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**(2011) 03 KL CK 0055**  
**In the High Court Of Kerala**  
**Case No : WA. No. 1977 of 2006**

P.V. Ravindran

APPELLANT

Vs

State of Kerala, The Chief Engineer and N.B. Babu

RESPONDENT

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**Date of Decision :** 10-03-2011

**Acts Referred:**

Kerala Public Services Act, 1968 — Section 2(1)

**Citation :** (2011) 03 KL CK 0055

**Hon'ble Judges :** Jasti Chelameswar, C.J.;Antony Dominic, J

**Bench :** Division Bench

**Advocate :** V.P. Seemandini, for the Appellant; Government Pleader, for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. Chelameswar, C.J.—Aggrieved by judgment in O.P. No. 16824 of 2001, the unsuccessful Petitioner therein preferred the instant appeal.

2. The Writ Petition was filed challenging the legality of an order dated 24.6.1998 marked as Ext.P1 in the writ petition, by which the 3rd Respondent herein was provisionally promoted as Assistant Engineer (Mechanical) against the vacancy earmarked for certificate holders and posted as Assistant Engineer in Mechanical Sub Division, Chalakkudy. The prayers in the writ petition are as follows.

It is therefore most respectfully prayed that this Hon''ble Court may be pleased to call for the records leading to Ext.P1 and may be pleased to issue;

(i). a Writ of Certiorari or any other appropriate writ, order or direction quashing Ext.P1 order promoting the 3rd Respondent to the post of Assistant Engineer (Mechanical).

(ii). a Writ of Mandamus or any other appropriate writ order or direction commanding Respondents 1&2 to promote the Petitioner to the post of Assistant Engineer (Mechanical) with effect from 31.5.1997 being the date of occurrence of

vacancy.

3. The Appellant and the 3rd Respondent belong to a service known as Kerala Engineering Subordinate Service (Mechanical Branch). The conditions of which service are governed by the rules framed in exercise of the powers u/s 2(1) of the Kerala Public Services Act, 1968 ( Act 19 of 1968). The said service consists of five categories of post, which are as follows;

Category 1. Assistant Engineer (Mechanical) (including Dredger Captain and Foreman of Dredger Dry Dock.)

Category 2. Inspector of Boats.

Category 3. Overseer/Draftsman(Mechanical) Grade I (including Foreman and Assistant Foreman).

Category 4. Overseer/Draftsman (Mechanical)Grade II.

Category 5. Overseer/Draftsman(Mechanical)Grade II. (including Tracers).

4. The method of appointment to each of those posts are indicated in 2 of the above mentioned rules. Coming to the post in question, i.e.; Assistant Engineer (Mechanical), two possible methods of appointment are specified, i.e.; either by direct recruitment or by promotion from Category No. 3 mentioned above. The Rule also prescribed a particular ratio to be maintained in making recruitment to the said post, either by direct recruitment or by promotion. In so far as the vacancies to be filled up by promotion, i.e.; four vacancies out of ten, three vacancies are required to be filled up by the candidates possessing a diploma in the appropriate branch and one post by holders of certificate specified in Section (C) of annexure to the said rules. The relevant portion of Rule 2 reads as under;

By direct recruitment and by promotion from Category 3, Overseers/Draftsman(Mechanical) Grade I in the ratio of 6:4. The vacancies reserved to be filled up by promotion shall be allocated between those possessing the qualification specified in Section B and Section C of the Annexure in the ratio 3:1. The ratio 6:3:1 for direct recruitment of Graduates, promotion of Diploma holders and Certificate holders shall be applied to the total cadre strength of Assistant Engineers (Mechanical) in the Department and not to vacancies as they arise from time to time. Separate seniority lists of Graduates, Diploma holders and Certificate holders shall be followed for the maintenance of the ratio on cadre strength. Promotions and reversions of each category of officers shall be confined to the quota allowed for each category of officers within the cadre strength. In the absence of qualified hands for promotion, the vacancies shall be filled up by direct recruitment subject to the condition that the ratio maintained against future appointments.

Note:- The category 1 Assistant Engineer (Mechanical) and category 2 Inspector of Boat are interchangeable.

5. It is further stipulated under Rule 3 that no person is eligible for appointment

to the category of Assistant Engineer by promotion unless the candidate possesses an SSLC qualification or its equivalent and also possesses any of the qualifications mentioned in Section (C) of the annexure (certificate referred to earlier in the judgment) and also had rendered service in the department for a minimum period of five years, of which not less than two years in the feeder category that is Overseer/Draftsman Grade I.

6. As a matter of fact, the Petitioner and the 3rd Respondent admittedly were promoted to Draftsman Grade-I category which is the feeder category for the post in dispute on the same day, i.e.; 27.6.1996. Prior to that, both were working in the same department in the category of Draftsman Grade II into which category the Appellant was recruited directly and the 3rd Respondent was promoted from the category of Draftsman Grade III.

7. Initially, a seniority list of both the classes of employees, i.e.; direct recruits and promotes in Grade-II was prepared by the department, wherein the direct recruits were placed above the promotees. Aggrieved by the same, the 3rd Respondent approached this Court by way of O.P. No. 8353 of 1992 claiming that he was entitled to be promoted as Draftsman Grade II category in the vacancies that arose on 21st January, 1988. The said Original Petition was disposed by judgment dated 27.6.1996, directing the appropriate authority, i.e.; Chief Engineer of the Department to consider the grievance of the two Petitioners therein, of whom the 2nd Petitioner is the present 3rd Respondent.

8. In pursuance to the said direction, admittedly the 3rd Respondent was placed above the Appellant herein and the other direct recruits in the seniority list. We say admittedly because it is pleaded in the writ petition at para 3 as follows;

Subsequently the R3 preferred an Original Petition before this Hon'ble Court as O.P. No. 8353 of 1992 wherein it was contended that he is entitled to promotion to the post of II Grade Draftsman in vacancies arising after 21.1.1988 and the said was directed to be considered by the 2nd Respondent by this Hon'ble Court. In reconsidering the matter the 3rd Respondent was placed above the direct recruits including the Petitioner in the seniority list.

9. Thereafter, the 3rd Respondent acquired the qualification of the certificate necessary for considering his case for promotion to the post of Assistant Engineer on 20th January, 1998. However, even before the 3rd Respondent acquired such qualification to the post of Assistant Engineer in the quota earmarked for the candidates possessing the certificate referred to earlier, vacancy arose on 31.5.1997. However, by proceedings dated 21st August, 1997, the 3rd Respondent was appointed to the above mentioned vacancy, though on that date the 3rd Respondent did not have the requisite qualification, i.e.; the possession of certificate referred to earlier. Sometime later the department realized the mistake. Therefore, by proceeding dated 6.10.1997, the above mentioned promotion order in favour of the 3rd Respondent was cancelled. Subsequently by proceedings dated 24.6.1998, the 3rd Respondent was once

again promoted, in view of the fact that by the said date the 3rd Respondent had obtained the certificate.

10. It is this order of promotion (Ext.P1) which is under challenge in the writ petition as well as in the present appeal.

11. Counsel for the Appellant argued that, though initially the Appellant was shown as senior to the 3rd Respondent in the category of Draftsman Grade II, the seniority came to be altered ostensibly, in view of the directions issued by this Court in O.P. No. 8353 of 1992 referred to supra. Learned Counsel for the Appellant argued that neither the Appellant herein was a party to the said writ petition nor at the time of altering the seniority list pursuant to the above mentioned judgment, the Appellant was put on notice of that process.

12. Except for the submission at the Bar, there is no pleading regarding the lack of notice in the writ petition. However, the fact that the Appellant was not heard before altering the inter se seniority of the Appellant and the third Respondent herein is not in dispute. It needs no great expedition of law to say that the Appellant is not bound by the judgment in O.P. No. 8353 of 1992 as he is not a party to the same. Even otherwise the said judgment did not declare any right of the third Respondent's seniority. It only directed that his claim be considered in accordance with law.

13. Notwithstanding such a defective procedure in determining the seniority of the third Respondent pursuant to Ext.P2 judgment, no proceedings are issued by the official Respondents finalizing the inter se seniority between the Appellant and the third Respondent and other members of the service in the category of Draftsman Grade I. The official Respondents proceeded to promote the third Respondent herein by (Ext.P1 proceedings dated 24.6.1998) to the next higher post of Assistant Engineer. The details of such proceedings are already taken note of. In substance, the official Respondents completely failed to apply their mind to the dispute before them. Apart from that we also notice from the original records that in the whole exercise allegedly made pursuant to the directions issued under Ext.P2 judgment the third Respondent came to be promoted to the post of Draftsman Grade I with effect from 28th May, 1998. On the other hand, the third Respondent was promoted as Draftsman Grade II in the year 1991 an anomaly which needs no further proof of the non application of mind on the part of the State. We are also informed that the Appellant herein was also promoted to the post of Assistant Engineer on 29.5.2006.

14. In the circumstances, we are of the opinion that Ext.P1 is legally untenable and the same is required to be set aside. However, it is brought to our notice that the beneficiary of Ext.P1, i.e. the third Respondent, is no more in service and retired on 31.3.2010 on reaching the age of superannuation.

15. In the circumstances, we are of the opinion that the ends of justice would be met by disposing the writ appeal with the following directions:

That Respondents 1 and 2 herein would refix the inter se seniority of the Appellant and the third Respondent herein in the category of Draftsman Grade I after affording a reasonable opportunity to both of them and then re determine the eligibility of either of them for promotion to the post of Assistant Engineer on the basis of such refixed seniority. Necessarily, in view of the fact that the third Respondent has already retired from the service, whatever benefits endured to the third Respondent cannot now be taken away. Only the Appellant would be entitled for appropriate relief, if at all the Appellant is found to be senior to the third Respondent in the category of Draftsman Grade I. R.P. No. 289 of 2007 in O.P. No. 8353 of 1992

This review petition is filed by the Appellant in W.A. No. 1977 of 2006 aggrieved by the judgment dated 26th July, 1996 in O.P. No. 8353 of 1992.

The Petitioner is not a party to the said judgment. In view of the declaration made in W.A. No. 1977 of 2006 that the Appellant/review Petitioner herein is not bound by the judgment dated 26th July, 1996 in O.P. No. 8353 of 1992 we do not see any reason to entertain the review petition.

The review petition is accordingly dismissed.