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Mercy Antony Vs. K S E B.

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Court : Kerala

Decided On : Feb-07-2014

Judge : Honourable Mr. Justice Babu Mathew P.Joseph

Appellant : Mercy Antony

Respondent : K S E B.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH FRIDAY, THE7H DAY OF FEBRUARY201418TH MAGHA, 1935 WP(C).No. 30437 of 2010 (D) ---------- PETITIONER: ---------- MERCY ANTONY, JUNIOR FAIR COPY ASSISTANT, ELECTRICAL DIVISION, CHALAKUDY THRISSUR - 680 030. BY ADVS.SRI.P.B.SAHASRANAMAN SRI.T.S.HARIKUMAR SRI.K.JAGADEESH RESPONDENTS: ---------- 1. KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM PATTOM, THIRUVANANTHAPURAM - 695 004.

2. CHIEF ENGINEER(HRM), KERALA STATE ELECTRITY BOARD, VYDYUTHI BHAVANAM, PATTOM THIRUVANANTHAPURAM - 695 004. R BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0702-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WPC30437OF 2010 APPENDIX: PETITIONER'S

EXTS: P1: COPY OF THE

JUDGMENT
OF THIS COURT IN WP(C) NO. 23830 OF 2004 DATED128.2004 P2: COPY OF THE

ORDER
NO. EB.5/FCA/RP/HC/2005/04, DATED114.2005. P3: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE2D RESPONDENT, DATED2111.2005. P4: COPY OF THE REPRESENTATION MADE THE PETITIONER, DATED612.2007. P5: COPY of the LETTER ISSUED BY THE2D RESPONDENT, DATED1607.2010. RESPONDENTS' EXTS: NIL ks. TRUE COPY P.S. TO JUDGE BABU MATHEW P. JOSEPH, J.

= = = == = = = = = = = = = = = = = W.P.(C) No. 30437 of 2010 = Dated this the 7th day of February, 2014

JUDGMENT
This writ petition has been filed for directing the second respondent to promote the petitioner as Senior Fair Copy Assistant with effect from 4.2.2002 and to give her all consequential benefits including seniority and difference in pay from that date.

2. Heard the learned counsel appearing for the petitioner and the learned Senior Counsel appearing for the respondents.

3. Learned counsel for the petitioner submits that the petitioner, along with others, were promoted from the category of Junior Fair Copy Assistant to the category of Senior Fair Copy Assistant with effect from 4.2.2002. WPC304372010 2 Subsequently, the Chairman of the first respondent Electricity Board, directed to keep in abeyance such promotions. Therefore, one of the persons who was promoted as Senior Fair Copy Assistant with effect from 4.2.2002 approached this Court by filing O.P.No.33514 of 2002, for a direction to the first respondent to grant promotion with effect from 4.2.2002. Since the promotions to the category of Senior Fair Copy Assistant effected on 4.2.2002 were based on the long term settlement arrived at between the Electricity Board and the Unions representing

the employees of the Electricity Board, this Court allowed that writ petition upholding the order of promotion of the petitioner therein with effect from 4.2.2002 and directed to give all consequential benefits. In view of the judgment so rendered by this Court in O.P.No.33514 of 2002 in respect of a similarly placed person, all the persons who were earlier granted promotion with effect from 4.2.2002 were entitled to be promoted with WPC304372010 3 effect from 4.2.2002 to the category of Senior Fair Copy Assistant. But, despite the judgment so pronounced by this Court, the Electricity Board refrained from granting promotion to the petitioner and other similarly placed persons. Therefore, the petitioner along with some others approached this Court by filing W.P.(C) No.23830 of 2004 which was disposed of by this Court as per Ext.P1 judgment. In Ext.P1, it was stated that the issue was covered in favour of the petitioners therein as per judgment in O.P.No.33514 of 2002 and that judgment has become final. It was also declared that the petitioners therein would be entitled to the consequential benefits. Since the petitioner was entitled to be promoted based on the judgment of this Court with effect from 4.2.2002 and since it was postponed to 31.12.2002 illegally, the petitioner preferred representations before the respondents. But, that genuine request of the petitioner was turned down. Aggrieved by the stand taken by the respondents, the petitioner was compelled to WPC304372010 4 approach this Court by filing this writ petition, the learned counsel further submits.

4. The question as to whether the petitioner and other similarly placed persons were entitled to be promoted to the category of Senior Fair Copy Assistant had been considered by this Court in the judgment dated 17.7.2003 in O.P.No.33514 of 2002. Going by that judgment, the petitioner and other similarly placed persons were entitled to be promoted to the category of Senior Fair Copy Assistant with effect from 4.2.2002 as originally done by the first respondent Electricity Board. Such a position has been reiterated by this Court in Ext.P1 judgment. Therefore, the petitioner and other similarly placed persons were entitled to be promoted to the category of Senior Fair Copy Assistant with effect from 4.2.2002. Curiously enough, by issuing Ext.P2 order by the second respondent, the petitioner and 116 similarly placed other persons were given promotion to the category of Senior Fair Copy Assistant only with effect WPC304372010 5 from 31.12.2004. Since the petitioner was entitled to be promoted with effect from 4.2.2002, she has preferred

representations before the concerned authorities which were turned down.

5. A counter affidavit has been filed for and on behalf of the second respondent. It is stated in the counter affidavit that as per Ext.P1 judgment, all the petitioners in the writ petition were given promotion benefits with effect from 4.2.2002. The petitioner was reluctant to accept the promotion and hence she was not given promotion with effect from 4.2.2002. All the employees who approached this Court were given promotion with effect from 4.2.2002. This Court has not issued any direction to promote the petitioner with effect from 4.2.2002. It appears rather strange that the second respondent has raised such contentions by filing a counter affidavit before this Court. It can be seen from Ext.P2 order of promotion that the petitioner was 'not reluctant' to be promoted as Senior Fair WPC304372010 6 Copy Assistant. Moreover, as per Ext.P2, she was given promotion with effect from 31.12.2004. Therefore, the contention that the petitioner was reluctant to accept the promotion and hence she was not given promotion with effect from 4.2.2002 is baseless. Similarly, the statement that the petitioner was reluctant to accept promotion with effect from 31.12.2004 and hence she was not given promotion is also equally incorrect. In the light of the judgment rendered by this court in O.P.No.33514 of 2002 and Ext.P1 judgment, the respondents cannot contend for a moment that the petitioner is not entitled to promotion with effect from 4.2.2002. She is entitled to promotion to the category of Senior Fair Copy Assistant with effect from 4.2.2002. Therefore, this writ petition is to be allowed by issuing a direction to the respondents to give promotion to the petitioner to the category of Senior Fair Copy Assistant with effect from 4.2.2002 and to give her all consequential benefits including seniority from 4.2.2002. WPC304372010 7 6. In the result, the second respondent is directed to give promotion to the petitioner to the category of Senior Fair Copy Assistant with effect from 4.2.2002 and to give her all consequential benefits and seniority from 4.2.2002 as expeditiously as possible and, at any rate, within a period of two months from the date of receipt of a copy of this judgment. The petitioner is directed to produce a copy of this judgment before the second respondent for compliance. This writ petition is allowed as above. Sd/- BABU MATHEW P. JOSEPH JUDGE ks. WPC304372010 8 BABU MATHEW P. JOSEPH JUDGE ks. WPC304372010 9

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