

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 14923 of 2010 (M)

PETITIONER:

**M.S.ANTONY, MUNDAKKAL HOUSE,
1000 ACRE, ADIMALI P.O., IDUKKI DISTRICT
(RETD.OVERSEER, K.S.E.B., GENERATION CIRCLE
MEENCUT, CHITHIRAPURAM, IDUKKI).**

**BY ADVS.DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.MATHEW SUNNY**

RESPONDENTS:

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM.**
- 2. THE CHIEF ENGINEER (H.R.M.),
K.S.E.B., VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM.**
- 3. THE ACCOUNTS OFFICER,
PENSION SANCTION SECTION, VYDYUTHI BHAVANAM, PATTOM
THIRUVANANTHAPURAM.**

R1 TO R3 BY ADV. SRI.K.S.ANIL, SC, KSEB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

C.K. ABDUL REHIM, J.

W.P.(C)No.14923 of 2010

Dated this the 21st day of January, 2015

JUDGMENT

Petitioner retired from service of the 1st respondent Board as Overseer on attaining superannuation on 31/01/2006. He joined service of the Ist respondent Board with effect from 24/09/1981. Prior to joining service of the Board, the petitioner had 'Military Service' to his credit, during the period from 24/08/1977 to 20/03/1981. Issue involved in this writ petition is as to whether the 'Military Service' put in by the petitioner prior to entry in the service of the Board can be reckoned for the purpose of payment of pension and other retirement benefits. When Ext.P3 representation was submitted by the petitioner, the Board replied in Ext.P4 that the 'Military Service' can be reckoned on realisation of pro-rata liability from the Government of

India, as per Rule 8 (c) of part III KSR. The petitioner is challenging Ext.P4. It is pointed out that the Board has admitted such benefits with respect to another employee who is similarly situated, on the said employee remitting the pro-rata pension liability by himself. Ext.P5 reply given to the petitioner under the Right to Information Act will reveal the above said fact. Based on Ext.P5 the petitioner again submitted Ext.P6 representation seeking to reckon the 'Military Service' for the purpose of computing pensionary benefits. But no response was received from the respondents. The petitioner points out that, as per Ext.P7 order passed by the State Government, guidelines were issued for reckoning service rendered in Government of India for pensionary benefits, consequent to absorption in State Government Departments and State Autonomous Bodies and vice versa, based on condition of the former employer remitting the proportionate pro-rata pension liability, on a service sharing basis. But subsequently

Ext.P8 order was issued by the State Government modifying the guidelines to the effect that, in the case of employees who left from service of the Central Government and absorbed in the State Government and vice versa, liability of pension including gratuity will be borne in full by the Central Government or State Government as the case may be to which the employee permanently belongs at the time of his retirement. In such case no realisation of pro-rata pension is required. The petitioner further relies on Ext.P9 judgment wherein direction was given to reckon prior service put in by an employee of the State Government, in the Central Government. Based on the above aspects, the petitioner seeks to quash Ext.P4 and seeks appropriate direction for reckoning the prior 'Military Service' put in by him before entry in the service of the 1st respondent Board.

2. In the counter affidavit filed on behalf of the 2nd respondent it is contended that, as per Rule 8(c) of part III KSR, Ex-servicemen re-employed in Civil Service shall be

allowed to count their 'Military Service' subject to certain conditions. But with respect to the issue related to reckoning of prior service rendered elsewhere by the Board employees for pensionary benefits, the Board is governed by its own order dated 01/09/2005. In accordance with the said order, the prior service rendered by the Board employees in the Department of Government of India can be reckoned subject to realisation of pro-rata pension liability from the departments concerned. In the said order it was also decided to deny the request made by employees to remit pro-rata pension contribution by themselves, in the event of the former employer refusing to pay the pro-rata pension liability. In view of the above said clause contained in the Board Order dated 01/09/2005, the request of the petitioner even to allow him to remit the pro-rata pension cannot be admitted is the contention.

3. It is pertinent to note that, under Note 2. of Rule 11 of part III KSR, it is stipulated that, employees of State

Government Departments who left their former service in the Central Government/ Central Public Sector Undertakings on their own volition for taking up appointment in State Government Departments will be allowed to reckon their prior service for all pensionary benefits, along with the service in the State Government Departments. In such case, the liability of pension including the gratuity will be borne in full by the State Government to which the Government servant permanently belongs at the time of retirement, and no recovery of proportionate pension will be made from the Central Government under whom he had served earlier. It is specified that, in the case of employees who left former service in Central Public Sector undertakings this benefit will be available only if the former employer remits the share of proportionate pro-rata pension liability on a service share basis. Question is with respect to the procedure to be adopted with respect to reckoning of 'Military Service' rendered by an employee, who is

transferred or discharged from such service. It is not in dispute that provisions of the Kerala Service Rules is adopted in the case of employees of the 1st respondent Board. This court in the judgment in **Mohammed Basheer A. v. State of Kerala and others [2015(1) ILR (Kerala) 10]** held that Rule 11 in Chapter II in part III KSR empowers the Government to declare that any specified kind of service rendered shall qualify for pension in individual cases, subject to conditions as may be imposed in each case, with respect to mobility of employees between Central Government and Central Government Autonomous bodies. The Government of India had issued orders to count former service for pension subject to certain conditions. The said benefit was subsequently extended to employees absorbed in the State Government and State Autonomous bodies and vice versa. The State Government have also issued various orders with respect to mobility of employees between Central

government/ Central Autonomous Bodies and the State Government / State Autonomous bodies and vice versa. Referring to various such orders, this court found that the KSEB as well as KSRTC would come under the sweep of the expression, "State Autonomous Bodies / Public Sector Undertakings" . Therefore it was held that in the light of the various Government orders referred the persons who were subsequently absorbed in KSEB and in other Autonomous bodies are entitled for reckoning their prior service put in under the Central Government. The said decision had referred to various previous decisions on the subject matter.

4. Since it is evident that, by virtue of various Government Orders, it was decided that realisation of pro-rata pension liability is not required in the case of former service put in by employees in the Central Government/ Central Government undertakings, it is for the KSEB to decide the issue as to whether the former 'Military Service' put in by the petitioner can be reckoned without realising

the pro-rata pension liability. It is for the 1st respondent Board to take an appropriate decision in the matter considering the various Government Orders and provisions of the KSR, as well as the settled legal precedents. This court is of the opinion that Ext.P4 reply was given by the 1st respondent without taking note of any of the above said aspects. Hence this court is of the opinion that the matter needs re-consideration by the 1st respondent Board for which necessary direction can be issued.

5. Therefore this writ petition is disposed of by quashing Ext.P4. The 1st respondent is directed to re-consider the request made by the petitioner for reckoning his former 'Military Service' for the purpose of payment of pension and other terminal benefits. A fresh decision in this regard shall be taken, after affording an opportunity of personal hearing to the petitioner, and after taking note of the observations contained herein above.

A decision in this regard shall be taken at the earliest possible, at any rate, within a period of three months from the date of receipt of copy of this judgment.

Sd/- **C.K. ABDUL REHIM**
JUDGE

MJL

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: TRUE COPY OF THE VERIFICATION CERTIFICATE OF MILITARY SERVICE
ISSUED TO THE PETITIONER DATED 26-6-2006
- EXT.P2: TRUE COPY OF THE CERTIFICATE ISSUED BY THE COMMANDING
OFFICER DATED 20-5-2009
- EXT.P3: TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER
DATED 2-6-2009
- EXT.P4: TRUE COPY OF THE REPLY GIVEN BY THE FIRST RESPONDENT DATED
19-8-2009
- EXT.P5: TRUE COPY OF THE REPLY GIVEN TO THE PETITIONER UNDER THE
RIGHT TO INFORMATION ACT BY THE BOARD DATED 15-12-2009
- EXT.P6: TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER
DATED 7-1-2010
- EXT.P7: TRUE COPY OF THE GOVERNMENT ORDER G.O.(P)NO. 703/02/FIN. DATED
12-11-2002
- EXT.P8: TRUE COPY OF THE GOVERNMENT ORDER G.O.(P)NO.651/03/FIN. DATED
6-12-2003
- EXT.P9: TRUE COPY OF THE JUDGMENT DATED 10-3-2010 IN O.P.NO.3478/2001

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P A TO JUDGE

MJL