
(2010) 09 KL CK 0375

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10361 of 2009 (M)

J.J. Jefferson

APPELLANT

Vs

The Kerala State Electricity Board and The Chief Engineer
(HRM)

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79

Citation : (2010) 09 KL CK 0375

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : P.K. Radhika, for the Appellant; K.S. Anil, SC for KSEB, for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—The petitioner was an employee of the Kerala State Electricity Board. Prior to joining the Kerala State Electricity Board, the petitioner had nine months and 29 days of aided school service. The petitioner retired from service of the Kerala State Electricity Board on 31.5.2002. The petitioner seeks reckoning of the aided school service also for the purpose of retirement benefits, which has not been favourably considered by the respondents. According to the petitioner, the issue is squarely covered in his favour by the decision of the Division Bench of this Court in W.A. No. 2214/2009.

2. I have heard the learned standing counsel appearing for the KSEB also. The standing counsel could not dispute the fact that the issue in question is squarely covered by the decision of the Division Bench of this Court in W.A. No. 2214/2009, which reads thus:

"The second petitioner is the appellant. Respondents 1 and 2 herein were the respondents in the Writ Petition. The point that arises for decision in this appeal is whether a teacher of an Aided School, who later joined the Kerala State

Electricity Board (hereinafter referred to as "the K.S.E.B."), can count his past service in the school as teacher, for the purpose of pensionary benefits, on his retirement from the K.S.E.B.

2. The skeletal facts necessary for the disposal of the appeal are the following: The appellant had worked as a Lower Primary School Assistant in an Aided School from 17.8.1972 to 30.6.1977. The said service was approved by the Educational Officer concerned. Later, on 1.7.1977, he joined the K.S.E.B. as Cashier and retired from service as Senior Assistant on 31.10.2004. He filed a representation before the K.S.E.B., praying that his past service in the Aided School may also be reckoned for the purpose of granting pensionary benefits. But, the Chief Engineer of the K.S.E.B., by Ext.P4 order dated 16.6.2004, rejected his request. Therefore, the Writ Petition was filed, seeking appropriate reliefs, to enable him to count his past service as Lower Primary School Assistant also, for the purpose of pensionary benefits. The learned Single Judge, after hearing both sides, dismissed the Writ Petition. Hence, this appeal.

3. The learned Counsel for the appellant brought to our notice that Rule 14 E of Part III of the Kerala Service Rules (for short "the Rules") mandates reckoning of Aided School service also for the purpose of pensionary benefits and that the provisions of the said Rule are mutatis mutandis applicable to the K.S.E.B. also, by virtue of Annexure A3 decision of the K.S.E.B. As per the said decision, the Rules, including the amendments introduced from time to time, are automatically applicable to the employees of the K.S.E.B., unless otherwise decided by the Full Board or they are contrary to the special regulations of the K.S.E.B. The learned Counsel for the appellant submitted that in this case there is no decision by the Full Board of the K.S.E.B. not to make applicable Rule 14E of the Rules and none of the regulations of the K.S.E.B. runs counter to the aforementioned provision in the Rules. So, the Writ Petition should have been allowed, it is submitted.

4. We heard the learned Standing Counsel for the K.S.E.B. It is submitted by the learned Standing Counsel that the K.S.E.B., by Ext.R1(b) decision, has laid down the cases in which past service of employees could be counted for the purpose of pensionary benefits, that the service in Aided Schools does not find a place in it and, therefore, that service cannot be reckoned.

5. Rule 14E of the Rules reads as follows:

14E. Aided School Service put in by Government employees prior to entry in Government service qualified. Takes effect from 24th January, 1968." It is common ground that the provisions of the Rules are adopted by the K.S.E.B., invoking its regulation making power u/s 79(c) of the Electricity (Supply) Act, 1948. So, wherever the word "Government" is used in the Rule, the same has to be understood as K.S.E.B. So, Rule 14E of the Rules when adopted by the K.S.E.B. reads as follows:

14E. Aided School Service put in by K.S.E.B. employees prior to entry in K.S.E.B. service qualified. Takes effect from 24th January, 1968.

In view of the above position, even if Ext.R3(b) decision of the K.S.E.B. does not mention Aided School service, the K.S.E.B. was bound to reckon the past service of the appellant. The decision in the nature of Ext.R1(b) cannot have the efficacy to override a statutory regulation in the nature of Rule 14E of the Rules. In view of the above position, the appellant is entitled to succeed.

Accordingly, the Writ Appeal is allowed. the judgment under appeal is reversed. The first respondent is directed to reckon the past service of the appellant in the Aided School from 17.8.1972 to 30.6.1977, for the purpose of granting the pensionary benefits. This direction shall be implemented by the first respondent within three months from the date of receipt/production of a copy of this judgment.

In view of the same, this writ petition is allowed in terms of the Division Bench decision.