IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 22ND DAY OF FEBRUARY 2024 / 3RD PHALGUNA, 1945

WA NO. 1032 OF 2021

AGAINST THE ORDER/JUDGMENT IN DATED IN WP(C) NO.13933 OF 2021 OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

1 KERALA STATE ELECTRICITY WORKERS UNION,
REG.NO. 43/56, NANTHANCODE,
THIRUVANANTHAPURAM REPRESENTED BY ITS GENERAL SECRETARY, S. SEETHILAL.

2 THULASIDAS.T.K.
AGED 60 YEARS
S/O.T.N. KUTTAPPA NAIR, KACKANATTU HOUSE,
MEENADOM P.O. KOTTAYAM 686 516.

3 SUDHAKARAN. O.
AGED 60 YEARS, S/O. UNNI.S, NADUVILATHARAYIL
MUTTOM P.O. HARIPPAD, ALAPPUZHA 680 511.

4 VIJAYAKUMARAN C.O.
AGED 60 YEARS
S/O. VELAYUDHAN NAIR P.T., AMMOTH HOUSE,
VAZHAYOOR P.O. MALAPPURAM 673 633.

5 R.VENUGOPAL
AGED 46 YEARS
S/O. RAGHAVAN, KOCHUVILA KUTTIYIL,
PALLARIMANGALAM P.O. MAVELIKKARA,
ALAPPUZHA DISTRICT 690 107.

6 BINU.U.N.
AGED 48 YEARS
S/O. NARAYAN U.K., URUMBIL HOUSE,
VALAVAYAL P.O. WAYANAD.

BY ADVS.
LIJU.V.STEPHEN
INDU SUSAN JACOB

RESPONDENTS/RESPONDENTS:

1 *STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY, (LABOUR),
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
(*CORRECTED)

2 KERALA STATE ELECTRICITY BOARD
VAIDYUTHI BHAVAN, PATTOM P.O.
THIRUVANANTHAPURAM 695 004,
REPRESENTED BY ITS SECRETARY (ADMINISTRATION).

3 MANAGING DIRECTOR AND CHAIRMAN
KERALA STATE ELECTRICITY BOARD LTD.
VAIDYUTHI BHAVAN,, PATTOM P.O.
THIRUVANANTHAPURAM 695 004.

*THE DESCRIPTION OF R1 IS CORRECTED AS: "STATE OF KERALA,.REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, POWER DEPARTMENT,GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-695 001. AS PER ORDER DTD. 12-11-2021 IN I.A.NO.1/21 IN WA NO.1032/2021.

BY ADVS.
N.SATHEESH
ANTONY MUKKATH

SR GP SRI BIMAL K NATH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Amit Rawal, J.

1. Appellants have been non-suited on the technical ground by relegating them to avail the remedy of industrial dispute. The grievance sought to be redressed in the writ petition on behalf of the Appellants/petitioners was plain and simple and is summarized as under:

Six petitioners sought the indulgence of this Court on the ground that the Kerala State Electricity Board and Managing Director had been employing workers on temporary basis to carry out the regular work for a long period without regularization of their services. Industrial dispute was raised which was referred to Labour Court in I.D.No.27/2002. Labour Court vide award dated 15.12.2004 allowed the case in favour of the Trade Unions and its members by issuing directions to the respondents that 25% of the existing vacancies as well as the vacancies that may arise during a period of five years from the date of the award shall be reserved for appointment from among the petty contractors

and contract line workers. There shall be appropriate percentage of communal reservation within 25%. Management shall in consultation with the State Government nominate an officer not below the rank of Deputy Labour Commissioner to prepare a State-wide seniority list of petty contractors. All the persons named in the seniority list would satisfy the qualifications for appointment of Electricity Workers as per the orders of the management which are in force as on the date of the award. Maximum age limit for appointment was fifty(50) years and Management is given liberty to formulate and finalise recruitment procedure within a period of sixty(60) days from the date of the publication of select list. The aforementioned award was challenged in this Court and even before the Supreme Court but it attained finality. In view of the aforementioned directions, their services were liable to be regularized, for, most of the petitioners had been working from 1990, 1991, 1993 and 1996 and discharging the regular duties till 2021 and petitioner Nos.5 and 6 are still in employment. Realizing that the respondents would not take any action, submitted a

representation Ext.P2, but of no avail.

2. Learned counsel appearing on behalf of the appellants submitted that the respondents were required to consider the period. All the employees were regularized after ten(10) years in 2019 though the award was passed much before. For the purpose of fixation of pay and the pension respondents did not take note of the past service, but had already taken into account the date of regularization. In this view of the matter, cause of action accrued to petitioner Nos.1 to 4 whereas petitioner Nos.5 and 6 are expressing the same apprehension. In support of the contention, relied upon the judgment of this Court in ***K.L Francis v. The Kerala State Road Transport Corporation and Others (2015(1)KLT 1051)*** and **Sukumaran V.** v. **State of Kerala and Another** [2020 (5) KHC 571].

3. It is further contended that the employees of the Kerala State Electricity Board are governed by the provisions of Kerala Service Rules. As per Rule 13 of Part III Chapter II, respondents were enjoined upon an obligation to consider the service rendered to the extent of 50% for the purpose of

considering the pension. There was no fault on behalf of the appellants as the respondents sat over the matter of regularisation for almost ten years.

4. On the other hand, learned counsel appearing on behalf of the respondent-Electricity Board countered the arguments by raising following objections:

The judgment in ***Francis*** (supra) was based upon Rule 11 which is not applicable to the facts and circumstances of the present case. Casual labourers cannot be treated at par with the contract workers as the petitioners had been discharging duties to the limited extent and had not rendered 240 days. It is in that background, pension in respect of petitioners Nos.1 to 4 have been determined from the date of regularisation and similar benefits would be granted to petitioner Nos.5 and 6 on their superannuation.

6. We have heard the learned counsel for the parties and appraised the paper book.

7. Rules 12 and 13 of KSR Part-III reads thus:

> 12. Service in an establishment, the duties of which are not continuous, but are limited to certain fixed periods in each year, including the period during which the

establishment is not employed, qualifies, but the period during which the establishment is not employed shall qualify only if the employee was on actual duty when the establishment was discharged after completion of its work and on the date on which it is re-employed.

13. Work Establishment employees absorbed in regular establishment will be allowed to count 50 per cent of the work establishment service for purposes of pension.

In cases of retirements on or after 1st April 1968 the entire full-time work establishment service excluding periods of actual break will count for pension provided that if the employee was a member of any Contributory Provident Fund Scheme, the employer's share of Provident Fund Contribution with interest thereon shall be refunded to Government.

Explanation – Period of officiating / temporary service in the regular establishment interposed between work establishment service will be treated as work establishment service. "

8. On perusal of the Rules, it is evident that the contract service rendered by the employees for the purpose of computing the pension after regularization at least 50% of the past service is required to be taken. Though parties are governed by the Rules but in the *ratio decidendi* culled out in **Sukumaran** (*supra),* the Court had noticed that where the workers had discharged the duty as casual labourers for

umpteen number of years but were regularised subsequently, the benefit of past service should have been granted. Paragraphs 18 to 24 reads as under:

> "18. We are unable to accept the rationale and reasoning of the learned Single Judge and the Division Bench of the High Court in the given facts and circumstances of the case.
>
> 19. We begin by, once again, emphasising that the pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept in mind, i.e., to facilitate a retired Government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities.
>
> 20. While looking into the facts and circumstances of the case, there is no dispute about the time period spent by the appellant as a CLR worker and his being at serial No. 2 for grant of pensionary benefits in the list of details of CLR workers had he continued as one. The appellant was able to advance his career by going through a process of direct recruitment by the KPSC successfully. It is not a case of some unreasonable or improper benefit being extended to the appellant but that he competed against others and was successfully recruited.
>
> 21. It is also not in dispute that he was transferred to the Fisheries Department albeit at his own request and

demitted office from there after earning promotion. To say that the appellant would be denied the benefit of the period spent as CLR worker for his pensionary benefit would be to treat his case as inferior one to the case of other CLR workers, who never went through a system of recruitment for regularisation but were regularised in the Fisheries Department to provide better working conditions and monetary benefits to the employees. Can it really be said that a regularly recruited person like the appellant should not get the benefit which the other people who were CLR workers would get, having spent more than 7 years in that capacity? The answer, in our view, is in the negative, as it would amount to whittling away long years of service as a CLR worker of 1678 days (7 years 4 months and 23 days).

22. Had the respondents not issued the G.O.s, no doubt the appellant would have no claim. The claim of the appellant arises from the G.O.s, which are beneficial efforts for the CLR workers to improve the conditions of working along with monetary benefits. The appellant did work for the aforesaid long period of time as a CLR worker and should, thus, be entitled to the same on parity vis-à-vis other CLR workers. The appellant was at serial No.2 in the aforementioned list and would have been so absorbed when 29 posts were created. In fact, only 27 posts out of these were filled in. It is thus not even a case where no post existed or that it would affect anybody else, or that the Government would be compelled to create a post for the appellant. In fact, in terms of the G.O. dated 21.8.2006 an equalisation has been given of 200 days of work as a CLR worker to one year’s regular service for the

purposes of pension. While one would commend such effort by the State Government, it would be very unreasonable to deny this to the appellant in view of the aforesaid facts.

23. What also weighs with us is that the appellant is being deprived of the maximum pensionable service which would be permissible to him if his period of CLR service is recognised as qualifying service and there is no reason to deny the same to him when other CLR workers have got this benefit at the time of their absorption and subsequent regularisation as SLR workers and who would have, by virtue of joining at a later point of time, rendered less service. We also feel that Rule 13 of the Service Rules would possibly come to the aid of the rationale we seek to adopt as on absorption in the establishment, such persons are given the benefit of counting 50 per cent of their earlier work service prior to absorption for the purposes of pension.

24. We are, thus, of the view that for all the aforesaid reasons, the appellant is entitled to succeed in the present appeal and the impugned orders are liable to be set aside. We also find that the rejection of the recommendation of the Fisheries Department, respondent No. 2, by respondent No. 1 was consequently improper and unsustainable. The benefit of the service rendered as a CLR worker would, thus, be liable to be counted for determining the pensionary benefits of the appellant at par with other CLR workers and the pension be accordingly calculated. The arrears of pension be remitted to the appellant within a maximum period of eight (8) weeks

from today with admissible interest as applicable to outstanding pension amounts."

9. We are in disagreement with the findings given by the learned Single Bench relegating the appellants/petitioners to industrial dispute as claim for pension cannot be a ground for raising a dispute, for, the respondents do not deny the entitlement of pension but only taking into consideration the reckoned date ie., the date of regularization whereas the claim of the appellants/petitioners was, it should have been from the date they have been in employment 1990, 1991, 1993 and 1996. Out of six petitioners, petitioner Nos.1 to 4 have already retired in 2021 and petitioner Nos.5 and 6 are still working. We cannot remain oblivious of the fact that the award came to be passed and it has to be complied within a specified period. Had it been complied in letter and spirit, the order of regularisation would have come in 2005 but order was passed later. Thus, we would take the date of regularisation from 2005 onwards and as far as the previous service is concerned, the appellants would be entitled to 50% of the pension.

10. We thus set aside the order of the Single Bench and allow the appeal in the following manner:

The date of regularisation would be on 15.06.2005. Respondents are directed to recalculate the pension of the appellants from the date of regularisation. As regards the past service, respondents will redetermine the pension to the extent of 50% as per Rule 13. Let this exercise be undertaken within a period of three months from the date of receipt of certified copy of this judgment.

Sd/-
AMIT RAWAL
JUDGE

Sd/-
C.S. SUDHA
JUDGE

nak