



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

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THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

MONDAY, THE 9<sup>TH</sup> DAY OF DECEMBER 2024/18<sup>TH</sup> AGRAHAYANA, 1946

WA NO. 2234 OF 2023

AGAINST THE JUDGMENT DATED 25.05.2023 IN WP(C)

NO.3936 OF 2011 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 AND 2 IN WPC:

- 1 THE CHIEF ENGINEER (HRM)  
K.S.E.B. VAIDYUTHI BHAVAN, PATTO, ,  
THIRUVANANTHAPURAM, PIN-695 004., PIN - 695004
- 2 THE SECRETARY K.S.E.B.  
VAIDYUTHI BHAVAN, THIRUVANANTHAPURAM, , PIN-695  
004., PIN - 695004

BY ADV M.K.THANKAPPAN

RESPONDENT/PETITIONER IN WPC:

RAJESH K.  
CHERKALA ELECTRICAL SECTION, , CHERKALA, KASARGODE  
DISTRICT., PIN - 671323

BY ADVS. ANNAMMA PHILIP  
NISHIN GEORGE VIJAYABABU(K/966/2001)  
HAFY PUNTHALA WILSON(K/001559/2001)  
NIMISHA M.G. (K/00861/2022)  
HASEENA K.A. (K/000132/2017)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
09.12.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## **JUDGMENT**

### **Anil K. Narendran, J.**

The appellants in this writ appeal are respondents 1 and 2 in W.P.(C)No.3936 of 2011 filed by the respondent herein-petitioner, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the appellants to grant him promotion to the post of Senior Assistant, with consequential benefits; and a writ of mandamus commanding the appellants to recast Ext.P5 order dated 06.01.2011 issued by the 1<sup>st</sup> appellant Chief Engineer (HRM), by including his name and promoting him to the post of Senior Assistant. At the time of filing of the writ petition, the petitioner was working as a Cashier, on a provisional basis, in Cherkkala Electrical Section of the Kerala State Electricity Board. The document marked as Ext.P1 is a circular dated 30.01.2006 issued by the 1<sup>st</sup> appellant calling for details of the employees belonging to the cadre and below the pay scale of Cashiers and possessing the qualification, except passing the suitability test, for provisional appointment to the post of Cashier against 20% quota. The qualifications prescribed in the said notification read thus;



"Qualification

1. Pass in SSLC or equivalent.
2. Fiver years experience (service) under the Board in regular establishment (for those who possess Pre-degree or equivalent qualification 3 years, regular service under the Board shall be sufficient).
3. A pass in the Suitability Test conducted by the KPSC."

The said circular is one issued in terms of Board order No.1439/95 (Estt.II-2185/90) dated 14.07.1995, issued by the Board prescribing qualifications and method of appointment of Junior Assistant/Cashier to 15% quota earmarked for employees in the pay scale and below that of Junior Assistant. The document marked as Ext.P5 is a list of Assistant/Cashiers, Junior Fare Copy Assistants who were given promotion as Senior Assistants. The name of the petitioner finds no place in Ext.P5 list. It is in such circumstances that the petitioner had approached this Court in W.P.(C)No.3936 of 2011, seeking the aforesaid reliefs.

2. The Board filed a counter affidavit dated 13.06.2012 in the writ petition, opposing the relief sought for. After considering the pleadings and materials on record, the learned Single Judge, by the impugned judgment dated 25.05.2023, disposed of that writ petition, placing reliance on the provisions contained in Rule



13B of the Kerala State and Subordinate Service Rules (KS&SSR).

Paragraphs 7 and 8 of that judgment read thus;

"7. Rule 13B of the KS&SSR and proviso thereof provide that the persons who has attained 50 years on or after 26.08.1981 shall be eligible for permanent exemption from passing of the obligatory departmental tests. In the present case, petitioner attained the age of 50 years in the year 2006. However, concededly till 2009 no examination was held by the KPSC, petitioner could not have been imposed the condition of undergoing the suitability test, in view of the provision aforementioned, envisaging deemed exemption. For the reason best known, the respondent had not taken into consideration counter affidavit or by arguments during the courses of hearing. No other objections had been taken with regard to the qualification or the suitability of the petitioner for promotion except for suitability test.

8. For the reasons aforementioned, I am of the view that this is a fit case where the respondent are to be directed to take a call for considering the case of the petitioner for regularization and consequential promotion to the post of Senior Assistant without taking objection of passing of the suitability tests in view of the Proviso Rule 13B Part II of the KS & Subordinate Services Rules, 1958 and shall also supply any documents to the petitioner with regard to the assertion qua temporary employment to the post of Cashier/Junior Assistant, if any. Petitioner is also directed to submit any documents in support therein and order shall



be passed after giving opportunity of hearing to the petitioner. Let this exercise be undertaken within a period of three months from the date of receipt of a certified copy of this judgment."

3. Feeling aggrieved, the appellants are before this Court in this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958.

4. This appeal is one filed along with C.M.Appl.No.1 of 2023 to condone the filing delay of 181 days. The said application was allowed by the order dated 08.02.2024.

5. Heard the learned counsel for the appellants-respondents 1 and 2 and the learned counsel for the respondent-writ petitioner.

6. The issue that requires consideration in this writ petition is as to whether the impugned judgment of the learned Single Judge can be sustained in law.

7. By the impugned judgment, the learned Single Judge disposed of the writ petition, placing reliance on Rule 13B of Part II KS&SSR. As per Rule 13B, notwithstanding anything contained in these rules, Special Rules or any executive orders, persons in Government service who attain the age of 50 years shall be eligible



for permanent exemption from passing the obligatory departmental tests other than those prescribed as qualification in the Special Rules or executive orders for all purposes such as promotion, appointment as full member of a service, etc. As per the first proviso to Rule 13B, this Rule shall not be applicable to test prescribed for purposes of promotion of executive staff belonging to the police department. As per the second proviso to Rule 13B, Ex-Servicemen employees of Rajya Sainik Board Department and National Cadet Corps Department who attain the age of 45 years and who have successfully completed probation shall be permanently exempted from passing the tests prescribed for promotion other than those prescribed as essential qualification.

8. In view of the provisions contained in Rule 13B Part-II KS&SSR, which starts with a *non-obstante* clause, notwithstanding anything contained in these rules, Special Rules or any executive orders, persons in Government service who attain the age of 50 years shall be eligible for permanent exemption from passing the obligatory departmental tests other than those prescribed as qualification in the Special Rules or



executive orders for all purposes such as promotion, appointment as full member of a service, etc.

9. In the instant case, a pass in the suitability test conducted by the Kerala Public Service Commission prescribed is a qualification prescribed in the executive order dated 14.07.1995 issued by the Board for appointment as Junior Assistant/Cashier against 15% quota earmarked for employees in the pay scale and below that of Junior Assistant. The said qualification is not one which can be exempted under the provisions of Rule 13B of Part II KS&SSR.

10. The learned counsel for the respondent-writ petitioner would place reliance on the provisions contained in the explanation to Rule 12(7) of Part I Kerala Service Rules, in order to contend that the exemption provided under Section 13B, Part II KS&SSR can be made applicable in the case of a pass in the suitability test conducted by the Kerala Public Service Commission prescribed in the executive order dated 14.07.1995 issued by the Board.

11. As per Rule 12(7) Part I KSR, duty includes (i) service as a probationer or apprentice, provided that such service is followed by confirmation; (ii) joining time; (iii) a course of



instruction or training which an officer undergoes specifically ordered by Government to be treated as duty. As per Note 2, an officer required or permitted to attend an obligatory departmental examination may be treated as on duty during the day or days of the examination and during the reasonable time required for the journey, if any, to and from the place of examination. As per Explanation to Rule 12(7), the term obligatory departmental examination means any test enumerated in clauses (i) to (v) thereto.

12. The provisions contained in the Explanation to Rule 12(7), Part I KSR in no manner support the case of the 1<sup>st</sup> respondent-writ petitioner that a pass in the suitability test prescribed in the executive order dated 14.07.1995 can be exempted under the provisions of Rule 13B Part II KS&SSR.

13. Admittedly, the 1<sup>st</sup> respondent-petitioner has not secured a pass in the suitability test conducted by the Kerala Public Service Commission and as such he is not qualified for appointment in terms of the executive order dated 14.07.1995 issued by the Board. In that view of the matter, we find no grounds to sustain the reasoning of the learned Single Judge in the





impugned judgment dated 25.05.2023 in W.P.(C)No.3936 of 2011, placing reliance on the provisions contained in Rule 13B Part II KS&SSR.

In the result, this writ appeal is allowed by setting aside the judgment dated 25.05.2023 of the learned Single Judge in W.P.(C)No.3936 of 2011. Consequently, the said writ petition will stand dismissed.

Sd/-  
**ANIL K. NARENDRA, JUDGE**

Sd/-  
**MURALEE KRISHNA S., JUDGE**

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