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

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WA.No. 1601 of 2010 ( ) IN WP(C).5763/2005

(AGAINST THE ORDER/JUDGMENT IN WP(C) 5763/2005 of HIGH COURT OF KERALA DATED 09-03-2010)

APPELLANT(S)/APPELLANTS:
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1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM

2. THE CHIEF INTERNAL AUDITOR
KSEB, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM.

3. THE CHIEF ENGINEER (HRM)
KSEB, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM.

BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

RESPONDENT(S):

C.C.JOSEPH
MOBILE CRANE OPERATOR GRADE-11 RETIRED, KSEB
CHERUPACHIKARA HOUSE, KEEZHILLAM, PO
ERNAKULAM DISTRICT.

BY ADV. SRI.K.PAUL KURIAKOSE
BY SRI.MOHAMMED SHIRAZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.

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W.A. No.1601 OF 2010

....

Dated this the 10th June, 2015

<u>JUDGMENT</u>

<u>P.R. Ramachandra Menon, J:</u>

Fixation of pay of the respondent herein, pursuant to Ext.P1 Long Term Settlement, sought to be unilaterally corrected by the K.S.E. Board by placing reliance on Ext.P5 Circular issued by the Board , which was intercepted by the learned single Judge in the writ petition, is sought to be challenged by way of this appeal preferred by the Board.

2. The respondent herein joined the service of the appellant Board and retired from the service on attaining the age of superannuation on 30.09.2003, when he was working as Mobile Crane Operator Grade II. Pursuant to Ext.P1 Long Term Settlement , Pay fixation was effected and the due amount was disbursed to the first respondent. Subsequently, pointing out that there was wrong fixation and excess payment, steps were pursued to recover the alleged excess amount with reference to

Ext.P5 Circular . The respondent was constrained to approach this Court by filing O.P.No.5315 of 1999. The stand taken by the respondent Board was that they were justified in proceeding with such steps by virtue of the Clause 8(g) of the terms of settlement, which was subsequently clarified as per Ext.P5 Circular.

3. In the case of the respondent herein, fixation was done by giving hike to the concerned extent, in two consecutive months; by virtue of which, much excess amount came to be drawn. The contention was appreciated by the learned Single Judge making an observation that there was considerable force in the submission made from the part of the Board to the effect that what has been done by the Circular is only to fill the lacuna in Ext.P1 Long Term Settlement. It was also observed that Ext.P1 is silent as to the case of persons whose basic pay, after adding the minimum increment and weightage, is below the minimum of the scale of pay. However, the correctness of the said fact was not decided any further and the matter was disposed of, holding that there was no fault on the part of the

writ petitioner and no allegation of fraud was there . The payment was effected and the same was received in good faith and as such the writ petitioner was permitted to retain the amount, however adding that the respondents were at liberty to refix the pay of the petitioner ***in accordance with law.***

4. After passing the said verdict, the writ petitioner retired from the service on 30.09.2003. Pensionary benefits were worked out as originally intended by the Board . With regard to fixation of pay, there was substantial reduction, which made the writ petitioner to approach this Court again by filing WP.(C) No.15923 of 2004. The delay in settling the pensionary benefits was stated as because of the pendency of the earlier Petition, ie. O.P.5315 of 1999. Observing that the said case was already disposed of, the first respondent therein was required to consider the matter and take necessary steps to see that the pensionary benefits were settled and released to the writ petitioner within the time as specified therein. In case of delay, beyond the stipulated extent, it was ordered that the writ petitioner would be entitled to get interest at the rate of 15% from 01.01.2004 and the officers responsible for the delay were to be personally liable for the same. Contending that the Board did not approach the matter in the correct perspective, and that they struck to their stand effecting unauthorised deduction (referring to the alleged mistake in the re-fixation) orders were passed releasing only lesser benefits, which was the subject matter of challenge in W.P.(C)5763 of 2005 . After hearing both the sides and after considering the materials on record, a learned Judge of this Court as per judgment dated 09.03.2010 observed that, fixation of pay of the writ petitioner as per Ext.P2 was perfectly in accordance with Ext.P1 Long Term Settlement and was not liable to be changed, either on the basis of Ext.P5 Circular or otherwise. Retirement benefits payable were ordered to be given as per the Fixation done by Ext. P2 and disbursement was ordered to be effected at the earliest, at any rate, within two months, which in turn is under challenge in this appeal preferred by the Board on various grounds.

5. Heard both the sides in detail.

6. The learned Standing Counsel appearing for the Board

submits that the contents of Ext.P2 will reveal that the respondent herein is a beneficiary to an undesired extent by getting vertical elevation with regard to financial benefits to an undesirable extent as two higher fixation was given in two simultaneous months i.e. "01.08.1999 and 01.09.1999". How fixation has to be done is very much discernible from Ext.P1 Long Term Settlement. Fixation of pay as it appears in Clause 8 reads as follows:

> *"8. The pay of an employee in service as on 31.7.93 will be fixed in the revised scale as follows:*
>
> *a) Add to the basic pay as on 31.7.93 ' in the pre-revision scale' the following:*
>
> *i) Assured benefit of Rs.180/- (under clause 7 above) (Rs. One hundred and eighty only)*
>
> *ii) Weightage admissible (under clause 3 above)*
>
> *b) If the amount arrived at as per clause (a) above is less than the minimum of the revised scale then the pay of the employee will be fixed at the minimum of the revised scale.*

c) If the pay arrived at as per clause (a) above is more than the maximum of the revised scale, then the pay of the employee will be fixed in the next higher state notionally arrived at by elongating the scale after adding as many increments (at the rate of the last increment in the revised scale) as are necessary to avoid stagnation.

d) In other cases, the pay of the employee will be fixed at the next higher stage in the revised scale whether it represents a stage in the revised scale or not.

e) No option facility will be allowed.

f) The pay arrived at as per sub clause (b), (c) and (d) above, as the case may be, shall be the pay as on 1.8.1993 in the revised scale.

g) the next increment will be given on the date on which the normal increment false due in the pre-revision scale"

To the basic pay as on 31.07.1993, an 'Assured Benefit' of Rs.180/- is to be added at the first instance and there shall be an addition of 'Weightage' admissible, as per Clause '3' of Ext.P1 Long Term Settlement , which in the instant case is '56'. It is seen that the basic pay as on 31.07.1993 in the case of the respondent was Rs.1250/- and on adding the amounts under the above two Heads, the total becomes Rs.1486/-and in the revised scale, it comes to Rs.1690/-.

7. Although the total figure worked out, as per Clause 8(a) of Ext.P1 comes at Rs.1486/-, the minimum of the scale is at Rs.1690/-. As such, by virtue of mandate of Ext.P1 settlement, it has to be fixed at the minimum of Rs.1690/-, which has been done as evident from Column 11 of Ext.P2. By virtue of contents of Ext.P1 Long Term Settlement , the next increment payable will be on the date on which the normal increment falls due 'in the pre-revised scale', as provided under clause 8 (g), which in the case of the respondent is 01.09.1993. It was accordingly that the next increment in the Scale was also given to the respondent and the pay was fixed accordingly. As such, fixation given as per Ext.P2 does not suffer from any infirmity and the observation made by the learned Single Judge in this regard is perfectly within the four walls of law.

8. However, there is an observation by the learned Single Judge of this Court while passing Ext.P6 judgment that Ext.P5

Circular is only to fill the lacuna in Ext.P1 and that Ext.P1 is silent as to the case of persons, whose basic pay, after adding the minimum increment and weightage is below the minimum of the scale of pay.

9. On going through the materials on record, this Court finds that the said observation does not appear to be correct in so far as existence of **Clause 8(b)** of Ext.P1 was not brought to the notice of the learned Single Judge. It is very evident that there was clear understanding/agreement, with proper consensus, between the workers represented by the Trade Union and also the Management Board, as to what should be the course to be done, if at all the total pay arrived at by following the exercise as envisaged under clause 8(a) of Ext.P1 settlement happens to be less than the minimum in the revised scale. The agreement did not stipulate that, if such difference happens to be more than one increment , the granting of next increment had to be postponed in any manner and on the other hand clause 8(g) categorically stipulated that the next increment was to be given on the date on which the normal increment fell due.

The course pursued by the Board vide Ext.P5 Circular was in effect to modify the terms of the agreement between the Union and the Management (Ext.P1), adding/incorporating that if such difference was more than one increment at that stage in the pre-revised scale, the next increment in such cases was to be granted only on 01.08.1994. This Court does not find any basis for having issued such a Circular, for the obvious reason that the Board could not have unilaterally altered the terms of Settlement entered between the Management and the Union vide Ext.P1. The binding nature of the settlement is clearly discernible from Section 18 of the Industrial Disputes Act . This Court does not find it necessary to go into details as to how it can be changed. Admittedly, the Board did not have any concurrence of the Union to have changed any of the terms of Ext P1 settlement, particularly **Clause 8(b),** by adding something more, vide Ext.P5 Circular issued by the Board. This being the position, the said Circular sought to be relied on by the Board cannot have, any relevance or significance or authority to supercede the terms of settlement covered by Ext. P1.

10. In the above circumstance, this Court finds that the fixation effected as per Ext.P2 is perfectly in order and as a natural consequence, pensionary benefits are also to be worked out in the manner as ordered by the learned Single Judge. There is absolutely no tenable ground to call for interference with the verdict passed by the learned single Judge. Interference is declined and the appeal is dismissed.

P.R. RAMACHANDRA MENON,
JUDGE.

BABU MATHEW P. JOSEPH,
JUDGE.

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