

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

O.P.(LC).No.2727 of 2013 (O)

AGAINST THE JUDGMENT IN C.P.NO.40/2006 DATED 15.05.2013
OF THE LABOUR COURT, KOLLAM.

PETITIONER(S):-

M. AMRITHAM, AGED 66 YEARS, S/O. JOBU,
RESIDING AT MELEYA THOTTATHU VEEDU,
AYIRA P.O., NEYYATTINKARA, THIRUVANANTHAPURAM-695 502.

BY ADVS.SRI.V.V.SIDHARTHAN (SENIOR ADVOCATE)
SRI.D.G.VIPIN
SRI.KAROL MATHEWS SEBASTIAN ALENCHERRY.

RESPONDENT(S)/RESPONDENT :

THE KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM-695 004,
REPRESENTED BY ITS SECRETARY.

R1 BY STANDING COUNSEL SRI.K.S.ANIL.

THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD ON
13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1(a): COPY OF THE APPLICATION DTD.3.2.2009 FILED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.
- EXT.P1(b): COPY OF THE APPLICATION DTD.23.7.2009 FILED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
- EXT.P1(c): COPY OF REPLY DTD.25.7.2009 SENT BY THE PUBLIC INFORMATION OFFICER OF THE RESPONDENT TO THE PETITIONER.
- EXT.P2 : COPY OF THE CLAIM PETITION AND ANNEXURE.
- EXT.P3 : COPY OF THE OBJECTION FILED BY THE RESPONDENT.
- EXT.P4 : COPY OF CMP NO.93/2007 IN CP 40/2006 FILED BY THE PETITIONER BEFORE THE LABOUR COURT, KOLLAM.
- EXT.P5 : COPY OF THE ORDER DTD.21.8.2007 IN CP 40/2006 OF THE LABOUR COURT, KOLLAM.
- EXT.P6 : COPY OF THE COMMON JUDGMENT DTD.22.3.2011 IN WPC NO.12950/08 AND WPC 28917/08 OF THE HIGH COURT OF KERALA.
- EXT.P7 : COPY OF THE ORDER DTD.15.5.2013 IN CP 40/2006 OF THE LABOUR COURT, KOLLAM.
- EXT.P8 : COPY OF THE ORDER DTD.10.5.2006 IN COMPLAINT NO.1334/2005 OF THE LOKAYUKTHA, THIRUVANANTHAPURAM.
- EXT.P9 : COPY OF THE STATEMENT FILED BY THE RESPONDENT IN COMPLAINT NO.1334/2005 BEFORE THE LOKAYUKTHA, THIRUVANANTHAPURAM.
- EXT.P10 : TRUE COPY OF THE APPLICATION UNDER RTI ACT DATED 4.10.2014 SENT BY THE PETITIONER TO THE RESPONDENT.
- EXT.P11 TRUE COPY OF THE REPLY NO.GB-1/R1A/1176/2014-15/EDN/1823 DATED 10.10.2014 ISSUED BY THE PUBLIC INFORMATION OFFICER, NAMELY; THE EXECUTIVE ENGINEER, KSEB, ELECTRICAL DIVISION, NEYYATTINKARA TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS:-

- EXT.R1(a) TRUE COPY OF DUTIES OF JUNIOR LINE ASSISTANTS AND LINE ASSISTANTS.

Vku/-

(true copy)

K. Vinod Chandran, J.

O.P(LC) No.2727 of 2013-O

Dated this the 13th day of February, 2015

JUDGMENT

The petitioner was working as a Lineman Grade-I in Parassala when he retired on 30.04.2002. The petitioner, four years after his retirement, by a claim petition; C.P.No.40 of 2006, approached the Labour Court under Section 33C(2) of the Industrial Disputes Act, 1947 [for brevity “the Act”] to get “Incentive Allowance”. The claim was made on the basis of the incentive allowance made applicable to Linemen of the Kerala State Electricity Board [for brevity “KSEB”] as per a long term settlement arrived at between the KSEB and the recognized Trade Unions.

2. The terms of the settlement, as is indicated in Exhibit P7 order, was that a Lineman is entitled to incentive allowance at the rate of one day's wage for attending every 180 consumers in excess of 900 consumers. The petitioner contended that in the area allotted to the petitioner, there were 3022 consumers spread over the limit of 7 transformers located at different places. Hence, the petitioner's claim was that he ought to have been paid incentive allowance from 01.07.2000 to 30.04.2002, which comes to an amount of Rs.97,966/-.

3. The KSEB contested the aforesaid claim on the ground of limitation, lack of any material evidence to prove the claim and also on the basis of the fact that there were 11 to 14 Linemen working in the Electrical Major Section, Parassala where the petitioner was also employed as a Lineman. The petitioner, in fact, was alleged to have not carried out disconnection of reconnection work promptly and that was said to be serious lack on his part affecting the revenue collection of the Board.

4. I have heard the learned counsel appearing for the petitioner; but did not have the opportunity to hear the KSEB, since none appeared for the KSEB.

5. P.Ws 1 to 3 were examined before the Labour Court, who were respectively the petitioner and two retired Assistant Engineers of the KSEB. Exhibits P1 and P2 were marked on behalf of the petitioner. D.Ws 1 and 2 were the defence witnesses, who were also officials of the KSEB, who also marked Exhibits D1 to D5. The question of limitation was found to be not one which could be urged by the Opposite Party, since the issue arose under the ID Act. ***Bombay Gas Company v. Gopal Biva [AIR 1964 SC 752]*** was relied on to answer the above point against the opposite party, the KSEB. The

subsequent decisions of the Supreme Court indicate that, the position that there could be no question of limitation urged against a proceeding under the ID Act remains undisturbed; but, however, it has been held that the Courts would have the discretion to mould the relief on a delayed petition. That, however, would be applicable only if this Court finds that there should be an interference caused to the rejection made by the Labour Court as per Exhibit P7 award.

6. With respect to the maintainability of an application under Section 33C(2), the Labour Court found that the claim arises from a benefit available to the petitioner under a long term settlement and the benefit being possible of computation in terms of money, the application would be maintainable. However, on a consideration of the facts and evidence, it was found that the petitioner could not prove that he was entitled to the incentive allowance. The Labour Court found that incentive allowance was based on the long term settlement, which was produced by the KSEB as Exhibit D3. Parassala Electrical Major Section, where the petitioner was working, was admittedly a semi-urban area and the incentive allowance claimed by the petitioner was in accordance with the long term settlement produced at Exhibit D3, applicable to semi-urban areas. The claim specifically was the

incentive allowance payable to the petitioner between July, 2000 and April, 2002.

7. The petitioner, to establish his claim, produced a memo as Exhibit P1 issued by the Electrical Major Section. Exhibit P1 was a memo relieving the petitioner from service on superannuation. One other document produced by the petitioner was Exhibit P2, being a copy of the representation dated 02.05.2005, wherein the petitioner had claimed the incentive allowance from the Assistant Engineer, KSEB. Definitely the said documents could not prove the entitlement of the petitioner for such incentive allowance, which had to be proved on facts, on the basis of the disconnection and reconnection work carried out by the petitioner. At the outset, it is to be noticed; the mere existence of a specified number of consumers in a particular area does not entitle a Lineman operating therein to the incentive. The factum of such disconnection and re-connection work having been carried on by the petitioner as Lineman, was crucial; insofar as that alone would establish his entitlement to the incentive allowance.

8. The evidence of PW2 was not helpful to the petitioner, since he merely deposed that the representation filed by the petitioner was forwarded to the Executive Engineer and there was no

recommendation made as to the entitlement of the petitioner to get incentive allowance. PW2 in fact pointed out, with reference to Exhibit D1, being the Complaint Register, specifically pages 115 and 116, wherein he had put question marks in green ink, which, according to him, shows the irregularities regarding the duties carried out by the petitioner. P.W.3, again examined by the petitioner, was also a retired Assistant Engineer of the KSEB; deposed against the petitioner and categorically stated that the petitioner did not properly carry out the work of disconnection and reconnection of service. Hence, neither PW2 nor PW3, the witnesses of the petitioner-workman; supported the case of the petitioner.

9. The case projected by the Opposite Party was also considered by the Labour Court. The Opposite Party had produced certain extracts of the Complaint Register and the Disconnection Register before the Labour Court. According to them, incentive allowance was payable only on completion of disconnection or reconnection work allowed to each Lineman. The same is evident from the terms of the long term settlement also granting such incentives. As was noticed, incentive allowance, at the rate of a day's wage for disconnection and reconnection, was payable only for such work done

in excess of a specified number. In the semi-urban areas, such allowance at the rate of one day's wage was available for disconnection and reconnection done to the extent of 180 consumers in excess of 900 consumers. There was absolutely no evidence produced by the petitioner to establish the same.

10. The petitioner's contention is that the petitioner had sought for production of documents by the KSEB by Exhibit P4 Interlocutory Application. It is seen that the petitioner had sought for production of almost five documents, of which three have been produced before the Labour Court. The Labour Court found that there was nothing to establish the petitioner having carried out such disconnection and reconnection work entitling him to the incentive allowance. This was on the basis of examination of the Complaint Register and Disconnection Register. True, the registers were not the complete registers for the entire period on which the claim was sought. But the question of drawing of adverse inference would only arise when the party who asserts a fact has proved the same and the opposite side who equally asserts the contrary fails to prove it on the basis of substantial evidence. It cannot be said that any adverse inference can be drawn against the KSEB, in the facts of the instant

case.

11. In the present case, the question is as to whether the petitioner has proved the fact as to his being entitled to the incentive allowance. The petitioner but for stating that there were 3022 connections, spread over 7 transformers, has not proved the specific area of operation of the petitioner. Nor has the petitioner stated as to the exact number of disconnections and reconnections made or provided the details of the disconnections or reconnections made, before the Labour Court. These are factual aspects which would have to be proved before a claim could be sustained for incentive allowance, which allowance is based on the specific condition of carrying out disconnection and reconnection work.

12. The learned counsel appearing for the petitioner has a further case that the Labour Court has found against the petitioner for reason of the work diary issued to the petitioner having not been produced. The petitioner contends, on the basis of a communication issued under the Right to Information Act, produced at Exhibit P11, that neither the petitioner nor any Lineman in the jurisdiction of the Parassala Electrical Major Section was issued with such work diary. However, the petitioner has not contested the same in the cross

examination of the witnesses of the KSEB. Exhibit P11 is seen issued only after the impugned order was passed. The prayer for a remand cannot be countenanced primarily since the rejection of the claim of the workman was not for the reason of non-production of the work diary; but for absence of any reliable evidence to substantiate the claim raised under Section 33C(2). Further; adjudication cannot be reduced to a mere gamble, where the litigant courts the change in fortunes; as with the roll of dice.

In such circumstances, this Court does not find any reason to interfere with the rejection of the claim made by the petitioner. The writ petition would stand dismissed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

(true copy)