

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

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

WP(C).No. 35004 of 2011 (A)

PETITIONER(S):

R.RITA BELLA, 35 YEARS
W/O.M.FELIX LEO
KOZHIPARA (PO)
PALAKKAD.

BY ADV. SRI.U.BALAGANGADHARAN

RESPONDENT(S):

1. STATE OF KERALA REPRESENTED BY SECRETARY
POWER DEPARTMENT, THIRUVANANTHAPURAM 695 001
2. THE SECRETARY
KERALA STATE ELECTRICITY BOARD, VIDYUTHBHAVAN
THIRUVANANTHAPURAM 695 004.
3. THE CHIEF ENGINEER (HRM)
KERALA STATE ELECTRICITY BOARD, VIDYUTHBHAVAN
THIRUVANANTHAPURAM 695 004.
4. THE EXECUTIVE ENGINEER
ELECTRICAL DIVISION
KERALA STATE ELECTRICITY BOARD,
CHITTUR, PALAKKAD - 678 101.

R2-R4 BY ADV. SRI.K.S.ANIL, SC, KSEB
R BY GOVERNMENT PLEADER SRI.T.R.RAJESH.
R BY SRI.K.S.ANIL, SC, KSEB

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

APPENDIX IN W.P (C) No.35004/2011

PETITIONER(S) EXHIBITS

- EXT.P1 TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT NO.EB4 (A)/LWA/02/2008 DT.1.9.2008.
- EXT.P2 TRUE COPY OF THE MEDICAL CERTIFICATE DT.20.1.2009 ISSUED BY DR.R SEKAR.
- EXT.P2(A) TRUE COPY OF THE MEDICAL CERTIFICATE DT.20.1.09 ISSUED BY K.G.HOSPITAL, COIMBATORE.
- EXT.P3 TRUE COPY PROCEEDINGS OF THE 3RD RESPONDENT NO.EB4(a)GL-IP/09/2009 DT.26.10.2009.
- EXT.P4 TRUE COPY OF the COMMUNICATION FROM THE 3RD RESPONDENT DT.18.1.2010.
- EXT.P5 A TRUE COPY OF THE ORDER NO.EB7(D)67/09 DT.14.1.2011 ISSUED BY THE 3RD RESPONDENT.
- EXT.P6 A TRUE COPY OF THE REPRESENTATION 31.1.2011 SUBMITTED BY THE PETITIONER.
- EXT.P7 A TRUE COPY OF THE REGULATION NO.PS.1.3146/83 DATED 29.4.1985.
- EXT.P8 TRUE COPY OF JUDGMENT IN RENJITH V.R. v. KSEB & ANOTHER W.P.(C) NO.2587/2007 (E)

RESPONDENTS' EXHIBITS

- EXT.R2(a) TRUE COPY OF THE RELEVANT EXTRACTS OF THE LONG TERM SETTLEMENT DATED 19.3.2007.

//TRUE COPY//

P.S. TO JUDGE.

“C.R.”

V.CHITAMBARESH, J.

W.P (C) No.35004 of 2011

Dated this the 9th day of February, 2015

J U D G M E N T

The husband of the petitioner while working as a Lineman Grade-I in the Kerala State Electricity Board ['the KSEB' for short] suffered serious injuries in a motor accident on 21.1.2007. The victim sustained Fracture of Left Frontal Bone and Temporal Bone with Multiple Contusions Brain with Fracture Left Zygomatic Arch and Tracheotomy was done on 25.1.2007. The permanent disability of the husband of the petitioner had been assessed at 100% by the K.G.Hospital, Coimbatore wherein he was treated as an inpatient. The treatment continued for long as an outpatient and the husband of the petitioner was initially granted leave without allowance on medical grounds. The husband of the petitioner is permanently incapacitated for further service of any kind in the KSEB as per the medical certificate issued by the Standing Medical Board. The KSEB finally allowed the husband of the petitioner to retire from service on medically invalid grounds with

effect from 17.6.2009 as per the Kerala Service Rules. The monthly income of the family depleted and the necessity to look after her ailing husband involving expenditure prompted the petitioner to apply for compassionate employment in the KSEB.

2. The Kerala State Electricity Board (Appointment of dependents of Board employees who die-in-harness or are permanently disabled and are retiring on invalid pension) Regulations, 1985 govern the issue. The Regulations have been framed by the KSEB in exercise of the powers conferred under Section 79 read with Section 15 of the Electricity (Supply) Act, 1948 in supercession of all the earlier orders. Regulation 7 of the Regulations (as amended by the KSEB) as regards eligibility for appointment of dependents of employees who retire on invalid pension is as follows:-

“The dependent of a Board employee who retires on the ground of mental infirmity or who retires on being permanently incapacitated to work, such permanent incapacitation to work being certified by an approved medical board duly constituted by Government, shall also be eligible for appointment under these Regulations, provided the period from the date of such retirement to the normal date of retirement

of such Board employees on superannuation is one year or more.”

The petitioner was aged only 31 years and her husband 36 years at the time the accident took place and the victim had about 19 years left in service before superannuation in normal circumstances.

3. The claim for compassionate employment put in by the petitioner was however turned down by the KSEB on the one and only ground that the accident did not occur during the course of employment. Ext.P5 order of the third respondent Chief Engineer of the KSEB informing the petitioner of the rejection of her claim is impugned in this writ petition. The KSEB attempted to justify its stand relying on two clauses of the Long Term Settlement dated 19.3.2007 entered by it with few registered Trade Unions. Clauses 5 and 6 of the Long Term Settlement relied on are extracted hereunder:-

Clause 5 “Appointment under compassionate employment scheme (CES) would be granted only in cases of dependent of employees who avail invalid pension due to accidents occurred during the course and out of employment, provided the employee is incapacitated to perform his/her duties and is absent from duty consequent to the accident.”

Clause 6 “The special privilege of compassionate employment scheme (CES) applicable to employees incapacitated due to accident during the course and out of employment will not normally be extended to employees with chronic illness.”

The plea in essence of the KSEB is that they were obliged to give compassionate employment to the petitioner only if her husband had availed invalid pension due to an accident in the course of employment.

4. I heard Mr.U.Balagangadaran, Advocate on behalf of the petitioner and Mr.K.S.Anil, Standing Counsel on behalf of the KSEB.

5. The Regulations as regards appointment of dependents of employees of the KSEB who retire on invalid pension are statutory and the powers can be traced to the Electricity (Supply) Act, 1948. Valuable rights have been conferred thereunder prescribing the eligibility for appointment provided at least one year of service was left for the invalid employee. These rights can be abridged or otherwise altered only by an amendment of the statutory Regulations which has not hitherto been done. A Long Term Settlement cannot override the statutory Regulations in deciding the eligibility for appointment of dependents of employees

who retire on invalid pension. A similar view has been taken in the judgment dated 19.6.2008 in W.P.(C) No.25871/2007 by this Court (also relating to an employee of the KSEB) to which I fully subscribe. The KSEB could have as well amended the statutory Regulations to be in tune with the terms of the Long Term Settlement which has not taken place.

6. A new condition has been prescribed in the Long Term Settlement to the effect that invalid pension should have been availed 'due to accidents occurred during the course and out of employment'. An accident during the course and out of employment assumes significance only in a case arising under the Workmen's Compensation Act, 1923. Such a new condition should not have been put forward against the petitioner to deny her claim when there is no such insistence in the statutory Regulations afore mentioned. The mere fact that the accident occurred on a holiday (Sunday) leading to the employee availing invalid pension should not visit his dependent adversely. The Long Term Settlement dated 19.3.2007 was valid only for 5 years and it has not been shown to me that its validity has been extended or a new agreement entered into. There

is no justification for the KSEB to deny the claim of the petitioner for compassionate employment on the basis of the terms of the Long Term Settlement.

7. The necessity to provide compassionate employment to the dependents of the employee who availed invalid pension needs to be emphasised taking note of the attendant circumstances. Here is a case where the family is thrown out of gear due to the depletion in income with the added financial burden to nurse the employee who is invalid. The immediate repercussions over an employee being medically invalidated and allowed to retire would be more than the consequences of death in harness. The Supreme Court has in this context in *V.Sivamurthy v. State of Andhra Pradesh and others* [(2008) 13 SCC 730] had occasion to observe as follows:-

“But what is lost sight of is the fact that when an employee is totally incapacitated (as for example when he is permanently bed ridden due to paralysis or becoming a paraplegic due to an accident or becoming blind) and the services of such an employee is terminated on the ground of medical invalidation, it is not a case of mere sickness. In such cases, the consequences on his family, may be much more serious than

the consequences of an employee dying-in-harness. When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable additional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact far more than the consequences of death in harness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia, serious incapacitating illness etc."

8. The husband of the petitioner is suffering from loss of eye sight, loss of memory, orientation and has become hemiplegic and his permanent disability has been assessed at 100%. The petitioner has to bear the financial burden not only to look after her invalid husband but also to look after her three young children

who are pursuing their studies. The petitioner is reportedly a Graduate in History and has also acquired Diploma in Computer Application and there will be slots in the KSEB wherein she could be accommodated. I cannot help castigating the attitude of the KSEB in denying the claim of the petitioner for compassionate employment as totally unreasonable. I quash Ext.P5 order and direct the respondents to reconsider the claim for appointment of the petitioner on compassionate grounds in the lines abovesaid. The petitioner shall be put on notice and orders passed afresh for compassionate employment within a period of three months from today.

The Writ Petition is allowed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

nj.