

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 24321 of 2004 (U)

PETITIONER(S):

**K. KERALADASAN UNNI, DIVISIONAL
ACCOUNTANT (RETIRED), KERALA STATE ELECTRICITY, BOARD
ELECTRICAL DIVISION, PALAKKAD.**

**BY ADVS.SRI.T.C.SURESH MENON
SMT.M.R.VALSA
SRI.SREEKANTH.K.R
SMT.G.GEETHISHA**

RESPONDENT(S):

- 1. THE KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM.**
- 2. THE CHIEF ENGINEER (H.R.M.), KERALA
STATE ELECTRICITY BOARD, THIRUVANANTHAPURAM.**
- 3. THE CHIEF INTERNAL AUDITOR,
KERALA STATE ELECTRICITY BOARD, THIRUVANANTHAPURAM.**

**R1TOR3 BY ADV. SRI.C.C.THOMAS, SC, K.S.E.B
R1 TO 3 BY ADV. SRI.K.S.ANIL, SC, KSEB
R1 TO R3 BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB
R1 TO R3 BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB
R1 TO R3 BY SRI.P.SANTHALINGAM, SC, KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF THE RELEVANT PORTION OF THE LONG TERM AGREEMENT DATED NIL.**
- EXT.P2: TRUE COPY OF THE LETER DATED 06.11.2002**
- EXT.P3: TRUE COPY OF THE REPRESENTATION DATED 25.04.2003**
- EXT.P4: TRUE COPY OF THE REPRESENTATION DATED 02.06.2003**
- EXT.P5: TRUE COPY OF THE REPRESENTATION DATED DATED 12.09.2003**
- EXT.P6: TRUE COPY OF THE JUDGMENT DATED 28.11.2003**
- EXT.P7: TRUE COPY OF THE ARGUMENT NOTE DATED 19.03.2004**
- EXT.P8: TRUE COPY OF THE ORDER DATED 25.03.2004**
- EXT.P9: TRUE COPY OF THE ORDER DATED 03.04.2004**
- EXT.P10: TRUE COPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT DATED 23.05.1996**

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY//

PA TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.24321 of 2004-

Dated this the 9th day of February, 2015

J U D G M E N T

The petitioner has filed this writ petition complaining that, he has not been granted the grade promotions due to him as per Exhibit P1. Exhibit P1 is a long term settlement that has been entered into between the first respondent and recognized Trade Unions of its employees accepted by the Board order dated 24.04.1990.

2. The petitioner entered service as a Cashier under the first respondent on 30.08.1968. He was given a Cadre Promotion as Senior Assistant on 27.10.1987. Subsequently, the promotion was given a retrospective effect from 10.12.1976. As per clauses 1,2 and 3 of Exhibit P1, employees who do not get a promotion within ten years of joining a particular post are entitled to be granted Grade Promotion. Similarly, a person who does not get two promotions within a period of 18 years of joining a post is

entitled to be granted a Grade Promotion. Similarly on completion of 25 years, grant of a third grade promotion is also contemplated. In accordance with Exhibit P1, the petitioner was granted his grade promotion on 10.12.1986 after he completed 10 years in the post of Senior Assistant. He was entitled to be granted the second grade promotion on 10.12.1994 upon completion of 18 years in the post. Similarly, on 10.12.2001, he was entitled to the third grade promotion after twenty five years. Though the petitioner was granted the first grade promotion on 10.12.1986, he was not granted the second grade promotion. Instead, he was granted the third grade promotion on 30.08.1993 upon completing 25 years of his entry in the cadre. The petitioner was aggrieved by the denial of his second grade promotion. As per letter dated 06.11.2002, the Deputy Chief Engineer has recommended his case. However, as no action was taken, the petitioner submitted representations Exhibits P3, P4 and P5. Since there was no response to his representations, the petitioner approached this Court by filing W.P.(C) No.37524 of 2003. As per Exhibit P6

judgment, this Court directed the petitioner's representation to be considered. Thereupon, the petitioner submitted a further representation Exhibit P7.

3. In the meantime, since the petitioner's Junior was receiving a higher salary than the petitioner, his salary was ordered to be stepped up by the second respondent as per Exhibit P8 proceedings dated 25.03.2004. In the above circumstances, pursuant to Exhibit P6 judgment, the petitioner's claim was considered by the second respondent. However, the same has been rejected by Exhibit P9 proceedings dated 03.04.2004. The petitioner has filed this writ petition challenging Exhibit P8.

4. According to Advocate T.C.Suresh Menon who appears for the petitioner, though the petitioner was granted the first higher grade on 10.12.1986, the second grade promotion was not granted on the due date. The third grade promotion had to be granted calculating his service from the post to which he had been promoted with effect from 10.12.1976. Instead, he was sanctioned to the third grade promotion on 30.08.1993. Consequently, the

petitioner has been denied his second grade promotion. The counsel places reliance on Exhibit P10 order produced along with reply affidavit to point out that another similarly situated employee has been granted the second grade promotion after cancelling the third grade promotion that was erroneously granted. At the same time, the petitioner has been denied a similar benefit. Therefore, the petitioner seeks the issue of appropriate orders quashing Exhibit P9 and granting a third higher Grade on 10.12.2001.

5. A counter affidavit has been filed on behalf of the respondents. Advocate Pulikool Abubacker appears for the respondents. According to the counsel, the petitioner has retired on 30.06.2003 on attaining superannuation. It is contended that, the petitioner has not stagnated in any post and therefore he is not entitled to the grade promotion that has been claimed. It is contended that, he was granted promotion as Senior Superintendent on 01.05.1996. Since he was granted a regular promotion, he is not entitled to claim the grade promotion.

6. Heard. The petitioner had joined service as a

Cashier and was promoted as Senior Assistant with effect from 10.12.1976. Therefore, his completed years of service would have to be counted for the purpose of determining whether he is entitled to be granted grade promotions or not, in accordance with Exhibit P1, from the said date. He was correctly granted the first grade promotion on completion of 10 years as a Senior Assistant on 10.12.1986. He had completed 15 years in the post of Senior Assistant on 10.12.1994. Therefore, he was entitled to the second grade promotion with effect from the said date. However, he was not granted the second grade promotion. Therefore, he is entitled to the grant of the said second grade promotion as claimed by him. In spite of granting the second grade promotion, he was granted his third grade promotion on 30.08.1993 calculating the period of 25 years from the date of his first entry in the service. This is not the procedure contemplated by Exhibit P1. Therefore, grant of the third higher grade to the petitioner is irregular and liable to be set aside.

7. According to the respondents, the petitioner was

promoted as Senior Superintendent on 01.05.1996. If that was a regular promotion, the petitioner is not entitled to be granted the third higher grade. This is for the reason that, before the petitioner completed the 25 years in the post of Senior Assistant, he got promoted as a Senior Superintendent. It is trite that, grade promotions are granted only to employees who stagnate in a particular post and not to persons who have been regularly promoted. However, the counsel for the petitioner disputes that the petitioner was granted a regular promotion, as contended. According to the counsel, since the post of Junior Superintendent was abolished, the post was only re designated as Senior Superintendent with effect from the date mentioned in Exhibit P9. The same cannot be construed as a regular promotion. My attention has been drawn to the relevant portions of Exhibit P9 as well as the counter affidavit filed in this case to support the above contention. Therefore, this is a matter on which the second respondent would have to take a decision, after examining

the service records of the petitioner. If the petitioner is entitled to the third grade promotion on completion of 25 years, he would certainly have to be granted the said benefit also. I notice that by Exhibit P10 order, a similar relief has been granted to another employee in identical circumstances. Therefore, there is no justification for denying the same to the petitioner, if he is actually entitled. However, the entitlement of the petitioner would become clear only if he was not regularly promoted. The said aspect is therefore one, on which the second respondent would have to take a decision. Since Exhibit P9 has not considered the above aspects, the said order cannot be sustained. Exhibit P9 is therefore set aside. This writ petition is disposed of as follows:-

- 1.The petitioner is held entitled to his second grade promotion with effect from 10.12.1994.
- 2.The second respondent is directed to consider whether the promotion alleged to have been granted to the petitioner on 01.05.1996 was actually a regular promotion or a mere

re-designation of the post of Junior Superintendent as contended. If the petitioner was not given a regular promotion, he would have to be granted his third grade promotion with effect from the date on which he completed 25 years in the post that he was holding.

3.Appropriate orders in the matter shall be passed by the second respondent Chief Engineer, after affording an opportunity of being heard to the petitioner also, as expeditiously as possible and at any rate within a period of three months of the date of production of a copy of this judgment by the petitioner.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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