



WA NO. 928 OF 2020

1

2025:KER:70871

“C.R.”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 24TH DAY OF SEPTEMBER 2025 / 2ND ASWINA, 1947

WA NO. 928 OF 2020

AGAINST THE JUDGMENT DATED 05.02.2020 IN WP(C) NO.24477 OF 2017 OF HIGH
COURT OF KERALA

APPELLANT/S:

K. C. DILEEP KUMAR
AGED 48 YEARS
SUB ENGINEER (CIVIL), KERALA STATE ELECTRICITY BOARD LTD.,
INVESTIGATION CIRCLE, VYDYUTHI BHAVANAM, THRISSUR.

BY ADVS.
SHRI.ELVIN PETER P.J. (SR.)
SRI.K.R.GANESH
SMT.N.R.REESHA
SMT.T.S.LIKHITHA

RESPONDENT/S:

- 1 KERALA STATE ELECTRICITY BOARD LTD.
REPRESENTED BY ITS CHAIRMAN, VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM - 695 004.
- 2 THE CHIEF ENGINEER (HRM)
KERALA STATE ELECTRICITY BOARD LTD., VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM - 695 004.
- 3 NELVI P. C.
[SUB ENGINEER(CIVIL), KERALA STATE ELECTRICITY BOARD
LTD.,TRANSMISSION CIRCLE, VYDYUTHI BHAVANAM, THRISSUR-680004];



WA NO. 928 OF 2020

2

2025:KER:70871

CORRECTED AS NELVI P.C. ASSISTANT ENGINEER (CIVIL), OFFICE OF THE
DEPUTY CHIEF ENGINEER, TRANSGRID NORTH,VYDYUTHI BHAVANAM,
KALLIPADAM P.O.,SHORANUR-679122 AS PER ORDER DATED 08/10/2024 IN IA
NO.2 OF 2024 IN WA 928/2020

BY ADV SRI.M.K.THANKAPPAN

THIS WRIT APPEAL HAVING RESERVED ON 03.07.2025, THE COURT ON 24.09.2025
DELIVERED THE FOLLOWING:



JUDGMENT

"C.R."

Sushrut Arvind Dharmadhikari, J.

The present intra-Court Appeal under Section 5 of the Kerala High Court Act 1958 assails the judgment dated 05.02.2020 passed in W.P.(C) No.24477/2017-H whereby the writ petition filed by the appellant has been dismissed by the learned Single Judge.

Facts:

2. The brief facts of the case are that the appellant was appointed as Foreman Grade-II in the Kerala State Electricity Board (KSEB) on 24.04.1995 on the advice by the Kerala Public Service Commission. Subsequently, on 11.08.2000, the Kerala State Electricity Board (KSEB) signed a long-term settlement with two recognized trade unions, *i.e.*, the Kerala State Electricity Board Workers Association and the Kerala Electricity Workers Federation, which provided for revision of pay and allowances and other service conditions of the workmen of the KSEB. According to Clause 5 of Article VII, Staff Pattern, B – Executive Staff, the posts of Foreman (Civil) and Sub Engineer (Civil)



were merged effective from 29.08.2000. All Foreman (Civil) appointed through the Kerala Public Service Commission were to be integrated with Sub Engineers (Civil), and the post of Foreman (Civil) was abolished from the date of the settlement.

2.1 All five Foremen (Civil) were integrated as Sub Engineer (Civil) with effect from 29.08.2000. As per Ext.P2 it was ordered that the five Foreman (Civil) integrated with the cadre of Sub Engineer (Civil) would be placed junior to the junior-most Sub Engineer (Civil), Sri R. Renjith, who was appointed as per Board Order dated 22.05.2000.

3. Being aggrieved, the appellant submitted a representation (Ext.P3), requesting that his service be reckoned from the date he entered service, *i.e.*, with effect from 24.04.1995, since, as per Ext.P2, he would otherwise be considered junior even to a person appointed in the year 2000. Due to inaction on the representation, the appellant filed W.P.(C) No.33596/2010. This Court disposed of the W.P.(C) No.33596/2010 directing the 2nd respondent to consider the claim of the appellant in the light of the directions passed by the Apex Court in the



case of *Union of India v. Dharam Pal and others* [(2009) 4 SCC 170].

3.1 The Chief Engineer/the 2nd respondent rejected the representation, stating that the post of Foreman (Civil) did not have any promotional avenues, even though the scale of pay and the prescribed qualifications for both Foreman (Civil) and Sub Engineer (Civil) were identical. It was further stated that, prior to the integration, the two cadres were entirely different, with separate channels for recruitment, promotion, and other service conditions. The cadre of Foreman (Civil) was not re-designated but integrated with the cadre of Sub Engineer (Civil) with effect from 29.08.2000, on the ground that it would be unfair to disturb the settled seniority of the other existing Sub Engineers owing to the integration. Furthermore, the decision to integrate was taken by the KSEB taking into consideration the lack of further promotional prospects for Foremen (Civil). Therefore, even though the scale of pay of both the cadres and the qualification prescribed for the posts were similar or identical, seniority in the cadre of Sub Engineer (Civil) cannot be assigned to the



appellant with effect from the date of his joining as Foreman (Civil).

4. Aggrieved, the appellant preferred W.P.(C) No.24477/2017-H before the learned Single Judge. The learned Single Judge, after considering the pleadings and the arguments advanced by the learned Counsel for the appellant, concluded that there is no specific provision in the settlement stating that the integration would take effect from the appellant's original appointment date or that seniority upon integration would be reckoned from the date of entry into service as Foreman (Civil). Therefore, the appellant has no valid claim to have his service as Foreman (Civil) counted for seniority purposes. The learned Single Judge further noted that allowing such a claim would adversely affect those in the Sub Engineer (Civil) cadre who were in service on the date of integration, and accordingly dismissed the writ petition. Hence, this writ appeal.

Appellant's submission:

5. Learned counsel for the appellant contended that the Chief Engineer did not have the power to modify the settlement and decide,



as per Ext.P2, that the appellant would be the junior most. The learned counsel further contended that the appellant was granted time-bound promotion by counting his earlier service from 1995, and not from 2000, as per Ext.P4.

5.1 Furthermore, the learned Counsel for the appellant relied on the Apex Court judgment in ***Nirmal Kumar Choudhary and others v. State of Bihar and other*** [1988 Supp SCC 107], which dealt with the very issue raised in this appeal regarding how to determine *inter se* seniority upon integration. Therefore, the issue which crops up for consideration before this Court is “Whether, according to service jurisprudence, in the absence of any valid rule for determining *inter se* seniority of members belonging to the same service, the rule of continuous officiation, length of service, or the date of entry into service followed by continuous uninterrupted service would be valid and satisfy the requirements of Article 16 of the Constitution of India?”



5.2 The Apex Court came to the conclusion that it is a well settled position in law that seniority would ordinarily depend upon the length of service, subject, of course, to the rules holding the field.

5.3 Therefore, the learned Single Judge erred in dismissing the writ petition without considering how seniority is to be reckoned in the absence of specific rules in the settlement. In view of the above, the judgment of the learned Single Judge deserves to be set aside, and the appeal deserves to be allowed.

Respondent's submission:

6. *Per contra*, the learned counsel appearing to the respondents have filed counter affidavit in the writ petition justifying their action in Ext.P8 order. The learned counsel submitted that only five Foremen (Civil) Grade-II were recruited through the PSC. The promotional avenue for Foreman Grade-II was limited to Foreman Grade-I, with no further promotion prospects beyond that. Therefore, based on requests from Foremen (Civil) Grade-II, including the appellant and others, the



KSEB decided to integrate the existing Foreman (Civil) cadre with the Sub Engineer (Civil) cadre and abolish the post of Foreman (Civil).

6.1 Further, it is stated that on the basis of settlement arrived at Exts.P1 and P2, the seniority of the Foremen (Civil) has been assigned below the junior-most Sub Engineer. Therefore, no interference is called for. The order passed by the learned Single Judge deserves to be upheld.

Discussion and Analysis:

7. Heard Mr Elvin Peter learned Senior Counsel for the appellant, and Mr M.K. Thankappan, learned Standing Counsel for the Kerala State Electricity Board Ltd.

8. The Apex Court in **Nirmal Kumar Choudhary** (supra), while considering the amalgamation of the Engineering cadre and its various wings and the preparation of the graduation list for determining seniority, held that the length of service test should be applied. The Apex Court held thus:



“3. The High Court referred to all the materials that were placed before it by the different parties and in para 17 of the judgment came to the conclusion:

"From the discussion of the facts of the case before us, it is clear that the petitioners got their substantive appointments earlier than the respondents concerned and if seniority would have ranked on that consideration, then the petitioners would have ranked senior in the integrated cadre. This was also the recommendation of both the High Powered Committees which suggested that two seniority lists, one for the permanent incumbents and the other for the temporary incumbents, be framed. No specific rule was brought to our notice by either side which could govern the case of the petitioners and the respondents.

On the other hand, learned counsel for the petitioners has referred to the instructions issued by the Personnel Department of the State Government to all Principal Secretaries and Heads of Departments etc. in its memo No 3/RI-106/72-F- 15784 dated the 26th August, 1972. Clause 3(vii) thereof provides that in the event of amalgamation of cadres seniority is determined with reference to the date of appointment in the particular grade on substantive or continuous officiating basis, whichever is earlier, without. however, disturbing the inter se seniority of incumbents in any group of posts as amongst themselves in that process. No other rule was brought to our notice on behalf of either the learned counsel appearing for the State or the contesting respondents.”



An attempt had been made before the High Court to rely upon the executive instructions issued in a Government resolution (Annexure 9). The High Court found that the circular had got no application to the case before it and it related to secretariat assistants. The High Court was not prepared to act upon it because it was not laying down any general principles. According to the High Court:

"Substantive appointment in a service gives the incumbent a right and if that cannot be taken away by a temporary incumbent of the same department, we do not see why that right should be allowed to be taken away if a question of integration or merger comes in by such incumbents who were similarly temporary and thereby junior to the permanent employees. In our opinion, therefore, the gradation list in this case (Annexure 12) is violative of the principles contained in Article 14 and 16 of the Constitution and impinges upon the civil rights of the petitioners, making them several hundreds places junior in the integrated or combined cadre on a basis which cannot, in any view of the matter, be said to be reasonable in the light of the principles discussed in the aforesaid authorities."

It is not in dispute that the three wings, though under the administrative control of the Agricultural Department, were separate before amalgamation. As already pointed out, permanent posts had been sanctioned in the Minor irrigation wing to which the petitioners before the High Court belonged and they were appointed on permanent basis. The High Powered Committees had taken all aspects into consideration and had recommended relevant aspects to be kept in view



to regulate seniority in the merged cadre. When integration takes place and officers in different cadres are merged into one, there is bound to be some difficulty in the matter of adjustment. That obviously has occurred here. The High Court has found that the petitioners before it had held, on the basis of confirmation, permanent posts and on that basis directed that the combined seniority list should be prepared taking dates of substantive appointments as the basis for fixing inter se seniority. That indeed might create problems because depending upon availability of opportunities in the different wings, confirmation may have been granted while in the absence of the same, though officers in the other wings may be senior they may not have been confirmed. The approach of the High Court has been, as extracted above by us, that if within the cadre earlier confirmation gives seniority why should that basis be not extended to the combined gradation list. This may not be applicable in every situation- particularly when there is a merger of cadres and the combined gradation list is proposed.

4. It is a well-settled position in law that seniority would ordinarily depend upon length of service subject, of course, to rules holding the field. That view has been taken by this Court in several cases and it is unnecessary to refer to all of them. In *A. Janardhana v. Union of India and Ors* [1983] 2 SCR 936 the situation was somewhat the same as here. The Court found that the method adopted for fixing seniority overlooked the character of appointments and pushed down persons validly appointed below others who had no justification to be given higher place. At page 960 of the Reports, the Court observed:



"It is an equally well recognised canon of service jurisprudence that in the absence of any other valid rule for determining inter se seniority of members belonging to the same service, the rule of continuous officiation or the length of service or the date of entering in service and continuous uninterrupted service thereafter would be valid and would satisfy the tests of Article 16."

We may also refer to a very recent decision of this Court in K.S. Vora & ors. v. State of Gujarat & Ors., [1987] 4 Judgment Today 179. The High Court recorded a finding that there is no applicable rule in the matter of fixing inter se seniority in a situation of this type. In the absence of rules, the more equitable way of preparing the combined gradation list would be to take the total length of service in the common grade as the basis for determining inter se seniority. We would like to add that in regard to the Supervisors (now called Junior Engineers) serving in the three wings there is no dispute of the grade being the same. While we do not agree with the High Court that confirmation should be the basis and would substitute it by the length of service test, we would uphold the direction that in fixing the combined gradation list the inter se seniority of the incumbents in their respective departments would not be disturbed. Even if this be the test, the gradation list as published by Government has to be modified. We would accordingly confirm the conclusion of the High Court that Annexures 1 1, 11/1, 12, 13, 13/1, 15 and 16 should be quashed and a fresh combined gradation list has to be published. We have altered the test for fixing the seniority inter se generally but we have approved the direction of inter se seniority in their own departments to be respected. The respondent-State and its



officers are directed to prepare and publish the fresh combined gradation list keeping the aforesaid directions in view.

5. Both the appeals are allowed to the extent indicated above. Parties shall bear their own costs throughout.”

9. On perusal of the aforesaid judgment, it is clear that in the absence of any specific rules regarding the reckoning of seniority after integration, length of service is the appropriate criterion for determining seniority. The learned Single Judge erred in concluding that there was no specific provision in the settlement stating that integration would take effect from the date on which the appellant was appointed. Therefore, the appellant cannot have valid claim to get the service rendered from the date of appointment to the post of Foreman (Civil), reckoned for the purpose of seniority.

Conclusion:

10. In view of the aforementioned discussions, we are unable to agree with the findings of the learned Single Judge. Thus, the impugned judgment dated 05.02.2020 in W.P.(C) No.24477/2017-H is hereby set aside. As a consequence, Ext.P2 dated 30.11.2000 to the



extend of directing the Foreman (Civil) to be placed as junior to the junior-most Sub Engineer (Civil) and Ext.P8 order rejecting the representation, are also set aside.

10.1 We are also of the opinion that the Chief Engineer was incorrect in stating that the appellant's seniority should be placed below the junior-most due to the absence of any specific provision.

Result:

The writ petition is allowed. The respondents are directed to recast the seniority list and assign seniority to the appellant in view of the aforementioned observations and in light of ***Nirmal Kumar Choudhary*** (supra). No order as to costs. All Interlocutory Applications as regards interim matters stand closed.

Sd/-

SUSHRUT ARVIND DHARMADHIKARI

JUDGE

Sd/-

SYAM KUMAR V.M.

JUDGE