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

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

OP(KAT).No. 146 of 2014 (Z)

AGAINST THE ORDER IN OA 110/2014 of KERALA ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM

PETITIONER:

A.SASISEKHARAN NAIR
AGED 56 YEAFS, S/O. K. APPUKUTTAN NAIR
RETIRED ASSISTANT COMMISSIONER OF EXCISE
RESIDING AT SREEPADAM, SNEHAPURI, KARUMAM P.O.
THIRUVANANTHAPURAM -695 018.

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.AMMU PILLAI

RESPONDENTS:
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1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM -695 001 (WRONGLY SHOWN AS EXCISE DEPARTMENT IN THE O.A)

2. THE SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

3. THE PRINCIPAL SECRETARY TO GOVERNMENT
TRANSPORT DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

4. THE ACCOUNTANT GENERAL (A&E), KERALA
OFFICE OF THE ACCOUNTANT GENERAL
THIRUVANANTHAPURAM - 695 039.

5. THE MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM - 695 022.

6. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, THULASI HILLS
PATTOM PALACE P.O., THIRUVANANTHAPURAM - 695 004.

R1 to 3 BY SR. GOVERNMENT PLEADER SRI E.M. ABDUL KHAHDER
R6 BY SRI.P.C.SASIDHARAN, SC, KPSC
R5 BY SRI.BABU JOSEPH KURUVATHAZHA,SC,KSRTC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(KAT).No. 146 of 2014 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE O.A NO. 110 OF 2014 FILED BY THE PETITIONER BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

EXHIBIT-P2-TRUE COPY OF THE ORDER DATED 15/01/2014 IN O.A 110/2014 OF THE KERALA ADMINISTRATIVE TRIBUNAL.

RESPONDENT(S)' EXHIBITS

NIL

ks.

True copy

P.S. (Hr.Gr.)To Judge

P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.
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O. P. (KAT) No. 146 of 2014
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Dated, this the 9th day of June, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

The learned Government Pleader takes notice on behalf of the respondents 1 to 3. Mr. Babu Joseph Kuruvithazha, the learned standing counsel takes notice on behalf of the 5th respondent, while notice is taken on behalf of the 6th respondent, PSC, by Mr. P.C. Sasidharan, the learned Standing Counsel.

2. The issued involved in this case is whether the service rendered by the petitioner in the 5th respondent/KSRTC prior to joining the 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 both the learned standing

counsel for the concerned respondents submit that the matter can be considered and heard finally. Heard both the sides accordingly.

4. The learned counsel for the petitioner submits that interference 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 by a Division Bench of this Court, as per the decision reported in **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 of 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 Excise 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 the Tribunal. Referring to the **'Note'** to the **proviso to Rule 20** of part III KSR**,** 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 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), 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, observing 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 find that the issue is squarely covered by the decision as aforesaid.

7. The Tribunal decided the issue 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, 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, we hereby set aside the order passed in the Original Application No. 110/2014. It is declared that the prior service rendered by the petitioner in the KSRTC is very much reckonable as qualifying service for computing pension. The retirement benefits payable to the petitioner shall be reworked and the due amount shall be disbursed at the earliest, at any rate within three months. It is also made clear that nothing prevents the Government to amend the Rule in accordance with law, if so desired, to appropriate extent, so as to safeguard the interest of the Government.

Original Petition is allowed. No cost.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

Sd/-

ks

BABU MATHEW P. JOSEPH,
JUDGE

True copy

P.S. (Hr.Gr.)To Judge