

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 18330 of 2011 (M)

PETITIONER(S):

1. V.J.HUBERT(FORMERLY TUNNEL WORKER),
J.R.COTTAGE(VADASSERY),RANDAR.P.O, MUVATTUPUZHA.
2. M.K.SASIDHARAN NAIR(FORMERLY TUNNEL
WORKER), MELEDATHU HOUSE, URULANTHANNI.P.O
KUTTAMPUZHA, KOTHAMANGALAM.
3. K.K.GOPI,(FORMERLY TUNNEL WORKER),
MAMPILLIKUDIYIL, KOOVAPARA, KOTHAMANGALAM.
4. C.N.SIDHARDHAN,(FORMERLY TUNNEL WORKER),
CHALIYIL HOUSE, KADAKARAPALLY.P.O, CHERTHALA.
5. N.SASIDHARAN,(FORMERLY TUNNEL WORKER),
GOURIKAL PADEETTATHIL, KANNUMKAVUBHAGAM, MANAYIL.P.O
PANMANA, CHAVARA.
6. P.MADHAVAN,(FORMERLY TUNNEL WORKER),
KOCHUTHARAYIL HOUSE, KADATHOOR, K.S.PURAM.P.O
KARUNAGAPPALLY.
7. P.R.GOPINATHAN,(FORMERLY TUNNEL WORKER),
POTHENKULATHIL VEEDU, PADEEKATHIL, PERUMATHARA
VARAYILA.P.O, KARUNAGAPPALLY.
8. K.P.RAJAN,(FORMERLY TUNNEL WORKER)<
KOTTOOR VEEDU, URULANTHANNI.P.O, KOTHAMANGALAM.
9. V.K.DIVAKARAN,(FORMERLY TUNNEL WORKER),
VALIAVEETIL, URULANTHANNI.P.O, KOTHAMANGALAM.
10. N.AYYAPPAN,(FORMERLY TUNNEL WORKER),
PUTHENVEETIL, EDAMALAYAR COLONY, VADATTUPARA.P.O.
11. G.RAJAN,(FORMERLY TUNNEL WORKER),
ITHUKUNIKAL VEEDU, URULANTHANNI.P.O, KOTHAMANGALAM.

CONTD..2..

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12. M.SUNDARAM,(FORMERLY TUNNEL WORKER),
EDAMALAYAR COLONY, PLAVAN, VADATTUPARA.P.O.
13. P.SREEDHARAN NAIR,(FORMERLY TUNNEL
WORKER), ITTIMADATHU HOUSE, ARANMULA.P.O.
14. P.RAMANAN,(FORMERLY TUNNEL WORKER),
CHANDRIKA BHAVANAM, CHANGANKULANGARA, OCHIRA.P.O.
15. K.P.KUNJUMON,(FORMERLY TUNNEL,WORKER)<
KALAPURAKAL PUTHEN VEEDU, VETTIYAR.P.O, MANKUZH.

BY ADVS.SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS
SRI.L.RAM MOHAN

RESPONDENT(S):

1. KERALA STATE ELECTRICITY BOARD,PATTOM,
VYDYUTHI BHAVAN, THIRUVANANTHAPURAM, 695004
REPRESENTED BY ITS SECRETARY.
2. SECRETARY,KERALA STATE ELECTRICITY BOARD
PATTOM, VYDYUTHI BHAVAN, THIRUVANANTHAPURAM-695004.

R,R1-3 BY ADV. SRI.K.S.ANIL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

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| EXT.P1 | COPY OF MEMORANDUM OF SETTLEMENT DATED 15.6.77 BETWEEN THE VARIOUS WORKERS, UNIONS AND THE RESPONDENT. |
| EXT.P2 | COPY OF THE SAID SETTLEMENT DATED 6.2.79 BETWEEN THE WORKMEN AND THE BOARD. |
| EXT.P3 | COPY OF THE JUDGMENT DATED 7.9.05 IN O.P NO.19125/1997 |
| EXT.P4 | COPY OF CERTIFICATES/WAGE CARDS OF THE 1ST PETITIONER. |
| EXT.P4(A) | COPY OF CERTIFICATES/WAGE CARDS OF THE 2ND PETITIONER. |
| EXT.P4(B) | COPY OF CERTIFICATES/WAGE CARDS OF THE 3RD PETITIONER. |
| EXT.P4(C) | COPY OF CERTIFICATES/WAGE CARDS OF THE 4TH PETITIONER. |
| EXT.P4(D) | COPY OF CERTIFICATES/WAGE CARDS OF THE 5TH PETITIONER. |
| EXT.P4(E) | COPY OF CERTIFICATES/WAGE CARDS OF THE 6TH PETITIONER. |
| EXT.P4(F) | COPY OF CERTIFICATES/WAGE CARDS OF THE 7TH PETITIONER. |
| EXT.P4(G) | COPY OF CERTIFICATES/WAGE CARDS OF THE 9TH PETITIONER. |
| EXT.P4(H) | COPY OF CERTIFICATES/WAGE CARDS OF THE 10TH PETITIONER. |
| EXT.P4(I) | COPY OF CERTIFICATES/WAGE CARDS OF THE 12TH PETITIONER. |
| EXT.P4(J) | COPY OF CERTIFICATES/WAGE CARDS OF THE 14TH PETITIONER. |
| EXT.P5 | COPY OF THE ORDER DATED 5.5.09 |
| EXT.P5(A) | COPY OF THE ORDER DATED 25.5.09 |

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- EXT.P6 COPY OF THE REPRESENTATION DATED 28.8.09 SUBMITTED
BY THE PETITIONERS.**
- EXT.P7 COPY OF THE NOTICE DATED 7.11.09 ISSUED BY THE 1ST
RESPONDENT.**
- EXT.P8 COPY OF THE PETITION DATED 17.11.09 SUBMITTED BY THE
PETITIONERS.**
- EXT.P9 COPY OF THE JUDGMENT DATED 15.1.10 IN W.P.(C) NO.82/2010.**
- EXT.P10 COPY OF ORDER DATED 16.7.2010 ISSUED BY THE
RESPONDENTS.**
- EXT.P11 COPY OF THE JUDGMENT DATED 29.11.12 IN W.A NO.1628/2010**

RESPONDENTS EXHIBITS: NIL

// TRUE COPY //

PA TO JDUGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.18330 of 2011 - M

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Dated this the 23rd day of September, 2015

J U D G M E N T

The petitioners are persons, who claim to have worked in projects under the Kerala Electricity Board for 18 years starting from 1966 onwards and assert their entitlement for regularisation, also treating the period spent under contract employment for the purpose of pension and other benefits. The petitioners claim that they are similar to the 85 persons, who are directed to be regularised as per judgment in W.A No.1093 of 1993. The Writ petition filed by the petitioners for consideration of a representation, was disposed of by Ext.P9, which has resulted in Ext.P10 order, which is impugned herein. The only question to be considered is whether on the claim raised by the petitioners herein, they are entitled to regularisation and whether they stand on an identical footing of the afore

mentioned 85 employees.

2. Ext.P10, which has resulted in the present claim being urged has elaborately considered the facts,. The very same petitioners noticed in Ext.P10 had earlier filed an original petition numbered as O.P No.16341 of 1995 contending that they were engaged as casual workers during 1996 for the work of Idukki Power Tunnel and later for the work at Edamalayar, during 1977. An agreement is said to have been executed between the construction workers and representatives of the Board for examining the feasibility of absorption and providing the contract construction workers with regular employment. Agreements though entered into between the Board and the construction workers, they were later not implemented for reason of the same being not feasible. The petitioners then filed O.P No.16341 of 1995 and this Court had directed the consideration of the representations. In compliance with the said judgment, the Board is said to have disposed of the

representation rejecting the claim vide order as per L.A.1/10609/1995 dated 03.01.1996. Obviously no challenge has been made to the said orders. The petitioners then by successive writ petitions sought to resurrect a claim, which had already been rejected.

3. O.P No.19125 of 1997 is said to have been filed in which reference was made to the order of rejection on 03.01.1996. In the said writ petition, the contention of the petitioners that they seek similar consideration as the petitioners, whose writ petition culminated in W.A No.1170 of 1993 and 1093 of 1993 was noticed. In such circumstance, without interfering with the earlier order, rejecting the claim of the petitioners, it was directed that if the petitioners are similarly situated, then appropriate action would be taken in the case of the petitioners also. In fact in Ext.P3 judgment, this Court had specifically noticed that any dispute, on the facts being dissimilar, would have to be urged before the forum under the Industrial Disputes

Act, 1947 (for brevity, 'I.D Act).

4. The petitioners have not taken up any such remedy after the judgment. There is nothing to show that there was a diligent prosecution of their claim either before the Board or the forum under the I.D Act noticed by the Board eventually was not adjudicated upon and the three remaining out of the 85 were directed to be continued merely on sympathetic considerations. Nothing is indicated as to what steps were taken to pursue the representation directed to be considered by Ext.P3 judgment. The petitioners after long years in 2010, again filed a writ petition, which was disposed of by Ext.P9, directing consideration of the representations which allegedly raised a similar claim as in W.A No.1170 of 1993 and 1093 of 1993. The said direction has resulted in Ext.P10 order.

5. In Ext.P10, the claim raised in the proceedings which eventually resulted in a judgment of W.A No.1093 of 1993 and 1170 of 1993 has been elaborately dealt with. It is noticed

that during 1975, while commissioning of the Iduki Hydro Electric Project, the Board had invited applications from former CLR/TLR workers, who have either worked under the project area for a minimum period of 30 days within any consecutive 12 months from 01.01.1960 to 17.01.1974 or for a total period of 100 days during the said period.

6. Obviously, the work claimed by the petitioners would fall within the said period. It is also stated in Ext.P10 that from among the 14000 applicants, only 2144 applicants were found eligible and the list was forwarded to Kerala Public Service Commission for final interview. It is also categorically stated that 1795 persons were advised and were appointed. The petitioner then never raised any claim for such appointment, nor did they challenge their exclusion.

7. As to the subsequent claim made in the writ appeals mentioned above, the same arose from the list prepared by the Executive Engineer, Constructions Division, Kakkad, of 755

persons. Despite there being direction in the writ appeal mentioned above, the High Level Committee constituted by the Board found discrepancies in the claim of majority of the said persons and after detailed examination, 85 persons were found eligible, for consideration for provisional employment and the matter was submitted before Court.

8. Pursuant to the order of this Court, the said persons were also appointed. However later, again finding the claims of the 85 persons to be not substantiated, they were terminated, which was again challenged before this court. The recitals in Ext.P10 indicate that even with respect to the 85 persons, terminations were effected intermittently, which were challenged before this Court and eventually W.P.(C) No.10003 of 2004 was filed by three persons, in which order No.LAS.III/14026 of 2002, dated 19.01.2004 was challenged.

9. At that point of time, out of the 85 persons only three were remaining in the list. It was hence this Court in W.P.

(C) No.10003 of 2004 dated 23.01.1999, directed that there would be no prejudice caused to the Board, if those three persons were given employment in accordance with the spirit of the judgment of this Court. The other persons, who had not contested the matter were declined relief. The regularisation directed in W.ANo.1093 of 1993 and 1170 of 1993 are no more relevant as a precedent; due to the subsequent events.

10. This Court cannot find any similarity of the claim raised by the petitioners herein with the 85 persons, who were directed to be granted regularisation by this Court at the earlier point of time. Even with respect to the 85 persons, only three had eventually been directed to be regularised, that too on the ground of no prejudice being caused to the Board by such orders. The petitioners herein had slept over their rights if at all, there was any claim. The Board having disputed their claim, the petitioner ought to have approached the remedy under the I.D Act for adjudication on facts. The same was permitted by Ext.P3

in 2005. The petitioner chose not to avail that remedy and persistently filed writ petitions under Article 226 of the Constitution of India.

11. The claim raised is on the basis of Ext.P4 certificates issued by the Chief Engineer, Civil, Idamalayar, but however, there is nothing to show that the petitioners had applied as per the specific notification made by the Board in the year 1975. Even going by the claim of the petitioners their services were terminated in the year 1984. No proceedings were taken for long after that. The claim raised in 1995 stood rejected by the order dated 03.01.1996. This Court in Ext.P3 specifically noticed that if there is any dissimilarities with respect to the claim of the petitioners and the petitioners who had initiated litigation which led to the judgment; in the aforementioned writ appeals, the petitioners could take recourse under the provisions of the I.D Act.

12. The petitioners neither pursued their

representations after the disposal of the original petition by Ext.P3 judgment dated 07.09.2005, nor did they approach the forum under the I.D Act. In 2010, they again filed writ petition raising the very same claim, which was directed to be disposed of by Ext.P9. The said judgment has been complied with by Ext.P10. Having gone through Ext.P10, this Court does not find any reason to allow the claim of the petitioners especially making the jurisdiction under Article 226 of the Constitution of India.

The writ petition would stand dismissed. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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P.A to Judge.