

(2011) 03 KL CK 0329

In the High Court Of Kerala

Case No : O.P. No. 6805 of 1997-I and W.P. (C) No"s. 6952 of 2009-L and 6607 of 2010-A, 9599 of 2010-Y, 10014 of 2010-B, 12184 of 2010-W and 24823 of 2010-C

Sugathakumar K.C.

APPELLANT

Vs

State of Kerala and Director of Technical Education

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Citation : (2011) 03 KL CK 0329

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : I. Sheela Devi, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—In these writ petitions, common questions arise for consideration and they are being disposed of together.

2. The Petitioners are working in institutions under the Technical Education Department and are governed by the relevant special rules, viz. Kerala Technical Education Service Rules (Amendment Rules, 1989). The rules were initially framed in the year 1967 which is known as Kerala Technical Education Service Special Rules.

3. The Petitioners in W.P.(C) Nos. 6952/2009, 6607/2010, 9599/2010, 10014/2010 and 12184/2010 are B. Tech holders. The present dispute is the aftermath of an amendment in 1989. We are concerned with the qualification and method of appointment to the post of Lecturer, etc. Under 1967 rules, the methods of filling up of the post was governed by the following provisions:

2. Lecturer

1) By transfer from the categories of Assistant Lecturers in Polytechnics and

Instructors in Engineering and Draftsman in Junior Technical Schools.

OR

In the absence of suitable candidates in item

1) above,

2) by transfer from any other service

OR

3) In the absence of suitable candidates for transfer in items (1) and (2) above, by direct recruitment.

The qualifications prescribed are as follows:

Sl. No. Post Method of appointment Qualifications

2. Lecturer Any method Degree in appropriate branch of Engineering Technology with two years professional experience in Engineering or Technology. OR Diploma in the appropriate branch of Engineering or Technology with 60% marks in the final year examination and 10 year teaching experience.

Note: 1. A pass in sections A and B of the A.M.I.E. (India) will be considered as equivalent to diploma with 60% marks.

2. For transfer as Lecturer from the category of Assistant Lecturers/Instructors in Engineering/Draftsman, eight years service for diploma holders and two years service for degree holders will be sufficient.

Under the amended rules, the provisions read as follows:

2. Lecturer/Post Diploma Lecturer.

1. By transfer from the Kerala Technical Education Subordinate Service from the category of Instructor Grade I in Engineering Colleges/Workshop Superintendent in Polytechnics/Superintendents of Technical High Schools.

or

2. In the absence of qualified candidates under item 1 above by transfer from the Kerala Technical Education Subordinate Service from the category of Assistant Lecturers/Instructor in Engineering/Draftsman Grade I/Foreman belonging to the branch of Engineering/Technology in which vacancy exists;

or

3. In the absence of candidates under item 1 and 2 above by transfer from any other service on the Technical Education Department.

or

4. In the absence of qualified candidates under item 1, 2 and 3 by direct

recruitment.

The qualifications prescribed under the amended rules are as follows:

2. Lecturer/Post Diploma Transfer/promotion

Lecturer Direct recruitment

Degree in the appropriate branch of Engineering with not less than 60% marks in the qualifying examinations, in the case of promotions from the feeder category 60% marks will not be insisted upon.

Note: (1) Diploma in the appropriate branch of Engineering or Technology obtained after undergoing a regular course of study for not less than 3 years with 60% marks in the qualifying examination and a pass in Sections and of AMIE will be considered as equivalent to a degree in Engineering for purpose of transfer. (2) Post Diploma Lecturer shall be an addition to the cadre of Lecturer.

As per the amendment of the rules in 1989, Clause 5 which is described as a protection clause, provided certain relaxations in respect of persons who are already in service and in the feeder category before the date of commencement of the amended rules. The said provision reads as follows:

(5) Nothing contained in the Kerala Technical Education Service (Amendment) Rules, 1989 shall apply to those in the feeder category to the above post who are already in service before the date of commencement of the said rules. But the personnel promoted, if any during the interim period (i.e. from 23.9.1984 to the date of issue of this order) shall not be adversely affected.

The amended rules are effective from 23.9.1984.

4. The present controversy, normally, could not have arisen in the light of the fact that the amendment of the rules was upheld by this Court in the decision reported in Radhakrishnan v. Sunoj 2000 (1) KLT 774 DB. On the interpretation of Clause 5 of the amended rules, it was held by the Division Bench that only persons belonging to the feeder categories are governed by it, apart from persons who were promoted during the interim period.

5. It is the case of the degree holders that Clause 5 of the amendment protects only persons who are actually in the feeder category as on 23.9.1984. It will not apply to persons who become qualified for promotion based on the unamended rules on a day later than 23.9.1984 in terms of the pre existing rules. It is pointed out that the protection under the rules is only to the persons who are already in the feeder category as on the date of coming into force of the amendment, but because of the amended rules, are unable to get promotion in terms of the new rules.

6. Before going further, it will be profitable to consider the requirement of the pre existing rules and the amended rules.

7. Under the Rules of 1967, it can be seen that for the post of Lecturer, the

method of filling up was by transfer from the categories of Assistant Lecturers in Polytechnics and Instructors in Engineering and Draftsman in Junior Technical Schools and in the absence of any suitable candidates from the said category, by transfer from any service.

8. Under the amended rules, the method provided shows that it is by transfer from an equated category like Instructor Grade I in Engineering Colleges/Workshop Superintendent in Polytechnics/Superintendents of Technical High Schools. This is provided as item (1). Under item (2), in the absence of qualified candidates under item (1), appointment will be by transfer from Kerala Technical Education Subordinate Service from the category of Assistant Lecturers/Instructor in Engineering/Draftsman Grade I/Foreman belonging to the branch of Engineering/Technology. Item (3) states that in the absence of candidates under item (1) and (2), appointment will be by transfer from any other service on the Technical Education Department. With regard to qualification also, what is discernible on a reading of the amended special rules, is that the same has also underwent a change. Under 1967 rules, the qualification prescribed was degree in appropriate branch of Engineering or Technology with two years provisional experience in Engineering or Technology. The alternate qualification as far as diploma holders are concerned, was diploma in the appropriate branch of Engineering or Technology with 60% marks in the final year examination and 10 year teaching experience. In the Note it was specified that a pass in Sections A and B of the A.M. I.E. (India) will be considered as equivalent to diploma with 60% marks. Under Note (2), it was specified that for transfer as Lecturer from the category of Assistant Lecturers/Instructors in Engineering/Draftsman, eight years service for diploma holders and two years service for degree holders will be sufficient.

9. When we come to the 1989 rules, it can be seen that as far as promotions of the feeder category from among degree holders are concerned, 60% marks will not be insisted upon. The qualification for transfer provided is diploma in the appropriate branch of Engineering or Technology obtained after undergoing a regular course of study for not less than 3 years with 60% marks in the qualifying examination and a pass in Section A and B of AMIE.

10. How the dispute presently arose, is described in W.P.(C) No. 6952/2009 thus: The Petitioner is a degree holder and working as Workshop Instructor. The academic qualification of B. Tech was acquired in the year 2007. He was promoted as Workshop Instructor on 22.3.1990 after acquisition of Diploma in Mechanical Engineering in 1989. It is pointed out that based on the Special Rules of 1989 a provisional seniority list was published which was finalised as per Exts. P2 and P2(a) on 28.11.2008. It is pointed out that in the light of Ext. P3 judgment of this Court in W.P.(C) No. 26027/2005 it can be seen that degree is essential qualification for promotion to the post of Lecturer. The Petitioner complains that in spite of the express provisions of the statutory rules and the dictum laid down by this Court, by Exts. P4, P5 and P6 the Government ordered

that persons in the category of Engineer Instructor/Workshop Foreman/Workshop Instructor/Demonstrator who were in service prior to 23.9.1984, are also entitled to be promoted as lecturer. The Petitioner challenges these orders as they are not in tune with the amended special rules.

11. In W.P.(C) No.6607/2010 the two petitioners are working as Workshop Instructor. They are also B. Tech holders. The challenge is to the very same Govt. Orders.

12. In W.P.(C) No. 9599/2010 the Petitioners are working as Workshop Instructors and are having B. Tech qualification. Therein also, Exts. P4, P5 and P6 Govt. Orders are under challenge. Exts. P7 and P8 are respectively the circulars issued by the Department inviting list of incumbents who have acquired B. Tech degree or its equivalent during the period from 1.1.2007 to 31.12.2007, along with the relevant documents, so as to prepare seniority list as well as select list for appointment to the post of Lecturer and equated categories in Polytechnics as well as request to forward details of 1st class diploma holders and who have entered into service as Workshop Instructor, Demonstrator, Draftsman Grade I and II before 23.9.1984 in terms of Ext. P6. Ext. P10 therein is the seniority list of Workshop Foreman/Engineering Instructors who entered into service prior to 23.9.1984. They are also challenging Exts. P4, P5 and P6.

13. The writ Petitioners in W.P.(C) No. 10014/2010 point out that they were Petitioners 4 and 5 in W.P.(C) No. 2923/2010 wherein a direction was issued directing the first Respondent herein to consider and pass orders on Exts. P12 to P20 representations submitted by Petitioners 1 to 9 therein. They are also relying on the amended special rules to contend for the position that ignoring the special rules of 1989, attempts are made to promote unqualified persons based on Clause 5 of the amended rules. The same is the case pleaded in W.P.(C) No. 12184/2010 also. Therein the Petitioners have produced Ext. P3, a copy of the minutes of the Department Promotion Committee which met on 16.3.2010. Ext. P1 is an order issued on the same date promoting certain persons who according to them, are ineligible for promotion in terms of the amended special rules.

14. The contentions of these Petitioners are opposed by the contesting Respondents some of whom are the Petitioners in W.P.(C) No. 24823/2010. They are diploma holders. The content and tenor of their argument is that Clause 5 of the amended special rules protects them in getting promotions. They are a vanishing class and in terms of the Govt. Orders which are under challenge in the other writ petitions they have been conferred the right to be promoted to the post of Lecturer and equated categories. It is submitted that the decision of the Division Bench in Radhakrishnan's case 2000 (1) KLT 774 will not go against their claims. They are also relying upon another judgment of this Court produced as Ext. P10 in O.P. No. 34441/2000.

15. The respective Petitioners in the said writ petition entered service on 31.3.1984, 20.2.1984 and 7.8.1978. They have obtained certain promotions

after they entered in service. They are having First Class diploma or equivalent qualification in Mechanical Engineering. According to them, they are entitled to be promoted in terms of the unamended special rules. Ext. P2 is the seniority list of 24 persons like the Petitioners in the writ petition who entered service before 23.9.1984. The Petitioners have been ranked 18, 17, 19 and 24 and persons up to rank No. 10 have been promoted. Ext. P3(a) is the seniority list of Assistant Lecturers prepared in terms of Ext. P3 and it is stated that "Assistant Lecturers were promoted as per Ext. P3(b) in the year 2006. They are not degree holders but were promoted in terms of the protection under Clause 5 of the amended rules. Ext. P4 is the same Govt. Order which is produced in W.P.(C) No. 9599/2010 and Ext. P5 is the same Govt. Order Ext. P5 produced in the said writ petition. It is pointed out that since the remaining persons were not promoted, some of the Petitioners approached this Court in W.P.(C) No. 7209/2008 and this Court directed the second Respondent to consider and pass orders on the representations, as per Ext. P6 judgment. Ext. P7 is the reply stating that they will be considered for the year 2008 in accordance with their turn in the seniority list. Ext. P8 is the order under challenge in W.P.(C) No. 12184/2010 by the degree holders. It is pointed out that 20 vacancies were existing which could be filled up in terms of Clause 5 and seeking for promotion they filed Exts. P11 to P11(c) representations. It is stated that contrary to the stand taken by the Government in the various orders, the third Respondent has filed a statement in W.P.(C) No. 22246/2010. It is stated that it is an attempt to deny the rightful claim of the Petitioners. Ext. P13 is the order by which Respondents 4 to 16 were promoted on 24.7.2010. The Petitioners are challenging Exts. P13 and P14 orders. Against the select list they have filed statutory representations as per Exts. P15 to P15(c).

16. Respondents 4, 7, 9 and 10 have filed a detailed counter affidavit therein.

17. The controversy as noticed above, centres on the true effect of Clause 5 of the Amended Rules. Shri P.M. Pareed, learned Counsel for the Petitioners in W.P. (C) No. 24823/2010 who is appearing for the diploma holders and who are also the contesting Respondents in the other writ petitions, submits that going by the second method provided under the 1967 rules, persons in any categories are liable to be promoted in the absence of qualified persons in item 1 therein. Therefore, what is required is only that the diploma holders who are claiming promotion should be in the feeder category posts, i.e. by designation. It is stated that the contention raised by the degree holders that those persons should actually be in the feeder category on 23.9.1984, cannot be supported. It is pointed out by the learned Counsel appearing for the degree holders that this interpretation runs contrary to the judgment of this Court in Radhakrishnan's case 2000 (1) KLT 774 which was followed by this Court in another judgment, in W.P. (C) No. 24458/2005 produced as Ext. P3 in W.P.(C) No. 9599, 6607 and 6952 of 2010. In that view of the matter, the true effect of the Division Bench decision will have to be examined.

18. The facts of the case considered by the Division Bench in Radhakrishnan's case (supra) show that the writ petition was filed by the diploma holders challenging the amendment of the rules in 1989. The learned Single Judge upheld the claim of diploma holders under Clause 5 and the Division Bench reversed the judgment. Para 1 of the judgment shows that the diploma holders challenged the prescription of degree qualification for promotion as lecturer and also sought for a direction to promote them as Lecturers without insisting upon degree qualification. It was held by the learned Single Judge that going by Clause 5, it was not a requirement that those in the feeder category should be in that category before the commencement of the rules. It was held that the requirements were complied with if they are already in service on the relevant date, viz. 23.9.1984. This conclusion was challenged before the Division Bench by various persons including persons who filed writ appeals after obtaining leave. The Division Bench held that the interpretation placed by the learned Single Judge will frustrate the purpose of the amendment. It was held that if the said interpretation was adopted, all persons in service prior to 23.9.1984 will have to be granted promotion even though they are not in the feeder category. The explanatory note to the rule was also examined. The conclusions of the Division Bench are clear from paragraphs 6 and 7 which are extracted below:

6. The interpretation given by learned Single Judge would frustrate the purpose for which the amendment has been brought in. The provision conveys the intention that the insistence is on the person being in the feeder category before the date of commencement of the Rules on 23.9.1984. Otherwise, persons who are not in the feeder category have to be accommodated indefinitely and that cannot be the intention. It may be a never-ending process. Explanatory note appended to the notification reads as follows:

According to the amendments made to the Kerala Technical Education Service Rules as per G.O.(P) 160/87 H. Edn. Dated 28.5.1987 degree with 60% marks in the final examination in the appropriate branch of Engineering or Technology has been made essential for the posts of Lecturer in Polytechnics, Instructor Grade I in Engineering Colleges, Workshop Superintendent in Polytechnics and Superintendents in Technical High School. The Rules have been made with retrospective effect from 23.9.1984. On the issue of the Government Order, Service Organisations have represented that by the Government Order promotional chances of Diploma holders already in service have been completely shut out and therefore the Government Order should be revised. It has also been represented that insistence of 60% marks for even the inservice hands for promotion cause undue hardship. The matter was discussed with the Organisations and it has been decided to give protection to those in the feeder categories in service on the date of issue of Government order for promotion. Also in the last Pay Revision, a separate cadre of Head of Section has been created in Polytechnics. Hence qualification and method of appointment of Head of Section have to be prescribed.

This notification is intended to achieve the above object.

(underlining for emphasis)

Though explanatory note does not form part of the Rule, and need not be looked into when the provision is clear, it throws light if there is ambiguity. If the interpretations given by learned Single Judge are accepted, then, in effect, the implementation of the amendment to the Special Rules has to be postponed till the appointment of the last person in service, even not in the feeder category as Lecturer. That certainly cannot be an intention when the object of the amendment is taken into consideration.

7. It has to be noted that Clause (5) deals with two categories of cases. One relates to those who are in the feeder category on the relevant date and those who are promoted during the interregnum. This is clear from a reading of Clause (5) itself. If the interpretation given by the learned Single Judge is accepted, there would be a third category covered by Clause (5). Then the categories would be: (a) those promoted during the interregnum i.e., from 23.9.1984 to the date of issue of the order (21.12.1989), (b) those who are in the feeder category before the commencement of the Rules and (c) those who are not in the feeder category, but are holding some other posts. Such a contemplation cannot be spelt out from the Rules. The concession was extended to persons in the feeder category at the relevant time and not to those who come to the feeder category after the stipulated date. The other category of persons who got the benefit related to those who were in the feeder category and got promotion during the interim period (i.e., from 23.9.84 to the date of issue of the order i.e., 19.12.1989). The amended provision gave the relaxation to those who got promotion to the feeder category. In other words, it is only those who are in the feeder category get the exemption from requisite qualification when they get promotion. It cannot certainly be the intention to cover those not in the feeder category during the interim period to get the exemption. A combined reading of the relevant provision makes this position clear. Even without the aid of the Explanatory Note this position emerges.

19. Therefore, the findings of the Division Bench in the decision in Radhakrishnan's case (supra) are: (a) the insistence of the amended rules as per Clause 5 is that person should be in the feeder category on the date of commencement of the rules on 23.9.1984; (b) It is not the intention that persons who are not in the feeder category had to be accommodated indefinitely as it will be a never ending process; (c) the following sentence in the explanatory note was given emphasis by the Division Bench, viz. "the matter was discussed with the Organisations and it has been decided to give protection to those in the feeder categories in service on the date of issue of Government order for promotion; (d) It was held by the Division Bench that if the interpretations given by the learned Single Judge are accepted, then, in effect, the implementation of the amendment to the Special Rules has to be postponed till the appointment of the last person in service, even not in the feeder category as Lecturer. It is not

the intention of the amendment. It was further held that if the interpretation given by the learned Single Judge is accepted, there will be three categories of persons, viz. (a) those promoted during the interregnum i.e., from 23.9.1984 to the date of issue of the order (19.12.1989), (b) those who are in the feeder category before the commencement of the Rules, and those who are not in the feeder category, but are holding some other posts. It was emphatically held that "such a contemplation cannot be spelt out from the Rules. The concession was extended to persons in the feeder category at the relevant time and not to those who come to the feeder category after the stipulated date." It was also held that it cannot be the intention to cover those not in the feeder category during the interim period to get the exemption.

20. Thus, it can be seen that it is not a case where persons aspiring for promotion under the rules, should, not only be appointed prior to 23.9.1984 to claim the benefit, but should be in the feeder category. Mere presence in the service on 23.9.1984 will not be sufficient.

21. What was left to be considered by the Division Bench was only the claim of persons who sought the benefit of Clause 5 stating that they were actually in the feeder category prior to 23.9.1984.

22. In Ext. P3 judgment in W.P.(C) Nos. 24458/2005 and 26027/2005 the above judgment of the Division Bench was followed. Therein, the claim of the persons who claimed to be in the feeder category after 23.9.1984, viz. on 21.10.1995 and 4.5.2000, was disallowed. It is stated that they are not entitled to the protection extended by Clause 5 of the Rules. In para 4 it was held as follows:

In my view, they are not entitled to the protection of Rule 5 for the reason that the benefit of Rule 5 is available only to those who are in the feeder category to the post of Lecturer, and in service before the commencement of the said Rules. The Rule therefore extends protection only to those candidates who are in service and in the feeder category before 23.9.1984.

The interpretation given by the Division Bench in Radhakrishnan's case (supra) was followed.

23. Shri Pareed submitted that the later judgment in O.P. No. 34441/2000 considered a case of persons who could be promoted under the third method of promotion provided in 1989 rules in the absence of persons under categories 1 and 2. Evidently, the third method provided for promotion to the post of Lecturer is that in the absence of candidates under items 1 and 2, it should be by transfer from any other service in the Technical Education Department. It is pointed out that identical provision was there in the 1967 rules. Therein, item 2 reads as follows: "by transfer from any other service". It is pointed out that this aspect is not covered by the decision of the Division Bench.

24. A reading of the judgment in O.P. No. 34441/2000, according to the learned Counsel Shri S.P. Chaly, Smt. I. Sheela Devi and learned counsel appearing for

the contesting respondents in W.P.(C) No. 24823/2010, Shri Ajith Narayanan will show that the judgment of the Division Bench was not brought to the notice of the learned Single Judge. It is further pointed out that the analogy drawn from the said decision will not apply as far as the diploma holders who are petitioners in W.P.(C) No.24823/201 since the claimant therein was one appointed after the amendment of the rules in 1989 and was not a person covered by the provisions of Clause 5 of the amended rules 1989. It is submitted that the claim was examined only in the light of the amended rules alone.

25. Therefore, it has become necessary to consider the details of the said case which led to the judgment in O.P. No. 34441/2000. The Petitioner therein entered service as Workshop Attender on 17.7.1985. (Amended rules came into force on 23.9.1984). She was promoted as Demonstrator in 1991. Thereafter she obtained B. Tech degree. Her case was that in terms of the amended rules 1989, she was entitled for promotion in existing vacancies, after she acquired the qualification. She acquired the qualification in February, 2000. The Respondents contended that only persons included in items 1 and 2 of the amended rules alone will be in the feeder category and she is not covered by those provisions. This Court examined the question whether the absence of categories 1 and 2 will help the Petitioner therein who is under category 3, for getting promotion. The said contention was examined in para 15. It was held that "Candidates coming under method No. 1 have got a preferential claim over candidates coming under methods 2 and 3. Likewise, candidates coming under method No. 2 has got a preferential claim over candidates coming under method No. 3. Except this preference to be given to candidates under methods 1 and 2, in other respects candidates under method No. 3 stand on an equal footing. It is pointed out that if candidates under method No. 3 alone are available, then they shall be entitled to be considered for appointment." Thus, it was held that the relaxation from the requirement of 60% marks for the degree examination made applicable to incumbents belonging to methods 1 and 2, is applicable to members of the service in those categories coming under method No. 3 also. After finding that vacancies were there after she acquired the qualification, it was held that she gets a right to be included in the select list from the date of acquisition of such qualification if such acquisition of qualification is prior to the occurrence of vacancy. Finally, it was held in para 18 that "vacancies against which Respondents 3 and 4 were promoted occurred on 19.2.2000 and 8.6.2000 whereas the Petitioner acquired qualification on 8.2.2000." Accordingly, a direction was issued to convene the meeting of the D.P.C. for considering her claim.

26. Evidently, therefore, the claim of the Petitioner in the above writ petition was considered in terms of 1989 rules alone. She was not extended any benefit under Clause 5 of the amended rules. She entered service on 17.7.1985. The amended rules were given effect from 23.9.1984. The claim was considered in the light of the fact that candidates under items 1 and 2 were not available. As it is not a case where the interpretation of Clause 5 of the amended rules came up for

consideration, normally it will not help the diploma holders to refer to the above principle to apply to a fact situation prior to the coming into force of the amended rules.

27. But Shri Pareed contended that an analogy can be drawn from the said decision. According to him, even under the old rules, persons under method No. 1 alone are in the feeder category, but persons under method No. 2, viz. those from any other service are definitely in the feeder category if the principle stated by this Court in the above judgment is applied. It is submitted that to that extent the said judgment applies herein.

28. The scope of the amendment in 1989 and the difference in the provisions will have to be kept in mind while analysing the said plea. Under the amended rules, 60% marks will not be insisted upon in the case of degree holders. Clause 5 has importance to consider the claim of persons in the feeder category and who are already in service before the date of commencement of the said rules.

29. Clause 5 has two parts. The protection clause applies to those in the feeder category before the date of commencement of the rules. It also protects the right of persons promoted during the interim period, viz. from 23.9.1984 to 21.12.1989. Evidently, it has to be considered as to why the promotes during this period were thus protected. The amendment came into force with retrospective effect from 23.9.1984. Therefore persons who do not fulfil the criteria as per the amended rules but were promoted after 23.9.1984 will normally be affected by the amendment. Therefore, their rights were sought to be protected. It cannot be said that persons who were not promoted during the interim period and who were aspiring for promotion, need not satisfy the qualifications prescribed in the amended rules and the method prescribed therein for promotion. But the Clause also protects some of those who could not get promotion prior to 23.9.1984 but were in the feeder category. The question is whether it is available to all persons in service as on 23.9.1984 or only to those in the feeder category in terms of their qualification and experience, as contended by the learned Counsel for the Petitioners and the contesting Respondents.

30. Shri P.M. Pareed contended that the principle stated in Clause 5 is unexceptional. It wanted to help a vanishing class in the category as on 23.9.1984. The protection is granted by way of designation of the posts. It is pointed out that any other interpretation of Clause 5 will cause disastrous consequences. It is therefore submitted that the Govt. Order which allows the promotion of those persons in the service as on 23.9.1984 in terms of amended rule cannot be held as illegal. It is clear from the unamended rules also that for promotion the diploma holders had to fulfil two criteria, viz. 60% marks in the final year examination and 10 years teaching experience. Under Note 2, for transfer as Lecturer from the category of Assistant Lecturers/Instructors in Engineering/Draftsman, eight years service for diploma holders and two years service for degree holders will be sufficient.

31. Therefore, on any day prior to 23.9.1984 only persons having the said qualification from among diploma holders alone could get promotion. As far as degree holders are concerned, it was degree in appropriate branch of Engineering Technology with two years professional experience in Engineering or Technology. We are not concerned with the said provision here. Can it be said that even persons who entered service just before 23.9.1984 and were not having the required academic qualification or experience as on that day, and acquired the qualification on a later day than 23.9.1984, could claim to be in the feeder category for the purpose of Clause 5? In fact, the very same question was answered by the Division Bench in Radhakrishnan's case (supra) and therefore the issue has been finally settled by the Bench decision itself. The learned Single Judge therein had concluded that requirement of Clause 5 will be satisfied if persons are in the service on 23.9.1984 which interpretation was not accepted by the Division Bench. As already discussed, the Division Bench was of the view that if it is held otherwise it will be a never ending process as all those who are in service on 23.9.1984 should get promotion. The Bench has categorically held in para 7 that the concession was extended to persons in the feeder category at the relevant time and not to those who come to the feeder category after the stipulated date. Evidently, there cannot be any iota of doubt in such matters thereafter. The Bench thereafter, emphatically said that it cannot certainly be the intention to cover those not in the feeder category during the interim period to get the exemption. Hence it can be safely concluded that even those persons who claim themselves eligible for promotion after 1989 also cannot get the benefit of Clause 5. Clause 5 only protects those who are in the feeder category as on 23.9.1984.

32. In fact, in the counter affidavit filed by the second Respondent in W.P.(C) Nos. 6952/2010 and 6607/2010 and in the counter affidavit filed in W.P.(C) No. 9599/2010 by the first Respondent, what is emphasised is that the diploma holders were included in the field of choice in terms of the Govt. Orders which are under challenge in those writ petitions.

33. The Petitioners in W.P.(C) No. 24823/2010, as already noticed, entered service just prior to 23.9.1984. There is no plea that as on 23.9.1984 they were entitled for promotion. They are claiming their right for promotion in respect of vacancies which arose in 2008. In fact, Ext. P2 gradation list produced in the said writ petition is in respect of persons who entered service in the Technical Education Department before 23.9.1984 and it is prepared on the basis that they were in service as on that day.

34. The impugned orders in W.P.(C) No. 9599/2010 and other connected cases have thus to be analysed to understand as how the Government has understood the special rules. The learned Counsel for Degree holders submitted that the impugned orders are not in tune with the dictum laid down by the Division Bench in Radhakrishnan's case (supra). Ext. P4 is the Govt. Order dated 24.8.2007 which was passed on a representation by the Kerala Technical Education

Engineering Instructor and Foreman's Association. Their request was to promote the Engineering Instructor/Workshop Foreman who entered service prior to the commencement of Special Rules, 1989 to the post of Lecturer/Workshop Superintendent/College Instructor in Engineering Colleges/Superintendent in Technical High Schools. After referring to the amended special rules and the method of appointment prescribed therein, it is stated in para 6 of the order that the Petitioners come under third category of method of appointment and therefore the Government decided to promote the Engineering Instructor/Workshop Foreman/Workshop Instructor/Demonstrator who were in service prior to the commencement of Special Rules, to the post of Lecturer or equated category. Evidently, the order is passed merely based on the designation of posts and not by analysing the claims of individuals at all. Ext. P5 appears to be a clarification issued in terms of the request made by the Director of Technical Education. Again, it is repeated that in the absence of persons under 1st and 2nd method of appointment were available at the time of occurrence of vacancy, persons without degree qualification will become eligible even if qualified juniors as per the amended special rules are 27 available or not. In Ext. P6 Govt. Order, the earlier order Ext. P4 was modified stating that in order to make the persons without degree, eligible for being considered for by transfer appointment as Lecturer through the 3rd method of appointment, such persons can be accorded regular promotions in the absence of qualified hands for promotion through the 1st and 2nd methods of appointment at the time of occurrence of vacancy by placing the matter before the Departmental Promotion Committee as in the case of qualified degree holders. To that extent, the earlier order was modified.

35. Thus, by one stroke the Government ordered that all those persons who are in service prior to 23.9.1984 in certain categories could get promotion as Lecturer or in equated category. The same cannot be supported in the light of the interpretation placed by the Division Bench in Radhakrishnan's case (supra) and in that view of the matter the true interpretation of Clause 5 of the amended special rules will not protect all persons who were in service on 23.9.1984 to get promotion automatically as it depends upon the question whether such individuals are in the feeder category as on 23.9.1984. Their mere presence in the service cannot be a criteria. Otherwise, the amended rules will not have any effect at all. Clause 5 will not give a blanket protection to all those persons in the service as on 23.9.1984, as contended by Shri Pareed. Therefore, any gradation list prepared, followed by any select list of diploma holders merely because of their presence in the service as on 23.9.1984 cannot hold good.

36. Therefore, the Petitioners in all the writ petitions except in W.P. (C) No. 24823/2010 are entitled to succeed.

37. It is evident from the statement filed on behalf of the third Respondent in W.P. (C) No. 22246/2010 which is produced as Ext. P12 in W.P.(C) No. 24823/2010 that the Directorate of Technical Education has correctly analysed the judgment in W.P.(C) No. 34441/2000. It is stated in para 4 of the said statement that "the

Petitioners in the said writ petition are B. Tech Degree holders but only having second class. Hence in the absence of 1st and 2nd category, persons included in the 3rd category with B. Tech Degree can be considered for promotion to the post of Lecturer. The Petitioners herein are not similar to that of the Petitioners in the aforesaid writ petition."

38. In W.P.(C) No. 10014/2010 an interim order as prayed for, was passed and the prayer sought was for a direction to Respondents 1 to 4 not to make any appointments to the post of Lecturers in Government Polytechnic Colleges and equated categories in Mechanical Engineering, otherwise than as provided in the Special Rules for the Kerala Technical Education Service (Amendment) Rules, 1989, from the select list to be published as per the D.P.C. met on 16.3.2010. It is evident from the pleadings in W.P.(C) No. 24823/2010 that after the interim order was passed, a select list was prepared accordingly and Respondents 4 to 16 have been promoted as per Exts. P13 and P14 orders.

39. In the light of the conclusions already arrived at, W.P.(C) No. 24823/2010 is liable to be dismissed.

40. Ext. P1 produced in W.P.(C) No. 12184/2010 to the extent to which it is not passed in terms of the amended Special Rules, 1989, cannot also survive and it is declared so. The same is quashed to that extent.

41. Exts. P4, P5 and P6 in W.P.(C) Nos. 6952/2009, 6607/2010 and 9599/2010 are quashed. The prayer sought for in the said writ petitions and in W.P.(C) Nos. 10014/2010 and 12184/2010 to draw a select list in terms of the amended special rules, 1989 and to promote qualified persons, are also allowed.

42. The Petitioners in this original petition are persons who entered service under the Technical Education Department on 22.1.1989 and 2.6.1988 respectively. They are diploma holders. Their challenge is against the amended Special Rules, 1989. The rules have been produced as Ext. P3. What is contended is that the provision in Ext. P3 that it shall apply to those in the feeder category of persons who are already in service before the date of commencement of the Special Rules, will affect the scope of promotion of persons like the Petitioners who are diploma holders. The diploma holders have to retire in the entry cadre itself without having any avenues for promotion.

43. The rules have already been upheld by the Division Bench in Radhakrishnan's case 2000 (1) KLT 774. Apart from that, the Petitioners entered service only after the date of coming into force of the amendment, i.e. 23.9.1984. No reasons have been pointed out in the writ petition as to how Clause 5 is arbitrary. As the amended rules have been upheld by the Division Bench, this original petition is liable to be dismissed.

Hence, W.P.(C) Nos. 6952/2009, 6607/2010, 9599/2010, 10014/2010, 12184/2010 are allowed and W.P.(C) No. 24823/2010 and O.P. No. 6805/1997 are dismissed. No costs.