

S.Vrinda Vs. Kseb

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Court : Kerala

Decided On : Oct-30-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : S.Vrinda

Respondent : Kseb

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR THURSDAY, THE 30TH DAY OF OCTOBER 2014 8TH KARTHIKA, 1936 WP(C).NO. 19103 OF 2010(K) ----- PETITIONER(S): ----- S.VRINDA, ASSISTANT ENGINEER(ELECTRICAL) K.S.E.B., ELECTRICAL DIVISION, MAVELIKKARA ALAPPUZHA DISTRICT. BY ADVS.DR.K.P.SATHEESAN SRI.K.K.GOPINATHAN NAIR SRI.M.R.JAYAPRASAD SRI.P.MOHANDAS (ERNAKULAM) SRI.MATHEW SUNNY SRI.ANOOP.V.NAIR RESPONDENT(S): ----- 1. KERALA STATE ELECTRICITY BOARD (K.S.E.B. IN SHORT), REPRESENTED BY ITS SECRETARY VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM-4.

2. THE CHIEF ENGINEER (H.R.M.), K.S.E.B., VYDYUTHI BHAVANAM, PATTOM THIRUVANANTHAPURAM-4.

3. THE EXECUTIVE ENGINEER, K.S.E.B.ELECTRICAL DIVISION, MAVELIKKARA ALAPPUZHA-690 101. R1 TO R3 BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB R1TO3BY ADV. SRI.K.S.ANIL, SC, KSEB R1-R3 BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON3010-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).NO. 19103 OF2010(K) APPENDIX PETITIONER'S EXHIBITS: EXT.P1: TRUE COPY OF THE MEMO ISSUED TO THE PETITIONER DATED163.1996 EXT.P2: TRUE COPY OF THE PROCEEDINGS ISSUED BY THE2D RESPONDENT DATED411.2000 EXT.P3: TRUE COPY OF THE NOTE SUBMITTED BY THE PETITIONER TO THE3D RESPONDENT DATED75.2001 EXT.P4: TRUE COPY OF THE

ORDER

NO.EBI/PAY FIXN/10-11/33/MVK DATED315.2010 ISSUED BY THE3D RESPONDENT EXT.P5: TRUE COPY OF THE RELEVANT PAGE OF THE AUDIT REPORT GIVEN TO THE PETITIONER BY THE3D RESPONDENT EXT.P6: TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER DATED36.2010. RESPONDENTS' EXHIBITS: NIL //TRUE COPY// P A TO JUDGE A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C).No.19103 of 2010
..... Dated this the 30th day of October, 2014

JUDGMENT

The petitioner was working as a Cashier with the 1st respondent Board. She was appointed as an Assistant Engineer (Electrical), pursuant to a direct recruitment process and against the 10% quota that was earmarked from among the 50% quota earmarked for degree holders in the direct recruitment. The petitioner was appointed as Assistant Engineer (Electrical) on 16.03.1996 by Ext.P1 order. It is stated that thereafter, pursuant to writ petitions that were filed challenging the various appointments made to the post of Assistant Engineer (Electrical) and pursuant to the judgment of this Court in the said writ petition, the respondent Board had to resort to a reassignment of the date of appointment of 83 employees, who were appointed against the 10% quota earmarked for degree holders who

were also Board employees. Ext.P2 dated 04.11.2000 is the order of the respondent Board reassigning the date of appointment of the various persons mentioned therein, including the petitioner who is shown against serial number 82 in that order. Ext.P2 order would reveal that the petitioner's appointment was notionally reassigned as 07.07.2000 in lieu of 16.03.1996 mentioned in Ext.P1 appointment order. Thereafter, the petitioner, although reassigned a date of W.P.(C).No.19103 of 2010 -2- appointment as 04.11.2000, continued to obtain service benefits by treating her date of appointment as 16.03.1996. Accordingly, she was paid salary and other benefits by treating her as a person who had been appointed as an Assistant Engineer (Electrical) with effect from 16.03.1996. When in 2001, there was an audit objection raised with regard to the correctness of the pay and benefit that were being paid to the petitioner, she had preferred Ext.P3 explanation and it is stated that the audit wing found the explanation of the petitioner to be convincing and, accordingly, decided that there was no need to revise the salary of the petitioner to a lower level, pursuant to the notional reassignment of dates of appointment effected in Ext.P2 order. It is also pointed out that, on completion of 10 years from 16.03.1996, the petitioner was granted the higher grade. Thereafter, by Ext.P4 dated 31.05.2010, the 3rd respondent intimated the petitioner that she was entitled to get scale of pay of Assistant Engineer (Electrical) only with effect from 07.07.2000 and the revised scale of pay with effect from 01.07.2003. It was the stand of the 3rd respondent that the excess amounts paid to the petitioner, on the basis that she was appointed with effect from 16.03.1996, had to be recovered from her. On receipt of Ext.P4 communication, the petitioner sought for a copy of the audit report, that was the basis for Ext.P4 communication issued to her. The copy of the said audit report was made available W.P.(C).No.19103 of 2010 -3- to her and is produced in the writ petition as Ext.P5. Thereafter, the petitioner preferred Ext.P6 representation before the respondents and, when there was no response from the respondents, she preferred this writ petition impugning Ext.P4 and seeking a declaration that her appointment as Assistant Engineer (Electrical) with effect from 16.03.1996 is a regular appointment and would govern the grant of service benefits to her.

2. A Counter affidavit has been filed on behalf of the 1st respondent wherein the stand taken is that, pursuant to Ext.P2 order, the date of appointment of the

petitioner as Assistant Engineer(Electrical) stood reassigned as 04.11.2000. It followed, therefore, that the service benefits that were due to the petitioner would have to be computed on the basis that she was appointed only with effect from 04.11.2000. It is therefore that Ext.P4 was issued to the petitioner, based on an audit objection to the effect that the petitioner had erroneously been granted pay and benefits on the assumption that the date of her appointment as Assistant Engineer(Electrical) was 15.03.1996 and not 04.11.2000. Since this was a mistake committed by the employer, and it is well settled that administrative mistakes can be corrected at any point of time, it is the contention of the Board that it was perfectly justified in insisting on a recovery of amounts paid in excess to the petitioner, W.P.(C).No.19103 of 2010 -4- pursuant to the erroneous assumption.

3. I have heard the learned Senior counsel Dr.K.P.Satheesan, appearing on behalf of the petitioner and Sri.Pulikool Abubacker, the learned Standing counsel appearing on behalf of the respondent Board.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that the writ petition, in its challenge against Ext.P4 order of the Board, must necessarily succeed. The petitioner was initially appointed as Assistant Engineer (Electrical), pursuant to a valid selection process on 16.03.1996, by Ext.P1 order. The reassignment of the date of appointment of the petitioner, consequent to the directions of this Court in the various writ petitions that were filed challenging the appointment made by the respondent Board, was only for the limited purpose of assigning a notional date of appointment for the purposes of seniority. A perusal of Ext.P2 order of reassignment would clearly indicate that the reassignment of the dates of appointment of the petitioner was a notional one and in continuation of the reassignment proceedings that had earlier been undertaken by the Board. It is also clear from Ext.P2 order that the respondent Board intended the other W.P.(C).No.19103 of 2010 -5- conditions, contained in the appointment orders issued to the petitioner, to remain unaltered. In particular, it is relevant to note that Ext.P2 clearly states that the reassignment of appointment as Assistant Engineer (Electrical), ordered as per Ext.P2, is clearly notional with "no claim for monetary arrears". It is clarified that monetary benefits is due only from the dates of actual

officiation in the post of Assistant Engineer (Electrical) and that the withdrawal of arrears if any, consequent to the reassignment of appointment, should be made only after the approval of the re-fixed pay by the Chief Internal Auditor. In my view, the terms of Ext.P2 order, reassigning the dates of appointment of the petitioner, can be seen only as a notional one and for the limited purpose of determining the seniority of the petitioner vis-a-vis other employees in the said post under the respondent Board. The categorical statement in Ext.P2 order, which indicates that the reassignment is purely notional and with no claim for monetary arrears would, in my opinion, suggest that it was not the intention of the Board to effect any recovery of amounts that had already been paid to employees who had been validly appointed pursuant to earlier appointment orders and that the notional reassignment was only for the purposes of determining their seniority for future purposes. No doubt, the respondent Board would contend that Ext.P2 was not impugned by the petitioner in any proceedings. This contention, W.P.(C).No.19103 of 2010 -6- however, must be appreciated in the context of the challenge in the writ petition. The petitioner is not challenging his seniority in these proceedings and insofar as Ext.P2 order makes it clear that the reassignment is only notional for the purposes of seniority, and not for the purposes of recovery of any benefits paid to the petitioner, the non challenge of Ext.P2 order by the petitioner cannot have any serious repercussions with regard to his claim in the writ petition.

5. I must also hasten to add that, in this case, the respondent Board has by its further actions, of accepting the explanation preferred by the petitioner against an earlier audit objection, clearly manifested its understanding of Ext.P2 order that the same was not to apply to recover any amount paid to persons who had been appointed through earlier appointment orders issued to them. In view of the specific conduct of the respondent Board, I feel it will not be open to them to approbate and reprobate, at this belated stage, and demand amounts alleged to have been paid in excess to the petitioner, after more than 14 years from the date of her appointment. In this view of the matter, I quash Ext.P4 order of the 3rd respondent and declare that the petitioner will not be liable to pay any amount to the respondent Board, consequent to the said order or the audit report. The respondent shall fix the pay and W.P.(C).No.19103 of 2010 -7- grant the benefits of pay revision on the basis that she has been appointed as Assistant Engineer

(Electrical) with effect from 16.03.1996 as mentioned in Ext.P1 appointment order. The reassigned date of 04.11.2000 shall be applied to the petitioner only for the purposes of determining her seniority in service. Arrears if any, payable to the petitioner shall be paid within a period of two months from the date of receipt of a copy of this judgment. A.K.JAYASANKARAN NAMBIAR JUDGE mns W.P.(C).No.19103 of 2010 -8-

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