

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 20978 of 2010 (V)

PETITIONER :

**A.R.SUNNY,AGED 51 YEARS,S/O. RAPPAL,
EXECUTIVE ENGINEER, ELECTRICAL DIVISION, KSEB,
CHALAKUDY, TRICHUR DISTRICT.**

BY ADV. SRI.P.M.MOHAMMED SHIRAZ

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN,
PATTOM PALACE P.O., TRIVANDRUM.**
- 2. THE CHIEF ENGINEER (HRM),
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN,
PATTOM PALACE P.O., TRIVANDRUM.**

**BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB
BY SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE MEMORANDUM DATED 18/08/1989 OF DIRECTOR (ADMN)
- P2 COPY OF THE LETTER DATED 01/10/1999
- P3 COPY OF THE LETTER NO.PA/GI/90/99/581 DATED 17/02/2000
- P4 COPY OF THE LETTER DATED 11/01/2001 OF DIRECTOR (ADMINISTRATION)
- P5 COPY OF THE LETTER NO.CEE/ESTT-PF-2644/1598 DATED 07/07/2006
- P6 COPY OF THE REPRESENTATION DATED 25/08/2006 OF PETITIONER.
- P7 COPY OF THE LETTER NO.ESTT.IV/7544/2006 DATED 18/01/2007
- P8 COPY OF THE G.O.(P) NO.651/03/FIN DATED 06/12/2003
- P9 COPY OF THE B.O.(FB) NO.2574/2005 DATED 01/09/2005
- P10 COPY OF THE B.O.(FB) NO.1664/2002 DATED 10/12/2002
- P11 COPY OF THE G.O.(P) NO.367/87/FIN DATED 31/03/1987.
- P12 COPY OF THE NOTE NO.FIXN.I/98/273 DATED 26/10/1998 OF FINANCIAL ADVISOR AND CHIEF ACCOUNTS OFFICER, KSEB
- P13 COPY OF THE LETTER NO.PA/GI/98 DATED 30/10/1998 OF FINANCIAL ADVISOR AND CHIEF ACCOUNTS OFFICER.
- (I.A.NO.9498/2014) P13 COPY OF THE ORDER NO.CEE/ESTT-33(A)/76299 DATED 09/08/1979 OF CHIEF ELECTRICAL ENGINEER
- P14 COPY OF THE RECEIPT DATED 02/12/1998 ISSUED BY EXECUTIVE ENGINEER, TRANSMISSION CIRCLE, THRISSUR.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO.JUDGE

sts

C.K.ABDUL REHIM,J.

WP(C).NO. 20978 of 2010

Dated this the 16th day of January, 2015

JUDGMENT

The petitioner joined service of the 1st respondent Board with effect from 1.6.1990. Prior to entry in the service of the 1st respondent, the petitioner was working as a Junior Engineer in the Union Territory of Goa under the Central Government from 19.7.1979 to 29.5.1987. Thereafter till 31.5.1990 he served under the State Government of Goa, when the Union Territory of Goa became State with effect from 30.5.1987. Pursuant to the selection for appointment in the 1st respondent Board the petitioner was relieved from Goa on 31.5.1990. He joined service of the 1st respondent on 1.6.1990, without any break.

2. Issue involved in this writ petition is with respect to reckoning of prior service put in by the petitioner in the

Central Government, for the period from 19.7.1979 to 29.5.1987. Based on an application made by the petitioner in this regard, the 2nd respondent had informed through Ext.P3 that the service rendered by the petitioner under the Union Territory of Goa for the period from 19.7.1979 to 29.5.1987 can be reckoned as qualifying service for the purpose of pension, subject to condition of either the Central Government or the employer remitting the pro-rata pension liability and DCRG due on such service and subject to production of the original certificate with respect to his previous employment. It is evident from Ext.P4 that the respondent Board had requested the State Government of Goa to remit the pro-rata pension liability and DCRG. But the Government of Goa has not agreed for making such payment and replied accordingly. A personal request made by the petitioner before the Electricity Department of the Government of Goa was also declined through Ext.P5, stating that such payment was not approved by the State

Government of Goa. Under such circumstances the petitioner requested the 1st respondent to permit him to make payment of the amount of pro-rata pension liability and gratuity, directly to the Board. But in Ext.P7 the 1st respondent informed that the request to permit remittance of the pro-rata pension liability cannot be allowed as per the existing rules. It is aggrieved by the said decision and being aggrieved by non-reckoning of his prior service, this writ petition is filed .

3. Contention of the petitioner is that, in Ext.P8 order the State Government have taken a decision that prior service of any employee of the State Government either in the Central Government or in any Central Government undertakings can be reckoned as qualifying service. In Ext.P8 it is clarified that the liability for payment of pension and gratuity with respect to such prior service will be borne in full by the State Government and that no recovery of proportionate pension liability will be made from the Central

Government. It is further pointed out that by virtue of Ext.P9 order the 1st respondent Board had clarified that, the practice of counting prior service rendered in the departments of Government of India for the purpose of pension will be subject to realisation of pro-rata pension liability from the Government concerned. The said order further provides that while counting past service of Board employees in the Kerala State Government Departments, for the purpose of pension, such departments cannot be insisted upon to pay any pro-rata pension liability to the Board. But in Ext.P9 it is mentioned that the Board has taken a decision to deny the request of employees to remit the pro-rata pension by themselves, in the event of the former employer refusing to pay the pro-rata pension liability. Evidently it is on the basis of the above said clause contained in Ext.P9 order that the petitioner's request for permitting payment of pro-rata pension liability was declined through Ext.P7.

4. Learned counsel for the petitioner pointed out that, by virtue of Ext.P10 order of the Board the provisions of the Kerala Service Rules and the Kerala State and Subordinate Service Rules, and their amendments from time to time, are made applicable to employees of the Board. It is made clear that such provisions will apply automatically unless otherwise decided by the full Board and except in cases which were governed by the specific rules mentioned therein. Attention of this court is drawn to Rule 11 of Part III of KSR declaring that any specified kind of service rendered shall qualify for pension notwithstanding provisions contained in Rule 10. Note 2 of Rule 11 provides that employees of State Government department who left service of the Central Government for taking up appointment in the State Government department, will be allowed to reckon such service for all pensionary benefits along with their service in the State Government department. It further says that in case of prior service

rendered by the Central Government employees in the State Government and Vice versa the 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 retirement and no recovery of pro-rata pension will be made from the Government concerned under whom he had served previously.

5. Contention of the petitioner is that going by the terms of Ext.P10 through which provisions of KSR is made applicable automatically to employees of the 1st respondent, provisions contained in Note 2 of Rule 11 in Part III of KSR will apply and it will create an obligation on the 1st respondent Board to reckon prior service for all pensionary benefits without collecting any pro-rata pension liability from the Central Government. In support of the above contention the petitioner had placed reliance on a decision of this court in **Babu M.Poulose vs. KSEB and others**

(2014(2) ILR (Ker) 457). It is held that the statutory amendments to Note 2 to Rule 11 of Part III KSR will apply to employees of the KSEB, because no decision expressly making the said provision inapplicable is adopted by the full Board as required under Ext.P10 and in SRO No.96/2006. It is held that if an employee of the Central Government resigns to take up employment in KSEB, service put in by such employee with the Central Government shall be counted as qualifying service for pension and the Board shall not insist for payment of pro-rata pension liability by the Central Government. Based on the said decision it is contended that the Board is liable to reckon prior service put in by the petitioner in the Central Government, without insisting for payment of the pro-rata pension liability.

6. However, on the facts of the case it is evident that the Board has taken a decision to reckon the prior service, subject to realisation of pro-rata pension liability from the Central Government. But it is evident that the State

Government of Goa had refused to pay the liability, presumably because service rendered by the petitioner was for the Central Government when the state remained as a Union Territory. The petitioner had requested for permission to pay such liability directly to the Board. But the 1st respondent Board has refused to accept such request, as per Ext. P9 . In this regard learned counsel for the petitioner had pointed out decision of a Division Bench of this court in WA No.571/2013. It is held therein that if the former establishment does not contribute its pro-rata share of pension liability, it can be compelled to make the contribution. But that does not necessarily mean that a willing employee cannot be permitted to contribute the pro-rata pension liability, rather than pursuing a litigation to force the previous employer to make payment of the contribution. This court observed that, the establishment to which the employee ultimately comes cannot deny the eligibility and pension merely on the ground that the pro-

rata contribution has not come directly from the prior employer. Therefore the Division Bench had upheld direction issued by Single Judge to the Board to accept payment of the pro-rata pension liability.

7. Learned Standing Counsel for the respondent Board contended that, payment of pro-rata pension liability by the employee himself cannot be permitted in view of Ext. P9 decision of the Board. A judgment of this court in WA 148/2012, dt. 25.7.2014 is placed in support of the above contention. In the said case the challenge was against a direction issued by the Central Government to the employee to make payment of the pro-rata pension contribution, with respect to his prior service. The Division Bench observed that the obligation is upon the previous employer to remit the contribution and hence the employee cannot be compelled to make payment of the pro-rata pension liability. But such an observation will not in any manner prevent a willing employee from volunteering to pay the pro-rata

pension liability, is the opinion of this court.

8. Factual matrix established would reveal that the Board has already taken a decision to reckon prior service put in by the petitioner, subject to realisation of the pro-rata pension liability. As observed above, in view of Ext.P10 order the Board is at an obligation to reckon such service even without realisation of any pro-rata contribution from the previous employer, based on the provisions contained in Note 2 of Rule 11 of Part III KSR and as held by this court in the judgment in WA NO.571/2013. Further, there is no justifiable reasons in denying request of the petitioner to permit payment of the pro-rata pension liability by himself. Therefore it is necessary to issue directions to the respondents to approve the prior service put in by the petitioner under the Central Government for the period from 19.7.1979 to 29.5.1987, after receiving payment of pro-rata pension contribution offered by the petitioner.

9. Under the above mentioned circumstances, the writ

petition is hereby allowed. The respondents are directed to take necessary steps to reckon prior service put in by the petitioner in the Central Government for the purpose of granting pensionary and terminal benefits, after accepting payment of pro-rata pension liability and gratuity from the petitioner.

10. Consequential benefits due to the petitioner in this regard shall be disbursed , without any further delay, at any rate within a period of three months from the date of receipt of a copy of this judgment, provided the petitioner remits the liability without any delay.

C.K.ABDUL REHIM, JUDGE

Pmn/

