibit P5 TRUE COPY OF RTI APPLICATION SUBMITTED BY MUHAMMED RASHID DATED 09.11.2016.
- Exhibit P6 TRUE COPY OF THE REPLY DATED 15.12.2016 RECEIVED UNDER RIGHT TO INFORMATION ACT.
- Exhibit P7 TRUE COPY OF THE JUDGMENT IN WRIT PETITION NO.38864/2017 DATED 04.02.2021.
- Exhibit P8 TRUE COPY OF THE RANK LIST IN CATEGORY NO.557/2014 DATED 19.03.2021 PUBLISHED BY THE PUBLIC SERVICE COMMISSION.
- Exhibit P9 TRUE COPY OF THE ADVICE MEMO DATED 29.,05.2018 ISSUED BY THE PWD DEPARTMENT ISSUED TO ONE GEETHIKA.O.K. RELEVANT PORTION.
- Exhibit P10 TRUE COPY OF THE INTERIM ORDER DATED 27.04.2017 IN WRIT PETITION NO.8870/2021 OF THIS HON'BLE COURT.
- Exhibit P11 TRUE COPY OF THE GO(MS) 50/2022/H.EDM DATED 21.01.2022.

APPENDIX OF WP (C) 8870/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE NATIONAL TRADE CERTIFICATE IN THE TRADE OF ELECTRICIAN ISSUED TO THE 1ST PETITIONER.
- EXHIBIT P2 TRUE COPY OF THE NOTIFICATION PUBLISHED BY THE 2ND RESPONDENT FOR THE POST OF METER READER IN THE KERALA STATE ELECTRICITY BOARD IN THE GAZETTE DATED 28.1.2015
- EXHIBIT P3 TRUE COPY OF THE R.T.I. APPLICATION SUBMITTED BY ARUN V. DATED 22/10/2016
- EXHIBIT P4 TRUE COPY OF THE REPLY DATED 10.11.2016 RECEIVED UNDER RIGHT TO INFORMATION ACT.
- EXHIBIT P5 TRUE COPY OF R.T.I. APPLICATION SUBMITTED BY MUHAMMED RASHID DATED 9.11.2016
- EXHIBIT P6 TRUE COPY OF THE REPLY DATED 15.12.2016 RECEIVED UNDER RIGHT TO INFORMATION ACT.
- EXHIBIT P7 TRUE COPY OF THE JUDGMENT IN WRIT PETITION NO.38864/2017 DATED 4.2.2021
- EXHIBIT P8 TRUE COPY OF THE RANK LIST IN CATEGORY NO.557/2014 DATED 19.3.2021 PUBLISHED BY THE PUBLIC SERVICE COMMISSION
- EXHIBIT P9 TRUE COPY OF THE ADVICE MEMO DATED 28.6.2018 ISSUED BY THE PWD DEPARTMENT ISSUED TO THE 5TH RESPONDENT -RELEVANT PORTION.

RESPONDENT'S EXHIBITS

- EXT.R9 (A) TRUE COPY OF THE DIVISION BENCH JUDGMENT DATED 4.8.2015 IN WA NO.1874 AND 2193/2012

- EXT.R9 (B) TRUE COPY OF THE SUPREME COURT ORDER DATED 2.12.2016 IN CC 17522/16 FILED BY ITI CERTIFICATE HOLDERS CHALLENGING THE COMMON JUDGMENT DATED 4.8.2015 IN WA 466/2013.
- EXT.R9 (C) TRUE COPY OF GO(RT)NO.176/221/G.EDN. DATED 1.2.21
- EXT.R9 (D) TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS ISSUED BY THE TECHNICAL EDUCATION DEPARTMENT FOR ADMISSION TO DIPLOMA PROGRAMME THROUGH LATERAL ENTRY IN POLYTECHNIC COLLEGES 2021-22.
- EXT.R9 (E) TRUE COPY OF THE RELEVANT PAGES OF THAT CRAFTSMAN TRAINING SCHEME ISSUED BY THE GOVERNMENT OF INDIA
- EXT.R9 (F) TRUE COPY OF GO(RT)1717/2021/GEN.EDN DATED 24.12.2021
- EXT.R9 (G) TRUE COPY OF THE LETTER NO.C4/17749/2016/DTE DATED 27.10.2016 ISSUED BY THE DIRECTOR OF TECHNICAL EDUCATION.
- EXT.R9 (H) TRUE COPY OF THE BO(FTD) NO.744/2021 (NO.EB4c/RECRUITMENT/21-22 DATED 7.10.21.
- EXT.R9 (I) A TRUE COPY OF THE ADVICE LETTER NO.RIB(2)2681/2021/GW DATED 29.7.2021 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION.
- EXHIBIT R9 (J) TRUE COPY OF THE ADVICE MEMO NO.R1B(2)2681/12/GW DATED 22.12.2021 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION.

TRUE COPY

PS TO JUDGE