

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WA.No. 2524 of 2009 IN OP NO. 9181/2002

**AGAINST THE JUDGMENT IN OP 9181/2002 of HIGH COURT OF KERALA
DATED 17-12-2008**

APPELLANTS/RESPONDENTS 1 TO 4:

- 1. KERALA STATE ELECTRICITY BOARD
VIDYUTHI BHAVAN, PATTOM, TRIVANDRUM
REPRESENTED BY ITS SECRETARY.**
- 2. DEPUTY CHIEF ENGINEER, KERALA STATE ELECTRICITY BOARD,
ELECTRICAL CIRCLE, ALLEPPY.**
- 3. EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD,
ELECTRICAL CIRCLE, MAVELIKKARA.**
- 4. DEPUTY CHIEF ENGINEER, TRANSMISSION CIRCLE,
POOVANTHURUTHU, KOTTAYAM-12.**

**BY ADVS.SRI. ASOK M.CHERIYAN, SC, KSEB
SRI.RAJU JOSEPH (SR.)
SRI.K.T.PAULOSE, SC, KSEB**

RESPONDENTS/PETITIONER/5TH RESPONDENT:

- 1. S.SHEREEF RAWTHER, S/O. SHAHUL HAMEED,
RTD. ASSISTANT ENGINEER, 110 K.V., SUB STATION
EDAPPONE. [EXPIRED]**
- 2. K.THANKAPPAN CONTRACTOR, PARAKKAL HOUSE,
KUNNAM.**

LEGAL HEIRS OF DECEASED R1 IMPLEADED AS ADDL. RESPONDENTS 3 TO 6

**Addl.3. NOORJAHAN, AGED 68 YEARS
W/O.LATE SHEREEF RAWTHER, RESIDING AT MUMTHAZ MAHAL
CHARUMMOODU PO., ALAPPUZHA DISTRICT.**

**Addl.4. MUMTHAZ, AGED 38 YEARS,
D/O.LATE SHEREEF RAWTHER, RESIDING AT DIYA
NEAR RAILWAY OVER BRIDGE, CHERAVALLY, KAYAMKULAM.**

**Addl.5. SHAMINA, AGED 34 YEARS,
D/O.LATE SHEREEF RAWTHER, RESIDING AT MUMTHAZ MAHAL
CHARUMMOODU PO., ALAPPUZHA DISTRICT.**

**Addl.6. SHAMIM, AGED 32 YEARS
S/O.LATE SHEREEF RAWTHER, RESIDING AT MUMTHAZ MAHAL
CHARUMMOODU PO., ALAPPUZHA DISTRICT.**

**THE LEGAL HEIRS OF DECEASED R1 ARE IMPEADED AS PER ORDER DATED
29.01.2015 IN IA 87/2015.**

**R3-R6 BY ADV. SRI.A.SHAFAEEK (KAYAMKULAM)
R2 BY SRI.A.SHAFAEEK**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JJJ

**ASHOK BHUSHAN, Ag. C.J.
&
A.M. SHAFFIQUE, J.**

W.A. No. 2524 of 2009

Dated this the 24th day of March, 2015

J U D G M E N T

Ashok Bhushan, Ag. C.J.

Heard the learned Standing Counsel appearing for the appellants and the learned counsel appearing for the respondents.

2. This Writ Appeal has been filed against the judgment dated 17.12.2008 in O.P. No.9181/2002 delivered by the learned Single Judge allowing the Writ Petition filed by the petitioner/respondent. The Writ Petition was filed by the respondent herein seeking a writ of certiorari quashing Exts.P5 to P8, by which order the petitioner was directed to remit the amount of Rs.2,33,502.60, which according to the respondent was the liability fixed on the writ petitioner. The petitioner's case in the Writ Petition was that no proceedings

were drawn for fixing the liability nor any order in the nature of disciplinary action has been passed for recovery of the said amount. Ext.P7 is the memo issued by the Deputy Chief Engineer, containing the statement of allegation dated 2.3.2002.

3. It is not disputed that the proceedings, in pursuance of the memo, were never finalised. The Writ Petitioner retired from service in the year 2003. The Writ Petition was allowed by the learned Single Judge, observing in paragraph 7 thus:

“Thus what remains is the finalisation of the disciplinary proceedings and fixation of liability, if any. It is reported that the petitioner has retired from service. Therefore, it is upto the competent authority to take a decision as to the manner in which the disciplinary action could be proceeded against the petitioner and liability, if any, could be recovered from him. Leaving open the said right of the respondents, I allow this Writ Petition. No costs.”

4. The Kerala State Electricity Board is in appeal against the said judgment. The learned counsel for the appellant submits that liability was fixed on the petitioner, which was intimated by Ext.P2 dated 25.08.1997 to the petitioner, but the petitioner did not deposit the amount. Hence, again order dated 22.1.2002 was passed for a reduced liability. The petitioner retired as Assistant Engineer and no proceedings has yet been finalised by the petitioner, either before the retirement or subsequent to the retirement. The learned Single Judge in paragraph 7 has clearly observed that finalisation of the disciplinary proceedings and fixation of liability, if any, may be brought to its logical end. The rights of the respondents/appellants were left open and the order directing for deposit of the amount was set aside.

5. We do not find any infirmity in the judgment passed by the learned Single Judge. The right of the

department to proceed and take a final decision was left open. The order, directing for deposit of the amount, was not as a measure of disciplinary proceedings or penalty. The petitioner contested the alleged liability. Hence, it was incompetent on the department to proceed against the petitioner. Although, memo of charge was issued on 2.3.2002, it does not appear that any proceedings have yet been finalised.

6. The learned counsel for the respondent/petitioner submits that the petitioner died on 11.3.2014, but the death-cum-retirement benefits, which were to be paid, has not been paid. The appellant shall look into the same and ensure that the dues, consequent to the retirement-cum-death of the writ petitioner, be paid to the legal heirs. The finalisation of the death-cum-retirement benefit shall be completed within a period of four months from the date of receipt of a copy of this judgment.

With the above view of the matter, this Writ Appeal is dismissed.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

Sd/-
A.M. SHAFFIQUE,
JUDGE.

/TRUE COPY/

PA TO JUDGE

jjj