2025 INSC 354

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1420-1422 OF 2025
(Arising out of Special Leave Petition (C) Nos.12873-12875 of 2024)

SAJITHABAI AND ORS. ETC. ….. APPELLANTS

VERSUS

THE KERALA WATER AUTHORITY AND ORS. ETC. ..…RESPONDENTS

J U D G M E N T

MANMOHAN, J

1. Present Appeals have been filed challenging the common impugned judgment and final order dated 18th March, 2024 passed by the High Court of Kerala at Ernakulam in W.A. No. 2213 of 2023, W.A. No. 2206 of 2023 and W.A. No. 66 of 2024, whereby the Division Bench of the High Court dismissed the writ appeals filed by the Appellants herein and affirmed the judgment and order passed by the learned Single Judge allowing the writ petition filed by the private Respondents [original writ petitioners in WP(C) 5277/2023].

ARGUMENTS ON BEHALF OF APPELLANTS

2. Mr. Nikhil Goel, learned senior counsel for the Appellants stated that the present appeals have been filed on behalf of six employees of the Kerala Water Authority who were inducted as Draftsmen-Grade-I. He

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pointed out that four of these Appellants had joined on various dates in the year 2005, while one had joined in the year 2001 and the sixth Appellant had joined on 13th February, 2014. He stated that the present set of Appellants were promoted to the post of Assistant Engineers on various dates between 2015-16, except the sixth Appellant, who was promoted on 22nd September, 2018.

3. He stated that the two private Respondents – Mr. Anoop VS had joined service directly as an Assistant Engineer on 08th May, 2017, while Ms. Bindu S had joined service on 02nd March, 2005 as an Assistant Engineer, but availed leave without pay during her probation period and rejoined only on 18th October, 2015.

4. He stated that the present dispute arises out of the seniority lists dated 20th April, 2022 and 14th February, 2023 whereby the Appellants were shown to be senior to the Respondents.

5. He stated that the learned Single Judge allowed the writ petition no. 5277/2023 filed by Mr. Anoop VS and Ms. Bindu S (the private Respondents) relying on an erroneous interpretation of the Kerala Public Health Engineering Service Special Rules, 1960 (hereinafter the 'Special Rules, 1960') which, according to the Appellants, do not apply up to the stage of promotion or appointment to the post of Assistant Engineer. He submitted that appointment to the post of Assistant Engineer is solely governed by a separate set of Rules called the Kerala Public Health

Engineering Subordinate Service Rules, 1966 (hereinafter the 'Subordinate Service Rules, 1966'). He submitted that the Special Rules, 1960 require employees to exercise an option, i.e. for their further promotions, whether they want to be included in the 'degree quota' or the 'diploma quota'. According to him, the fundamental error in the impugned order was that this requirement was read into the Subordinate Service Rules, 1966 as well, despite a similar provision not being present in the 1966 Rules. He contended that employment in Kerala Water Authority is governed by two different sets of Rules.

6. He further stated that in accordance with the Subordinate Service Rules, 1966, an Assistant Engineer could either be appointed through direct recruitment or promoted from the post of a Draftsman in a 60:40 ratio. According to him, out of the 60% (sixty per cent) quota for direct recruitment, 6% (six per cent) had been carved out for in-service Draftsmen with an engineering degree. Further, the educational requirement for 40% (forty per cent) promotion quota was set out in the Schedule, according to which an employee must possess a diploma. Pertinently, for a Draftsman holding an engineering degree, there was no requirement of giving an option as to the category in which the appointment as Assistant Engineer was sought – the 6% (six per cent) in-service direct recruitment or the 40% (forty per cent) promotion.

7. He stated that insofar as the Appellants were concerned, it was not in dispute that they all had obtained an engineering degree much prior to their promotion as an Assistant Engineer. However, the Appellants had also applied for direct recruitment in the 6% (six per cent) in-service quota and despite being included in its Select List, the Appellants had declined their appointments as they had already been appointed in the 40% (forty per cent) promotional category before the declaration of results of the recruitment exam in the 6% (six per cent) quota.

8. Mr. Nikhil Goel, learned senior counsel stated that the Appellants having been promoted were governed for their future promotions to the post of Assistant Executive Engineer by the Special Rules, 1960. He emphasised that what applied to the Appellants or any other candidate seeking promotion to Assistant Executive Engineer was Rule 4(b) of the Special Rules, 1960. Since he laid special emphasis on Rule 4(b) and its proviso, the same are reproduced hereinbelow: -

> *"4.…*
> *(b) [Vacancies in the category of Assistant Engineers shall be filled up from among those in categories 1 or 2 in the Kerala Public Health Engineering Subordinate Service in the ratio of 4:1 between—]*
> *(1) Persons possessing any of the qualifications mentioned in item (i) or in Section A in item (ii) of the Annexure, and*
> *(2) Those possessing any of the qualifications mentioned in Section B in item (ii) of the Annexure or those possessing the S.M.T. Overseers certificate, every 5th vacancy being allotted to the latter and the rest to the former.*

> *A person who while holding [any of the posts in categories 1 and 2 of the Kerala Public Health Engineering Subordinate Service] passes Sections A and B of the A.M.I.E. (India) Examination shall be eligible for promotion as Assistant Engineer against the quota allotted for those possessing the qualifications mentioned in item (i) or Section A in item (ii) of the Annexure only after the claims of all those who, on the date of his passing the A.M.I.E. (India) Examination, possessed the qualifications mentioned in item (i) of the Annexure have been considered:*
>
> *Provided that it will be left to the option of such persons to continue among [those] possessing the qualifications mentioned in Section B in item (ii) of the Annexure and claim promotion against the quota allotted to them."*

9. He submitted that the aforesaid proviso would apply only once the Appellants were seeking promotion to the post of Assistant Executive Engineer. He stated that the method by which the Appellants became Assistant Engineer was not covered by this proviso. He pointed out that it was on this basis that the seniority list had been correctly drawn up by the Respondent authority.

10. He submitted that the learned Single Judge while deciding the challenge to the seniority list had held that there was a requirement of giving an option between the Direct Recruitment Quota (degree quota) and the Promotion Quota (diploma quota) even for the purpose of Subordinate Service Rules, 1966. According to him, this was the solitary finding based on which the writ petition of the private Respondents had been allowed.

11. He submitted that the learned Division Bench in the impugned order had added one more reason while upholding the judgment of the learned Single Judge, i.e. the Special Rules, 1960 did not permit switching by a person who had obtained appointment as an Assistant Engineer under the diploma quota to that of degree quota.

ARGUMENTS ON BEHALF OF PRIVATE RESPONDENTS

12. *Per contra*, Mr. V. Chitambaresh, learned senior counsel for the private respondents stated that the Appellants herein declined the offer of appointment in the 6% (six per cent) degree qualified draftsmen earmarked for in service candidates though they were included in the ranked list. He emphasised that the Appellants chose to get promoted from the category of Draftsmen as diploma holders (promotion quota). He submitted that the Appellants who were appointed in the diploma quota could not thereafter switch over to the degree quota for further promotion.

13. He also contended that Rule 4(b) and its proviso of the Special Rules, 1960 applies to only those who, while holding the post of Assistant Engineer acquire a degree qualification. He stated that as the Appellants had acquired the degree qualification even before being promoted to the post of Assistant Engineer and had declined promotion in the degree quota, they were not entitled to the benefit of Rule 4(b) and its proviso of the Special Rules, 1960. He contended that once a diploma-cum-degree

holder opted for diploma quota, he cannot switch over to degree quota and thereafter revert to diploma quota depending on promotional avenues. He submitted that *'once a mortgage, always a mortgage'*. In support of his submission, he also relied on the judgment of the Supreme Court in ***Chandravathi P.K. and Others. vs. C.K. Saji and Others, (2004) 3 SCC 734***, wherein it has been held as under:-

> *"43. The State as an employer is entitled to fix separate quota of promotion for the degree-holders, diploma-holders and certificate-holders separately in exercise of its rule-making power under Article 309 of the Constitution of India. Such a rule is not unconstitutional. The State therefore, in our opinion, cannot be said to have acted arbitrarily by giving an option to such diploma-holders, who acquired a higher qualification, so as to enable them to either opt for promotion in the category of degree-holder or diploma-holder. Such option was to be exercised by the officer concerned only. He, in a given situation, may feel that he would be promoted in the diploma-holders' quota earlier than degree-holders' quota and vice versa but once he opts to join the stream of the degree-holders, he would be placed at the bottom of the seniority list."*

ARGUMENTS ON BEHALF OF RESPONDENT NO.1-KERALA WATER AUTHORITY

14. Learned senior counsel for Respondent No.1/Kerala Water Authority contended that the interpretation given to Rule 4(b) of the Special Rules, 1960 by the Courts below was erroneous. He submitted that Rule 4(b) cannot be interpreted to mean that individuals who obtained a degree after being promoted to the post of Assistant Engineer are alone entitled to migrate to the degree quota. He clarified that Rule 4(b) even allows individuals who had obtained the degree qualification before being

promoted to the post of Assistant Engineer to migrate to the degree quota. In support of his submission, he relied on the counter affidavit filed by the Kerala Water Authority before the learned Single Judge. The relevant portion of the same is reproduced hereinbelow:-

> "*18. …..Thus Ext.R1(g) Rule* [Rule 4(b) of Special Rules, 1960] *provide a specific right for respondents 4 to 10 to change over their quota from diploma to graduate, if they had occurred degree qualification subject to the condition cited above. That is only after the claims of all those who on the date of his passing the examination, possess a degree qualification have been considered. The diploma engineers cannot march over the degree engineers, the date of acquisition of degree is a crucial date.*
>
> *19. It is submitted that the facts and circumstances involved in Ext.P11 is factually different. In the said case, the petitioner therein was Assistant Executive Engineer, who opted to get his promotion under diploma quota and claiming further promotion as Executive Engineer under degree quota, which was challenged before the Hon'ble Court. In paragraph 2 of Ext.P11. The State as an employer is entitled to fix separate quota of promotion for the degree holder, diploma holders and certificate holders separately, in exercise of its rule making power under Article 309 of the Constitution of India.*
>
> *20. The employer cannot be said to have acted arbitrarily by giving an option to such diploma holders, who acquired a higher qualification, so as to enable them to either opt for promotion in the category of degree holder or diploma holder. Such options are to be exercised by the employee concerned.*
>
> *Therefore, in the light of aforesaid submissions, it is clear that the instant Writ Petition filed by the Petitioner does not warrant interference by this Hon'ble Court under Article 226 of the Constitution of India…..*"

<u>REJOINDER ON BEHALF OF APPELLANTS</u>

15. Mr. Nikhil Goel, learned senior counsel in his rejoinder submitted that the question considered by this Court in ***Chandravathi P.K.*** (supra), as reflected in paragraph 20 of the said judgment, has no relation to the issue at hand. He stated that while deciding that question, certain observations were made in paragraph 43 of the said judgment which related to the validity of Subordinate Service Rules, 1966 and in no manner could be read to mean that a proviso similar to the one which existed along with Rule 4(b) of the Special Rules, 1960 would automatically be imported into the Subordinate Service Rules, 1966.

REASONING

SUBORDINATE SERVICE RULES, 1966 AND THE SPECIAL RULES, 1960 ARE SEPARATE AND DISTINCT RULES THAT GOVERN TWO SEPARATE SERVICES

16. Having heard learned senior counsel for the parties and having perused the materials placed on record, this Court is of the view that the Subordinate Service Rules, 1966 and the Special Rules, 1960 are separate and distinct rules that govern two separate services comprising different categories of officers.

17. The Subordinate Service Rules, 1966 govern the appointment, promotion and other conditions of service for various posts starting from Lorry Driver to Junior Engineer (re-designated as Assistant Engineer with effect from 05th December, 1978).

18. The Special Rules, 1960 govern the appointments and promotions of four categories of posts, i.e. Assistant Executive Engineer (called

Assistant Engineer before 05th December, 1978), Executive Engineer, Superintending Engineer and Chief Engineer.

19. Under the Subordinate Service Rules, 1966, appointment to the post of Assistant Engineer is by two streams i.e. direct recruitment quota (60%) (sixty per cent) and promotion quota (40%) (forty per cent).

20. In the 60% (sixty per cent) direct recruitment quota, 54% (fifty-four per cent) recruitment is on the basis of merit in an open exam (i.e. open market) in which candidates possessing a degree can participate. The balance 6% (six per cent) direct recruitment is on the basis of merit in an open exam in which a degree qualified Draftsman can participate.

21. The 40% (forty per cent) promotion quota is filled up from Draftsman/overseer on the basis of seniority, irrespective of the fact that they hold a diploma only or both diploma and degree qualification.

22. The Appellants before this Court who were holding the post of Draftsman/Overseer were promoted to the post of Assistant Engineer (i.e. from Category no. IV to Category no. I) in 2015 on the basis of seniority as draftsman in diploma quota under the Subordinate Service Rules, 1966 i.e. prior to the declaration of result on 21st March, 2017 of the 6% (six per cent) direct recruitment exam in which they had also participated.

23. Consequently, the Appellants, at the stage of entering the Kerala Public Health Engineering Service, never had the opportunity to opt or choose for the diploma or degree quota. However, the two private

Respondents were appointed to the post of Assistant Engineers as they were successful in the direct recruitment exam in the degree quota.

RULE 4(B) OF SPECIAL RULES, 1960 HAS NO APPLICABILITY TO A STAGE PRIOR TO AN OFFICER BECOMING AN ASSISTANT ENGINEER

24. This Court is further of the view that as Special Rules, 1960 deal with a separate service, its Rule 4(b) has no applicability to a stage prior to an officer becoming an Assistant Engineer i.e. to the draftsman/overseer who are holding both degree and diploma qualification and who exercise the option of sitting in 6% (six per cent) competitive exam for promotion to the post of Assistant Engineer. To put it differently, the said Rule 4(b) has no relevance as to how the person was appointed to the feeder post (i.e. the post of Assistant Engineer) in the service governed by the Special Rules, 1960. Consequently, this Court is of the view that the learned Single Judge has erroneously held that *"directly recruited Assistant Engineers from the open market and those promoted through the Departmental Quota are considered under separate watertight categories. This distinction necessitates maintaining separate seniority lists for each category, with different promotional paths…….they chose promotion under the Diploma quota and are thus ineligible for further promotion to Assistant Executive Engineer under the Degree quota, as per the governing rules."*

ONCE A PERSON JOINS AS AN ASSISTANT ENGINEER, HE/SHE HAS THE OPTION TO MIGRATE TO EITHER THE DEGREE OR DIPLOMA QUOTA

25. This Court is also of the view that once a person joins as an Assistant Engineer, i.e. the feeder post under a separate service governed by Special Rules, 1960, then that person irrespective of how he/she has been appointed to that post, has the option to migrate to either the degree or diploma quota, provided he/she has obtained a degree or a diploma. The intent and purpose behind Rule 4(b) is to give an option to an Assistant Engineer to join either the diploma or the degree quota, as promotion to the next higher post (i.e. Assistant Executive Engineer) is in the ratio of 4:1 between persons possessing any of the qualifications mentioned in item (i) or in Section A in item (ii) of the Annexure (degree quota) and those possessing any of the qualifications mentioned in Section B in item (ii) of the Annexure or those possessing the SM.T. Overseers certificate (diploma quota) whereby every 5^{th} (fifth) vacancy is allotted to the latter and the rest to the former.

INTERPRETATION PUT FORWARD BY THE PRIVATE RESPONDENTS IS ERRONEOUS

26. This Court is of the opinion that the interpretation put forward by the private Respondents that Rule 4(b) and its proviso of the Special Rules give an option/choice to choose a diploma or degree stream to only those who while holding the post of Assistant Engineer acquire a degree

qualification is erroneous. Proviso to Rule 4(b) is not just a proviso to the paragraph preceding it but to the entire Rule 4(b). The first para of Rule 4(b) when it stipulates that vacancy in the category of Assistant Engineers (to be read as Assistant Executive Engineer) shall be filled up from among those in Categories 1 and 2 in the Subordinate Service Rules, 1966 in the ratio of 4:1, takes within its fold all the officers serving as Assistant Engineer. Consequently, the proviso which gives the option to such officers to choose the diploma or degree quota means and refers to all the officers holding the post of Assistant Engineer. The paragraph preceding the proviso clarifies that the option to choose the stream shall be available to even those Assistant Engineers who acquire the degree during their tenure as Assistant Engineers. The proviso further clarifies as to how seniority of such Assistant Engineers would be determined.

27. This Court is also of the view that if the interpretation put forward by the Division Bench and the private Respondents is accepted, then it would put the meritorious candidates in a disadvantageous position as would be apparent from the illustration where ‘X’ being a draftsman/overseer and holding both diploma and degree gets promoted to the post of Assistant Engineer in the promotion quota, while another person ‘Y’ being junior to ‘X’ and having only a diploma gets promoted to the post of Assistant Engineer in the promotion quota subsequently and while holding the said post obtains a degree and thereafter exercises his

option to join the degree quota, will get an accelerated promotion and become 'X's' senior.

28. It is trite law that the more absurd a suggested conclusion of construction is, the more the court will lean against that conclusion. That is ordinarily so whether one is construing a contract or a statute. [See: ***Hatzl v. XL Insurance Co. Ltd. (2009) EWCA Civ. 223]***.

29. This Court in ***K.P. Varghese vs. Income Tax Officer, Ernakulam and Another, (1981) 4 SCC 173*** has held as under: -

> *"6. …..It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction (vide Luke v. Inland Revenue Commissioner [(1963) AC 557]) …..."*

30. Further, this Court in ***Bishwajit Dey vs. The State of Assam, Criminal Appeal No.87 of 2025*** has recently held as under:-

> *'The presumption against absurdity is found in the brief observation of Lord Saville agreeing with his colleagues in the case of Noone [**R (on the application of Noone) v. Governor of HMP Drake Hall [2010] UKSC 30**]. Lord Saville says simply:*
>
> > *"I would allow this appeal. For the reasons given by Lord Phillips and Lord Mance, I have no doubt that by one route or another the legislation must be construed so as to avoid what would otherwise produce irrational and indefensible results that Parliament could not have intended."*

<u>*THE JUDGMENT IN **CHANDRAVATHI P.K.** (SUPRA) HAS NO APPLICABILITY TO THE PRESENT CASE*</u>

31. This Court is the view that the judgment in ***Chandravathi P.K.*** (supra) has no applicability to the facts of the present case inasmuch as the

issue in the said case as articulated in paragraph 20, *'whether in terms of the scheme of the Kerala Engineering Service (General Branch) Rules, diploma-holders are entitled to claim any weightage for the service rendered by them prior to their acquisition of degree qualification in the matter of promotion or transfer to higher posts'*, is entirely different. Further, it is an admitted position (as per para 7 of the private Respondent's own counter affidavit) that the ***Chandravathi P.K.*** (supra) judgment is inapplicable to the present case.

CONCLUSION

32. Accordingly, the present appeals are allowed and consequently, the impugned judgments passed by the learned Single Judge and the Division Bench are set aside. Pending applications, if any, also stand disposed of.

...…...…….J.
[DIPANKAR DATTA]

…….J.
[MANMOHAN]

New Delhi;
March 18, 2025.