

(2001) 11 KL CK 0026
In the High Court Of Kerala
Case No : O.P. No. 5737 of 2001G

V.K. Mohammed Kunhi, Rtd. Asst. Executive Engineer (Civil) APPELLANT
"Seena"

Vs

Kerala State Electricity Board RESPONDENT

Date of Decision : 01-11-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 2, 11

Citation : (2001) 11 KL CK 0026

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : S.P. Sankarankutty Nair and T.V. Ajay Kumar, for the Appellant; K.I. Abdul Rasheed, Govt. Pleader and T.G. Rajendran, SC, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—The petitioner is aggrieved mainly by Exts. P9, P13 and P15. He had been authorised as per Ext. P1, only minimum pension and minimum gratuity. That too without taking into account the direction contained in Ext. P8 judgment. That is illegal; the petitioner submits. He has retired from service on 30.6.1993. His provident fund amount was not disbursed. It was disbursed only in June, 2000, that too without interest. His request for interest was declined in Ext. P13. The petitioner sought for certain service benefits from 13.5.1991 to 30.6.1993 and that was also declined in Ext. P15. That was why the petitioner has approached this court challenging Exts. P9, P13 and P15.

2. Ext. P9 reads that he has been granted a minimum pension of Rs. 375/- and granted an amount of Rs. 4485/- towards DCRG. He retired from service on 30.6.1993 while working as an Assistant Engineer. Admittedly he had commenced service on 26.8.1963. He had been granted leave from 20.5.1976 to 17.8.1983 for employment abroad. Thereafter also the petitioner did not join duty. According to him he had applied for leave. But the Board says that his leave has not been sanctioned. The petitioner requested to rejoin duty only on

13.5.1991. But it was rejected. He continued his request, which did not result any order. He was also removed from service without any enquiry. Thereupon he approached this court with O.P. 1606 of 1993, which was allowed as per Ext. P8 quashing the removal order and directing the respondents to disburse the entire pensionary benefits to the petitioner excluding the period of his absence. According to the petitioner there was a clear finding in paragraph 8 of that judgment that he had made a request to rejoining duty on 13.5.1991. But he was not admitted to duty. The order declining permission to rejoin duty, which was marked as Ext. P10 in the said Original Petition was also quashed. It was also held in paragraph 12 of the said judgment that:

"The petitioner shall be deemed to have been in service till 30.6.1993."

That means the petitioner should have been deemed to be in service from 13.5.1991 to 30.6.1993. That is the effect of paragraphs 8 and 12 of the judgment, Ext. P8. So, he is entitled to count his service from 13.5.1991 to 30.5.1993 for the purpose of pension and other retiral benefits. That is not granted as per Ext. P9, the petitioner submits. Therefore Ext. P9 is illegal.

3. He further contends that Provident Fund amount was liable to be paid on 30.6.1993, even if he had been removed from service. That was paid only in June, 2000. That was an illegal withholding. Therefore for that period the petitioner is entitled to interest. Its rejection as per Ext. P13 is illegal.

4. The petitioner submits that he also ought to have been granted salary for the period from 13.5.1991 to 30.6.1993 during which period, according to him, he was kept illegally out of duty and rejection of this claim in Ext. P6 is illegal.

5. The respondents have not sought to file a counter affidavit so far in this case. In spite of that it is contended by counsel for the KSEB that there is nothing illegal in Ext. P9. He is entitled only for the minimum pension as ordered therein because what has been directed in Ext. P8, as contained in paragraph 13, is as follows:

"At the time of hearing, learned counsel for the petitioner submitted that all the pensionary benefits for the periods served by him may be directed to be disbursed to him. Since the petitioner had to retire on 30.6.1993 he is entitled to get all the pensionary benefits excluding the period of absence from duty. Therefore, the respondents are directed to disburse the entire pensionary benefits due to the petitioner excluding the period of absence from duty within three months from the date of receipt of a copy of this judgment."

The petitioner was absent from 13.5.1991 to 30.6.1993. When this period is excluded the petitioner is entitled only to the minimum pension and that has been granted in Ext. P9.

6. In paragraph 8 of Ext. P8 the learned Judge, who disposed of O.P. 1506 of 1993 in which the Board was also a party, had made it clear that:

"Admittedly, he has availed of leave from 18.8.1976 and on 13.5.1991 he has requested the Board to grant permission to join duty."

The learned Judge also found that:

"The board is bound to admit the petitioner to duty under the Rule mentioned above. Therefore, Ext. P10 order is not legal."

Ext.P10 marked in that Original Petition was quashed. That was an order rejecting the petitioner's request for rejoining duty. Ext. P6 in this Original Petition. In the light of this conclusive finding in the said judgment, in which the Board is also a party, the Board cannot now take up a contention that the petitioner was absent from 13.5.1991 to 30.6.1993, when he retired from service. The effect of the judgment is that the rejection of the petitioner's request to rejoin duty was illegal. Consequence is that the petitioner ought to have been admitted to duty. Therefore that period shall be counted as service for the purpose of retirement benefits.

7. When that service is counted, necessarily Ext. P9 has to be revised for the purpose of grant of retirement benefits taking note of that period as well. Therefore there will be a direction to the respondents to revise the pension and gratuity authorised in Ext. P9, reckoning the period from 13.5.1991 to 30.6.1993 as well, as held in Ext. P8.

8. Admittedly the Provident Fund amount due to the petitioner was paid only in June, 2000. He had retired on 30.6.1993. He had been removed from service also. Atleast on that date it was incumbent on the Board to settle the Provident Fund account. The Board did not do so. No reason is put forth justifying this delay. So the withholding of the benefit during the period from 30.6.1993 to the date of its actual payment was illegal. He shall be entitled to the interest as is applicable to the Provident Fund amount and it shall be paid to him.

9. The further claim of the petitioner is for the pay and allowances for the period from 13.5.1991 to 30.6.1993. That was a matter that had to be agitated in the Original Petition which led to Ext. P8 judgment. The petitioner did not do so. If the petitioner has done so, there was no finding in that behalf. Then it has to be taken as if that prayer had been rejected. Going by Order 11, Rule 2 or Explanation IV to Section 11 of Code of Civil Procedure, the petitioner cannot reagitate that matter because of constructive res judicata. So there is nothing illegal in Ext. P15.

10. The retirement benefits due to the petitioner shall be granted with reference to the revised pay as on 30.6.1993 as applicable to the category of the post held by the petitioner. While revising Ext. P9 as directed above, that also shall be considered.

Final orders regarding these matters will be passed and payment shall be effected at any rate within three months. The Original Petition is allowed as above.