

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 21176 of 2013 (V)

PETITIONER(S)/PETITIONER:

**BABY JOHN
S/O.JOHN, (ASSISTANT ELECTRICAL INSPECTOR-RETIRED
OFFICE OF THE ELECTRICAL INSPECTOR, STAR JUNCTION
KOTTAYAM-686001), RESIDING AT NEDUMPARAMBIL HOUSE
NALUNNAKKAL.P.O, VAKATHANAM, CHANGANACHERRY
KOTTAYAM DISTRICT-686538.**

BY ADV. SRIT.R.MOHANAKUMAR

RESPONDENT(S)/RESPONDENTS:

- 1. UNION OF INDIA
REPRESENTED BY SECRETARY, GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE AND PENSION
DEPARTMENT OF PENSION & PENSIONERS WELFARE
LOK NAYAK BHAWAN, KHAN MARKET, NEW DELHI-110003.**
- 2. SPICES BOARD,
REPRESENTED BY IT'S SECRETARY
(MINISTRY OF COMMERCE-GOVERNMENT OF INDIA)
SUGANDHA BHAVAN, BH BY-PASS, PB NO.2277
PALARIVATTOM, KOCHI-682025.**
- 3. STATE OF KERALA,
REPRESENTED BY IT'S SECRETARY(FINANCE)
GOVERNMENT OF KERALA, FINANCE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-696001.**
- 4. PRINCIPAL SECRETARY,
GOVERNMENT OF KERALA, POWER (A)DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-696001.**
- 5. CHIEF ELECTRICAL INSPECTOR,
GOVERNMENT OF KERALA
ELECTRICAL INSPECTORATE DEPARTMENT
OFFICE OF THE CHIEF ELECTRICAL INSPECTOR
HOUSING BOARD BUILDINGS, SHANTI NAGAR
THIRUVANANTHAPURAM-695001.**

R2 BY ADV. SMT.K.RADHAMANI AMMA, SC, SPICES BOARD

R2 BY ADV. SRI.ANTONY MUKKATH, SC, SPICES BOARD

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

**R3 TO R5 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN
CHAMAPARAMPIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 A TRUE COPY OF THE OFFICE ORDER NO.4(19)80/ADMN/9003 DATED 23.12.1991 OF THE 2ND RESPONDENT

EXT.P2 A TRUE COPY OF THE APPLICATION DATED 20.07.1992 OF THE PETITIONER TO THE 2ND RESPONDENT

EXT.P3 A TRUE COPY OF THE LETTER NO.4(19)80/ADMN/6009 DATED 10.08.1992 OF THE 2ND RESPONDENT

EXT.P4 A TRUE COPY OF THE SUBMISSION DATED 12.11.1992 OF THE PETITIONER.

EXT.P5 A TRUE COPY OF THE LETTER NO.4(19)80/ADMN/12620 DATED 26.02.1993 OF THE 2ND RESPONDENT.

EXT.P6 A TRUE COPY OF THE LETTER NO.FII-6/15(1)92/FSC/1184 DATED 13.05.1993 OF THE 2ND RESPONDENT.

EXT.P7 A TRUE COPY OF THE LETTER NO.4(19)80/ADMN/4383 DATED 20.08.1993 OF THE 2ND RESPONDENT

EXT.P8 A TRUE COPY OF THE LETTER OF RESIGNATION DATED 03.0-9.1993 OF THE PETITIONER

EXT.P9 A TRUE COPY OF THE ORDER NO. 4(19)80/ADMN/5383 DATED 16.10.1993 OF THE 2ND RESPONDENT

EXT.P10 A TRUE COPY OF THE LETTER NO.PF 2/CI/2094 DATED 21.03.1996 OF THE OFFICE OF THE ACCOUNTANT GENERAL.

EXT.P11 A TRUE COPY OF THE REPRESENTATIONS DATED 17.06.2004 OF THE PETITIONER ADDRESSED TO RESPONDENT NO.5.

EXT.P12 A TRUE COPY OF THE REPRESENTATIONS DATED 17.06.2004 OF THE PETITIONER ADDRESSED TO RESPONDENT NO.2.

EXT.P13 A TRUE COPY OF THE LETTER NO.4(19)/80/ADMN/10351 DATED 11.03.2009 OF 2ND RESPONDENT.

EXT.P14 A TRUE COPY OF THE ORDER NO.4/(19)/80/D ADMN/1221 DATED 31.05.2010 OF THE 2ND RESPONDENT.

EXT.P15 A TRANSLATED VERSION OF EXT.P15 IN ENGLISH

EXT.P16 A TRUE COPY OF THE GOVERNMENT OF INDIA,DEPT.OF PERSONNEL & AR,OM 28-10/84-PENSION UNIT,DATED THE 2.08.1984.

EXT.P17 A TRUE COPY OF THE GOVERNMENT OF INDIA,DEPT.OF PEN. & PEN.WELFARE,OM 28(10)/84-P. & PW./VOL.II,DATED 7TH FEBRUARY 1986,17TH JUNE 1986,30TH OCTOBER,1986 & 20TH MARCH 1987 ETC.

W.P.(C).NO.21176/2013

EXT.P18 A TRUE COPY OF THE G.I.DEPT OF PEN. & PEN.WELFARE,OM NO 28/10/99-P & PW (B)DATED 19TH APRIL 1999.

EXT.P19 A TRUE COPY OF THE G.O.,(P)NO.212/09/FIN DATED 03.06.2009 OF THE 3RD RESPONDENT.

EXT.P20 A TRUE COPY OF THE PENSION PAYMENT VOUCHER FII 632/1486 DATED 07.06.2010 OF THE 2ND RESPONDENT.

EXT.P21 A TRUE COPY OF THE REPRESENTATION DATED 20.11.2010 TO THE 4TH RESPONDENT WITH ENGLISH TRANSLATION.

EXT.P22 A TRUE COPY OF THE ORDER NO.9177/A3/10/U.V.DATED 08.06.2011 OF THE 4TH RESPONDENT.

EXT.P22-A A TRANSLATED VERSION OF EXT.P22.

RESPONDENT(S)' EXHIBITS

EXT.R2(A): COPY OF THE MEMORANDUM NO.1(6) 80 ADM DATED 1.11.1980 ISSUED BY THE CHAIRMAN SPICES BOARD.

EXT.R2(B): COPY OF THE MEMORANDUM NO.A3/3(1) 87/362 DATED 15.4.1988 OF THE 2ND RESPONDENT.

EXT.R2(C): COPY OF THE ORDER NO.1(6) 80 ADM DATED 12.02.1985 OF THE CHAIRMAN AND DISCIPLINARY AUTHORITY.

EXT.R2(D): COPY OF THE ORDER NO.1(6)80/ADMN. 13146 DATED 3.9.1985 OF THE CHAIRMAN, SPICES BOARD.

EXT.R2(E): COPY OF THE MEMORANDUM NO.ADM.I/751/RECT/9919/90-91 DATED 29.6.1991 OF THE 2ND RESPONDENT.

EXT.R2(F): COP OF THE LETTER 12.7.1991 OF THE PETITIONER ADDRESSED TO THE 2ND RESPONDENT.

EXT.R2(G): COPY OF THE LETTER NO.4(19)80/ADMN 6009 DATED 10.08.1992 OF THE 2ND RESPONDENT.

EXT.R2(H): COP OF THE FILE NOTINGS DATED 12.5.2010.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.21176 OF 2013 (V)

Dated this the 1st day of July, 2015

J U D G M E N T

The petitioner joined the services of the 2nd respondent Board as a Mechanic cum Electrician on 20.11.1980. While under the services of the 2nd respondent Board, the petitioner applied for the post of Assistant Electrical Engineer under the Kerala State Co-operative Bank. He was offered appointment by the said Bank through a memo dated 29.6.1991. On receipt of the memo of appointment, the petitioner approached the 2nd respondent Board and requested the Board to retain his lien in the services under the Board for a period of two years or till such time he was permanently absorbed by the Kerala State Co-operative Bank. Acting on the request of the petitioner, the 2nd respondent, by Ext.P1 order dated 23.12.1991, permitted the petitioner to retain his lien under the respondent Board for a period of two years or till such time as he was permanently absorbed in the Kerala State Co-operative Bank whichever is earlier subject to the condition that during the period of retention of lien, he contributed towards leave salary and pension contribution as per the Rules and failing which he would have to report back to the post he was occupying under the 2nd respondent Board. It was made clear in

the said order that the 2nd respondent Board would not bear any liability with regard to leave salary and pension contribution. Further, it was made clear in the said order that the petitioner should either revert to the service of the 2nd respondent Board or resign from the services of the 2nd respondent Board at the end of the lien period of two years. The facts in the writ petition would reveal that although the petitioner took up the appointment under the Kerala State Co-operative Bank, he subsequently got an appointment in the Electrical Inspectorate of the Government of Kerala as an Assistant Electrical Inspector. He therefore approached the 2nd respondent Board, once again, seeking a retention of the lien under the 2nd respondent Board for the purposes of taking up the new assignment under the Government of Kerala. Thus time around, by Ext.P3 order dated 10.8.1992, the 2nd respondent Board informed the petitioner that his request for retention of lien for the originally agreed two years period could be considered on the petitioner complying with the conditions in the said order. By Ext.P4 letter dated 12.11.1992, the petitioner agreed to the conditions prescribed by the 2nd respondent Board, and on the basis of that, the 2nd respondent, by Ext.P5 order dated 26.2.1993, informed the petitioner that he would have to remit an amount of Rs.3,150/- towards the pension contribution and leave

salary contribution, with interest, for the lien period from 26.12.1991 to 13.8.1992. In Ext.P5 order, the 2nd respondent Board also requested the petitioner to submit a formal resignation from the services of the Board with effect from 14.8.1992. Acting on the instructions of the 2nd respondent Board, the petitioner submitted Ext.P8 resignation letter resigning from the services of the 2nd respondent Board with effect from the after noon of 13.8.1992. It was immediately thereafter that he joined the services of the State Government with effect from 14.8.1992. The grievance of the petitioner in the writ petition is with regard to the refusal by respondents 4 and 5, to reckon the period of service rendered by the petitioner under the 2nd respondent Board for the purposes of computing the pensionary benefits that became payable to the petitioner consequent to his retirement with effect from 30.11.2012. It would appear that when the petitioner made a request before the 5th respondent for reckoning his services under the 2nd respondent Board while computing the qualifying service for the grant of pension, the said respondent, by Ext.P15 order, informed the petitioner that his service under the 2nd respondent Board could not be counted for the grant of pension. The petitioner thereafter preferred an appeal against Ext.P15 before the 4th respondent but the said appeal was

rejected by Ext.P22 order dated 8.6.2011, wherein the 4th respondent also took the stand that, insofar as there were no orders or rules to count formal service under autonomous bodies, it was not possible to consider the application of the petitioner for reckoning such service for the purposes of payment of pension. In the writ petition, the petitioner impugns Exts.P15, P22 and also Ext.P14 of the 2nd respondent Board, wherein, the 2nd respondent informed the petitioner that his service under the Kerala State Co-operative Bank could not be termed as 'Government Service', and, therefore, arrangements had been made to refund the amount of Rs.3,150/- that was paid by the petitioner towards pension contribution and leave salary contribution. It is the contention of the petitioner that inasmuch as his services under the 2nd respondent Board were not terminated till the submission of the resignation letter with effect from the after noon of 13.8.1992, it could not be said that he was not under the services of the 2nd respondent Board till that date. It is further contended that the resignation letter that was submitted by him had to be understood as a letter seeking to relieve him from the services of the 2nd respondent Board so as to take up employment under the State Government. The petitioner relies on the correspondence entered into between the petitioner and the 2nd

respondent Board, which would suggest that it was with the consent of the 2nd respondent Board, that the lien of the petitioner with regard to his services under the 2nd respondent Board was retained by the 2nd respondent, which lien culminated only with the resignation that took effect from the after noon of 13.8.1992.

2. A counter affidavit has been filed on behalf of the 2nd respondent. Therein, it is pointed out that while the 2nd respondent Board had initially consented to the retention of lien of the petitioner under the services of the 2nd respondent Board, and had also issued communications to the petitioner on that basis, in subsequent audit proceedings, it was pointed out that the action of the 2nd respondent Board was contrary to the provisions of the Fundamental Rules which were applicable to the 2nd respondent Board. It is stated that it was under those circumstances that the 2nd respondent Board subsequently resiled from their earlier stand, and directed a refund of the amounts collected from the petitioner by way of contribution towards pension and leave salary, together with interest thereon, for the lien period. It is further pointed out that based on the same audit objection, the 2nd respondent Board was constrained to treat the petitioner as having been under the services of the 2nd respondent

Board only for the period from 20.11.1980 to 23.12.1991, as against the period from 20.11.1980 to 13.8.1992 as was originally stated. It is further contended that at any rate, in the absence of any order of the State Government that recognises the past service rendered by an employee in a Central autonomous body as reckonable for the purposes of pension, the petitioner would not be entitled to any proportionate contribution from the 2nd respondent Board towards pension amounts that are allegedly due to him.

3. In the counter affidavit filed by the 4th respondent, the stand taken by the respondents in Ext.P22 order is maintained and it is also pointed out that during the period from 27.12.1991 to 13.8.1992, the petitioner was rendering services under the Kerala State Co-operative Bank which is not a pensionable establishment. This service of the petitioner is cited as a reason for the stand of the Government to deny the petitioner reckoning of his past service under the 2nd respondent Board for computation of the total service for the purposes of grant of pension.

4. I have heard the learned counsel for the petitioner, learned Standing counsel for the 2nd respondent Board and also the learned

Government Pleader for respondents 4 and 5.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that, inasmuch as the 2nd respondent Board had expressly consented to the retention of the lien of the petitioner under the services of the 2nd respondent, during the period when the petitioner was working under the Kerala State Co-operative Bank, it would be futile for the 2nd respondent Board to now contend that such service could not be reckoned as service rendered under the 2nd respondent Board. Although the 2nd respondent Board would rely on Fundamental Rule [FR] 13 and the Government of India's Decisions governing the issue of retention of lien in parent department in the case of Government servants getting employment in other Departments, as also FR 14-A (d), to contend that as per the provisions of the FR, the lien of the petitioner in the post under the 2nd respondent Board would automatically stand terminated on his acquiring lien in an other post outside the cadre of which he is borne, I am of the view that inasmuch as there was an express consent by the 2nd respondent Board to retain the lien of the petitioner in the services of the 2nd respondent Board, the said consent would operate to negate a contention that the

petitioner had obtained a lien in any other post outside the cadre on which he was borne. In other words, during the period covered by the consent letter issued by the 2nd respondent Board, the petitioner has to be treated as a person who continued to have a lien in the services under the 2nd respondent Board. As regards the stand of respondents 4 and 5 that the services rendered by the petitioner under the 2nd respondent Board could not be reckoned for computing the total period of service for the purposes of disbursing pensionary benefits, I find that in Ext.P15 order of the 5th respondent, reliance is placed on a Circular, wherein, the State Government had followed a similar practice under the Central Government, whereby, persons migrating from services under the Central Government Public Sector Undertaking to a service under the Central Government were not permitted to reckon their services under the Public Sector Undertakings for reckoning the total period of services for pension purposes. It is the stand of the 5th respondent that inasmuch as the State Government is following the practice prevailing in the Central Government, the services rendered by the petitioner under the 2nd respondent Board could not be reckoned for the purposes of determining the qualifying service for the payment of pension. It must immediately be noticed that the said stand of the 5th respondent

in Ext.P15 order stems from an erroneous appreciation of the nature of the 2nd respondent Board. The 2nd respondent Board is not a Central Government Public Sector Undertaking but is rather an autonomous body under the Central Government, as well as a statutory body constituted under the Spices Board Act, 1986. In the case of Central Government autonomous bodies, the Central Government itself has recognised that an employee migrating from a Central Government autonomous body to a Central Government service can reckon the service rendered under the autonomous body for the purposes of computing the qualifying service for the purposes of pensionary benefits. This is evident from Exts.P16 and P17 documents that are produced by the petitioner, which are extracts from the CCS (Pension) Rules. In Ext.P17, which is an extract from Appendix 12 of the CCS (Pension) Rules, it is seen that the Government of India had considered the question of extension of various benefits like counting of service etc. in the case of employees of Central Government autonomous bodies absorbed in State Governments and State Autonomous bodies, and vice versa and had found that the services rendered in the Central Government autonomous bodies could be reckoned for the purposes of computing qualifying service for payment of pension. The orders of the Central Government also

indicate that they would apply to employees of the State Governments and State Autonomous bodies moving to Central Government and Central Government autonomous bodies, in respect of the State Governments listed in the table below the said order. The State of Kerala is clearly mentioned as one of the States to whom the Central Government orders would be extended as and when they agreed to similar reciprocal arrangements. It is apparent from a perusal of Exts.P15 and Ext.P22, that the above orders of the Central Government have not engaged the attention of either the 4th respondent or the 5th respondent. In that view of the matter, Ext.P22 order of the 4th respondent cannot be seen as one that has been passed after considering relevant facts. I therefore quash Exts.P15 and P22 and direct the 4th respondent to re-consider the matter of reckoning the period of service rendered by the petitioner under the 2nd respondent Board for the purposes of computing the qualifying service for the grant of pension. While doing so, the 4th respondent shall treat the petitioner as having been under the services of the 2nd respondent Board from 20.11.1980 to the after noon of 13.8.1992. The 4th respondent shall also treat the resignation letter submitted by the petitioner before the 2nd respondent Board as having the effect of a relieving order of the 2nd respondent Board, relieving the petitioner

from the service of the 2nd respondent Board so as to take up employment under the State of Kerala. To this extent therefore, the findings in Ext.P14 communication of the 2nd respondent Board, that suggest to the contrary, are also quashed. The 4th respondent shall pass orders in the matter after hearing the petitioner and the 2nd respondent Board within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp