

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

WA.No. 1675 of 2014

WP(C) 10848/2013, DATED 10-07-2014

APPELLANT(S)/RESPONDENTS 1 TO 3 IN WPC:

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VAIDHUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 004.**
- 2. CHIEF ENGINEER (HRM)
KERALA STATE ELECTRICITY BOARD, VAIDHUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM- 695004.**
- 3. CHAIRMAN,
KERALA STATE ELECTRICITY BOARD, VAIDHUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM- 695004.**

**BY ADVS.SRI.P.SANTHALINGAM (SR.)
SRI.S.SHARAN,SC,K.S.E.BOARD**

RESPONDENT(S)/PETITIONER IN WPC:

**M.M. VARGHESE, AGED 58 YEARS,
DEPUTY CHIEF ENGINEER CIVIL (RETIRED),
KERTALA STATE ELECTRICITY BOARD,
RESIDING AT MOTEL HOUSE, P.O. THRIKKARIYOOR,
KOTHAMANGALAM, ERNAKULAM - 686 692.**

BY ADV. SRI.P.M.PAREETH

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

ASHOK BHUSHAN, C.J.

“C.R.”

&

A.M. SHAFFIQUE, J.

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W.A. No. 1675 of 2014

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Dated this, the 21st day of November, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This writ appeal has been filed by the Kerala State Electricity Board against judgment dated 10th July 2014, by which judgment the writ petition filed by the 1st respondent/writ petitioner has been allowed holding that petitioner was eligible for grade promotion on completion of 10 years of service and was entitled for fixation in the scale of pay of Chief Engineer w.e.f. 16/3/2008. Order for revising his pensionary benefits were also issued. Parties shall be referred to as described in the writ petition.

2. The brief facts necessary for deciding the writ appeal are; The writ petitioner was appointed as Assistant Engineer (Civil) in the Board's service on 25/11/1981. Petitioner was promoted to the post of Assistant Executive Engineer on 31st May, 1990, to the post of Executive Engineer on 2/5/1996 and to the post of Deputy Chief Engineer (Civil) on 16/3/1998. The petitioner

retired on superannuation while holding the post of Deputy Engineer (Civil) on 31st July, 2009.

3. Petitioner filed the writ petition praying for the following reliefs;

- 1) A writ of mandamus or other appropriate writ, direction or order commanding the respondents to refix the pay of the petitioner in the scale of Rs.28015-32565 with effect from 16.3.2008 and to revise his pensionary benefits accordingly with effect from 1.8.2009 within a time frame.*
- 2) A Direction to the respondents to disburse the arrears of the pay with effect from 16-03-2008 to 31-07-2009 and arrears of pensionary benefits with effect from 1.8.2009 to the petitioner within a time frame.*
- 3) A direction to the 3rd respondent to consider and pass orders on the Ext.P8 representation submitted by the petitioner within a time frame after affording an opportunity of being heard."*

4. Petitioner's case in the writ petition was that he having stagnated on the post of Deputy Chief Engineer for more than 10 years, he was entitled for grade promotion. Accepting the said claim, learned Single Judge has allowed the writ petition.

5. Sri.P. Santhalingam, learned senior counsel appearing for the appellant challenging the judgment contends that petitioner having already been favoured with three promotions, he was not entitled for any grade promotion. He submits that Clause (v) of Article VIII of the settlement, which was brought on record as Ext.P1, clearly indicated that grade promotion can be granted only when a workman recruited under the Board's service does not get at least three promotions within a period of twenty five years. He submits that Clause (i) of Article VIII on which petitioner has placed reliance does not come to the rescue of the petitioner since Clause (i) if read in the correct perspective deals with a person who holds the post and does not get a promotion/grade promotion within 10 years of joining that post. He submits that all the clauses of Article VIII have to be given effect.

6. Learned counsel appearing for the respondent/writ petitioner submits that the case is fully covered by Clause (i) and a workman holding a post if he does not get promotion within 10 years of joining that post is entitled for grade promotion in the

normal promotion generally as per the existing practice. He submits that since petitioner could not get promotion to the next higher post, the Deputy Chief Engineer, he was entitled for grade promotion.

7. We have considered the submission of the learned counsel for the parties and have perused the records.

8. For appreciating the submissions raised by the parties, it is relevant to refer to Article VIII grade promotions. Article VIII has (xi) clauses. Clauses (i) to (v) are as follows:

Article VIII
GRADE PROMOTIONS

i) If a workman holding a post does not get a promotion/grade promotion within 10 years' of joining that post, then he will be granted a grade promotion in the normal promotion channel as per practice existing now.

ii) If a workman holding a post does not get two promotions/grade promotions within a period of 18 years of joining that post, then he will be granted appropriate number of Grade promotions so that he gets atleast two promotions/Grade promotions on completion of 18 years of service in that post.

iii) Similarly, if a workman holding a post does

-:5:-

not get atleast three promotions/Grade Promotions within a period of 25 years of joining that post, then he will be granted appropriate number of grade promotions so that he gets atleast three promotions/grade promotions on completion of 25 years service in that post.

iv) If any workman recruited under the Board's service does not get atleast two promotions/grade promotions within a period of 18 years from the date of his first entry into the Board's service, then he will be granted appropriate number of grade promotions so that he gets atleast two promotions/grade promotions on completion of a period of 18 years from the date of his first entry into the Board's service.

v) If any workman recruited under the Board's service does not get atleast three promotions/grade promotions within a period of 25 years from the date of his first entry into the Board's service, then he will be granted appropriate number of grade promotions so that he gets atleast three promotions/grade promotions on completion of a period of 25 years from the date of his first entry into the Board's service."

A reading of clauses (iv) and (v) together indicate that clauses (iv) and (v) relate to those workman who are recruited under the

Board's services. The present is a case where the petitioner was recruited in the Board's service as Assistant Engineer. Clause (iv) requires that if a workman recruited under the Board's service does not get atleast two promotions/grade promotions within a period of 18 years from the date of his first entry into Board's service, he will be granted appropriate number of grade promotions so that he gets atleast two promotions. Similarly, Clause (v) provides that if any workman recruited under the Board's service does not get atleast three grade promotions within a period of 25 years from the date of his first entry into the Board's service, he will be granted appropriate number of grade promotions so that he gets atleast three grade promotions on completion of 25 years. The present case is clearly covered by clause (v) since petitioner was recruited in the Board's service and within 25 years of service, he got three promotions. Thus, he was not eligible for the grade promotion even after grant of three regular promotions on different higher positions as noted above.

9. Learned Single Judge although noted both Clauses (i)

-:7:-

and (v), but referring to Ext.P5, has allowed the writ petition. Ext.P5 was a case where higher grade promotion was granted to one Sri.M.Mohammed Sherif. The said order was one with regard to an individual and which note was issued by Chief Engineer recommending higher grade in the scale of Chief Engineer. An order passed with regard to different officer regarding grant of grade promotion cannot be treated as last word on the interpretation of the settlement, Ext.P1. More so, Ext.P5 was only a note to the Secretary, Kerala State Electricity Board. The entitlement has to be looked into as per Ext.P1. Learned counsel for the petitioner has also referred to Ext.P10, which was an order issued with regard to another employee, viz., Sri.Unnikrishnan V., granting higher grade.

10. As observed above, any order with regard to the granting of higher grade to an officer cannot be treated to be a final word or interpretation of the settlement. When the petitioner has come before the Court claiming right, he has to establish his right flowing from Ext.P1, which is the basis for claim. We are of

W.A.No.1675/14

-:8:-

the view that present case is covered by clause (v) instead of clause (i) as claimed by the petitioner.

We are thus of the view that the judgment of the learned Single Judge cannot be sustained. Writ appeal is allowed. The judgment of the learned Single Judge is set aside and the writ petition is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

21/11/2015

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P.S to Judge