

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WA.No. 1100 of 2015 () IN WP(C).35004/2011

AGAINST THE JUDGMENT IN WP(C) 35004/2011 DATED 09-02-2015

APPELLANT(S)/RESPONDENTS 2 TO 4 :-

1. THE SECRETARY, KERALA STATE ELECTRICITY BOARD
VIDYUTHBHAVAN, THIRUVANANTHAPURAM - 695 004.
2. THE CHIEF ENGINEER (HRM), KERALA STATE ELECTRICITY BOARD
VIDYUTHBHAVAN, THIRUVANANTHAPURAM - 695 004.
3. THE EXECUTIVE ENGINEER
ELECTRICAL DIVISION, KERALA STATE ELECTRICITY BOARD
CHITTUR, PALAKKAD - 678 103.

BY ADV. SRI.K.S.ANIL, SC, KSEB

RESPONDENT(S)/PETITIONER AND RESPONDENT NO.1 :-

1. R.RITA BELLA, 35 YEARS,
W/O.M.FELIX LEO, KOZHIPARA P.O., PALAKKAD.
2. STATE OF KERALA
REPRESENTED BY SECRETARY, POWER DEPARTMENT
THIRUVANANTHAPURAM - 695 001.

R1 BY ADV. SRI.U.BALAGANGADHARAN

R2 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A. No.1100 of 2015

Dated this the 28th day of July 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellants as well as the learned counsel appearing for the first respondent/writ petitioner.

2. This writ appeal has been filed against the judgment dated 9.2.2015 in W.P.(C) No.35004 of 2011. The writ petition was filed by the petitioner praying to set aside Ext.P5 order, by which, the claim of the writ petitioner for compassionate appointment on account of invalid retirement of her husband on medical ground was rejected. In the writ petition, the following prayers were made by the petitioner :-

- “(i) Writ in the nature of certiorari to set aside Ext.P5 is legally unsustainable.
- (ii) Writ in the nature of mandamus commanding the 3rd respondent to give appointment to the petitioner in Clerical cadre in accordance with her qualification on compassionate grounds ;
- (iii) Writ in the nature of mandamus commanding the 1st respondent to consider and pass orders on Exhibit P6 representation ;
- (iv) Declare that the petitioner is entitled to be appointed in the services of board in clerical cadre on compassionate grounds commensurate with her qualification.”

3. The relevant facts noted by the learned Single Judge is that the petitioner's husband while working as a Lineman Grade - I in the Kerala State Electricity Board (in short 'KSEB') suffered serious injuries in a motor accident on 21.1.2007 and his permanent disability has been assessed at 100%. As per the recommendation of the Medical Board, the petitioner's husband was permitted to retire on the ground that he is medically invalid with effect from 17.6.2009 as per the Kerala Service Rules. The petitioner claims compassionate appointment under the provisions of the Kerala State Electricity Board (Appointment of dependents of Board employees who die-in-harness or are permanently disabled and are retiring on invalid pension) Regulations, 1985. Regulation 7 of the Regulations (as amended by the KSEB) provides the eligibility for appointment of dependents of employees who retire on invalid pension, which has been extracted in paragraph 2 of the judgment and as per the said Regulation, the petitioner was clearly entitled for compassionate appointment. She fulfilled the eligibility as mentioned in Regulation 7.

4. The appellants resisted the claim of the petitioner on the ground that after the Regulations, a Long Term Settlement

was entered on 19.3.2007 with few registered Trade Unions, under which, Clause 5 is extracted hereunder :-

“Clause 5 Appointment under Compassionate Employment Scheme (CES) would be granted only in cases of dependent of employees who avail invalid pension due to accidents occurred during the course and out of employment, provided the employee is incapacitated to perform his/her duties and is absent from duty consequent to the accident.”

5. It was submitted by the KSEB that in view of the Long Term Settlement, the petitioner is not eligible. The learned Single Judge took the view that the statutory regulations could not have been diluted on the basis of the Long Term Settlement as claimed by the KSEB. Cogent reasons were given by the learned Single Judge for not relying on the Long Term Settlement for denying the claim of the petitioner. The learned Single Judge also took note of the fact that present is a case where, the family is thrown out to street due to depletion of income and the sole earning member of the family, the petitioner's husband, is suffering from loss of eye sight, loss of memory, orientation and has become hemiplegic and his permanent disability has been assessed at 100%. Taking into consideration the aforesaid facts and circumstances, the learned

-: 4 :-

Single Judge set aside Ext.P5 order and directed the respondents to consider the claim of the petitioner for compassionate appointment within a period of three months.

6. After having heard the learned counsel for the parties and perused the records, we are of the view that the learned Single Judge has exercised his discretion of equitable jurisdiction in the facts of the present case, especially, in view of Regulation 7, the petitioner was clearly entitled for compassionate appointment. In the above view of the matter, we are of the view that the facts of the case call for a sympathetic consideration of the petitioner's case. Thus, we are not inclined to interfere with the judgment of the learned Single Judge.

Accordingly, the writ appeal is dismissed. The time granted by the learned Single Judge is extended till **31.8.2015**.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE