

(2018) 02 KL CK 0022
In the High Court Of Kerala
Case No : 2243 of 2017 IN WA 1094 of 2014

SIBICHAN THOMAS & ANR

APPELLANT

Vs

DR. K.ELLANGO VAN IAS & ANR

RESPONDENT

Date of Decision : 15-02-2018

Acts Referred:

Citation : (2018) 02 KL CK 0022

Hon'ble Judges : Antony Dominic, Dama Seshadri Naidu

Bench : Division Bench

Advocate : KALEESWARAM RAJ, VARUN C.VIJAY, A.ARUNA, THULASI K. RAJ, ANEETHA A.G

Final Decision : Disposed off

Judgement

1. This contempt case is filed alleging disobedience of the directions contained in Annexure-I judgment in W.A. No.1094 of 2014 rendered by a Division Bench of this Court.

2. We heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

3. In Annexure-I judgment, this Court made it clear that, the Kerala State Electricity Board (for short, "the Board") is entitled to effect promotion

on the basis of a list prepared in terms of the qualifications prescribed by it as per Annexure-II Board Order dated 23.01.1981, which is in

question. Although, an application was filed seeking review of Annexure-I judgment, that review petition was dismissed by Annexure-III order

giving liberty to the Board to suitably modify the qualifications.

4. Taking advantage of the liberty so given, the Board issued Annexure-IX order dated 30.03.2017 amending the qualifications prospectively with

effect from 25.03.2017. On the basis of the amended qualifications, the petitioners herein were promoted to the cadre of Sub Engineer by

Annexure-X order dated 31.03.2017. Immediately thereafter, Contempt Case No.296 of 2016 was filed alleging that the promotions given were

in violation of Annexure-I judgment. In that case, Annexure-V order was passed reiterating that since the amendment to the qualification was made

prospectively with effect from 25.03.2017, the promotion effected to the vacancies prior to the amendment applying the amended qualifications

was an act in contempt. Subsequently, the contempt petition was closed by Annexure-VI order wherein the finding that there is violation of the

judgment, was again affirmed, however, the proceedings were dropped.

5. It would appear that in pursuance to Annexures-V & VI orders of this Court, the petitioners were reverted from the post of Sub Engineer.

While they were continuing in the reverted post, the Board is alleged to have promoted their juniors by Annexures-VII and VIII orders. These

promotions, according to the petitioners, were to vacancies occurred prior to the amendment with effect from 25.03.2017 and applying the

qualifications as per Annexure-IX and also applying Annexure-XII order dated 04.11.2014. A reading of Annexure-XII shows that, it is a

Government Order wherein the Government have equalised 24 months training course conducted by NCVT to 18 months training course together

with six months inplant training, which was one of the qualifications prescribed in the Board Order of 1981 and which course was discontinued

since 1969.

6. In this contempt petition, petitioners allege that by promoting their juniors giving the benefit of Annexures-IX and XII is again an act committed

by the Board in violation of Annexure-I judgment. However, the stand taken by the Board is that in the light of the judgments of this Court, the

Board was faced with a situation where it was compelled to effect promotions in the vacancies of Sub Engineers which arose till 25.03.2017

applying the qualifications prescribed in the Board Order of 1981. It is stated that nobody was having those qualifications and therefore,

Annexures-XII Government Order dated 04.11.2014 was made applicable by the Board, whereby the Government equated the 24 months

NCVT training course with 18 months course coupled with six months inplant

training. The argument of the petitioners that Annexure-XII is not even adopted by the Board is also answered by relying on Annexure-R1(d) Board Order dated 10.12.2002 whereby the Board had adopted the same set of Rules mentioned therein including its future amendment.

7. Insofar as this petition filed under the Contempt of Courts Act is concerned, all that we are concerned is whether the Board can be held to be guilty of wilfully disobeying the directions as contained in Annexure-I judgment. True, in that judgment and also in the order of this Court in

Contempt Case No.296 of 2016, this Court has categorically held that the vacancies prior to 25.03.2017 should be filled up on the basis of the qualifications as prescribed in the Board Order of 1981. However, promotions now effected by Annexures-VII and VIII is by giving the benefit of the equalisation as ordered in Annexure-XII, which according to the Board, is already adopted by it in view of Annexure-R1(d).

8. In the context of these orders, the question that arises for consideration is whether Annexure-XII can be made applicable to the vacancies to which the beneficiaries of Annexures-VII and VIII were promoted. The further question that arises for consideration is the disputed claim of the petitioners that they are also qualified in terms of Annexure-XII. Again, the question whether Annexure-XII would be applicable to the employees of the Board at all, even in spite of Annexure-R1(d), is also a matter for consideration. Only if these questions are answered in favour of the petitioners, can their plea of violation of the directions contained in Annexure-I judgment be sustained.

9. According to us, such an adjudication is beyond the scope of a petition filed under the Contempt of Courts Act and, at any rate, in the background of these facts and the disputes that remain unresolved, we are not persuaded to think that the Board can be accused of having wilfully disobeyed the directions issued by this Court. To our mind, the proper course available to the petitioners is to work out their remedy in accordance with law in appropriate proceedings.

Therefore, with that liberty and without expressing anything on the merits of the rival contentions, this contempt petition is closed.