

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 20386 of 2014 (W)

PETITIONER(S):

**P.SASIDHARAN
ASSISTANT ENGINEER (RETIRED)
KERALA STATE ELECTRICITY BOARD,
RESIDING AT KAKKOPRAVAN HOUSE, KOOLICHAL, P.O.MORAZHA
KANNUR DISTRICT-670331.**

BY ADV. SRI.P.M.PAREETH

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VIDYUTHI BHAVANAM
PATTOM, THIRUVANANTHAPURAM-695004.**
- 2. CHIEF ENGINEER (HRM)
KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VIDYUTHI BHAVANAM
PATTOM, THIRUVANANTHAPURAM-695004.**
- 3. ACCOUNTS OFFICER (PAY FIXATION)
OFFICE OF THE CHIEF INTERNAL AUDITOR
KERALA STATE ELECTRICITY BOARD, VIDYUTHI BHAVANAM
PATTOM, THIRUVANANTHAPURAM-695004.**
- 4. DEPUTY CHIEF ENGINEER
KERALA STATE ELECTRICITY BOARD, TRANSMISSION CIRCLE
VIDYUTHI BHAVANAM, KANNUR DISTRICT-670002.**

BY ADV. SRI.K.S.ANIL, SC, KSEB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 :** TRUE COPY OF THE APPOINTMENT ORDER DT.27-11-87 ISSUED BY THE R2.
- EXHIBIT P2 :** TRUE COPY OF THE LETTER DT.20-9-2013 ISSUED BY R2 TO THE R4.
- EXHIBIT P3 :** TRUE COPY OF THE REPRESENTATION DT.8-11-2013 SUBMITTED BY THE PETITIONER THROUGH THE R4.
- EXHIBIT P4 :** TRUE COPY OF THE JUDGMENT DT.4-2-2014 IN WPC 1798/2014.
- EXHIBIT P5 :** TRUE COPY OF THE ORDER DT.25-6-2014 ISSUED BY R2.
- EXHIBIT P6 :** TRUE COPY OF THE ORDER NO.EB/GR.3/AE/2011-12 DT.30-11-2013 ISSUED BY R2.
- EXHIBIT P7 :** TRUE COPY OF THE RELEVANT PORTION OF THE GRADATION LIST OF OVERSERS AS ON 1-1-2004.
- EXHIBIT P8:** TRUE COPY OF THE RELIEVING MEMO DATED 30/11/13 ISSUED BY R4.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(A):** COPY OF THE ORDER DATED 24/6/14
- EXHIBIT R2(B):** COPY OF THE ORDER DATED 24/7/14
- EXHIBIT R2(C):** COPY OF THE ORDER DATED 23/8/14
- EXHIBIT R2(D):** COPY OF THE ORDER DATED 30/8/14

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.20386 of 2014

Dated this the 15th day of January, 2015

JUDGMENT

The petitioner was appointed initially as lineman on 15.12.1987. Before declaration of the petitioner's probation, he was granted Leave Without Allowance from 22.3.1988. He rejoined duty on 10.1.1997. Thereafter, the petitioner was promoted as Sub Engineer on 14.9.1998 and then Assistant Engineer on 13.6.2005 by reckoning the seniority from 15.12.1987. Thereafter, the petitioner retired from the service on 30.11.2013 as Assistant Engineer. The petitioner submitted his pension papers. The Audit Wing found that the assignment of seniority to the petitioner as Sub Engineer was erroneous by reckoning the seniority from 15.12.1987 in the post of Overseer. As per the conditions in granting Leave Without Allowance, the petitioner cannot get all the service

benefits accrued prior to the proceedings on leave. However, this fact was not noted while promoting the petitioner as Overseer and, consequently, as Sub Engineer and Assistant Engineer. Accordingly, the Board revised the pensionary benefits of the petitioner by holding that the petitioner was granted erroneous promotion and directed to refix the pensionary benefits based on the revised pay and allowances and after recovering the excess amount drawn by the petitioner. Essentially, what emanates out of the proceedings of the Board is that all promotions granted to the petitioner has been unsettled and the monetary benefits has to be worked out based on the revised pay be fixed based on the demotion of the petitioner. Consequent upon the decision of the Chief Engineer (HRM) in Ext.P5, the Board also passed Ext.P6 Order approving Ext.P5.

2. Heard the learned counsel for the petitioner Sri.PM.Pareeth. The learned counsel for the petitioner

submits that the petitioner was promoted as Sub Engineer on 14.9.1998 and the Assistant Engineer on 13.6.2005. The petitioner submits that the Board had opportunity to rectify the mistake occurred in promotion during the last more than a decade and the Board did not find that the petitioner's promotion was erroneous. The petitioner submits that the final list was prepared in the year 2004 assigning the seniority to the petitioner by reckoning seniority on 15.12.1987 in the service of Lineman. However, this has been unsettled in the year 2014 by Ext.P5 order. The proceedings ordering that the petitioner's pay has to be revised and excess has to be recovered, therefore, is unsustainable.

3. On the other hand, the learned Standing Counsel for the Board would submit that the petitioner was very well aware of the condition while availing Leave Without Allowance and the petitioner cannot take advantage of any mistake occurred on the part of the Board in reckoning the

seniority of the petitioner.

4. In the realm of service matter, the employer can review any fault committed by them in promoting any person erroneously. The right to review one's own decision on account of mistake or fault is not foreclosed under law. However, exercise of that power must be done within a reasonable time. The petitioner has drawn salary and other benefits throughout the service career based on the seniority and promotion given in time to time. The Board have no case that the petitioner has committed any fraud in obtaining any of the benefits. It is to be noted that the seniority in the cadre of Overseer was reassigned on the date of retirement of the petitioner. The petitioner retired on 30.11.2013. The proceedings cancelling the promotion of the petitioner in the category of Sub Engineer was issued only on 24.6.2014. Thus the Board's decision to unsettle the promotion which was given to the petitioner as Sub Engineer and consequently,

Assistant Engineer that too after his retirement is unsustainable. In view of the above facts and circumstances, I am of the view, to review seniority of the petitioner after the retirement, and that too after more than ten years is unsustainable. Accordingly, Exts.P5 and P6 are set aside. Consequently, there shall be a direction to disburse the petitioner's pensionary benefits in accordance with law on the basis of his pay actually drawn by him as Assistant Engineer and all the benefits shall be disbursed to the petitioner within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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