

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

**PRESENT:
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 13245 of 2013 (E)

PETITIONERS:

- 1. P.K.CHANDRABABU
COMPOSITOR, TRAVANCORE DEVASWOM BOARD PRESS
THIRUVANANTHAPURAM.**
- 2. S. REMADEVI
BINDER, -DO-**
- 3. V. LEKHA
-DO-**
- 4. S.S. SANDHYARANI
-DO-**
- 5. R. VIJAYALEKSHMI
-DO-**
- 6. K.R. JAYARANI
-DO-**
- 7. G. JAYASANKAR
-DO-**
- 8. T.R. SANDHYARANI
LASCAR, -DO-**
- 9. G. SARASWATHY ANTHARJANAM,
SWEEPER, -DO-**

**BY ADVS.SRI.K.R.B.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL**

RESPONDENT:

**THE TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY
TRAVANCORE DEVASWOM BOARD OFFICE, NANTHANCOD
THIRUVANANTHAPURAM - 695 001.**

BY ADV. SRI.KRISHNA MENON, SC, TRAVANCORE DEVASWOM BOARD

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE RELEVANT PORTION OF THE LIST OF DAILY WAGE WORKERS AND EMPLOYEES OF THE DEVASWOM BOARD PREPARED AND SIGNED BY THE DEVASWOM COMMISSIONER.
- EXHIBIT-P2- TRUE COPY OF THE JUDGMENT DATED 07/01/2004 IN O.P 28829/1999
- EXHIBIT-P3- TRUE COPY OF THE JUDGMENT DATED 15/07/2008 IN W.P(C) 18173/2004
- EXHIBIT-P4- TRUE COPY OF THE ORDER DATED 23/06/2009 IN R.P 120/2009
- EXHIBIT-P5- TRUE COPY OF THE ORDER DATED 23/07/2009 IN DBA NO. 94/2009
- EXHIBIT-P6- TRUE COPY OF THE ORDER NO. ROC 8199/08/EST.2 DATED 05/10/2009 ISSUED BY THE RESPONDENT.
- EXHIBIT-P7- TRUE COPY OF THE ORDER ROC NO. 8199/08/ESTT.2 DATED 27/10/2009 ISSUED BY THE DEVASWOM COMMISSIONER.
- EXHIBIT-P8- TRUE COPY OF THE ORDER NO. ROC 20721/09/ESTT/ DATED 10/2009 ISSUED BY THE DEVASWOM COMMISSIONER
- EXHIBIT-P9- TRUE COPY OF THE JUDGMENT DATED 14/07/2011 IN W.P(C) 12288/2010
- EXHIBIT-P10- TRUE COPY OF THE ORDER NO. ROC NO. 1502/98/EST.I DATED 31/03/2008 ISSUED BY THE RESPONDENT.
- EXHIBIT-P11- TRUE COPY OF THE ORDER ROC NO. 948/2012/EST.2 DATED 24/08/2012 ISSUED BY THE RESPONDENT.
- EXHIBIT-P12- TRUE COPY OF THE ORDER ISSUED BY THE RESPONDENT
- EXHIBIT-P13- TRUE COPY OF THE JOINT REPRESENTATION DATED 13/12/2011 SUBMITTED BY THE PETITIONERS TO THE RESPONDENT.
- EXHIBIT-P14- TRUE COPY OF THE ROC NO. 8199/08/ESTT.2 DATED 26/06/2012 ISSUED BY THE RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

C.R.

K. VINOD CHANDRAN, J.

W.P.(C) No. 13245 of 2013

Dated this the 3rd day of September, 2015

J U D G M E N T

The petitioners are aggrieved with the fact that their daily wage service would not be reckoned for pension.

2. The petitioners were all appointed, first, between 1990 to 1993, on the various dates mentioned in page two of the writ petition. Admittedly, they were continuing with break in service over the years, which prompted them to approach this Court with a petition seeking regularization. Ext.P2 judgment of a Division Bench of this Court found that since they had been working for nearly 10 years with artificial break in service, it is only proper that the Board consider the case of the petitioners, if the posts are permanent in nature.

3. Nothing having been done by the Board, the petitioners were again before this Court and another Division Bench, in Ext.P3, observed that the employment of

the petitioners seems to be of a regular nature and in such circumstance, held that the Devaswom Board should approach the Bench having roster for Devaswom matters, to get sanction; for creation of regular posts to accommodate the petitioners. A review filed by the Devaswom Board ended in rejection, as is seen at Ext.P4. In such circumstance, the Devaswom Board approached the Division Bench having roster and considering the observations made by the earlier Division Bench, as also the fact of continuance of the petitioners for long, the Division Bench, by Ext.P5 judgment, permitted creation of such posts. The petitioners were, hence, regularized by Ext.P6 order dated 5.10.2009.

4. Ext.P10 order did not speak of any retrospective regularization and there could be no such retrospective regularization because the creation of posts itself was one sanctioned as per Ext.P5 judgment. The petitioners rely on Exts.P11 and P12, wherein, with respect to two similarly

placed employees, the Board had reckoned the daily wage service also for determining pension.

5. The learned Standing Counsel for the Board, however, would rely on G.O.(P) No.3116/98/Fin. dated 15.12.1998, which reads as follows:

“Read:-1. G.O.(P)No.543/89/Fin.dated20.11.1989
2. G.O.(P)No.540/94/Fin. dated 30.9.1994

ORDER

In the Government Orders read above, it was ordered that the provisional service of an employee with or without break will be reckoned as qualifying service for pensionary benefits. These orders were issued when the Government Decision No.2 under Rule 33 Part I KSRs was in existence according to which provisional service on regularization or followed by regular appointment with or without break in the same category of post would be treated as officiating service for the limited purpose of granting of increments subject to conditions stated therein. In the Government Order read as second paper above, the said Government Decision was

deleted with effect from 1.10.1994. Government have examined the issue in detail and it appears to it that the orders in the G.O. first read above are to be cancelled.

2. Accordingly, the Government order read as first paper above are hereby cancelled with effect from 1.10.1994. However, past cases already settled on the basis of the above orders will not be re-opened."

By virtue of the said order it is contended that the Board could not have made a regularization reckoning the past period spend on temporary service as one capable for determining pension.

6. It is to be noticed that the Government Order specifically stands against the claim of the petitioners. In this context, the decision of another learned Single Judge in W.P.(C) No.4408/2008 dated 8.7.2008 assumes relevance. That was a case in which such regularization was sought by an employee of the Guruvayoor Devaswom Board. Therein, the Devaswom Board had taken a decision for such

regularization in the year 1990 itself. But however, the same was reduced to writing and communicated by way of an order after the 1998 Government Order. This Court found that since a decision was taken prior to the Government Order, the regularization made could be reckoned for computation of pension. As a corollary, it has to be held that after the Government Order, no such regularization could be made especially when the Devaswom Board has adopted the provisions of the Kerala Service Rules.

7. One other aspect is the fact that Ext.P6 specifically did not grant any retrospective regularization, and the petitioners did not seek to challenge the same at that point of time. As to the orders passed at Exts.P11 and P12, it is to be noticed that the same was passed after the 1998 Government Order and could only be considered to be orders passed against the specific provisions of the Rules, which cannot be relied upon by the petitioners to seek

similar treatment since that would be perpetrating an illegality.

8. However, it is to be noticed that the Government Order of 1998 was partially modified by G.O.(P) No.2357/99/Fin. dated 25.11.1999, which reads as hereunder :

“1. In the Government Order read as first paper above, orders were issued to reckon the provisional service as Qualifying Service for pensionary benefit from the date of order. It was inter-alia ordered that past cases settled would not be re-opened. Subsequently, the above orders were cancelled vide orders read as 3rd paper above consequent on the issuance of G.O. cited 2nd. Now it has come to the notice of Government that certain inconsistencies pertaining to the effective date of orders for reckoning the provisional service for pensionary benefits still persists as clarification sought in the reference cited 4th read.

2. Government have examined the case in detail and are pleased to clarify that the provisional service with or without break rendered by the employees upto 30-09-1994 which qualifies for earning increments in terms of Government Decision No.2 under Rule 33 Part I, Kerala Service Rules will be reckoned as Qualifying Service for pension irrespective of dates of retirement after 20.11.1989. The provisional service rendered on or after 01.10.1994 will not be reckoned as qualifying service for pension. The cases of retirement from service during the period from 01.10.1994 to 15.12.1998 and pensionary claims already sanctioned will not be re-opened."

The afore cited Government Order has to be read with Rule 33 of Part I of KSR. What comes to fore is that, as on 1994 Government Decision No.2 under Rule 33 of Part I of KSR contemplated provisional service on regularisation with or without break in the same category or post was to be treated as officiating service for the limited purpose of

granting of increments. GO(P) No.543/89/Fin, dated 20.11.1989 read as item No.1 in Government Order dated 15.12.1998 also permitted reckoning of such provisional service for the purpose of pension also. Government Decision No.2 under Rule 33 was deleted by G.O.(P) No.540/94/Fin dated 30.09.1994. However, the Government Orders of the year 1989 with respect to reckoning the provisional service for pension remained as such. Government by subsequent Order of 15.12.1998, thought it fit to remove such reckoning of provisional service even for pension purposes. However, later on, it was felt that at least till 1994; when the G.O. of 20.11.1989, with respect to pension, as also Government Decision No.2 under Rule 33 with respect to increments, were in force the same should be given its full effect; till that date. It was hence the subsequent G.O. of 25.11.1999 was brought in clarifying that provisional service with or without break rendered by the employees up to 30.09.1994, which qualifies for earning

increments under Government Decision No.2 would also be reckoned as qualifying service for pension.

9. The specific contention of the petitioners is that the petitioners were appointed on various dates between 1990 and 1993. In such circumstances, the respondent would have to examine as to the service of each of the petitioners till 30.09.1994, whether continuous or with artificial breaks; which should be reckoned for the purpose of pension.

With the aforesaid direction, the writ petition would stand partly allowed.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj/sp