

High Court of Kerala
Justice Raja Vijayaraghavan V
Date of Decision: 22nd November 2023

Sajithabai and Others ... Petitioners

VERSUS

Kerala Water Authority and Others ... Respondents

Legislation and Rules:

Kerala Public Health Engineering Subordinate Service Special Rules, 1966
Kerala Public Health Engineering Service Special Rules, 1960
Kerala State and Subordinate Service Rules, 1958

Subject:

The petitions revolve around the eligibility of Assistant Engineers, who were promoted from the Diploma holders' quota, to be considered for further promotion in the Degree quota within the Kerala Water Authority.

Headnotes:

Promotion Eligibility – Kerala Water Authority Assistant Engineers – Determination of eligibility for further promotion based on entry quota (Degree or Diploma) for Assistant Engineers. Assessment of legal validity of Ext.P12 Final Seniority List including Diploma holders for further promotion. [Para 1-4, 13-14]

Kerala Public Health Engineering Service Rules – Analysis of Special Rules for Kerala Public Health Engineering Subordinate Service and Service Special Rules. Examination of appointment methods and qualification requirements for Assistant Engineers and their impact on promotions. [Para 3-3.10, 11-13]

Seniority and Promotion Dispute – Assistant Engineers in Kerala Water Authority – Conflict between directly recruited Assistant Engineers (Degree quota) and promoted Assistant Engineers (Diploma quota) over seniority and promotion rights. Examination of rules governing promotions to higher posts based on initial recruitment quota. [Para 4-5, 13-14]

Judicial Precedents – Reference to Division Bench and Single Judge decisions in similar cases. Application of established legal principles to the current dispute over promotion and seniority among Assistant Engineers in Kerala Water Authority. [Para 15-17]

Decision – Invalidity of including Diploma quota promotees in Degree quota seniority list for further promotions. Directive to recast Ext.P17 promotion order and seniority lists in accordance with established rules and precedents.

Dismissal of W.P.(C) No. 27817/2023 and allowance of W.P.(C) No. 5277/2023. [Para 18-19]

Referred Cases:

**Chandravathi v. Saji, [2004(2) KLT 320(SC)]
O.P.(KAT) 3719/2012, Kerala High Court
W.P.(C) 14860/2013, Kerala High Court
Representing Advocates:**

For Petitioners: Adv P.C. Sasidharan, Adv Elvin Peter P.J., and others

For Respondents: Adv P.M. Johny (SC for Kerala Water Authority), Adv Georgie Johny, and others THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.11.2023, ALONG WITH WP(C)No.27817/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR” JUDGMENT

The question raised in this writ petition is whether the party respondents who got promotion to the category of Assistant Engineers in the Diploma holders quota are entitled to come to the stream of Assistant Engineers who entered into service in the Degree quota for further promotion. The answer to the above question would determine whether Ext.P12 Final Seniority List, to the extent it includes the Diploma holders, is legal and valid.

2. As common issues are involved, both these writ petitions are taken up and disposed of by a common judgment. The parties and exhibits shall be as described in W.P.(C) No. 5277/2023.

3. Before advertng to the contentions advanced by both sides, it would be apposite to refer to the provisions of the Kerala Public Health Engineering Subordinate Service Special Rules, 1966, and the Kerala Public Health Engineering Service Special Rules, 1960, which stipulates the service conditions of employees in the Subordinate Service as well as the Service Conditions of Senior Officers respectively.

3.1. The Special Rules for Kerala Public Health Engineering Subordinate Service was issued on 01.11.1966, and it provides that the service shall consist of about 43 categories of officers. The relevant categories for the purpose of this case are as under:

Rule 1 Category I - Junior Engineer/Minor Irrigation Supervisor

Rule 1 Category IV - Draftsman/Water Works Inspector/
Drainage Inspector/ Overseer Grade I

3.2. Rule 2 deals with the appointment to the various categories. The relevant portion reads thus:

Category	Method of appointment
(1)	(2)
1. Junior Engineer/Minor Irrigation Supervisor	1. Direct recruitment. and 2. Promotion from category 4. Note:- (i) Direct recruitment and appointment by promotion shall be made in the ratio of 6:4. Diploma holders and Certificate holders shall be promoted in the ratio 3:1. (ii) The above ratio shall be applied to the total cadre strength of Junior Engineers in the Department.

The provision says that the appointment shall be through Direct Recruitment and Promotion from category 4, and it shall be in a ratio of 6:4.

The Diploma and Certificate Holders are to be promoted in a ratio of 3:1.

3.3. The Note (vii) to Rule 2 details the manner of making the

appointment. The said Rule reads thus:

Note: (vii) Subject to the provisions in item (i) in making appointment to the category by direct recruitment, appointment to 54% of the post shall

be made by direct recruitment of candidates from the open market and 6% by direct recruitment from among Draftsman/Water Works Inspector/Drainage Inspector/Overseer Grade I or II or Works Superintendents Grades I and II or Clerks in the Public Health Engineering Department of the Government of Kerala.

It says that while making appointments to the category of Assistant Engineer by direct recruitment, 54% of the post shall be made by direct recruitment of candidates from the open market and 6% by direct recruitment from among Draftsmen/Water Works Inspector/Drainage Inspector/Overseers Grade I and II. The qualification laid down for the 6% quota earmarked for direct recruitment of in-service candidates is also a degree.

3.4. Rule 6 deals with other qualifications. It says that no person shall be eligible for appointment to the category specified in Column No.1 of the schedule to these Rules by the method mentioned in Column No. 2 unless he possesses the qualifications prescribed in the corresponding entry in Column No.3.

3.5. The schedule referred to in Rule 6 reads as under:

SCHEDULE

(Referred to in Rule 6)

Category	Method of appointment	Qualification
Junior Engineer/ Minor Irrigation Supervisor	Direct recruitment	Must possess any of the degrees of Diplomas specified in item (i) on in Section A in item (ii) of the Annexure.

	Promotion	<p>1. (a) Must possess any of the diplomas specified in Section B item (ii) of the Annexure and must have rendered service under Government for a minimum period of two years; or</p> <p>(b) Must possess any of the certificates specified in Section A of item (iii) of the Annexure and must have rendered service under Government for a minimum period of five years of which not less than two years should be in the category of Overseer Grade I. Note:- Work Establishment or Municipal Service shall be counted in computing the five years' service, provide that provisional or emergency service shall not be so counted.</p> <p>2. Must possess the minimum general educational qualification of S.S.L.C Standard.</p> <p>Note:- (i) Vacancies reserved to be filled by promotion shall be allocated between those possessing the qualifications specified in clauses (a) and (b) in item (1) above in the ratio of 3:2.</p>
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		<p>(ii) A senior diploma holder shall not be superseded by a junior certificate holder for promotion in order to maintain the 3:2 ratio.</p> <p>(iii) A person who obtains any of the diplomas mentioned in Section B in item (ii) of the Annexure to the Rules, after his appointment as Overseer Grade I/Draftsman Grade I shall be eligible for promotion as Junior Engineer against the quota allotted to those possessing the same qualification only after the claims of all Overseers Grade I/Draftsman Grade I who on the date of his obtaining the diploma, possessed the qualifications mentioned in clause (a) of item (i) above have been considered provided however that this shall not be detrimental to his interest if he is likely to get an earlier chance for promotion in the quota allotted for Certificate holders.</p> <p>(iv) Overseers Grade I/Draftsman Grade I, possessing the qualifications of Smt. Maistry's Course or Civil Maistry's Course or Section Superintendent's Course and who have a minimum service of 10 years under Government of which not less than 7 years should be as Overseer Grade I/Draftsman Grade I shall be considered for promotion as Junior Engineer in the quota allotted for Certificate holders provided they possess the minimum general educational qualification of S.S.L.C Standard.</p>
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3.6. To get more clarity regarding the qualification, one may have to advert to the relevant portion in the Annexure to the Rules.

ANNEXURE

(i) Degree in Engineering

B.Sc. Degree in Engineering (Civil Mechanical or Chemical) of the Kerala University, B.E. Degree (Civil or Mechanical or Chemical) of the Madras University or any other qualification recognised as equivalent thereto. Diploma in Civil Engineering or Mechanical Engineering of the

College of Engineering, Guindy, which was abolished in 1945, will be treated as equivalent to a degree.

(ii) Diploma in Engineering

SECTION A

- (a) Associate membership diploma of the Institution of Engineers, India, in Civil or Mechanical or Chemical Engineering or any other Diploma recognised as equivalent thereto.
- (b) Pass in Sections A & B of the Associate Membership Examination of the Institution of Engineers, India, in Civil or Mechanical or Chemical Engineering.

SECTION B

- (a) Upper Subordinate Diploma of the College of Engineering, Guindy.
- (b) Diploma in Civil or Mechanical Engineering of the Travancore (now Kerala) University, or Diploma recognized by Government as equivalent thereto.
- (c) Lower Subordinate Diploma of the College of Engineering, Guindy.
- (d) Licentiate in Civil or Mechanical Engineering from the Technical Institute at Kozhikode, Trichur, Kalamassery or other equal courses.

(iii) Certificate in Engineering

SECTION A

- (a) S.M.T. (Sri Mulam Technical Institute) Overseer's course (2 years course)
- (b) Draftsman's Course, College of Engineering, Guindy.
- (c) Group Certificates under M.G.T.E. (Madras Government Technical Examination) or K.G.T.E.

3.7. The qualification laid down for appointment to the post of Junior Engineer for direct recruitment is Degree or Diploma as specified in

Item (i) or in Section A of item (ii) in the Annexure. The qualification laid down for promotion to the post of Junior Engineer is a Diploma in Engineering as included in Section B.

3.8. A reading of Ext.P4 Special Rules would disclose that in making an appointments to the category of Assistant Engineer by direct recruitment, 54% of the post shall be made by direct recruitment of candidates from the open market and 6% by direct recruitment from among Draftsman/Water Works Inspector/Drainage Inspector/Overseers Group I and II. The qualification laid down for the 6% quota earmarked for direct recruitment of in-service candidates is also Degree. This is because the Diploma laid down for direct recruitment has become obsolete since no university or institutions are conducting the said course, and the said Diploma is equivalent to a degree in Engineering.

3.9. The Public Service Commission, while issuing notification inviting applications for direct recruitment to the post of Assistant Engineer, had also invited applications from qualified in-service candidates possessing the qualification of Degree in Engineering for direct recruitment in the 6% quota earmarked for departmental candidates.

3.10. It appears that by order dated 5.12.1978 in terms of Ext.P6

Government Order, the category of Junior Engineer was redesignated as

Assistant Engineer and the category of Assistant Engineer was redesignated as Assistant Executive Engineer without any change in pay scale, jurisdiction, power and responsibilities.

3.11. Rule 4 of the Kerala Public Health Engineering Service Special Rules lays down the qualification and method of appointment to the post of Executive

Engineer and Assistant Engineer, which has been redesignated as Assistant Executive Engineer. The said provision reads as under:

“4. Promotion as Executive and Assistant Engineers -

(a) A person who obtains the A.M.I.E. (India) Diploma after appointment as Assistant Engineer shall be eligible for promotion as Executive Engineer only after the claims of all Assistant Engineers who on the date of his obtaining the A.M.I.E. (India) Diploma, possessed the qualification mentioned in item (i) in the Annexure has been considered.

(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 qualification 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.I.M.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.”

3.12. If a Junior Engineer re-designated as Assistant Engineer and a

Mechanical Superintendent, who falls under Category I and II of the Kerala Public Health Engineering Subordinate Service, acquire qualifications of Degree in Engineering while holding the post of Assistant Engineer and Mechanical

Superintendent, they shall be eligible for promotion as Assistant Executive Engineer against the quota earmarked for degree holders after the promotion of all Assistant Engineers, on the date of their acquiring the qualification have been promoted. The Rule further says that it would be open to those Assistant Engineers and Mechanical Superintendents to continue among those possessing the diploma qualification and claim promotion against the quota allotted to them. In other words, a person who, while holding the post of Assistant

Engineer and Mechanical Engineer, passes Sections A and B of the A.M.I.E. (India) Examination he/she shall be eligible for promotion as Assistant Engineer against the quota allotted for those possessing the qualification 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.I.M.E. (India) Examination, possessed the qualifications mentioned in item (i) of the Annexure have been considered.

4. In the light of the above rules, the contentions raised by the petitioners as well as the respondents can be appreciated.

4.1. The petitioners are individuals who were included in the rank list published by the Public Service Commission (PSC) for direct recruitment to the post of Assistant Engineer from the open market in the Kerala Water Authority (KWA).

4.2. The respondents 4 to 10, were appointed as Draftsman Group I in the Kerala Water Authority. At the time of joining the service, some of them had the qualification of Diploma in Engineering and B.Tech Degree in

Engineering. After entering service as Draftsman Grade I in the KWA, the rest of them acquired a B.Tech Degree.

4.3. Going by the Rules, insofar as in-service candidates like respondents 4 to 10 are concerned, by virtue of their possession of qualification of Diploma in Engineering, they are entitled to seek appointment to the category of Assistant Engineer by promotion in the quota earmarked for Overseers, and they can also seek for direct recruitment through the Public Service Commission to the category of Assistant Engineer in the 6% out of 60% for direct recruitment if they possess Degree in Engineering.

4.4. A notification was invited by the Public Service Commission inviting applications for direct recruitment to the post of Assistant Engineer. Ext.P1 ranked list was published consequent thereto. The PSC had also invited applications for qualified in-service candidates possessing a Degree in Engineering qualification for direct recruitment in the 6% quota earmarked for departmental candidates.

4.5. Respondents 4 to 10 submitted their applications for direct recruitment in the 6% quota earmarked for departmental candidates. After completing the selection process, the PSC published a ranked list for appointment of departmental candidates as Assistant Engineer in the 6% quota earmarked for them with effect from 21/03/2017 as borne out from Ext.P7. It is stated that respondents 4 to 9 have been included as Rank Nos. 26, 31, 32, 11, 12 and 3. It is stated that though respondents 4 to 9 were included in Ext.P7 rank list for direct recruitment to the post of Assistant Engineers under the Departmental Quota on the basis of their possession of a Degree in Engineering, they declined appointment under the Direct Recruitment Quota,

since they had already been promoted as Assistant Engineer on promotion by virtue of their possession of Diploma in Engineering in the 4% quota earmarked for promotion. The 10th respondent was also appointed later as Assistant Engineer by promotion. It is stated that respondents 4 to 10, who were appointed on promotion as Assistant Engineers, are entitled to get seniority under Rule 27 (a) of the Kerala State and Subordinate Service Rules, 1958, and they will continue to be Assistant Engineers falling under the Diploma Quota.

4.6. The petitioner contends that insofar as the petitioner and other similarly situated persons are concerned, as they were directly recruited as Assistant Engineers for which Degree in Engineering has been prescribed as the qualification on the basis of the advice by the Public Service Commission, they are entitled to get seniority under Rule 27 (c) of the Kerala State and Subordinate Service Rules, 1958 with effect from the date of their advice.

4.7. It is stated that the 3rd respondent, as per proceedings dated 31/12/2021, published Ext.P8 provisional seniority list of Assistant Engineers, Degree quota (Direct and Departmental) and the petitioners have been included in the same. It is stated that in Exhibit P8, the Assistant Engineers who were appointed on the advice of the PSC from the open market and the Departmental Quota candidates who were appointed as Assistant Engineers on the basis of the advice of the PSC in the 6% quota were included.

4.8. The respondents have also issued Exhibit P9 provisional seniority list of Assistant Engineers (Diploma and Certificate) and in the said list, the respondents 4 to 10 have been included.

4.9. The petitioners contend that respondents 4 to 10 acquired the Degree in Engineering qualification while continuing as Draftsman Grade-I. They got appointed as Assistant Engineer by promotion under the Diploma quota. Relying on the Special Rules, the petitioners assert that respondents 4 to 10 are not entitled to exercise an option to come over to the Degree quota for promotion to the category of Assistant Engineer.

4.10. The petitioners contend that the 3rd respondent by Ext.P12 proceedings has published the final seniority list of Assistant Engineers in the Degree quota and has included respondents 4 to 10 in the seniority list of Assistant Engineers possessing Degree qualification. It is stated that the said seniority list is in respect of persons who were directly recruited from the open market and from Departmental Quota on the strength of their Degree qualification. It is stated that the petitioners have been placed juniors to respondents 4 to 10 in Ext.P12.

4.11. The petitioners contend that they have objected to the inclusion of respondents 4 to 10 in Ext.P12 seniority list by submitting Exts.P14 and P15 representations. It is further stated that the 4th respondent has now been included in Ext.P16 select list for promotion to the post of Assistant Executive Engineer in the Degree Quota. Immediately thereafter, Ext.P17 promotion order has been issued promoting the 4th respondent as Assistant Executive Engineer in the Degree Quota. Thereafter, Ext.P18 select list has been issued, including respondents 5 to 9 except 6th respondent. This, according to the petitioners, is illegal.

5. It is on these assertions that W.P.(C) No. 5277/2023 has been filed

seeking the following reliefs.

- (1) Issue a writ of certiorari calling for the records leading to Exhibit-P12 final seniority and quash the same to the extent it includes respondents 4 to 10 in the said seniority list;
- 1) (a) To issue a writ of certiorari calling for the records leading to Ext.P16 and quash the same to the extent it included the 4th respondent in the select list in Ext.P16 select list and Ext.P17 promotion order;
- (1)(b) To issue a writ of certiorari calling for the records leading to Ext.P18 and quash the same to the extent it included respondents 5 to 9 therein.
- (ii) Issue a writ of mandamus or any other writ direction or order, directing respondents 1 to 3 to include respondents 4 to 10 in Ext.P13 seniority list of promotee Assistant Engineers.
- (iii) Declare that respondents 4 to 10 are not entitled to be included in Ext.P12 final seniority list of directly recruited Assistant Engineers and they are only entitled to be included in Ext.P13 seniority list of promotee Assistant Engineers.
- (iii)(a) To issue a writ of mandamus or any other appropriate writ, order or direction directing respondents 1 to 3 to recast Ext.P17 promotion order to the extent it promoted the 4th respondent as Assistant Executive Engineer;
- (iii) (b) to declare that the inclusion of respondents 4 to 10 in Ext.P16, P17 and P18 are illegal and void;

6. The respondents 5, 7, 8 and 9 have filed W.P.(C) No. 27817/2023, seeking the following reliefs:

- i) issue a writ of mandamus or other appropriate writ, order or direction directing the respondent Nos.1 and 2 to operate Ext.P1 select list promotion to the post of Assistant Executive Engineer.
- ii) issue such other writ, order or direction directing the respondent Nos.1 and 2 not to make any promotion to the post of

Assistant Executive Engineer overlooking or ignoring the select list evidenced by Ext.P1 and orders of seniority in the select list.

iii) to declare that when promotions are to be effected to a selection post, it should be made based on the select list and not based on the seniority list in the feeder category.

7. In the above writ petition, they contend that they are holding the post of Assistant Engineer in the Kerala Water Authority and the next promotional post is that of Assistant Executive Engineer. They state that the DPC has published a list including the petitioners in the select list of Assistant Engineers fit for promotion to the post of Assistant Executive Engineers for the year 2023 in the Degree Quota. It is stated that the promotion is not solely based on seniority but on the basis of eligibility and suitability to be included in the select list. It is stated that Bindu S., the 2nd petitioner in W.P.(C) No. 5277/2023, had availed Leave Without Allowance for a period of 10 years and that period has been excluded as Qualifying Service in terms of the rules. It is stated that Smt. Bindu, who has been arrayed as the 4th respondent, cannot have any claim over the petitioners. It is further stated that Sri. Anoop V. S. cannot have a better claim for promotion as had entered service much after the appointment of the petitioners. The contention of the petitioners is that when a select list is prepared, the seniority list in the feeder category loses its relevance and the promotion has to be made based on the seniority list rather than the seniority position obtained in the seniority list in the feeder category.

8. A counter affidavit has been filed by the respondents 1 to 3. It is stated that the 1st petitioner was provisionally appointed on 26.11.2017 and has joined service as Assistant Engineer in the Kerala Water Authority through PSC under the Degree Quota. The 2nd petitioner joined the service

of the KWA on 16.3.2005. After joining the service, she applied for LWA for five years with effect from 28.3.2005. On the basis of her application, she was extended leave for a further period of five years retrospectively from 20.4.2005. It is stated that the respondents 4 to 9 have joined the KWA as Draftsman Grade I through PSC and under the compassionate scheme during the period from 2001-2005.

Ext.P12 final seniority list under the Degree Quota was published on 20.4.2022.

Later, Ext.P12 was placed before the DPC and the select list of Assistant Engineers for the year 2022 was published on 12.12.2022. The 4th respondent was included under the Degree Quota and she has been promoted as Assistant Executive Engineer as per Ext.R1(e) promotion order. It is stated that the conditions of the Kerala Public Health Engineering Subordinate Service Rules have been strictly complied with by the respondents. As the respondents 4 to 10 are graduates, there is no impediment in including them in the list for promotion. It is further stated that Ext.R1(g) enables the respondents 4 to 10 to change over the quota from Diploma to Graduate if they had acquired Degree qualification. However, that can only be after the claims of all those who on the date of passing the examination, possess a degree qualification has been considered.

9. In the counter affidavit filed by the 4th respondent, it is stated that she was directly recruited to the post of Draftsman Grade I on 4.10.2001 and was promoted to the post of Assistant Engineer on 3.10.2015. It is stated that the combined seniority list of Assistant Engineers to the Degree quota (Direct, Departmental and Promotee) was published on 20.4.2022 and the same has not been challenged. It is stated that when the 4th respondent was directly recruited to the cadre of Draftsman Grade I and opted the graduate

quota for promotion, the petitioners were not in the service of the KWA. It is further stated that only after granting seniority to the degree holders in service that the appointees in the service who opted for Degree quota shall be considered. The promotion to the post of Assistant Executive Engineer is not solely based on seniority as it is a selection post. She was considered for promotion to the post of Assistant Executive Engineer in the DPC held on 1.8.2022.

10. In the counter affidavit filed by respondents 5, 7, 8 and 9, it is stated that the inclusion of the respondents in the select list is not under challenge. It is further stated that the 5th respondent was promoted on 3.10.2015, the 7th respondent on 8.11.2016 and respondents 8 and 9 on 18.11.2016 whereas the petitioner was directly recruited only much later. In that view of the matter, the petitioner is not entitled to claim seniority in the cadre of Assistant Engineer over the respondents.

11. I have heard the submissions of Sri. Elvin Peter, the learned counsel appearing for the petitioner in W.P.(C) No.5277/2023, Sri. P.C.Sasidharan, the learned counsel appearing for the petitioners in W.P.(C) No. 27817/2023 and Sri.Georgie Johny, the learned counsel appearing for the KWA. As the decision to be taken in W.P.(C) No. 5277/2023 would decide the issues raised in W.P.(C) No. 27817/2023, both these matters are disposed of by a common judgment.

12. I have adverted to the Kerala Public Health Engineering Subordinate Special Rules, 1966, and the Kerala Public Health Engineering Service Special Rules, 1960, which lays down the conditions of service applicable to the Kerala Water Authority.

13. Going by Exhibits P4 and P5 Special Rules, Assistant Engineers within the Degree Quota and Diploma Quota are categorized distinctly. Assistant Engineers are appointed through two primary methods: direct recruitment from the open market and internal recruitment of candidates holding an Engineering Degree, as well as promotion from Draftsman Grade 1 positions for those with an Engineering Diploma. The petitioners in this case were directly recruited as Assistant Engineers from the open market, following recommendations by the PSC. Conversely, Respondents 4 to 9 were promoted to Assistant Engineer positions under the Diploma quota. It is a matter of record that respondents 4 to 10, while serving as Overseers in the KWA, responded to a PSC notification and were included in the Ext.P8 rank list for direct recruitment. However, they opted not to pursue direct recruitment as Assistant Engineers, presumably due to the advantages and benefits that such a course offered to them.

14. Rule 4 of the Ext.P5 State Service Special Rules specifies that promotions from Assistant Engineer to Assistant Executive Engineer should maintain a 4:1 ratio between those with Degree qualifications and those with Diploma/Certificate qualifications. Consequently, 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. Additionally, it is to be noted that Respondents 4 to 10 obtained their Degree qualifications while serving as Draftsmen, not as Assistant Engineers. While in the Draftsman role, they sought promotion to Assistant Engineer within the 4% quota, holding a Diploma. Under Rule 4 of Ext.P4 Special Rules, an Assistant Engineer who acquires a Degree qualification

can opt for promotion to Assistant Executive Engineer under the Degree quota. However, such a candidate would be ranked as the most junior among Degree holder Assistant Engineers as of the date they obtained their Degree. They are also eligible for promotion under the Diploma quota. However, the benefits of Rule 4 are exclusively available to Assistant Engineers who acquired their Degree while serving in that capacity. As mentioned earlier, Respondents 1 to 4 earned their Engineering Degrees while working as Draftsmen. Therefore, they could invoke the Note to Rule 2 of Ext.P4 Special Rules, seeking direct recruitment as

Assistant Engineers in the 6% quota reserved for them or promotion under the

Diploma quota. However, for obvious reasons, 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.

Consequently, including Respondents 4 to 10 in the Ext.P12 final seniority list of Assistant Engineers for promotion to Assistant Executive Engineer cannot be said to be legal.

15. I find that an identical issue had come up for consideration before a Division Bench of this Court in O.P.(KAT) 3719/2012. After considering the principles laid down in **Chandravathi v. Saji**¹, it was held as follows in paragraphs Nos. 11 to 13 of the judgment.

11. Then coming to the factual situation, as already stated above, having taken the benefit of proviso to Rule 5(b) of the Special Rules, whether the 1st respondent could come back to seniority list of Assistant Executive Engineers as a degree holder is the question to be considered. Note 2 of Rule 5(b) clearly indicates, it is a non obstante clause which overrides all other provisions even if they are

¹ [2004 (2) KLT 320]

beneficial to the parties. In this case, by virtue of Note 2 of Rule 5(b) definitely the Tribunal could not have taken aid of Rule 28(a) of K.S. & S.S.R., as Special Rules override the General Rules and going by the Clause in Note 2 itself which is already stated above. From paragraph 7 onwards Tribunal in its order proceeded to hold that Rule 28(a) of K.S. & S.S.R. has to be applied. Thus, if the benefit available to a person as per Rule 28(a) is applied and allowed, the applicant has the right to come back in the seniority list of degree holders as Assistant Executive Engineer. By doing this, serial numbers from 13 to 51 at Annexure A7 would be adjusted as the applicant comes to the place of serial number 13. None of these affected parties were made parties to the proceedings.

By virtue of law laid down by the Apex Court in the case of Arun Tiwari's case(supra) the application before KAT is not maintainable for non-joinder of necessary parties. All along, the State was contending that Rule 5(b) benefit cannot be continued to apply to the case of the applicant even for the promotion of Executive Engineer and Rule 5(a) alone has to be applied and no other rules were applicable. In the absence of application of Rule 28(a) of General Rules, one has to understand the position and seniority of the applicant only from reading of Rule 5 of General Rules.

12. Learned counsel for the 1st respondent categorically contends that Rule 5 starts with the Head Note "Promotion as Executive and Assistant Executive Engineers". Therefore, proviso at Rule 5(b) is also applicable to Rule 5(a). Reading of the entire Rule 5 clearly indicates, if 1st respondent is promoted to the post of Executive Engineer as the junior most Assistant Executive Engineer in the said list. The very fact that he did not acquire a degree as

Assistant Executive Engineer much prior to becoming an Assistant Executive Engineer would exclude the case of the applicant from Rule 5(a). Having taken the benefit under Rule 5(b) his seniority has to be maintained in the cadre of Assistant Executive Engineers only as diploma holder. When once his seniority is continued as diploma holder in the cadre of Assistant Executive Engineer, his next promotion also has to be considered depending upon his seniority and availability of vacancy for diploma holders in the cadre of

Executive Engineers. Just because his chances would be bleak by virtue of ratio of 5% alone being demarcated for promotion to the post of Executive Engineer from the cadre of Assistant Executive Engineers(diploma holders), he cannot be allowed to leave his seniority of Assistant Executive Engineer as a diploma holder and chooses to come to the seniority of Assistant Executive Engineer(degree holder). The argument of learned counsel for the 1 st respondent that he was a degree holder irrespective of taking benefit by virtue of proviso is not acceptable to us as similar provision to Rule 5(a) was consciously omitted by the rule maker.

13. The Special Rules was confirmed as legal by the judgment of Apex Court in the case of Chandravathi v. Saji [2004(2) KLT 320(SC)]. Therefore, there is no question of applying any other rule other than Rule 5(a) and (b) of Special Rules to the facts of the present case. If his case is excluded from Rule 5(a), the only rule available is Rule 5(b) along with Note 2. As already stated above, the application of Note 2 does not permit the applicant to claim his seniority as a degree holder, therefore his seniority for next promotion as Executive Engineer has to be only from the diploma holder quota.

16. The Division Bench has held that a person having been appointed to a higher category under the Diploma Quota cannot thereafter exercise any option to switch over to the Degree quota for further promotion.

17. An identical view was taken by a learned Single Judge of this Court in judgment dated 14.10.2019 in W.P.(C) 14860/2013 wherein it was held that having availed the benefit of promotion under the Diploma quota as an Assistant Executive Engineer, the person concerned cannot thereafter claim promotion as Executive Engineer in the Degree quota.

18. In that view of the matter, the action on the part of the 3rd respondent by including respondents 4 to 10 in Ext.P12 final seniority list of

directly recruited Assistant Engineers is clearly illegal. I hold that the inclusion of respondents 5 to 9 in Ext.P18 select list would go against the rules.

19. Resultantly, these writ petitions are ordered and the following

directions are issued:

- a) W.P.(C) No. 5277/2023 will stand allowed. Ext.P12, P16, P17 and P18 are quashed to the extent it included respondents 4 to 10 in the seniority list and in the select list and in promoting the 4th respondent.
- b) I hold that respondents 4 to 10 are not entitled to be included in Ext.P12 final seniority list, which is exclusively meant for Assistant Engineers in the Degree Quota (Direct Departmental and Promotee).
- c) There will be a direction to respondents 1 to 3 to recast and rework Ext.P17 promotion order by excluding the 4th respondent.
- d) W.P.(C) No. 27817/2023 will stand dismissed.