

(2011) 06 KL CK 0124
In the High Court Of Kerala
Case No : W.A. No. 131 of 2011

The Kerala State Electricity Board

APPELLANT

Vs

E.N. Narayanan Pillai, Jerald Alphons D" Cruz Ashtami, State
of Kerala and Secretary to Government

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Electricity (Supply) Act, 1948 — Section 60

Citation : (2011) 3 KLJ 230

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Asok M. Cheriyan, S.C., KSEB, for the Appellant; P.B. Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Gopinathan, J.—The question raised before us is whether an employee transferred from the erstwhile Electricity Department of the Government of Kerala to the Kerala State Electricity Board, herein after referred to as "the Board", is entitled to the benefit of Ext.P5 order granting interim relief to the State Government Employees and Ext.P7 order granting revision of pension and other related benefits from the respective dates or from a date opted by the Board.

2. The Appellant before us is the 3rd Respondent Board in W.P.(C) No. 20865/2006. The Writ Petition was filed by Respondents 1 and 2 herein. The brief facts of the case is that the 1st Respondent was appointed in the erstwhile Electricity Department of the Government of Kerala as Lower Division Clerk on 1.11.1995. On constitution of the Board with effect from 1.4.1957, 1st Respondent along with certain others were transferred to the Board and he continued service in the Board till his retirement on 30.4.1985 as an Accounts Officer. The 2nd Respondent was directly appointed by the Board as a Lower Division Clerk on 25.2.1963 and retired from service on 31.7.1996 while he was

working as a Senior Superintendent.

3. By Ext.P5 order [(G.O.(P) No. 230/(124)/97/Fin. Dated 14.2.1997] issued by the 3rd Respondent State, 2nd installment of interim relief was granted to the Government employees with effect from 1.2.1997. By Ext.P7 order [G.O.(P) No. 3001/98/Fin. Dated, 25.11.1998], the pension and other related benefits consequent on revision of pay scales of the Government employees were granted with effect from 1.3.1997.

4. Respondents 1 and 2 requested the Appellant to extend the benefits under Exts.P5 and P7 from the respective dates, for which the Board was not amenable. Being aggrieved, they filed the Writ Petition seeking direction to the Board to extend the benefit of Exts.P5 and P7 to them. The Board took a contention that it adopted Exts.P5 and P7 orders with effect from 1.7.1998 only and hence the Respondents 1 and 2 are entitled to get the benefits of Exts.P5 and P7 from 1.7.1998 and not from 1.2.1997 and 1.3.1997 respectively.

5. The learned Single Judge by the impugned judgment dated 10.8.2010 arrived at a finding that since the 1st Respondent was transferred to the service of the Board from the erstwhile Electricity Department, he is entitled to the benefits on par with the employees in the other Departments of the State by virtue of Ext.P1 order dated 3.4.1957 and by virtue of Section 60 of the Electricity (Supply) Act, 1948. Since the 2nd Respondent entered the service of the Board subsequent to its constitution, the 2nd Respondent is entitled to the benefits only from the date when Exts.P5 and P7 were adopted by the Board, i.e., on 1.7.1998. In concluding so, the learned Judge had also given reliance to the decision of the Apex Court dated 26.3.2003 in Raghava Varma v. State of Kerala Civil Appeal No. 832/2002 (Ext.R3(a)). Consequently, in so far as the 1st Respondent is concerned, the Writ Petition was allowed and the Board was directed to extend the benefit of Exts.P5 & P7 with effect from 1.2.1997 and 1.3.1997 respectively. So far as the 2nd Respondent is concerned, the Writ Petition was dismissed. Now this appeal.

6. The status of the 1st Respondent that he was an employee of the erstwhile Electricity Department of the Government of Kerala and that he was a transferred employee of the Board and retired from service on 30.4.1985 is not at all disputed. The applicability of Ext.P1 was also not disputed. A reading of clauses 3, 4 and 6 of Ext.P1 would be appropriate for better appreciation of the claim of the 1st Respondent. Clause 3,

4 and 6 of Ext.P1 reads:

3. The Board should pay them their pension and provident fund. Government guarantee such payments also to the staff in question.

4. The Government transfer to the Board the pension contribution and provident fund accounts.

6. The Board should extend to the personnel transferred and lent, all the benefits such as pay and allowances and other conditions of service as enjoyed by them

in Government service. The Board should also give as enjoyed by them the benefits of increased emoluments which may be sanctioned by Government from time to time for similar officers in the Public Works Departments and other Department.

Section 60 of the Electricity (Supply) Act, 1948 provides that all obligations incurred by the Government before the constitution of the Board shall be deemed to have been incurred by the Board. On a combined reading of clauses 3, 4 and 6 quoted above with Section 60, we find that the learned Single Judge was correct in arriving at a finding that the 1st Respondent is entitled to the benefit as per Exts.P5 and P7. The learned Counsel for the Board submitted that in the light of Ext.R3(a) judgment of the Apex Court, the 1st Respondent is also not entitled to the benefit of Exts.P5 and P7 from the respective date. According to the learned Counsel, the 1st Respondent is entitled to the benefit only from 1.7.1998, on which date the Board adopted Exts.P5 and P7. On an anxious consideration of the pleadings and the documents we find that the employees of the erstwhile Electricity Department and those recruited by the Board after its constitution stand at different footing because those who were transferred to the Board are entitled to the benefit of Ext.P1. On the other hand, those who were recruited by the Board are not entitled to the benefit of Ext.P1 order. Clause 3, 4 and 6 entitle those who are transferred to the Board to get their emoluments including pension on par with their counterparts in the other departments of the State. Those who were directly recruited by the Board are not entitled to such benefit. It is not evident by R3(a) as to whether the parties to that proceedings were erstwhile employees of the Electricity Department or not. The Board has no case that the Petitioners in R3(a) were employees of the Electricity Department and transferred to the Board to whom Ext.P1 is applicable. Therefore, the Board cannot deny the benefit of Ext.P1 to the 1st Respondent on the basis of Ext.R3(a).

In the above circumstance, we find that the learned Single Judge was fully justified in distinguishing the claim of the 1st Respondent with that of the 2nd Respondent. We find that in the light of clauses 3, 4 and 6 of Ext.P1 coupled with Section 60 of the Electricity (Supply) Act, the 1st Respondent is entitled to the benefit of Exts.P5 and P7 from 1.2.1997 and 1.3.1997 respectively. Writ Appeal is devoid of merits. Accordingly, it is dismissed.