



KERALA STATE ELECTRICITY BOARD LTD.

(Incorporated under the Indian Companies Act, 1956)
CIN U40100KL2011SGC027424

Vydyuthi Bhavanam, Pattom, Thiruvananthapuram, Kerala-695004
Phone No 0471 2448948, FAX No 0471 2441361
Web: www.kseb.in e-mail: cehrm@kseb.in

ABSTRACT

Compliance of the direction of the Honorable High Court of Kerala dated 10.09.2021 in Contempt of Court Cases No. 853/2021, 878 /2021 & 885 /2021 in WA No.1099/2020 and connected Writ Appeals – Regularisation and absorption of remaining 124 posts of Assistant Engineers (Ele.) temporarily upgraded as Assistant Executive Engineers (Ele.)- Appointment of 87 candidates advised by PSC to the cadre of Assistant Engineers (Ele) under 40% quota – Sanctioned – Orders issued

CORPORATE OFFICE (HRM)

B.O (FTD) No. 661/2021 (EB1(a)/AE(Ele)/CCC/2021) dated Tvpm, 17.09.2021

- Read:-
1. BO (FM) No. 623/2011/CE(HRM)GENL/2/AE-AEE(E) 2011 dated 26.02.2011.
 2. GO (MS) 4/2014/PD dated 13.02.2014.
 3. Proceedings No. EB1/AE/AEE/UG/REGN/2015 Dated 30.05.2015 of the Chief Engineer (HRM).
 4. B O (FTD) No.959/2019(EB 1/AE(Ele.)/40%/2019) dated 26.12.2019.
 5. Letter No. EB1/AE(Ele.)/WA No.1099 of 2020/ 2020-21 dated 24.08.2020 of the Director (Distribution, IT& HRM).
 6. Letter No.PWR-A2/150/2021-POWER dated 27.08.2021 of the Principal Secretary, Power (A) Department.
 7. Note No.EB1(a)/AE(Ele)/CCC/2021/254 dated 14.09.2021 of the Chief Engineer (HRM) to the Full Time Directors (Agenda Item No. 78/9/21).

ORDER

The Contempt of Court Cases No. 853/2021, 878 /2021 & 885 /2021 are filed by certain candidates figured in the KPSC advice list No.RIB(2)384/17/GW dated 14.09.2020 for the appointment to the cadre of Assistant Engineer (Ele) in KSEBL. The above contempt petitions are filed alleging non-compliance of common judgment dated 14.09.2020 in Writ Appeal No. 1099/2020 and connected cases (WA Nos. 1104, 1108, 1110, 1191, 1192, 1193 & 1194/2020). The Chairman and Managing Director, the Secretary and the Chief Engineer (HRM), KSEBL, are arraigned as parties in these Contempt Petitions.

The last KPSC rank list for the appointment of Assistant Engineers (Ele.) under 40% was published on 30.12.2016 and the validity of the said rank list was expired on 29.12.2019. All the vacancies available under 40% quota during the tenure of the rank list were reported to the KPSC in time and all of them were given appointment before the expiry of the said rank list.

However, just before the expiry of the rank list, the Board vide Order read as 4th paper above had decided to report 162 vacancies in the cadre of Assistant Engineer (Ele.) for facilitating appointment of candidates figured in the above ranked list by temporarily converting as many numbers from the existing vacancies in the 20% ITI quota since no more vacancies were available in the 40% Quota earmarked for open market candidates at that time. Accordingly these 162 vacancies were reported to the KPSC on 26.12.2019.

Aggrieved by this, number of Writ Petitions were filed before the Honourable High Court of Kerala challenging the decision of the Board to report 162 vacancies in the cadre of Assistant Engineer (Ele.) for appointment of candidates from rank list of 40% direct recruitment quota by temporarily converting as many numbers from the existing vacancies in the 20% ITI quota.

The Honourable Court in the judgment dated 28.07.2020 in WP(C) No. 35921/2019 and connected cases held that at any rate conversion of the vacancies available to ITI holders and reporting such vacancies to the PSC for the purpose of appointment in the 40% quota are illegal. It was also observed that the deduction or adjustment of their vacancies for the purpose of appointment through direct recruitment under 40% quota is done in gross violation of the very method of appointment prescribed in the Board Orders which is impermissible and in violation of the fundamental right of the petitioners guaranteed under Articles 14 and 16 of the Constitution of India. By observing the above the Honourable High Court set aside Board Order dated 26.12.2019 (Read - 4) to the extent it reported the vacancies after converting vacancies in the 20% quota.

The above decision of the Honourable Single Bench was challenged by the KSEBL in Writ Appeal No. 1099 of 2020. The counsel appeared on behalf of the KSEBL, on instructions, submitted before the Honourable Court that the number of vacancies available under the 40% quota are only 73 and the remaining 89 vacancies in excess in the cadre of Assistant Engineers under 40% quota will be adjusted against the vacancies that will arise in future and will be filled by 31.05.2021. The Counsel further submitted that the appointment of Assistant Engineers are urgently required on account of various administrative exigencies and therefore the said 89 posts will be treated as supernumerary until the vacancies in the cadre arise and could be adjusted as and when arises.

The Honourable High Court in its interim order dated 19.08.2020 in WA No. 1099 of 2020 and connected cases upheld the decision of the Single Bench that the 20% quota stipulated for ITI holders cannot be converted to direct recruitment and further ordered that,

"3. Taking into account all these facts, we direct the KPSC to issue advice in respect of the 162 vacancies of Assistant Engineers reported by the Board and it shall be open for the Board to appoint them in the existing 40% quota and future vacancies. Until such time, the excess appointments over and above the cadre strength shall be treated as supernumerary. The Board shall file an affidavit

before this Court that the 89 posts to which the advice is made shall be treated as supernumerary under the 40% direct recruitment quota and the 20% quota will not be touched and would be filled up by ITI holders. The list of candidates who is to be promoted under the 20% quota shall also be prepared forthwith and the promotions be effected accordingly."

As per the specific directions of the then Director (Distribution, IT& HRM) vide letter read as 5th paper to the Legal Liaison Officer, KSEBL filed an affidavit dated 25.08.2020 before the Honourable High Court assuring the appointment of 75 candidates against the vacancies then available and the appointment to the remaining 87 candidates by creating supernumerary posts and their regularisation by 31.05.2021 itself against vacancies in 40% direct recruitment quota. Subsequently, the Honourable Division Bench in its judgment dated 14.09.2020 disposed of the writ appeals making the interim order dated 19.08.2020 absolute by recording the statement/ undertaking in the affidavit dated 25.08.2020. The relevant part of the affidavit as recorded in the said judgment is reproduced below:

"4. The vacancies available in 40% quota of Assistant Engineer (Electrical) as on 21.08.2020 is 75. The board had already reported 162 vacancies to PSC on 26.12.2019 anticipating enough number of vacancies during the year 2020 and also for the reason that the existing rank list was to expire on 29.12.2019 and a fresh rank list will be available only after 4 or 5 years. The balance 87 candidates can be appointed by creating supernumerary posts and all of them can be regularized before 31.05.2021 as and when vacancies arise in 40% direct recruitment quota. It is further submitted that the KSEBL will report vacancies that arise in future, in 40% quota through KPSC only after fully accommodating all the aforementioned 87 candidates. It is also submitted that while appointing candidates advised by PSC, vacancies earmarked for service quota will not be disturbed."

Based on the judgment, 75 candidates out of 162 candidates advised by the KPSC were given appointment against the available vacancies (ie., the vacancies that occurred after the expiry of the rank list) under 40 % quota as per the written direction of the then Director (Distribution, IT& HRM). As the remaining 87 candidates have not been given appointment by creating supernumerary posts, Contempt petitions No. 885 /2021, 878 /2021 & 853 /2021 are filed alleging non-compliance of the judgment dated 14.09.2020 of the Honourable Division Bench in WA No 1099/2020 and connected cases.

In the Contempt Petition No. 853/2021 filed by Smt. Abhila J R, the issue of non-compliance of the Government order dated 13.02.2014 read as 2nd paper pertaining to the temporary upgradation of Assistant Engineers (Ele.) as Assistant Executive Engineer (Ele.) is also highlighted. The petitioner contended that the regularization of remaining temporary upgraded posts, out of 161 posts upgraded temporarily as per the said Government Order dated 13.02.2014, will result in the restoration of 108 places back to the cadre of Assistant Engineers that can be utilized for their appointment.

In view of the pendency of the contempt petitions and considering that the affidavit assuring creation of supernumerary posts, which also involves additional financial commitment, was submitted before the Honourable High Court without obtaining the prior approval of the Board of Directors of KSEBL and the mandatory approval from the Government as required under Article 56(g) of the Articles of Association of KSEBL, the matter regarding creation of supernumerary posts was taken up with the Government.

However, the Government vide letter read as 6th paper have intimated that the Government have neither impleaded as a party in the said Writ Appeal No. 1099/2020 nor given any instructions or assurances on this subject. The Government have deplored the attempts from the part of the company authorities to obtain post-facto sanction from the Government to avoid the Contempt of Court proceedings after filing affidavits beyond their powers as unacceptable and should be avoided in future. It is further directed to conduct an enquiry at the appropriate levels to ascertain the circumstances that lead to the filing of affidavit before the Honourable High Court regarding the creation of supernumerary posts and to initiate stringent action against those who are found guilty. It is also directed to take further action pertaining to the appointment of the candidates advised by the KPSC in accordance with the orders of the Honourable High Court subject to the rules in vogue. Accordingly, the Chairman and Managing Director has initiated such an enquiry to fix responsibility through the Legal Adviser & Disciplinary Enquiry Officer, KSEBL.

In the meantime an affidavit was filed by the Board before the Honourable High Court elaborating the difficulties like the approval of Government and additional financial commitment involved in the creation of supernumerary posts. In this affidavit, restoring the 124 places of Assistant Engineers out of 161 that were temporarily upgraded as Assistant Executive Engineers as per Government Order dated 13.02.2014 was submitted as an alternate proposal for giving appointment to the remaining candidates advised by the KPSC instead of creating supernumerary posts.

The Board vide order read as 1st paper had decided to upgrade 167 places of Assistant Engineers in Corporate Offices, Chief Engineers Offices and Circle Offices to the cadre of Assistant Executive Engineers in-order to address the career stagnation in getting promotion to the Assistant Engineers recruited through KPSC during the period from August 1997 to November 2000, subject to the sanction from the Government. But the Government vide Government Order read paper 2nd accorded sanction only for **temporary up- gradation** of 167 Assistant Engineers to Assistant Executive Engineers treating the same as personal, subject to certain stringent conditions. Some of the prominent among them are:

Condition iv) *Temporary Up-gradation of 167 Assistant Engineers to Assistant Executive Engineers shall be permitted till their retirement or promotion to the next higher post whichever is earlier and absorbed automatically in the arising Assistant Executive Engineer vacancy till the 167 personal up-gradation are covered. No more appointment of Assistant Engineers in the 167 posts so upgraded will take place until*

these 167 posts are adjusted and no more promotion to the post of Assistant Executive Engineer will take place until the 167 temporary up-gradation is adjusted.

Condition vi) Every year the Board shall ensure the status of ratio of Assistant Engineer to Assistant Executive Engineer and intimate the same to Government until the original ratio of Assistant Engineer and Assistant Executive Engineer is restored.

Even though the Government had accorded sanction to temporarily upgrade 167 places, the Board temporarily promoted and posted only 161 persons against the temporarily upgraded places from the cadre of Assistant Engineer (Ele). Subsequently, in compliance with the condition (iv) of the Government Order dated 13.2.2014, 37 places, out of 161 places temporarily up-graded, were restored back in the cadre of Assistant Engineer in the year 2015 as per Proceedings read as 2nd paper. On restoration of 37 places, the quota wise cadre strength of Assistant Engineer (Ele.) are as shown below:

Quota	Original Cadre Strength	No of places Temporary Upgraded	No. of places restored	Cadre Strength after restoration	Remaining places to be restored
	(A)	(B)	(C)	(A-B+C)	(B-C)
40% (Direct recruitment through KPSC)	918	107	11	822	96
10% (Recruitment of in-service candidates through KPSC)	230	38	26	218	12
30% (Promotion from Sub-Engineer having Diploma)	688	16	Nil	672	16
20% (Promotion from Sub-Engineer having ITI)	459	Nil	Nil	459	Nil
TOTAL	2295	161	37	2171	124

As per the above Government Order dated 13.02.2014, the remaining **124 [161-37]** temporarily upgraded places have also to be restored in the cadre of Assistant Engineer (Ele) by regularizing the same in the cadre of Assistant Executive Engineer (Ele) against the existing regular vacancies.

The issue of non restoration of remaining temporary upgraded places in compliance with the Government Order dated 13.02.2014 to the cadre of Assistant Engineer was also raised before the Honourable High Court in many cases such as CCC No. 36/2018 in IA No. 11567/2017 in WP(C) No. 9807/2017, CCC No. 1238/2020 in WP(C) 15830/2020, WP(C) 28992/2020 etc. Hence the restoration of remaining temporary upgraded places will put an end to a plethora of litigation including the contempt cases mentioned herein.

The restoration of 124 temporarily upgraded places of Assistant Executive Engineers to the cadre of Assistant Engineers also results the limiting of working strength of Assistant Executive Engineers within the cadre strength of 679. But at present, on restoration of 124 temporarily upgraded places as Assistant Engineers, 31 Assistant Executive Engineers are found as working in excess of the cadre strength. This excess was happened owing to the temporary promotions given in excess of the cadre strength by adding the temporarily upgraded places also which was against the spirit of the Government Order dated 13.02.2014.

The non regularization of the persons promoted against the temporarily upgraded places stalled the quota wise regular promotion chances of their juniors who were promoted temporarily as Assistant Executive Engineers and their juniors who are still working in the cadre of Assistant Engineers. Further promotion from the category of Assistant Engineer (Ele) to the cadre of Assistant Executive Engineer (Ele) can be possible only after regularization of seniors working in the temporarily upgraded places, temporarily promoted places and after accommodating the above mentioned excess of 31 personnel presently working. As these 31 personnel are promoted temporarily based on the combined seniority of Graduates and Diploma holders, junior most 31 persons figured in the combined seniority list is to be treated as excess. Their regularization in the cadre of Assistant Executive Engineer can also be done as and when regular vacancies occur subject to quota rules and seniority protection clause in force.

Now, Sri. Antony Mukkath, Senior Government Pleader who is specially engaged for conducting the above Contempt Cases on behalf of KSEBL intimated vide letter No.XI/COC/885/2021 dated 13.09.2021 that no further time will be granted by the Honourable High Court for complying the Judgment and that the case is posted to 24.09.2021 for reporting compliance. It is also intimated by the Counsel that urgent steps are to be taken to comply with the Judgment dated 14.09.2020 in WA No. 1099/2020 and connected cases and to file a compliance report before the Honourable High Court.

Considering that the Government have declined the request for post-facto sanction for creation of supernumerary posts, the Chief Engineer (HRM) vide note read as 7th paper brought the issues before the Full Time Directors in detail and requested to issue necessary orders to give appointment to the remaining 87 candidates advised by KPSC in order to avoid Contempt of Court proceedings.

Having considered the matter in detail, the Full Time Directors in its meeting held on 15.09.2021 resolved

1. to restore 124 posts of Assistant Engineer (Ele) which were temporarily upgraded to the cadre of Assistant Executive Engineer (Ele) back to the cadre of Assistant Engineer (Ele) in the respective quotas viz. 96 in 40% open market quota, 12 in 10% in-service quota and 16 in 30% diploma quota by regularizing Assistant Executive Engineers (Ele) who were promoted in the temporarily upgraded places in compliance with the Government Order No. GO (MS) 4/2014/PD dated 13.02.2014. On restoration of temporary upgraded posts, the cadre strength of Assistant Engineer (Ele.) became 918 in 40% quota, 230 in 10% quota, 688 in 30% quota and 459 in 20% quota.

2. to restore back the remaining office places, out of 167 office places identified and proposed as per Board Order (FM) No. 623/2011/CE(HRM)GENL/2/AE-AEE(E)2011 dated 26.02.2011 and sanctioned vide GO (MS) 4/2014/PD dated 13.02.2014 for effecting temporary upgradation, after deducting 37 places already restored as per proceedings No. EB1/AE/AEE/UG/REGN/2015 dated 30.05.2015 of the Chief Engineer (HRM) as places of Assistant Engineer.
3. to give appointment to the remaining 87 candidates advised by the Kerala Public Service Commission for appointment as Assistant Engineer (Ele) against the restored places under 40% quota as per decision (1) above in order to comply with the judgment dated 14.09.2020 in WA No. 1099/2020 and connected cases.
4. to regularize 31 personnel, including 28 graduates and 3 diploma holders, who were temporarily promoted and now working as excess in the cadre of Assistant Executive Engineer (Ele) against the vacancies that occur in future in the respective quotas subject to seniority protection clause in vogue.
5. to effect further promotions to the cadre of Assistant Executive Engineers (Ele.) only against the regular vacancies that occur within the cadre strength of 679 in future after regularizing the above 31 personnel now working in excess. Additional posts in the cadre shall be operated only with the prior approval of competent authority.

These orders are issued in compliance with the judgment dated 14.09.2020 in WA No.1099/2020 and connected cases and GO (MS) 4/2014/PD dated 13.02.2014.

The Chief Engineer (HRM) shall take immediate necessary action to implement these orders.

Orders are issued accordingly.

By order of the Full Time Directors
Sd/-
LEKHA G
Company Secretary - in Charge

To

1. Chief Engineer (HRM)
2. Secretary (Administration)

Copy To:

1. The Legal Advisor & Disciplinary Enquiry Officer, KSEB Ltd., Tvpm.
2. The Chief Vigilance Officer, KSEB Ltd., Tvpm.
3. The Financial Advisor/Chief Internal Auditor, KSEB Ltd., Tvpm.
4. The Chief Personnel Officer, KSEB Ltd., Tvpm.
5. The Chief Public Relations Officer, KSEB Ltd., Tvpm.
6. The TA to Chairman and Managing Director, KSEB Ltd., Tvpm.
7. The TA to the Director (Gen- Ele), Director (Trans. & System Operation), Director Generation - Civil), Director (Distribution & IT), Director (Planning, Safety&SCM), Director (REES including SOURA, Sports Welfare), KSEB Ltd., Tvpm.
8. The PA to the Director (Finance), KSEB Ltd., Tvpm.
9. Stock File.

Forwarded / By Order


Administrative Officer