IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

OP(KAT).No. 170 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 677/2012 of KERALA ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 01-01-2013

PETITIONER(S)/APPLICANT:

S.JITHENDRIYAN AGED 58 YEARS
RETIRED U.D. CLERK, DIRECTORATE OF COIR DEVELOPMENT
INDUSTRIES AND COMMERCE DEPARTMENT, COIR BHAVAN
NANDAVANAM, THIRUVANANTHAPURAM, RESIDING AT T.C 81745
LEKSHMY NAGAR, THIRUMALA P.O., THIRUVANANTHAPURAM-6.

BY ADVS.SMT.SREEDEVI KYLASANATH
SRI.M.JAYAKRISHNAN
SRI.ACHUTH KYLAS

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
INDUSTRIES DEPARTEMTN, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF INDUSTRIES AND COMMERCE
VIKAS BHAVAN, THIRUVANANTHAPURAM.

3. THE DIRECTOR OF COIR DEVELOPMENT,
DIRECTORATEOF COIR DEVELOPMENT, COIR BHAVAN
NANDAVANAM, THIRUVANANTHAPURAM -695 033.

4. THE KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECETOR
THIRUVANANTHAPURAM.

R1 AND R2 BY SENIOR GOVERNMENT PLEADER SRI. M. MUHAMMED SHAFI
R4 SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR ADMISSION ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(KAT).No. 170 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT-P1-TRUE COPY OF THE ORDER DATED 1/01/2013 IN O.A 677/2012.
EXHIBIT-P2-TRUE COPY OF THE ORIGINAL APPLICATION ALONG WITH DOCUMENTS
EXHIBIT-P3-TRUE COPY OF THE ORDER DATED 26/11/2-012 IN O.A 677/2012.
EXHIBIT-P4-TRUE COPY OF THE ORDER DATED 01/01/2013 IN A.R 11/2012 IN O.A 677/2012.
EXHIBIT-P5-TRUE COPY OF THE JUDGMENT IN O.P (KAT) 770/2013 AND O.P (KAT) 1570/2013.

ANNEXURE A1 : TRUE COPY OF THE REPRESENTATION DATED 21.07.2011
ANNEXURE A2 : TRUE COPY OF THE LETTER DATED 16.10.2008 OF 3RD RESPONDENT
ANNEXURE A3 : TRUE COPY OF THE LETTER DATED 22.08.2006 ADDRESSED TO 3RD RESPONDENT.
ANNEXURE A4 : TRUE COPY OF THE REPRESENTATION DATED 15.08.2011
ANNEXURE A5 : TRUE COPY OF G.O. (MS) 130/2011/RD DATED 28.02.2011
ANNEXURE A5(a) : TRUE COPY OF G.O. (RT) 463/99/GAD DATED 11.01.1999
ANNEXURE A5(b) : TRUE COPY OF G.O. (RT) 9548/2000/GAD DATED 01.12.2000
ANNEXURE A5(C) : TRUE COPY OF JUDGMENT DATED 26.8.200 IN W.P.(c) 17808/2007
ANNEXURE A6 : TRUE COPY OF CIRCULAR DATED 16.04.1971
ANNEXURE A7 : TRUE COPY OF .G.O.(P) NO. 188/2008/FIN DATED 29.08.1989
ANNEXURE A9 : TRUE COPY OF THE RELEVANT PART OF THE 9TH PAY COMMISSION REPORT LAID DOWN UNDER PARA 15.08.
ANNEXURE A10: TRUE COPY OF the LETTER DATED 16.11.2007 OF CHAIRMAN & MANAGING DIRECTOR, KSRTC.
ANNEXURE A10(a) : TRUE COPY OF THE LETTER 13.08.2009 OF THE CHARIRMAN & MANAGING DIRECTOR, KSRTC.
ANNEXURE A10(b) : TRUE COPY OF THE RESIGNATION LETTER DATED 27.12.2010
ANNEXURE A11 : TRUE COPY OF THE JUDGMENT IN WRIT PETITION 30492/2011
ANNEXURE A12 : TRUE COPY OF THE LETTER DATED 03.01.2012 OF THE UNDER SECRETAR INDUSTRIES (A) DEPARTMENT.
ANNEXURE A13 : TRUE COPY OF THE G.O(RT) 255/2012/ID DATED 14.02.2012

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.
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O. P. (KAT) No. 170 of 2015
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Dated, this the 4th day of June, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

The learned Government Pleader takes notice on behalf of the respondents 1 to 3. The learned standing counsel takes notice on behalf of the 4th respondent.

2. The issued involved in this case is whether the service rendered by the petitioner in the 4th respondent/KSRTC prior to coming into service of respondents 1 to 3 could be reckoned as qualifying service for computing pension.

3. The learned counsel for the petitioner as well as the learned Government Pleader and the learned standing counsel for the KSRTC submit that the matter can be considered and heard finally. Heard both the sides accordingly.

4. The learned counsel for the petitioner submits that the relief was declined by the Tribunal based on the verdict dated 25.05.2012

passed by a learned single Judge of this Court in W.P.(C) No. 7747 of 2010. But subsequently the legal position has been clarified and declared in unequivocal terms as per the decision rendered by a Division Bench of this Court vide **ILR 2015 (1) Ker. 10 [Muhammed Basheer Vs. State of Kerala]** holding that the service rendered in the KSRTC is reckonable as qualifying service for computing pension.

5. Minimum factual position required for the purpose disposal of this petition is that, the petitioner, with intent to have his prior service of 11 years in the KSRTC counted along with the service rendered in the 3rd respondent department, approached the Tribunal by filing the O.A. Which was initially allowed. Subsequently, a review application was filed by the respondents contending that scope of 'Note' to the proviso to Rule 20 of Part III KSR was not considered and hence the matter required to be reconsidered. The judgment rendered by a learned single Judge of this Court in W.P.(C) No 7747 of 2010 was also brought to the notice of the Tribunal. Referring to the 'Note' to the proviso to Rule 20, stipulating that the proviso shall not be applicable for appointment to other public sector undertakings, except those

Universities mentioned thereunder, the verdict originally rendered was recalled and the O.A. was dismissed. This in turn is under challenge in this original petition.

6. In the course of time, the scope of the Rule came to be considered and analysed by a Division Bench of this Court. Exactly similar contention was raised from the part of the Government with reference to the 'Note' as aforesaid. The Division Bench of this Court (to which one of us was a member), with reference to the legal provision and the nature of contentions, clearly observed that the 'Note' added to the proviso to Rule 20 Part III KSR did not have any nexus, sanctity or connection with the point sought to be clarified. The eligibility to have the service counted, based on the Government Orders issued at different points of time (invoking the power under sub Rule (2) of Rule 11 Part III KSR) was also specifically adverted to, also making it clear that the aforesaid orders granting benefits of past service were not cancelled at any point of time. The Bench observed that the purpose of the 'Note' was only to explain the modalities to make appropriation of contributions made to the pension fund. It was accordingly held that the prior service rendered by the aggrieved party in the KSRTC

was very much liable to be counted, notwithstanding the 'Note' as aforesaid. We fully concur with the view expressed by the Division Bench as aforesaid and finds that the issue is squarely covered by the decision as aforesaid.

5. During the course of hearing, the learned Government Pleader also brought to the notice of this Court that the petitioner has sought to approach this Court much belatedly, i.e. nearly after 2½ years. It is true that the order was passed by the Tribunal as early as on 01.01.2013. But the issue was decided by the Tribunal based on the verdict passed by a learned single Judge of this Court in W.P.(C) No. 7747 of 2010. The legal position became clear only by virtue of the verdict passed by the Division Bench in **ILR 2015 (1) Ker. 10** (cited supra). Hence it is applicable to the petitioner herein as well. This is more so, when the original application preferred by the petitioner was allowed earlier, as per Ext. P3, which came to be reviewed subsequently, at the instance of the Government, based on misconceived idea and understanding as to the scope of Rule 20 Part III KSR.

As a natural consequence, there is no other alternative but to set aside the order passed in the Original Application No. 677 of

2012. It is ordered accordingly and it is declared that the prior service rendered by the petitioner in the KSRTC is very much reckonable as qualifying service for computing pension.

Original Petition is allowed. No cost.

sd/-
P. R. RAMACHANDRA MENON,
(JUDGE)

sd/-
BABU MATHEW P. JOSEPH,
(JUDGE)

kmd