IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION No.55754/2016 (S-RES)

BETWEEN:

SRI. J.K.KARIYAIAH
S/O KARIYAPPA @ KARIAIAH,
AGED 61 YEARS,
#MIG - 54, "ANUPAMA NILAYA",
26TH CROSS KUVEMPUNAGARA,
BEHIND AURBINDO SCHOOL,
HASSAN - 573 201.

...PETITIONER

(BY SRI.K.N. NITISH, ADV.)

AND:

1. THE KARNATAKA POWER TRANSMISSION CORPORATION LTD.,
   CAUVERY BHAVAN,
   BANGALORE - 560 001,
   REP. BY ITS CHIEF MANAGING DIRECTOR.

2. CHAMUNDESHWARI ELECTRICITY SUPPLY CORPORATION LTD.,
   #927, L.J. AVENUE COMMERCIAL COMPLEX
   NEW KANTHARAJ URS ROAD,
   SARASWATHIPURAM,
   MYSORE - 570 009.

3. EXECUTIVE ENGINEER (ELE)
   OPERATION AND MAINTENANCE DIVISION,
   CHAMUNDESHWARI ELECTRICITY,

SUPPLY CORPORATION LTD.,
HASSAN - 573 201.

...RESPONDENTS

(BY SRI.HARIKRISHNA S HOLLA, ADV. FOR R1 & R3
SRI.VIKRAM U.R., ADV. FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE OFFICIAL MEMORANDUM DATED 25.06.2015 ISSUED BY THE R3 AT ANNEXURE-L AND THE NOTICE AT ANNEXURE-M DATED 05.08.2015 ISSUED BY THE R3.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON **10/12/2020** COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

Petitioner is before this Court under Article 226 of the Constitution of India, praying for a writ of certiorari to quash the Official Memorandum bearing No. KA-EM(V)/LE/SALE1/SEESA-1/15-16 2928 dated 25.06.2015 (Annexure-L) and notice bearing No.KA.EM(V)/LE/SALE1/HISA(C)/15-16 4527-30 dated 05.08.2015 (Annexure-M), both issued by the third respondent.

2. The brief facts of the case are that, the petitioner was initially appointed on 01.10.1977 as Temporary Time Roll employee ("TTR Employee" for short). Subsequently, he was absorbed into supernumerary post under the Official Memorandum dated 30.09.1987 vide Annexure-A w.e.f. 01.07.1981. The petitioner and similarly placed persons made a representation Annexure-F, praying for absorption from 01.07.1979 instead of 01.07.1981 relying upon the decision of this Court dated 05.11.1997 in W.P.No.27711/1997. Since the said representation was not considered, the petitioner and others approached this Court in W.P.No.14428/2008. This Court, by order dated 13.03.2009 directed the respondent to consider the representation in accordance with law. Thereafter, under Official Memorandum dated 20.07.2009 (Annexure-H), the respondent-Corporation preponed the date of entry/absorption of the petitioner from 01.07.1981 to 01.07.1979 and re-fixed the pay of the petitioner. Subsequently, under Official Memorandum dated

10.03.2010, the petitioner was informed that the Official Memorandum dated 20.07.2009 under which, the petitioner was granted preponment of date of absorption was withdrawn. The said withdrawal was challenged before this Court in W.P.No.11447/2010. This Court, by order dated 07.09.2011 set aside the order of withdrawal, with liberty to take action in accordance with law, after affording opportunity of hearing to the petitioner. Subsequently, the petitioner was issued with notice dated 05.08.2015 (Annexure-M) asking the petitioner to show cause as to why his pay should not be re-fixed taking the date of absorption as 01.07.1981. It is stated that the petitioner replied to the said show cause notice. Thereafter, the respondent-Corporation passed an order dated 25.06.2015 re-fxing the pay of the petitioner from 01.07.1981 instead of 01.07.1979. Aggrieved by the said Official Memorandum dated 25.06.2015, the petitioner is before this Court in this writ petition.

3. Heard Sri.K.N.Nitish for Sri.K.V.Narasimhan, learned counsel for the petitioner and learned counsel Sri.Vikram for Sri.Harikrishna Holla, learned counsel for the respondents. Perused the writ petition papers.

4. Learned counsel for the petitioner would submit that the petitioner was appointed initially on 01.10.1977 as Assistant Lineman on TTR. Subsequently, he was absorbed under Annexure-A dated 30.09.1987 w.e.f. 01.07.1981. Similarly situated persons had approached the Labour Court seeking regularization as per Clause 5 of Settlement dated 15.05.1978 (Annexure-B). The Labour Court allowed the dispute and directed regularization of employees on completion of 240 days from the date of their appointment as on 1st July of each year. The respondents had challenged the above said award before this Court in W.P.No.27711/1997 and this Court had confirmed the order of the Labour Court holding that the petitioners therein had fulfilled the conditions in the year

1979 and their regularization had to be done w.e.f. 01.07.1980. Learned counsel would further submit that on the representation made by the petitioner, the said benefit was extended to the him under Official Memorandum dated 20.07.2009 and his pay was re-fixed taking the date of absorption of the petitioner from 01.07.1979. But, without any notice nor without assigning any reasons, the said Official Memorandum was withdrawn. Therefore, the petitioner approached this Court, wherein this Court set aside the order of withdrawal, with liberty to the respondents to take action in accordance with law. It is his submission that the respondents without taking into account the Settlement at Annexure-B passed impugned order re-fixing the pay of the petitioner taking the date of absorption as 01.07.1981. Learned counsel would rely upon Clause (5) of Settlement at Annexure-B to contend that the petitioner would be entitled for absorption on completion of 240 days of service in any consecutive 12 calendar months from the

date of his initial appointment and further submits that he would fulfill the conditions enumerated in Clause (5) of the said Settlement. As such, the respondent-Corporation had rightly extended the benefit under the Official Memorandum dated 20.07.2009 re-fixing the pay of the petitioner taking his date of absorption as 01.07.1979. There is no reason to withdraw the same. Further, he would submit that the contention of the respondent that Clause (5) of the Settlement would not be applicable to the petitioner and Clause (6) would be applicable, was not at all raised in the earlier proceedings and for the first time, the respondents are contending that Clause (6) of the Settlement at Annexure-B would be applicable to the petitioner, which is incorrect. Thus, he prays for allowing the writ petition.

5. Per contra, learned counsel for respondents would submit that the petitioner was regularized as per Annexure-A dated 30.07.1987 by the Executive Engineer

(Electrical), Major Works Division w.e.f. 01.07.1981. It is submitted that Clause (6) of Settlement at Annexure-B would be applicable for TTR Employees who were working in the Maintenance Establishment in Major Works Division. It is his submission that the petitioner was working in Maintenance Establishment in Major Works Division. Hence, Clause (6) of the Settlement would be applicable and not Clause (5) of the Settlement. It is further submitted that Clause (5) would be applicable to the TTR Employees who were working in Operation and Management Divisions including Central Stores, Workshops, MT, RT, TCD, Generating Stations. Referring to Annexure-C, order dated 05.11.1997 in W.P.No.27711/1997, learned counsel for the respondents would submit that the petitioners in the said writ petition were TTR employees who were working in O & M Division of Central Stores, Workshops, MT, RT, TCD and Generating Stations and they were not TTR employees of

Major Works Division. Thus, he prays for dismissal of the writ petition.

6. Admittedly, the petitioner was appointed as Temporary Time Roll employee on 01.10.1977. His services were absorbed under the Official Memorandum dated 30.09.1987 w.e.f 01.07.1981 by the Executive Engineer (Electrical), Major Works Division. A reading of Annexure-A makes it clear that the TTR employees working in the Maintenance Establishment in Major Works Division were absorbed w.e.f. 01.07.1981. Both the petitioner and respondents rely upon Settlement dated 15.05.1978 produced at Annexure-B. The petitioner would rely upon Clause (5) of the Settlement, whereas the respondents would rely upon Clause (6) of the said Settlement.

7. Clause (5) and (6) of the Settlement reads as follows:

> *"(5) Further, it is agreed that such of the TTR men of the O & M Divisions including*

Central Stores, Workshops, M.T., R.T., T.C.D., Generating Stations, etc., who were on rolls on 31.03.1978 and who complete subsequent to 30th June 1977, 240 days of service in any consecutive 12 calendar months will be absorbed according to seniority and suitability as per the provisions of Recruitment and Promotion Regulations subject to Clause 8 below, in these Divisions by creating supernumerary posts, if necessary. Further, it is agreed to review the position of such men on 1st July of each year for absorption on the above lines subject to Clause 8 below.

(6) It is agreed to absorb such of the TTR men working in Major Works who have completed 3 years continuous service as on 30th June, 1977 by creation of supernumerary posts in the Maintenance Establishment in Grade Rs.300-465 in Major Works Divisions with effect from 01.05.1978. Further, it is agreed to review in future the cases of TTR men of Major Works on 1st July every year and to absorb such of the men who complete 3 years continuous service as on that date according to seniority and

suitability as per the provisions of Recruitment and Promotion Regulations subject to Clause 8 below."

A careful reading of the above clauses of the Settlement would reveal that Clause (5) would relate to TTR men of the O & M Divisions including Central Stores, Workshops, MT, RT, TCD and Generating Stations who were on Rolls as on 31.03.1978. Whereas Clause (6) relates to TTR men working in Major Works Division who have completed three years continuous service as on 30th June 1977, by creation of supernumerary posts in the Maintenance Establishment. Clause (6) also stipulates a condition that, to absorb such an employee, he should have completed three years of continuous service as on that date.

8. The subject matter of W.P.No.27711/1997 was clause (5) of the Settlement dated 15.07.1978 at Annexure-B. This Court, interpreting clause (5) of the Settlement confirmed the order passed by the Industrial Tribunal and held that the employees therein fulfilled

conditions in the year 1979 and their regularization had to be done w.e.f. 01.07.1980. The benefit of the order of this Court in the above said writ petition would not be available to the petitioner herein. The distinguishable difference being that employees therein appear to be the employees who were working in O & M Division including Central Stores, Workshops, MT, RT, TCD and generating stations. Whereas the absorption order Annexure-A makes it clear that the order of absorption in respect of the petitioner was issued by the Executive Engineer (Electrical), Major Works Division and absorption is on fulfilling condition of completion of three years of continuous service as on 30th June, 1981. Clause (6) of the Settlement stipulates absorption of TTR men working in Major Works who have completed three years of continuous service by creation of supernumerary posts in the Maintenance Establishment in Major Works Division. Thus, I find force in the contention of the respondents.

9. I find no merit in the writ petition. Accordingly, the writ petition stands rejected.

Sd/-
JUDGE

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CT:bms