

Tom Harris Vs. State of Kerala

Tom Harris Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1093039

Court : Kerala

Decided On : Sep-25-2013

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Tom Harris

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE
THE CHIEF JUSTICE DR. MANJULA CHELLUR & THE HONOURABLE
MR.JUSTICE A.M.SHAFFIQUE WEDNESDAY, THE 25^H DAY OF
SEPTEMBER 2013 3RD ASWINA, 1935 Con.Case(C).No. 593 of 2013 (S) IN
WP(C).23253/2008 ----- AGAINST THE

JUDGMENT

IN WP(C) 23253/2008 DATED 11-04-2013
PETITIONER/RESPONDENT : ----- S.RAHUMUDEEN,
AGED 60 YEARS S/O. SHAHUL HAMEED, (RETIRED ADHOC
SUPERVISOR(WORKS) (SOUTHERN RAILWAY) NOW RESIDING AT RAILWAY
QUARTERS NO.72-A, ARISTO JUNCTION, THAMPANOOR,
THIRUVANANTHAPURAM. BY ADV. SRI.K.S.AJAYAGHOSH
RESPONDENTS/PETITIONERS : ----- 1. RAKESH
MISHRA NAME OF THE FATHER AND AGE ARE NOT KNOWN TO THE
PETITIONER GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS

OFFICE PARK TOWN P.O., CHENNAI-3.

2. RAJESH AGARWAL NAME OF THE FATHER AND AGE ARE NOT KNOWN TO THE PETITIONER DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY TRIVANDRUM DIVISION, THIRUVANANTHAPURAM-695 014.

3. T.VENKATESWARA RAO NAME OF THE FATHER AND AGE ARE NOT KNOWN TO THE PETITIONER SENIOR DIVISIONAL ENGINEER, SOUTHERN RAILWAY TRIVANDRUM DIVISION, TRIVANDRUM-695 014.

4. S.MOHAN NAME OF THE FATHER AND AGE ARE NOT KNOWN TO THE PETITIONER DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY TRIVANDRUM DIVISION, TRIVANDRUM-695 014.

5. N.SWAMINATHAN NAME OF THE FATHER AND AGE ARE NOT KNOWN TO THE PETITIONER CHIEF PERSONNEL OFFICER, SOUTHERN RAILWAY HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-3. BY ADV. SRI.C.S.DIAS,SC, RAILWAYS THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 25/09-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Con.Case(C).No. 593 of 2013 (S) APPENDIX PETITIONER'S EXHIBITS: ANNEXURE A : CERTIFIED COPY OF THE

ORDER

IN WP(C) NO.23253/2008 (S) DATED 11/04.2013. ANNEXURE A1 : TRUE COPY OF THE COVERING LETTER DATED 15/04.2013 ACKNOWLEDGING THE RECEIPT OF COPY OF THE

JUDGMENT

BY THE OFFICE OF THE 1ST RESPONDENT. ANNEXURE A2 : TRUE COPY OF THE COVERING LETTER DATED 15/04.2013 ACKNOWLEDGING THE RECEIPT OF COPY OF THE

JUDGMENT

BY THE OFFICE OF THE 5TH RESPONDENT. ANNEXURE A3 : TRUE COPY OF THE COVERING LETTER ACKNOWLEDGING THE RECEIPT OF THE COPY

OF THE

JUDGMENT

BY THE 2D RESPONDENT ON 1604.2013. /TRUE COPY/ PA TO JUDGE Manjula Chellur, C.J.

& A.M. Shaffique, J.

----- Contempt Case (Civil) No. 593 OF 2013- - -
----- Dated this the 25th day of September, 2013

JUDGMENT

Manjula Chellur, C.J.

Heard learned counsel for the complainant Sri.K.S.Ajayagosh as well as Sri.C.S.Dias, Standing Counsel for the respondents. It is not in dispute that O.A. No. 275 of 2005 came to be disposed of on 09.01.2008 by the Central Administrative Tribunal, Ernakulam Bench with the following direction at paragraph 11: "11. In view of the above discussion, the O.A. Succeeds. It is declared that the applicant is entitled to grant of regular promotion from the date Shri.K.Rajan was promoted. Consequently, the applicant is also entitled to the benefit arising out of such regular promotion as was extended to Shri.K.Rajan, namely promotion as Junior Engineer with effect from 01.11.2003. Such promotion shall be only notional and same shall be actual from the date the applicant assumes duty of higher post. In addition, other consequential benefits such as entitlement to compete for Group 'B' post etc. are also available to the applicant." 2. However, the above order of the Tribunal came to be challenged before the Division Bench of this Court in Contempt Case (Civil) No. 593 of 2013 :-2:- W.P.(C) No.23253 of 2008 and the same came to be disposed of only on 11.04.2013 giving following directions at paragraph 3: "3. In the result, this writ petition is dismissed. In view of the dismissal of this writ petition the establishment will expedite the finalization of the entitlements of the employee in accordance with the directions of the Tribunal at the earliest and let that be done within a period of two weeks from now, as the respondent is due to superannuate by the end of this month." 3. Once a specific direction is given by the High Court, the order of the Tribunal merges with the

directions issued by the High Court. However, the Division Bench of this Court directed the respondent establishment to finalise the entitlement of the employee in accordance with the directions of the Tribunal at the earliest and the same was directed to be complied, within a period of two weeks from 11.04.2013.

4. According to the respondents, by virtue of Annexure B Revised Pension Payment Order, made on 01.07.2013, this is nothing but complying with the directions issued by the Tribunal as directed by the High Court. According to the complainant, if the Department had passed an order within two weeks as Contempt Case (Civil) No. 593 of 2013 -:3:- directed by the High Court, he was entitled to hold the post of Junior Engineer at least for a period of 5 days from 25.04.2013 to 30.04.2013, as the employee complainant retired on 30.04.2013. Therefore, there is intentional disobedience of the directions of the Division Bench.

5. However, learned Standing Counsel for the respondents submits that as the complainant joined the Department way back in 1953, the records had to be tracked in order to finalise pension benefits and also other entitlement, if any, to the complainant, therefore there was delay in passing order at Annexure B. In order to consider the claim of the complainant whether immediately after 11.04.2013 there ought to have been a formal order of promotion promoting him as Junior Engineer on or before the date of retirement on 30.04.2013, we are of the opinion, that period is too short. Having regard to the time constraint, even if such an order is not passed granting promotion to the complainant as Junior Engineer from the date of order, we are of the opinion, there is no willful disobedience committed by the respondent authorities. On the Contempt Case (Civil) No. 593 of 2013 -:4:- other hand, so far as pension and other benefits, Annexure B clearly indicates, there is revision of pension amount payable to the complainant, notionally considering his case as an employee holding the post of a Junior Engineer with effect from 01.11.2003. In other words, his pension is fixed at what is payable to a Junior Engineer and not as Supervisor. In that view of the matter, we are of the opinion, the present proceedings deserve to be dropped. Accordingly, the Contempt Case is closed. So far as quantum of pension fixed as per Annexure B, if it is not in accordance with the pension payable to Junior Engineer, it is always open to the complainant to challenge the same. Manjula

Chellur, Chief Justice. A.M. Shaffique, Judge. ttb/25/09 Contempt Case (Civil) No. 593 of 2013 -:5:-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com