
(2016) 12 KL CK 0047
In the High Court Of Kerala
Case No : W.P.(C) No. 5894 of 2013

K.L. Rukmini

APPELLANT

Vs

Kerala State Electricity Board

RESPONDENT

Date of Decision : 17-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 LLJ 13

Hon'ble Judges : Mr. A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : P.M. Pareeth, Mohammed Shameel, Advocate, for the Petitioner; Sri. K.S. Anil, SC by Smt. A.G. Anitha, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

Mr. A. Muhamed Mustaque, J.—The petitioner, aggrieved by Ext.P-5 order of the Kerala State Electricity Board (for short, "the Board") dated 17.07.2007, regularizing certain contractual employees in the service of the Board along with some employment exchange candidates, approached this Court. According to the petitioner, those regularized employees are junior to the petitioner. Therefore, according to the petitioner, she is also entitled for absorption.

2. The petitioner refers to Ext.P-3 award passed by the Industrial Tribunal, Idukki, in ID MP No.4/2001 in ID No.12/1998, wherein it is held that as the petitioner herein is a worker under the Board. Thus, it is urged that there is no difficulty in regularizing the employment of the petitioner.

3. In this context, it is appropriate to refer to the award in ID No.12/1998 as this may have an impact on this writ petition as well. The award in ID No.12/1998 arose consequent upon a dispute raised by 14 persons, who were originally engaged as petty contractors by the Board at the inspection bungalows erected in connection with the Lower Periyar H.E. Project. They claimed that they are workmen under the Board. The stand of the Board was that they are only

engaged as petty contractors and their service would be terminated on completion of the project. The Industrial Tribunal, Idukki, overruling the objection of the Board, held that there exists employer - workman relationship between the Board and the 14 persons. This was challenged by the Board in WP(C) No.21068/2006. This Court did not interfere with the finding of the tribunal that the 14 persons were engaged in a contract of service and are not petty contractors and therefore, those 14 persons engaged by the Board have to be treated as workmen under the Board. However, this Court, in that case, held that they were engaged by the Board as contract workers. It was also observed in the above case that if those contract workers are entitled for absorption on account of their engagement after the termination of the project, they are free to take up their claim for regularization in appropriate manner before the appropriate authority.

4. The petitioner's claim is that she was continuously engaged even after the completion of the project in relation to the Lower Periyar H.E. Project, Vazhathope. It is also submitted that now also, she is engaged in another office at Idukki. It is submitted that as per Ext.P-5 order, certain persons, who are junior to the petitioner, have been regularized. It is further submitted that in view of the clear finding that the petitioner was found out to be a contractual worker, there is no impediment in regularizing her service, as she had put more than two decades' service with the Board. Ext.P-5 is the decision of the Board to regularize the service of six persons. This shows that some of the workmen, who were engaged on contract basis, were ordered to be regularized pursuant to the direction of this Court in OP No.18154/1996. This Court, in fact, directed the Board to consider regularization. If anyone of the contract workers is regularized, who is junior to the petitioner, certainly, the petitioner is well founded in her claim that there was a discrimination among the similarly situated employees. The petitioner raised a claim before the Board as per Ext.P-6 dated 15.02.2013. This Court is of the view that in the light of Ext.P-5, the petitioner shall also be considered for regularization.

5. Therefore, the writ petition is disposed of, as follows;

In the light of Ext.P-5, the petitioner shall be considered for regularization.

It is made clear that in the light of the award in ID No.12/1998, the status of the petitioner is that of a "contractual employee". Therefore, the petitioner's status has to be considered for the purpose of regularization as that of a contractual worker and the Board cannot treat her as a worker engaged in contract for service.