

The Assistant Engineer, vs Shaju K.K.,

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Court : Kerala

Decided On : Jan-12-2024

Judge : Honourable Mr. Justice Amit Rawal, Honourable Mrs. Justice C.S. Sudha

Appeal No. : WA/2103/2019

Appellant : The Assistant Engineer,

Respondent : Shaju K.K.,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MRS. JUSTICE C.S. SUDHA FRIDAY, THE 12TH DAY OF JANUARY 2024 / 22ND POUSHA, 1945 WA NO. 2103 OF 2019 AGAINST THE JUDGMENT DTD 3.4.2019 IN WP(C) 25664/2015 OF HIGH COURT OF KERALA APPELLANTS/RESPONDENTS 3 TO 5 IN WPC: 1 THE ASSISTANT ENGINEER, 100 KV SUB STATION, KSEB LTD., EDAPPAL KALADY P.O., MALAPPURAM DISTRICT-679582. 2 THE CHIEF ENGINEER, KERALA STATE ELECTRICITY BOARD LTD., VYDHYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM-695004. 3 KERALA STATE ELECTRICITY BOARD LTD., REPRESENTED BY THE SECRETARY, VYDHYUTHI BHAVANAM,

PATTOM, THIRUVANANTHAPURAM-695004. BY ADVS.RAJU
JOSEPH (SR.) SRI.C.JOSEPH ANTONY
RESPONDENTS/PETITIONER & R1 AND R2:

1 SHAJU K.K., AGED 49 YEARS S/O. KOCHAPPAN, RESIDING AT
KALLELY HOUSE, ASSISTANT ENGINEER, 220 KV SUB STATION,
NALLAYAM, KOZHIKODE DISTRICT-673027. 2 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695001. 3 THE DIVISIONAL OFFICER,
SOUTHERN RAILWAY, PALAKKAD-678001. BY ADVS.MUHAMMED
HASHIM A SHRI.C.DINESH, CGC P.ALI(A-185) SRI BIMAL K NATH,
SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
10/01/2024, THE COURT ON 12.01.2024 DELIVERED THE
FOLLOWING: AMIT RAWAL & C.S.SUDHA, JJ.

----- Dated this the 12th day of
January, 2024

JUDGMENT

C.S.Sudha, J.

This intra court appeal has been filed by respondents 3 to 5 against the judgment dated 03/04/2019 in W.P.(C)No.25664/2015. The respondents herein are the petitioner and respondents 1 and 2 in the writ petition. The parties and the documents in this appeal will be referred to as described in the writ petition.

2. The writ petition was filed challenging Ext.P3 order by which

the request of the petitioner to reckon his previous service for the purpose of pension and pensionary benefits, was rejected. According to the petitioner, before he joined the service of the fifth respondent, that is, the Kerala State Electricity Board (the KSEB) on 17/01/2011, he was working as Electrical Assistant,

Southern Railways, Palakkad, from 27/12/1999 to Department, from 11/07/2003 to 24/03/2006 and as Engineering Assistant (Electronics), Public Works Department from 25/03/2006 to 15/01/2011. He submitted a representation to the fourth respondent for reckoning his previous services for the purpose of pension and pensionary benefits. This representation was rejected as per Ext.P1 order dated 14/12/2011 against which W.P.(C)No.5551/2013 was preferred. By Ext.P2 judgment dated same by directing the fifth respondent to reckon the previous service of the petitioner if otherwise reckonable in terms of the relevant statutory provisions which could not be denied to the petitioner on the basis of a settlement entered into between the employees' union and the KSEB. There was also a direction to the fifth respondent to take a decision within two months from the date of production of a copy of the judgment. However, by Ext.P3 order dated 09/07/2015, the fifth respondent again rejected the request of the petitioner. Hence the writ petition seeking quashing of Ext.P3 order and also for directing the fifth respondent to reckon the petitioner's previous service for the purpose of pension and pensionary benefits.

3. The fourth respondent filed counter affidavit contending that

there is no reciprocal agreement between the KSEB and the PWD/Industrial Training Department/Indian Railways for sharing pension liabilities based on the prior service rendered by the employees in those organizations. Since reciprocal arrangements for sharing pension liabilities between these organizations is a prerequisite for counting prior service of its employees for pension and as such no arrangements were in existence between these organisations, the KSEB has not reckoned the prior service rendered by the petitioner. Further, Proviso to Rule 20 Part III KSR states that the past service put in by Government employees and Aided School/College Teachers in Panchayath/Municipal Common Service and Universities prior to their entry in State Government Service or Aided School/College service shall be reckoned as qualifying service, for pension and DCRG from the Government. However, the Note to the aforesaid Rule specifically stipulates that this provision shall not be applicable for appointments to or from Public Sector undertakings, or similar bodies, as they are constituted under Companies Act or by separate legislation of the Central/State Government.

Accordingly, by virtue of its rule making power, the KSEB has decided not to count the service of employees rendered by them prior to joining the service of the KSEB with effect from 01/07/2003 as per clause 14 of the Long Term Settlement-2007 (LTS). As per the LTS-2007, which was arrived at on the basis of consensus between the union and the management, the KSEB foreclosed the counting of previous service of the Board employees who joined service on or after 01/08/2003. As per LTS-2011, the employees who came to the Board prior to 01/08/2003 were given a chance to apply for considering their past service for pension upto date, he cannot be granted the benefit. Moreover, the statute clearly denies the counting of prior service of employees who are working in public sector undertakings. Hence the petitioner cannot make any claim for counting his previous service for the purpose of computation of pension and pensionary benefits.

4. The learned single Judge relying on a Division Bench decision

of this Court in Mohammed Basheer A. v. State of Kerala, 2014(4) KHC 658, held that the right or benefit granted by the Government invoking powers under Rule 11 read with Rule 20 of Part III KSR by issuing Government orders cannot be taken away by adding a stipulation that such benefit is not applicable to Public Sector Undertakings like the KSEB. The function of the Note introduced is to provide procedure and to control discretion and that a Note cannot be relied upon to deny the benefits granted by the substantial provision. The stipulation in the Note was liable to be read down so that it would not be applicable to deny the benefits granted thereunder. Since the KSR has been made applicable to the KSEB, all the provisions of Chapter 2 of Part III KSR including the Note to Rule 20 would be applicable to the petitioner. The benefit of counting of past service, could not be denied on the ground that the application had not been made by the petitioner within the time as provided in the LTS agreement between the KSEB and its employees. Holding so, Ext.P3 was set aside and the fifth respondent directed to reckon the previous services put in by the petitioner as qualifying service for pension. Aggrieved, the KSEB has come up in appeal.

5. Heard.

6. Rule 20 and Note thereunder in Part III KSR reads -

20. Local Funds and Trust Funds. - Service paid from a Local Fund does not qualify for pension except under special orders of Government. Provided that the past service put in by Government employees and Aided School/Aided College Teachers in Panchayat/Municipal Common Service and Universities prior to their entry in State Government Service or Aided School/Aided College Service shall be reckoned as qualifying service for Pension and Death-cum-Retirement Gratuity from Government. Note :- The above proviso shall not be applicable for appointments to or from Public Sector Undertakings, Autonomous Bodies or similar bodies as they are constituted under the Companies Act or by separate legislation of the Central or State Government. In the case of prior service in Universities, only such service in any of the following Universities shall be considered for this benefit:

- (i) Kerala University
- (ii) Calicut University
- (iii) Mahatma Gandhi University
- (iv) Sree Sankara University
- (v) Kannur University
- (vi) Cochin University of Science and Technology
- (vii) Kerala Agricultural University

The cases where payment towards pro-rata pension liability have already been made by a former employer as per the rules prior to the 19th day of November, 2009 shall not be re-opened and in all other cases including cases where payment have become due but not paid, such payments shall not be made. (Emphasis supplied) The decision relied on by the learned single Judge has been overruled by a Full Bench of this Court in Jayakumar S. v. State of Kerala, 2021(5) KHC 157,

relevant portion of the judgment reads thus -

19. In Mohammed Basheer, the Division Bench went one step further and found the last part of the Note to the proviso to R.20, which specified that the proviso was inapplicable to appointments to or from public sector undertakings, autonomous bodies or similar bodies to be unconnected to the proviso or the purpose for which the Note was introduced. Based on the said reasoning, the Division Bench read down the said stipulation. We find that the interpretation and reading down goes against the mandate of R. 10 and R.20 of Part III KSR. The legal position that executive orders cannot override statutory rules and cannot be interpreted in such manner as to make the statutory rule superfluous is well settled. [see S. L. Sachdev and Another v. Union of India and Others (1980 KHC 795 : (1980) 4 SCC 562: (1981) SCC (L&S) 24: AIR 1981 SC 411 : 1980 Lab IC 1321), State of M.P. v. Yogendra Shrivastava (2010 KHC 2026: (2010) 12 SCC 538)].

20. We find that by incorporating the proviso to R.20, past service in certain specified sectors were exempted from the rigour of R. 20. The last part of the Note to the proviso only clarified that the past service

in public sector undertakings and autonomous or similar bodies will not be reckoned as qualifying service, on the appointment of employees from those sectors in Government service. No right having been granted under R.11 or R.20 to Government employees having prior service in public sector undertakings and autonomous or similar bodies, the finding of the Division Bench that the last part of the Note takes away the benefit granted under R.11 read with R.20 and the Government orders discussed above, we hold, with due respect, as erroneous.

Hence the petitioner could not have been given the relief as prayed for in the writ petition. Therefore, the impugned judgment is liable to be interfered with. In the result, the impugned judgment is set aside and the writ appeal is allowed.

Interlocutory applications, if any pending, shall stand closed. Sd/- AMIT RAWAL
JUDGE Sd/- C.S.SUDHA JUDGE ami/ APPENDIX OF WA 2103/2019
PETITIONER ANNEXURES

ANNEXURE I

TRUE COPY OF B0(EB) NO.2574/2005 DATEDAN

DATED 20/07/2016. RESPONDENT ANNEXURES Annexure R1 TRUE COPY OF
THE PROCEEDINGS NO. G.O. (RT).NO.2125/FIN/2018 DATED 16.03.2018 OF
THE FINANCE DEPARTMENT Annexure R2 TRUE COPY OF THE ORDER
NO.B.O (DB) NO.199/2023 (ESST.IV/6848/2022) DATED 13.04.2023

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