

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 15604 of 2004 (G)

PETITIONER :

**M.K. SEETHI, MANGALASSERI HOUSE,
P.O. NELLIKUZHI, KOTHAMANGALAM,
ERNAKULAM DISTRICT. (RETD.OVERSEER (CIVIL)
INVESTIGATION DIVISION, VELLATHOOVAL).**

BY ADV. SRI.MOHAN JACOB GEORGE

RESPONDENT(S):

- 1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VAIDYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM.**
- 2. THE DEPUTY CHIEF ENGINEER, CIVIL CIRCLE,
KERALA STATE ELECTRICITY BOARD, KOTHAMANGALAM,
ERNAKULAM DISTRICT.**

**R1 & R2 BY SRI.N.N.SUGUNAPALAN(SENIOR ADVOCATE),SC,KSEB
SRI.SAJEEVKUMAR K. GOPAL,SC
SRI.P.SANTHALINGAM, SC, KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE ORDER NO.EB4-6/94-95 DATED 23/6/2003 ISSUED BY THE 2ND RESPONDENT**
- P2 COPY OF THE ORDER NO.PA. G.1/144/2003 DATED 19/9/2003 ISSUED BY THE OFFICE OF THE 1ST RESPONDENT**
- P3 COPY OF THE B.O.NO.(E.A.III)20982/79 DATED 6/3/1980**
- P4 COPY OF THE CERTIFICATE DATED 30/4/1980 ISSUED BY THE 1ST RESPONDENT**
- P5 COPY OF THE ORDER NO.EB 1-251/771258 DATED 30/4/1980**
- P6 COPY OF THE ORDER NO.B.O.EB C2/6159/85 DATED 13/2/1989**
- P7 COPY OF THE ORDER NO.EBC 2/89-90 DATED 25/3/1991**
- P8 COPY OF THE COMMUNICATION DATED 3/11/1992 OF THE EXECUTIVE ENGINEER, TNR DIVISION, SHORNUR**
- P9 COPY OF THE G.O.(P) 169/96/FIN.A1 DATED 5/2/1996**
- P10 COPY OF THE COMMUNICATION NO.EBI/17/2000-01/412 DATED 2/11/2000**
- P11 COPY OF THE G.O.(P) 228/01 FIN DATED 2/2/2001**
- P12 COPY OF THE G.O(P) 193/04/FIN DATED 20/4/2004**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 15604 of 2004

Dated this the 26th day of May, 2015

JUDGMENT

The petitioner approached this Court challenging the action of the respondent Board in not granting any pension pursuant to his retirement from the services of Board as an Overseer with effect from 30.04.2000. The facts in the writ petition would disclose that the petitioner joined service as an Overseer with effect from 26.04.1972. He had availed of leave without allowance covering three spells, namely the period from 02.05.1980 to 01.11.1984 (Exts.P3 and P5), from 02.11.1984 to 01.11.1989 (Ext.P6) and from 02.11.1989 to 01.11.1994 (Ext.P7). Thereafter, he applied for leave for a 4th spell from 08.12.1994 for a period of three years, but that was rejected by the respondent Board. Thus the petitioner was sanctioned the leave without allowance that he had applied for, for a period of 14½ years and he rejoined duty on 04.11.1994. Thereafter, the petitioner continued in service till 30.04.2000, on which date he retired from the services of the Board, on attaining the age of superannuation. In the writ petition, the prayer of the petitioner is essentially for the disbursal of the pension to the petitioner by taking into account the period covered

by the leave without allowance sanctioned to the petitioner, as also by including the period from 19.09.1968 to 24.05.1972, during which time the petitioner was rendering service under a Panchayat. The contention of the petitioner is that this prior period of service in the Panchayat should also be counted in the total service rendered by the petitioner under the KSEB for the purposes of reckoning the period of service for purposes of payment of pension. The claim of the petitioner for pension was rejected by the respondent on the ground that by Ext.P1 order, the disciplinary proceedings that were initiated against the petitioner, while in service had been closed by treating the period from 08.12.1994 to 30.04.2000, when the petitioner was absent from duty, as absence from duty and making it clear that the said period could not be counted for the purposes of pensionary benefits. It was found that, excluding the said period, together with the period for which the petitioner was sanctioned leave without allowance by the respondent Board, the total length of his service under the respondent Board was only 8 years, namely the period between 26.04.1972 and 02.05.1980. It was found by the respondent Board that inasmuch as the petitioner only had 8 years of reckonable service for the purposes of pension and the minimum period

required for the payment of pension was ten years at the relevant point in time, the petitioner was not entitled to claim any pension from the respondent Board. It is the said stand of the respondent Board, that is impugned by the petitioner in the writ petition.

2. A counter affidavit has been filed on behalf of the respondent Board, wherein the above stand of the respondent Board has been reiterated. It is in particular pointed out, with reference to Exts.P3, P5, P6 and P7 orders, that the orders sanctioning the leave without allowance to the petitioner made it very clear that the period spent on leave without allowance would not be counted for the purposes of pension. As regards the petitioner's claim for counting the prior period of service rendered in a Panchayat for the purposes of pension, reference is made to Ext.P11 order of the Government, which suggests that the said period of service cannot be reckoned for the purposes of pension to be paid by the respondent Board.

3. I have heard the learned counsel appearing for the petitioner and also the learned Standing Counsel appearing for the respondent Board.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, as per the provisions of Rule 26 Part III KSR, "time passed on leave of all kinds with or without allowances will count as qualifying service unless otherwise specified". The period of leave without allowance, that was sanctioned to the petitioner for the various spells is covered by Exts.P3, P5, P6 and P7 orders, that sanctioned the leave without allowance to the petitioner. All these orders contained an express provision to the effect that the leave period sanctioned therein will not count for increment and for pension. It is apparent, therefore, that the petitioner cannot count the period spent on leave without allowance for the purposes of pension. That apart, I find that by virtue of Ext.P11 order, the prior period of service rendered by the petitioner in the Panchayat cannot also be counted for the purposes of payment of pension as per the rules prevailing under the respondent Board. The issue to be examined therefore, is whether after exclusion of the aforesaid period, the petitioner would satisfy the requirement of having a minimum service of ten years to claim pension from the respondent Board.

On a consideration of the facts in the instant case, I find that the petitioner had a qualifying service of only eight years between the period from 26.04.1972 when he joined the service of Board as an Overseer and 02.05.1980 when he proceeded on his first spell of leave without allowance pursuant to Exts.P3 and P5 orders. In that view of the matter, I find that the petitioner will not be entitled to claim pension from the respondent Board. The writ petition, therefore fails and is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE