

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.P.RAY

MONDAY, THE 17TH DAY OF JUNE 2013/27TH JYAISHTA 1935

WP(C).No. 9899 of 2004 (C)

PETITIONER(S):

**K.N.THANKACHAN, RETIRED OVERSEER,
ELECTRICAL MAJOR SECTION, CHARUMMOD,
RESIDING AT KAIPPILLIL HOUSE, VELLIKODE,
VETTIKODE P.O., KAYAMKULAM.**

**BY ADVS.SRI.R.RAJASEKHARAN PILLAI,
SRI.GEORGE T. THACHETT,
SMT.SABINA JAYAN.**

RESPONDENT(S):

- 1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDYUTHI BHAVAN, THIRUVANANTHAPURAM.**
- 2. THE CHAIRMAN,
K.S.E.B. VYDYUTHI BHAVAN,
THIRUVANANTHAPURAM.**
- 3. THE CHIEF ENGINEER (HR),
K.S.E.B. VYDYUTHI BHAVAN,
THIRUVANANTHAPURAM.**

BY SRI.P.SANTHALINGAM, SENIOR SC, KSEB.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-06-2013, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

ANIL K. NARENDRA, J.

W.P.(C) No.9899 of 2004

Dated this the 13th day of July, 2015

JUDGMENT

The petitioner while working as Overseer in the Electrical Major Section, Charummood, retired from service with effect from 31.12.2001. In the year 2001, disciplinary proceedings were initiated against the petitioner as well as two of his superiors alleging dereliction of duty and the main charge levelled against them was that, they dismantled unauthorisedly the service connection bearing consumer No.1060 Kattanam on 03.01.2001 disregarding objection and physical obstruction made by the tenant who was in occupation of that premises. The further charge levelled against them was that, they colluded with the owner of the property in executing the above said unauthorised work to bestow undue favour upon the said owner by denying power supply to the tenant who was in occupation of the premises.

2. The petitioner was served with a memo of charges alongwith statement of allegations dated 28.08.2001 to which he

submitted Ext.P1 written statement of defence dated 12.09.2001. Thereafter, the management appointed an enquiry officer, who conducted an enquiry and submitted Ext.P2 report of enquiry. In Ext.P2 enquiry report, the enquiry officer found that, the charges levelled against the petitioner and two others stand proved. Based on Ext.P2 enquiry report, the petitioner was issued with Ext.P3 show-cause notice, proposing the punishment of barring of three increments with cumulative effect. The petitioner submitted Ext.P4 reply. Thereafter, by Ext.P5 proceedings dated 23.08.2003, the petitioner was imposed with the punishment of barring of next two increments with cumulative effect. Since the petitioner had already retired from service, it was ordered in Ext.P5 that, the monetary value equivalent to barring of two increments with cumulative effect has to be recovered from him by invoking Rule 3 Part III KSR.

3. Challenging Ext.P5 order imposing punishment, the petitioner filed Ext.P6 appeal before the 2nd respondent. The 2nd respondent, by Ext.P7 order allowed the appeal in part by reducing the punishment to that of recovery of the monetary value equivalent to barring of one increment with cumulative effect from the DCRG amount payable to the petitioner. A

reading of Ext.P7 order would make it explicit clear that, the said order was passed taking a lenient view. Even before issuance of Ext.P7 order, by Ext.P8 communication of the Chief Internal Auditor of KSEB, a sum of Rs.34,729/- was ordered to be recovered from the DCRG payable to the petitioner, out of which Rs.1,360/- was towards barring of two increments in terms of Ext.P5 order. It is aggrieved by Exts.P5 and P7, the petitioner is before this Court in this writ petition.

4. A statement has been filed on behalf of the respondents, in which it has been stated that based on the enquiry report the petitioner was issued with a show-cause notice proposing the punishment of barring three increments with cumulative effect. After considering the explanations made by the petitioner, the punishment was reduced to barring of two increments with cumulative effect. The petitioner submitted an appeal before the 2nd respondent against the order of punishment. The 2nd respondent, after examining the case reduced the punishment to barring of one increment with cumulative effect and ordered to recover the amount from the DCRG payable to the petitioner. According to the respondents, the said recovery will be regulated as under Paragraph 48 of MDP, vide order No.Vig.B.II/2041/01

dated 08.12.2003. Regarding the recovery made pursuant to Ext.P8, the respondent would contend that as per the liability certificate issued by the Executive Engineer, Electrical Section, Mavelikkara dated 14.01.2004, the petitioner is having a liability of Rs.34,729/- which consists of excess pay drawn during the period from 14.05.1997 to 31.07.1998 amounting to Rs.17,968/-; excess Earned Leave surrender amounting to Rs.1740/-; excess Holiday Wages amounting to Rs.1521/-; and monetary value of two increments amounting to Rs.13,500/-, barred as per Ext.P5 order. In the counter affidavit, it has also been stated that, the provisional pension was sanctioned to the petitioner on 25.11.2002 after withholding the DCRG for want of vigilance clearance and final Last Pay Certificate (LPC) and Non-Liability Certificate (NLC). The vigilance clearance was obtained on 17.09.2003 from the Inspector General of Police and final LPC and NLC were received on 17.10.2003 from the Office of the Executive Engineer, Electrical Division, Mavelikkara. On receipt of the same, DCRG was sanctioned on 31.10.2003. The 2nd respondent by Ext.P7 order dated 08.12.2003 disposed of Ext.P6 appeal filed by the petitioner by modifying the punishment as barring of one increment with cumulative effect. On 22.01.2014

all pensionary benefits were sanctioned to the petitioner and according to the respondents, no further amount is pending payment.

5. I heard arguments of the learned counsel for the petitioner and also the learned Standing Counsel appearing for the respondents.

6. As disclosed from the pleadings and documents on record, the petitioner alongwith two others were proceeded against in a disciplinary proceedings initiated for dismantling the electric connection to a tenanted premises. To the memo of charges, the petitioner submitted Ext.P1 written statement of the defence. The Enquiry Officer, after conducting an enquiry, came to the conclusion that the charges levelled against the petitioner and others stand proved, and submitted Ext.P2 enquiry report. Based on Ext.P2 enquiry report, the petitioner was issued with Ext.P3 show-cause notice to which he submitted Ext.P4 reply. It was after considering the aforesaid reply, the disciplinary authority by Ext.P5 imposed the petitioner the punishment of barring of two increments with cumulative effect, which is now stand reduced to barring of one increment with cumulative effect by Ext.P7 order. The documents on record make it explicitly

clear that the findings of the enquiry officer in Ext.P2 enquiry report are based on the facts borne out during the course of enquiry. It is based on cogent and convincing materials, the enquiry officer came to a conclusion in Ext.P2 report that both the charges levelled against the petitioner stands proved.

7. A reading of Ext.P5 order passed by the disciplinary authority would also show that after considering Ext.P4 reply submitted by the petitioner to Ext.P3 show-cause notice, the disciplinary authority came to the conclusion that the charges levelled against the petitioner stand proved and therefore, the petitioner is liable to be proceeded against. It is after considering the reply submitted by the petitioner and also taking into consideration the gravity of the charges proved against him, the disciplinary authority in Ext.P5 came to the conclusion that the petitioner has to be imposed with the punishment of barring two increments with cumulative effect. Now, based on Ext.P6 appeal filed by the petitioner, the appellate authority has reduced the said punishment as one barring one increment with cumulative effect.

8. A reading of Ext.P7 order passed by the appellate authority would make it explicitly clear that though the appellate

authority found absolutely no irregularity or illegality in the disciplinary proceedings initiated against the petitioner and also in the report filed by the enquiry officer and also the decision taken by the disciplinary authority imposing the punishment on the petitioner, taking a lenient view, the punishment imposed in Ext.P5 was reduced to one withholding one increment with cumulative effect.

9. As I have already noticed, during the entire proceedings, the petitioner was afforded a reasonable opportunity to defend the disciplinary proceedings initiated against him and the finding of the enquiry officer as well as the appellate authority were based on cogent and convincing materials on record. Further, extending a lenient view, the appellate authority has already reduced the punishment by Ext.P7 order.

10. In the facts and circumstances of the case, the petitioner is not entitled for any further indulgence from this Court, especially when the petitioner could not point out any illegality or irregularity in the disciplinary proceedings initiated against him. It is well settled that this Court exercising jurisdiction under Article 226 of the Constitution of India is not sitting in appeal on the decision taken by the disciplinary

authority or the appellate authority, as the case may be. Only in cases where there is procedural irregularity or the punishment imposed on the delinquent is shockingly disproportionate to the charges proved against him, this Court will be justified in interfering with an order passed by the disciplinary authority or the appellate authority, as the case may be. Since the petitioner could not make out any such ground warranting an interference by this Court, the challenge made against Exts.P5 and P7 can only be rejected.

11. The next challenge made in this writ petition is against the recovery made pursuant to Ext.P8 communication dated 07.11.2003. A reading of Ext.P8 communication would show that such recovery was effected during the pendency of Ext.P6 appeal, in terms of the punishment of barring two increments as ordered in Ext.P5 order. When the said punishment imposed on the petitioner was reduced to as one withholding one increment with cumulative effect, the recovery made in Ext.P8 has to be revised accordingly. Relying on a recent judgment of the Apex Court in **State of Punjab and others v. Rafiq Masih (white washer) and others [2015 (4) SCC 334]**, the learned counsel for the petitioner would contend that the recovery of excess pay

with effect from 14.05.1978 to 31.07.1998 would squarely fall within the sweep of Clause (ii) and (iii) in paragraph 12 of the said judgment. Paragraph 12 of the judgment reads thus:

"12. Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar, wherein this Court recorded the following observation in para 58: (SCC p.491)

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M.Bhaskar, V.Gangaram v. Director, B.J Akkara v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar Seb v. Bijay Bhadur".

12. Therefore, the learned counsel for the petitioner would contend that, the recovery ordered in Ext.P8 under the head "excess pay with effect from 14.05.1978 to 31.07.1998" is also

legally impermissible. Per contra, the learned Standing Counsel for the respondent Board would contend that, the recovery made in Ext.P8, except that towards “barring of two increments” are perfectly legal and no interference of this Court is warranted.

13. As I have already noticed, the recovery made in Ext.P8 under the head “barring of two increments” cannot be sustained in view of Ext.P7 order passed by the appellate authority by which the punishment imposed on the petitioner was reduced to one barring of one increment with cumulative effect. Therefore, the recovery under the above head has to be modified appropriately. As far as the recovery under the head “excess pay with effect from 14.05.1978 to 31.07.1998” is concerned, it is for the petitioner to make an appropriate representation before the 3rd respondent, relying on the judgment of the Apex Court referred to above, in which event the 3rd respondent shall consider and pass appropriate orders thereon, while taking a decision to modify the recovery in Ext.P8 in terms of the punishment imposed in Ext.P7.

In the result, this writ petition is disposed of with the following directions:

The challenge made in this writ petition against Exts.P5 and P7 orders passed by the disciplinary authority and the appellate authority are rejected and thereby sustaining the punishment imposed on the petitioner by Ext.P7 order.

Ext.P8 communication issued by the Chief Internal Auditor will be treated as a notice proposing recovery of amount from the DCRG amount of the petitioner.

Within three weeks from the date of receipt of a copy of this judgment, the petitioner shall submit a representation before the 3rd respondent, seeking modification of the recovery sought for in Ext.P8 under the head “barring of two increments”, as one in tune with the punishment imposed in Ext.P7 order passed by the appellate authority. In the aforesaid representation, the petitioner shall also challenge the recovery towards excess pay with effect from 14.05.1978 to 31.07.1998, relying on the judgment of the Apex Court in **State of Punjab and others v. Rafiq Masih (white washer) [2015 (4) SCC 334]**.

On receipt of such representation, the 3rd respondent shall consider and pass appropriate orders thereon, with notice to the petitioner and after affording him an opportunity of being heard.

Excess amount, if any, withheld from the DCRG of the petitioner shall be released to him without any further delay.

SD/-
ANIL K. NARENDRA,
JUDGE

JV