

**HIGH COURT OF KERALA****Bench: Justices Amit Rawal and C.S. Sudha****Date of Decision: 17th November 2023**

Writ Appeal Nos. 370 of 2023 and 398 of 2023

Against the Judgment in WP(C) No. 3383/2022 dated 7.12.2022 of High Court of Kerala

**Muhammed Naeem V.T****Nizamuddin Kochumanappuzha ..... APPELLANTS****VERSUS****State of Kerala****Kerala Public Service Commission****Kerala State Electricity Board Limited****Chief Engineer HRM & Others ..... Respondents**

**Subject:** Appeal against the dismissal of writ petitions challenging the inclusion of candidates with engineering degrees and diplomas in the rank list for the post of Meter Reader/Spot Biller in Kerala State Electricity Board, based on the contention that these qualifications do not presuppose the acquisition of the National Trade Certificate (NTC) in Electrician/Wireman/Electronics trade as required by the notification.

**Headnotes:**

**Qualifications for Appointment – Interpretation of 'Higher Qualification' – Case involving the eligibility of engineering degree and diploma holders for the post of Meter Reader/Spot Biller in KSEB – NTC in Electrician/Wireman/Electronics trade prescribed as qualification in notification – Engineering degrees/diplomas not presupposing acquisition of NTC, hence not to be considered 'higher qualification' for this post. [Paras 10-14, 20-22]**

Role of Executive Orders in Determining Equivalence of Qualifications – Reliance on executive orders to equate higher qualifications with prescribed qualifications – Ext.P11 (a post-notification order) stating diploma course in Electrical and Electronics Engineering as a higher qualification to NTC, deemed inapplicable – Change of qualification criteria post-notification not permissible. [Paras 15-19]

Impact of Administrative Decisions on Employment Opportunities – Consideration of degrees and diplomas for positions meant for NTC holders could disadvantageously affect employment opportunities of NTC holders – Necessity for clear demarcation of qualifications for specific job roles. [Paras 20, 22]

Decision – Appeals allowed – Impugned judgment set aside – Writ petitions allowed – Ext.P11 order declared not affecting Ext.P2 notification – Direction to recast rank list excluding degree or diploma holders in engineering without NTC as specified in notification. [Para 23]

#### **Referred Cases:**

- Jyoti K.K. v. Kerala Public Service Commission (2010)15 SCC 596
- Suma A. v. Kerala Public Service Commission, 2011 (1) KHC 16
- Manikandan M.A. v. Suresh Kumar B., 2015 (5) KHC 850 (W.A.Nos.1874 and 2193 of 2012)
- K.Manjusree v. State of Andhra Pradesh, (2008)3 SCC 512
- Smitha Chacko (Dr.) v. State of Kerala, 2022(6) KHC 1
- P.M.Latha v. State of Kerala, (2003)3 SCC 541 : 2003(1) KLT 949
- Janardanan K. v. State of Kerala, 2008 (3) KHC 299
- Abdul Salam N.P. v. Executive Engineer, Electricity Department, 2011 (2) KHC 948

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#### **J U D G M E N T**

**C. S. Sudha , J.**

1. These intra court appeals under Section 5 of the High Court Act, 1958 have been filed by the petitioners in W.P.(C). No.8870/2021 and W.P.(C). No.3383/2022 aggrieved by the common judgment dated 07/12/2022 by which the writ petitions have been dismissed. The respondents herein are the respondents in the writ petitions.

2. The petitioners in W.P.(C). No.8870/2021 are applicants to the post of Meter Reader/Spot Biller in the Kerala State Electricity Board, that is, the third respondent (KSEB) pursuant to Ext.P2 notification published by the second respondent, Public Service Commission (PSC). The petitioners have acquired the National Trade Certificate (NTC) in Electrician/Wiremen/Electronic Trade after undergoing a regular course of study. The certificate course is qualitatively and functionally different from that of diploma or degree course in engineering. As such diploma or degree course cannot be treated as a higher qualification to the ITI course. Apprehending that ineligible candidates are likely to be included in the rank list, the petitioners filed W.P.(C)No.38864/2017. The said writ petition was disposed of by Ext.P7 judgment dated 04/02/2021 in which this Court expressed the hope that PSC would be careful enough to ensure that only those candidates who are eligible as per the notified educational and other qualification would be included in the final rank list. Thereafter, Ext.P8 rank list dated 19/03/2021 was published by the PSC in which the names of ineligible candidates also find a place. Candidates with degree and diploma in Electrical and Electronics are seen included in the rank list. Because of the inclusion of ineligible persons in the rank list, the first petitioner has not been included in the rank list and the second petitioner who would have been placed in the main list has been placed in the supplementary list of Muslims.

Hence the writ petition to declare that “Engineering Degree Holders and Diploma Holders” without having “National Trade Certificate (NTC)” in Electrician or Wiremen or Electronics Trade as specified in Ext.P2 notification are ineligible to be included in Ext.P8 rank list; to declare that Rule 10(a)(ii) of Part II KS&SSR is not applicable to the technical qualification prescribed in Ext.P2 notification and to declare that any decision or order, if any of the PSC to include degree and diploma holders who do not have the qualification as specified in Ext.P2 notification for the post of Meter Reader to be illegal, arbitrary and unreasonable.

3. While the aforesaid writ petition was pending, the Government issued Ext.P11 notification dated 21/01/2022 wherein it has been stated that

Electrical and Electronic diploma course conducted by the Kerala State

Board of Technical Education is a higher qualification of the Kerala

Government/Certificate Examination (KGCE) in Electrical Engineering. Hence, the petitioners moved W.P.(C)No.3383/2022 contending that Ext.P11 has been issued by the Government without noticing the fact that the issue regarding qualification is pending in W.P(C). No.8870/2021 and that Ext.P10 interim order is in force. A reading of Ext.P11 would make it clear that none of the relevant aspects were considered by the Government before issuing Ext.P11 order. The said order does not have any retrospective effect and it would not in any way affect Ext.P2 notification published on 28/01/2015 and the rank list dated 19/03/2021. Degree or diploma was never treated as a higher qualification of NTC. The PSC does not have the power to declare it so in the light of the decision in **Suma A. v. Kerala Public Service Commission, 2011 (1) KHC 16**. Though Ext.P11 will not have any retrospective effect, the petitioners are challenging the same by way of abundant caution. The qualification now declared as a higher qualification as per Ext.P11 is not a qualification notified in Ext.P2. B.Tech degree and diploma cannot be taken as a higher qualification as the same is not an equivalent qualification prescribed for the post. The holders of a diploma or Engineering degree have got several employment opportunities, while those who have passed 8<sup>th</sup> standard and I.T.I. Certificate in Wiremen/ Electrician/Electronics have got only limited opportunities. If the short list is published by including diploma and degree holders, then the chances of the I.T.I. holders getting employment would be curtailed to a considerable extent. Subsequent amendment to the qualifications after the publication of Ext.P2 notification and the rank list is impermissible in law and also unjustified. It is in that background the writ petition was filed to declare that Ext.P11 Government Order does not have any retrospective effect or that it would in any manner affect Ext.P2 notification or Ext.P8 rank list and the appointments made therein.

4. The second respondent PSC filed counter affidavit in W.P.C.

No. 8870/2021 contending that in the light of the dictum in **Jyoti K.K. v. Kerala Public Service Commission, (2010)15 SCC 596**, higher qualifications in the same faculty would presuppose the acquisition of the lower qualification. Qualifications declared as equivalent to the notified qualifications by executive orders issued by the government can also be

accepted. The 5th respondent has been included in the rank list as she possesses diploma in electrical and electronics engineering which is accepted as a higher qualification as per Rule 10 (a) (ii) of part II KS&SSR. As alleged by the petitioner, the PSC has not included any unqualified candidates in the rank list. As directed by this court in Ext.P7 judgment dated 04/02/2021, the candidates included in the rank list are qualified as per Ext.P2 notification and the qualifications as per Rule 10 (a) (ii) of Part II KS&SSR.

5. Additional respondents 8 and 9 who got themselves impleaded in W.P.C. No. 8870/2021 also filed a counter affidavit contending thus- in the light of the dictum laid down in **Jyoti K.K. (Supra)** and Ext.R9(a) binding Division Bench judgement dated 04/08/2015 in W.A. No. 1874 and connected cases, the challenge raised by the petitioners is unsustainable. Ext.R9(a) judgement has already been affirmed by the Apex court by Ext. R9 (b) order dated 02/12/2016. The respondents are B.Tech holders in electronic and electrical engineering. The second respondent PSC in their counter has stated that B. Tech degree in electrical and electronic engineering is a higher qualification for appointment to the post of meter reader. In Exhibit R9(c) dated 01/2/2021, the Higher Education Department of the State has declared that diploma in automobile engineering is a higher qualification for ITI diesel mechanic and motor mechanic courses. In the prospectus issued by the General Education Department for admission to diploma program through lateral entry in polytechnic colleges, 2021–2022, 10% of the approved intake in each program had been set up apart for lateral entry for ITI holders in various trades. Curriculum of studies issued by the Ministry of Skill Development and Entrepreneurship also stipulate that out of the two instructors, one must have degree or diploma and the other must have NTC/NAC qualification in electrical trade. Based on the recommendation issued by the Director of Technical Education, the Higher Education Department of the State has issued Exhibit R9 (f) order dated 24/12/2021 holding that civil engineering diploma is a higher qualification for ITI course. In answer to a query, the Director, Technical Education by Ext. R9 (g) letter dated 27/10/2016, has informed that diploma in electrical and electronics engineering is a higher qualification of ITI Electrician course. The allegation of the petitioners that B. Tech degree in electrical and electronics engineering is not a higher qualification of ITI trade certificate course in Electrician/Wireman/Electronic trade is incorrect. This allegation can be seen

to be factually incorrect from the report submitted by a sevenmember expert committee appointed by the Director of Technical Education as directed by the Division Bench of this court in paragraph 8 of Ext. R9 (a) judgement. The PSC has already issued advice memo to 200 candidates from Ext. P8 rank list. These respondents have also received advice memos for appointment to the post. The eighth respondent joined duty on 10/01/2022. The ninth respondent would be joining duty shortly. The probation period of the Board employees is six months. The pendency of the petition would result in non-declaration of the probation of the respondents in the post of meter readers, thus adversely affecting their conditions of service. The petitioners are not entitled to any of the reliefs claimed and hence the petitions are liable to be dismissed with compensatory costs, contended the respondents.

6. The second respondent PSC filed a counter affidavit in W.P.C. No. 3383/2022, contending thus – the PSC has not included any candidate who is unqualified for the post. In **Suma A. (Supra)**, this Court has held that under the scheme of KS&SSR, the PSC is incompetent to deal with the question of equivalence of educational or other qualifications, prescribed by the Special Rules, unless the Special Rules provide for the recognition of qualifications other than the prescribed qualifications as equivalent to the qualifications prescribed. When the notification does not specify equivalent qualification, under no circumstances can equivalent or any other qualification be considered under Rule 13 of KS&SSR unless, there is a specific Government order in the matter. The equivalent qualifications accepted for the post in the case on hand is based on specific Government orders. Qualifications declared as equivalent to the notified qualifications by executive orders issued by the Government can also be accepted. Application of candidates, possessing qualifications equivalent to the ones prescribed, if allowed by executive orders/standing orders will also be admitted, irrespective of the fact whether the qualifications prescribed in the Special Rules provide for the acceptance of equivalent qualifications or not. As regards higher qualification, which presuppose the acquisition of lower qualifications prescribed for the post, the higher qualification *in lieu* of the qualification prescribed would be accepted. Also, the higher qualifications which necessarily do not “Pre-Suppose” acquisition of the lower qualifications prescribed for the post will be accepted, provided the higher qualification is acquired in the same quality in the same faculty of the prescribed qualification. As per the dictum in **Jyoti K.K. (Supra)**, higher qualifications in the “Same Faculty” presupposes the acquisition of the lower qualification. The

allegation of the petitioners is that Ext. P11 order is illegal and that it does not have any retrospective effect and hence would not affect Ext. P2 notification published on 28/01/2015 and Ext. P8 rank list dated 19/03/2021. However, the PSC has published the rank list before the issuance of Ext. P11 by including candidates having diploma in electrical and electronics engineering treating it as a higher qualification as per Rule 10 (a) (ii) Part II KS&SSR and there is no illegality in the same. It is well within the power of the PSC to decide as to whether a candidate is qualified for the post or not. The commission in the instant case examined the matter and on being satisfied that the candidates have the prescribed qualification, included them in the rank list which is in order and does not warrant any interference by the court.

7. Additional respondents 5 and 6 in W.P. 3383/2022 filed counter affidavit in which similar contentions have been raised like the one raised by the additional respondents in W.P.(C)No.8870/2021 and hence the same are not repeated.

8. The learned Single Judge relying on Rule 10 (a)(ii) Part II KS & SSR and the dictum in **Jyoti K.K.** (*Supra*) held that the case of the petitioners that the qualification of diploma or degree in Engineering would not presuppose the acquisition of the lower qualification of NTC as prescribed in Ext.P2 notification cannot be accepted and accordingly dismissed the writ petitions. Aggrieved, the petitioners have come up in appeal.

9. We have heard both sides and perused the records. In these appeals, the second respondent in the writ petitions will be referred to as the PSC and the additional respondents in both the writ petitions, as party respondents.

10. The points to be considered in these appeals are- (i) is NTC a lower qualification of a degree or diploma in engineering and (ii) whether a diploma or degree in engineering presupposes the acquisition of the lower qualification of NTC.

11. In the case on hand, the qualifications prescribed for the post of

Meter Reader/Spot Biller as per Ext.P2 notification dated 26/12/2014 read -

*“7. Qualifications:*

*1 General*

*Pass in 8<sup>th</sup> standard (IV forum) or its equivalent 2 Technical:*

*National Trade Certificate in Electrician / Wireman / Electronics trade*

Or

*KGCE electrical from an institution recognized by the Govt.  
of Kerala,*

Or

*MGTE / KGTE Group Certificate covering the following four subjects:*

- a) Electrical Light and Power (Higher)*
- b) Applied Mechanics (Lower)*
- c) Heat Engines (Lower)*
- d) Machine Drawing (Lower).*

*Note: Rule 10(a)(ii) of Part II KS & SSR is applicable to the post.*

12. According to the PSC and the party respondents, the learned single judge has rightly relied on the dictum in **Jyoti K.K. (Supra)** and rejected the case of the petitioners that NTC is not a lower qualification of a degree or diploma in engineering and that a degree or diploma in engineering does not presuppose the acquisition of NTC. **Jyoti K.K. (Supra)** was a case relating to selection to the post of Sub-Engineers (Electrical) in the Kerala State Electricity Board. As per the notification issued, the qualifications for the post were - (1) SSLC or its equivalent. (2) Technical qualifications – (a) Diploma in Electrical Engineering of a recognized institution after 3 years' course of study, or (b) a certificate in Electrical Engineering from any one of the recognized technical schools shown in the notification with five years' service under the Kerala State Electricity Board, (c) MGTE / KGTE in electrical light and power (higher) with five years' experience as II<sup>nd</sup> Grade Overseer (Electrical) under the Board. The appellants therein were holders of B. Tech Degree in Electrical Engineering or Bachelor's Degree in Electrical Engineering were held ineligible for the post as they did not possess the necessary qualification. It was contended by the appellants that they possessed higher qualifications and therefore non consideration of their candidature, was wrong. This Court held that when qualifications have been prescribed for a post, the same cannot be diluted and persons not possessing those qualifications cannot be held to be eligible. Holding so, the writ petitions were dismissed. The matter was taken in appeal before the Hon'ble Supreme Court. The Apex Court interpreting Rule 10(a)(ii) of the Kerala State and Subordinate Services Rules, 1958, **held that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification**



**prescribed for that post in order to attract that part of the Rule** to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. **The qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post and that the same shall be sufficient for the said post.** The Apex Court also held that if the Government was of the view that only diploma holders should have applied to the post of Sub-Engineers and not all those who possess higher qualifications, the Rule should have excluded those candidates who possessed higher qualification, or the position should have been made clear that the degree holders would not be eligible for such post. When the Rules do not disqualify *per se* the holders of higher qualifications in the same faculty, the Rule cannot be understood as excluding persons with higher qualification for the post.

13. Therefore, relying on this dictum, the learned senior counsel Ms. Seemandini submitted that the party respondents are degree holders in electrical and electronics engineering, apparently a higher qualification to NTC. Hence acquisition of a higher qualification of degree presupposes the acquisition of the lower qualification of NTC. So they are qualified for the post in question and hence rightly included in the rank list.

14. In our opinion, the dictum in **Jyoti K.K. (Supra)**, is not applicable to the facts of the case in hand, because the candidates therein were holding B. Tech Degree in Electrical Engineering. One of the technical qualifications required for a candidate to apply for the post of Sub-Engineers (Electrical) was **Diploma in Electrical Engineering**, which qualification is certainly a lower qualification to a **Degree in Electrical Engineering**. It is on that count the holders of higher qualification of degree were presupposed to hold the lower qualification of diploma. The same is not the position in the case in hand.

14.1. The party respondents also rely on Ext.R9(a) judgment of this Court dated 04/08/2015 in W.A.Nos.1874 and 2193 of 2012 reported in **2015 (5) KHC 850 (Manikandan M.A. v. Suresh Kumar B.)**. In the said case the PSC notified vacancies for selection to the category of Operator in the Kerala Water Authority (KWA). The service in the KWA is governed by the provisions of the Kerala Public Health Engineering Service Rules insofar as

State service categories are concerned and Kerala Public Health Engineering Subordinate Service Rules which relate to the subordinate service. Those rules have been adopted by the KWA. The qualification prescribed for the post in question was – (1) Pass in S.S.L.C examination or equivalent qualification. (2) National Trade Certificate in the Trade of Mechanic (Motor Vehicle / Electrician). The PSC notified the aforesaid qualification in its notification. In the selection process, it also considered candidates who had diploma or degree in some branches of Engineering. When the short list was prepared, a writ petition was filed challenging the action of PSC. The learned Single Judge held that Diploma or Degree cannot be treated as qualifications which are higher qualifications to the trade certificate which was prescribed and there was no way for the PSC to go by a principle of equivalence in bringing persons also within the field of choice. When the matter was taken up in appeal, the Division Bench relying on the dictum in **Jyoti K.K. (Supra)** held that if a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. The Division Bench was not persuaded to apply the ratio of the decisions in **Janardanan K. v. State of Kerala, 2008 (3) KHC 299** and **Abdul Salam N.P. v. Executive Engineer, Electricity Department, 2011 (2) KHC 948**, as according to the learned judges, the issues dealt with therein were not appropriate to be applied to the case in hand, while the precedential value of **Jyoti K.K. (Supra)** was in support of the case of the appellants therein.

14.2. The learned senior counsel appearing for the party respondents drew our attention to paragraph 8 of Ext. R9(c) judgement which refers to an affidavit filed by the Director of Technical Education, impleaded as an additional respondent in the case as per the directions of the court. This Court had directed the Director of Technical Education to give expert opinion whether the alternate qualifications suggested pre - suppose the acquisition of the prescribed qualification, National Trade Certificate in Mechanic (motor Vehicle / electrician). Pursuant to the direction, the Equivalence Committee after deliberations concluded that - (a) Diploma / Degree in Electrical Engineering of Electrical and Electronics Engineering are Higher qualification which pre - supposes the acquisition of National Trade Certificate in Mechanic (Electrician). (b) Diploma / Degree in Mechanical Engineering or Automobile Engineering are Higher qualification which pre - supposes the acquisition of National Trade Certificate in Mechanic (Motor Vehicle). (c) National Trade Certificate in Diesel Mechanic can be considered equivalent to the National

Trade Certificate in Mechanic (Motor Vehicle) for appointment as Operator in Water Authority. (d) National Trade Certificate in Industrial Electrician can be considered equivalent to the National Trade Certificate in Mechanic (Electrician) for appointment as Operator in Water Authority. In the light of the said report, the Bench did not find any reasons to disagree with the stand taken by the Director of Technical Education. Thus, the judgment of the Single Bench was set aside.

14.3. Relying on the dictums in **Jyoti K.K.** (*Supra*) and Ext. R9(c), the learned senior counsel for the party respondents quite persuasively and strenuously argued that party respondents are holders of Degree in Electronics and Electrical Engineering, a higher qualification of NTC and that acquisition of the higher qualification presupposes the acquisition of the lower qualification of NTC and hence the petitioners have been rightly included by the PSC in the rank list. It was also pointed out that the party respondents have already joined service in the year 2022; that they have crossed the age of 35 and so accepting the case of the petitioners would result in throwing them out of their employment and as they have crossed the age bar, they would not be eligible to apply for any further posts notified by the PSC.

14.4. *Per contra* it was submitted by the learned counsel appearing for the petitioners that as long as there is no provision in the Rules or there being an executive or standing order of the Government granting equivalence, the PSC is incompetent to deal with the question of equivalence of educational or other qualifications prescribed by the Special Rules unless the Special Rules provide for recognition of qualifications other than the prescribed qualifications as equivalent to the qualifications prescribed. As NTC is **not** a lower qualification of a degree or diploma in electrical and electronics engineering, acquisition of the said degree or diploma would not presuppose the acquisition of NTC.

15. As held by a Full Bench of this Court in **Suma A.** (*Supra*), under the scheme of KS&SSR, the PSC is incompetent to deal with the question of equivalence of educational or other qualifications prescribed by the Special Rules, unless the Special Rules provide for the recognition of qualifications other than the prescribed qualifications as equivalent to the qualifications prescribed. In fact, this is admitted by the PSC in paragraph 11 of their counter affidavit filed in W.P.(C)No.3383/2022 to which we have already referred to in detail. The PSC also admits that when the notification does not specify equivalent qualification, under no circumstances can equivalent or any other qualification be considered under Rule 13 of KS&SSR unless there is a

specific Government order in the matter. According to the PSC, qualifications declared as equivalent to the notified qualifications by executive orders issued by the Government can be accepted and that application of candidates, possessing qualifications equivalent to the ones prescribed, if allowed by executive orders/standing orders will also be admitted irrespective of the fact whether the qualifications prescribed in the Special Rules provide for the acceptance of equivalent qualifications or not.

15.1. However, the case of the PSC is that the equivalent qualifications accepted for the post in the case on hand is based on a specific Government order, that is, Ext.P11, which is permissible under Rule 10 of KS&SSR. Before we refer to the said contention of the PSC, it would be apposite to refer to Rules 10(a) (i) & (ii) and 13 of KS&SSR.

*“10. Qualifications. -- (a)(i) The educational or other qualifications if any, required for a post shall be specified in the Special Rules applicable to the service in which that post is included or as specified in the executive orders of Government in cases where Special Rules have not been issued for the post / service.*

*(ii) Notwithstanding anything contained in these rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules or found acceptable by the Commission as per R.13(b)(i) of the said rules in cases where acceptance of equivalent qualifications is provided for in the rules and such of those qualifications which pre - suppose the acquisition of the lower qualification prescribed for the post, shall also be sufficient for the post.”*

16. It can be seen from the above Rule that qualifications required for a post may be prescribed by the Special Rules applicable to the particular service in which the post is included or in the absence of any prescription by the Special Rules, to be specified by the executive orders of the Government. However, sub-clause (ii) deals with a specific situation of somebody claiming to be qualified for a particular post on the ground that he has the qualification which is equivalent to the qualification prescribed by the State. Sub-rule (ii) declares that in certain contingencies specified in the said subrule, such a claim can be accepted. Those contingencies are - (i) the Government recognises by executive orders certain qualifications to be equivalent to the qualifications specified in the relevant Special Rules; (ii) the PSC accepts a

qualification to be equivalent to the qualification specified in the Special Rules relevant to the post. [**Suma A. (Supra)**].

17. Rule 13 reads-

*“13. Special qualifications. -- No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he,--*

*(a) possess such special qualifications and has passed such special tests as may be prescribed in that behalf in the Special Rules, or*

*(b) possesses such other qualifications as may be considered to be equivalent to the said special qualifications or special tests--*

*(i) by the Commission in cases where the appointment has to be made in consultation with it; or*

*(ii) by the State Government or by the appointing authority with the approval of the State Government, in other cases.) of KS & SSR declares that no person shall be eligible for appointment to any service unless he possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the Special Rules.”*

18. As noticed earlier the question whether R.13(b)(i) authorises the PSC to recognise the equivalence of any qualification to the qualifications specified in the relevant rules applicable to a post sought to be filled up has been answered in the “Negative” in **Suma A. (Supra)**.

19. Ext.P11 order dated 21/01/2022 relied on by the PSC and the party respondents say that based on the report of the Director, Technical Education, Electrical and Electronics diploma course conducted by the Kerala State Board of Technical Education is a higher qualification of KGCE Electrical Engineering course. Ext.P11 is apparently and obviously much after Ext.P2 notification dated 28/01/2015. It is well settled that Rules of the game cannot be changed after the game has been played. [**K.Manjusree v. State of Andhra Pradesh, (2008)3 SCC 512** and **Smitha Chacko (Dr.) v. State of Kerala, 2022(6) KHC 1**]. Neither the PSC nor the party respondents have been able to show us that as on the date of Ext.P2 notification there was any provision in the Special Rules or an Executive Order or a Standing Order of the Government to the effect that degree or diploma in engineering is a higher qualification of NTC or that NTC is a lower qualification of such degree or diploma. That being the position, Ext.P11 order issued after Ext.P2 notification could not have been relied on by the PSC to include degree or

diploma holders in electrical and electronics engineering in Ext.P8 rank list. By doing so, not only would the petitioners' interest be affected, it would also affect several other holders of degree or diploma who had never applied for the post in the light of the specific qualifications referred to in Ext.P2. Another disadvantage would be that degree and diploma holders would take away the job opportunities of NTC holders.

20. It is now seen that the Government has issued Annexure A clarification dated 17/01/2023 which reads thus -

*"Many petitions have been received by the government requesting not to consider Diploma / B.Tech / M.Tech qualified candidates for posts to which ITI is set as basic qualification. Complaints were raised in the above said petitions against appointing highly qualified candidates for appointment to various posts advertised by PSC for which the basic qualification is ITI. Due to the fact mentioned above, it was complained in the above petitions that those who are qualified in ITI find it difficult to get employment.*

- 2) *The report submitted by the expert committee appointed by the Director of Training to look into this matter has been made available to the Government as per the letter in reference 4 of the report. As per the letter of DGT (Ref. 3 cited), various I.T.I. (Govt./Private) conduct vocational training courses through NSTI and awards National Trade Certificate to the trainees who pass the All-India Trade Test. Director General of Training (DGT) does not conduct any Diploma and B. Tech courses. B. Tech and Diploma Courses are conducted by AICTE.*
- 3) *The Director General of Training (DGT) (cited in reference 2) in his RTI reply opined that ITI trade certificates cannot be equated with other degree and diploma course certificates and degree and diploma courses cannot be considered as higher qualification than ITI trade Certificate. But as per the order of the Department of Higher Education in reference 1, the order has been issued that the B. Tech certificate issued by various universities in Kerala is the highest qualification for Diploma, ITI, ITC, KGCE, KGTE, NAC and NTC courses respectively.*
- 4) *In Kerala, ITI courses in different trades are conducted by the Industrial Training Department. The certificate is issued by the National Council for Vocational Training. There are many differences in learning and learning style between ITI education and engineering / diploma courses. ITI has a "skillenhancing curriculum" that prepares the students to become skilled workers in industries. But in engineering/diploma education, more importance*

*is given to academics than to skills. The Director General of Training has clarified that it is not possible to equate Engineering / Diploma Courses with courses that provide trade certificates like ITI/NAC, NTC etc.*

- 5) *In industrial sectors that require professional skills, job opportunities should be given to those who have completed their ITI education. Therefore, action should be taken to review the order of the Department of Higher Education in reference 1, based on the recommendation of the expert committee. The Director of Training in his letter (ref. 4 cited) had requested the government to issue an order so as to ensure employment of candidates who have passed the ITI course, in PSC notified posts for which the basic qualification is ITI.*
- 6) *The government has examined the matter in detail. Considering the need to take urgent action on the issue affecting the future of many candidates who are included in the short list/rank list of various Kerala PSC examinations with ITI as basic qualification and candidates awaiting their exam results and considering that it is a matter of ethical responsibility of the departments to take measures to prevent loss of employability of such ITI's trainees. The recommendation of Director of Training, Expert Committee Report and information provided by Director General of Training (DGT). The order is issued clarifying that degree and diploma courses cannot be considered as equivalent or higher to ITI/ITC/NAC/NTC trade certificate."*

(Emphasis supplied).

21. It is true that Annexure A has been issued after Ext.P2 notification. But the same is only a clarification and not something new that has been brought in. As noticed earlier, even at the time of Ext.P2 or at any time thereafter till Ext.P11, there was never any Rule or executive or Government order which said that such degree or diploma is equivalent or higher to NTC. Had there been such an order or provision in the Rules, then the PSC and the party respondents would have been right/justified in contending that Ext.P11 cannot be looked into. That apparently is not the situation here.

22. Here we refer to a Division Bench decision of this Court in W.A.No.1246/2021 which was disposed of by judgment dated 21/07/2022, which writ appeal was against the judgment dated 05/08/2021 in W.P.(C) No.36780/2018. The petitioner in the said case possessing the qualification of Bachelor of Engineering Degree (B.E. Degree) in Civil Engineering was working as Office Attendant (Last Grade staff in the N.S.S College of

Engineering, Palakkad). A vacancy in the post of Tradesman (Plumber) had arisen in the college by promotion of an incumbent to the higher post of Trade Instructor. The petitioner being the senior most qualified last grade staff, staked a claim for being appointed by transfer as Tradesman (Plumber). The prescribed qualification for the said post was, a pass in Technical High School Leaving Certificate / ITI or pass in Vocational Higher Secondary School Examination (THSLC/ITI/VHSC Examination). The petitioner contended that B.E. Degree in Civil Engineering is an equivalent or higher qualification for the aforesaid post and as he possessed B.E. Degree in Civil Engineering, he was eligible for appointment by transfer as Tradesman (Plumber). W.P.(C)No.36780/2018 was moved by the petitioner therein seeking a declaration that he is entitled and eligible to be promoted to the post of Tradesman (Plumber) against the existing vacancy. The respondents in the said case disputed the claim of the petitioner contending that the petitioner did not possess the prescribed qualification and hence could not be promoted. The learned Single Judge dismissed the writ petition holding that the petitioner did not have the necessary qualifications as provided in the Kerala Technical Education Subordinate Service Special Rules, 2012. Aggrieved, the petitioner filed W.A.No.1246/2021.

22.1. As per Rule 4 of the aforesaid Special Rules, the qualification for appointment as Tradesman is - (1) a pass in Technical High School Leaving Certificate Examination with specialization in the appropriate trade, OR, (2) (i) pass in Secondary School Leaving Certificate Examination or equivalent. (ii) National Trade Certificate in the appropriate trade/Pass in Kerala Government Certificate in Engineering Examination in the appropriate trade/pass in Vocational Higher Secondary Certificate course in the appropriate trade. The petitioner in the said case also relied on the dictum in **Jyoti K.K. (Supra)**. This Court differentiated the dictum in **Jyoti K.K. (Supra)** by relying on the dictum in **P.M.Latha v. State of Kerala, (2003)3 SCC 541 : 2003(1) KLT 949** and held that the dictum in **Jyoti K.K.** was not applicable to the facts of the case in W.P.(C)No.36780/2018.

22.2. **Latha (Supra)** was a case in which candidates seeking recruitment to the post of Lower Primary/Upper Primary teachers in Government Schools, questioned their non-selection to the post due to inclusion of B.Ed. candidates in the select list published by the PSC. Their contention before this Court was that in the advertisement issued for recruitment to the post of teachers in Government Primary Schools, B.Ed. is not the prescribed qualification and only candidates with the prescribed



educational qualification for Teachers Training Certificate (TTC) were entitled to compete for the selection and seek appointment. This Court allowed the writ petition holding that B.Ed. candidates could not have been included in the select or rank list as they were not eligible under the terms of the advertisement and so it was declared that the B.Ed. holders who are not having T.T.C. and who have been included in the rank list should be deleted from the rank list. In an intra-court appeal, a Division Bench of this Court reversed the decision. Aggrieved, the holders of T.T.C. certificate took up the matter in appeal before the Apex Court.

22.3. The Apex Court took note of the fact that in the advertisement, which was published, the qualifications for the post of Lower/Upper Primary teachers prescribed was - (i) pass in S.S.L.C. or any other equivalent qualification, (ii) pass in T.T.C. or pass in Pre-degree with pedagogy as optional subject or pass in basic T.T.C. examination (Malayalam) conducted by the Government of Madras or pass in Malayalam Vidhvan examination. It was canvassed on behalf of the appellants that when the terms of the advertisement were quite clear to indicate that B.Ed. degree was not the prescribed qualification, candidates holding the said degree were clearly ineligible to compete and they could not have been allowed to take part in the selection test and to be included in the selection list. On behalf of the State of Kerala and the PSC, it was contended that, B.Ed. is a higher qualification than T.T.C. and as in the process of recruitment of Primary Teachers in Government Primary Schools, candidates with B.Ed. degree were allowed to compete and that the Division Bench was right in not upsetting the select list and the appointments of B.Ed. candidates on the undertaking given by the Authorities to suitably amend the recruitment Rules. These arguments advanced on behalf of the State and the PSC did not find favour with the Hon'ble Supreme Court. The argument that B.Ed. qualification is a higher qualification than T.T.C. and therefore B.Ed. candidates are eligible to compete for the post was rejected. The Apex court accepted the argument advanced on behalf of the appellants/T.T.C. holders, that Trained Teachers Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. degree holders, therefore, it cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. It has been further held that, whether for a particular post, the source of recruitment should be from the candidates with T.T.C. qualification or B.Ed. qualification, is a matter of recruitment policy. The

Apex court found logic and justification in the State prescribing qualification for the post of primary teachers as only T.T.C. and not B.Ed.

22.4. Based on Rule 10(a)(ii), this Court went on to hold that the Director of Technical Education had no authority to certify that candidates with B.Tech. Degree in Civil Engineering were also eligible to be considered for the aforesaid post. On the other hand, it is the Government which is the appropriate authority to say so. So long as the Special Rules laying down the qualifications were not amended, it is also not for the Court to say otherwise. Holding so, W.A.No.1246/2021 was dismissed.

23. Likewise in the case in hand also, apart from Ext.P11, there is no **executive or standing order of the Government** recognising Degree or Diploma in engineering as equivalent to the qualification specified for the post notified by Ext.P2. There cannot be any quarrel on the position that as per Rule 10(a)(ii) of the KS&SSR, it is only the Government which can issue such orders. Neither the Director of Technical Education nor any like authority has the power or competence to pass such equivalence orders and therefore the various orders referred to by the party respondents in their counter affidavit cannot come to their rescue in the matter. It is true that Ext.P11 is an order issued by the Government, who is empowered to do so. We have already given our reasons as to why Ext.P11 cannot be relied on. That being the position, we hold that NTC is not a lower qualification of Degree or Diploma in Engineering and acquisition of such a Degree or Diploma does not presuppose the acquisition of NTC. The writ petitioners are entitled to succeed. In the result, the writ appeals are allowed. The impugned judgment is set aside. The writ petitions are allowed, and it is declared that Ext.P11 order cannot have any effect on Ext.P2 notification. It is further declared that Degree or Diploma holders in Engineering without having National Trade Certificate in Electrician/Wireman/Electronics trade as specified in Ext.P2 notification are not eligible to be included in Ext.P8 rank list published pursuant to Ext.P2 notification. The rank list shall be recast and only those candidates included in the list who possess the qualifications prescribed in Ext.P2 notification would be eligible for advice/appointment.

Interlocutory applications, if any pending, shall stand closed.

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