IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 8299 of 2006 (K)

PETITIONER(S):

T.C.CHAKO, RETIRED ASSISTANT ENGINEER,
ELECTRICAL SECTION NO.II, K.S.E. BOARD, THODUPUZHA,
RESIDING AT THADATHIL HOUSE, PERUMPILLICHIRA P.O.,
THODUPUZHA.

BY ADVS.SRI.KRB.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL

RESPONDENT(S):
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1. THE KERALA STATE ELECTRICITY BOARD,
   REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN,
   THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER (H.R.M),
   K.S.E. BOARD, THIRUVANANTHAPURAM.

3. THE DEPUTY CHIEF ENGINEER,
   ELECTRICAL CIRCLE, K.S.E.B, THODUPUZHA.

4. THE DEPUTY TAHASILDAR (RR),
   TALUK OFFICE, THODUPUZHA.

5. THE VILLAGE OFFICER,
   KUMARAMANGALAM VILLAGE, THODUPUZHA TALUK.

* ADDITIONAL R6 IMPLEADED.

6. THE DISTRICT COLLECTOR, IDUKKI.

* IS IMPLEADED AS PER ORDER DTD.13.10.2009 IN IA.12398/2009.

R1 TO R3 BY ADV. SRI.PULIKOOL ABUBACKER, SC
R4 TO R6 BY GOVERNMENT PLEADER SRI.LONACHAN P.V.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 8299 of 2006 (K)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER NO.SB/NAM/TCC/2001-2002 DATED 23.11.2001 ISSUED BY THE 3RD RESPONDENT.

EXT.P2: TRUE COPY OF THE ORDER NO.SB/NAM/TCC/2003-2004/1001 DATED 1.8.2003 ISSUED BY THE 3RD RESPONDENT.

EXT.P3: TRUE COPY OF THE REPLY DATED NIL SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P4: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.34470/2003 DATED 3.11.2004.

EXT.P5: TRUE COPY OF THE LETTER NO.PA.XII/PPO-25035 DATED 19.11.2003 OF THE CHIEF INTERNAL AUDITOR OF KSEB TO THE 3RD RESPONDENT.

EXT.P6: TRUE COPY OF THE LETTER DATED 27.11.2003 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P7: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.15410 OF 2005 DATED 24.6.2005.

EXT.P8: TRUE COPY OF THE DEMAND NOTICE NO.B7-5347/06 DATED 2.3.2006 ISSUED BY THE 4TH RESPONDENT.

EXT.P8(a): TRUE COPY OF THE DEMAND NOTICE NO.B7-5347/06 DATED 2.3.2006 ISSUED BY THE 4TH RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No.8299 of 2006 (K)

...

Dated this the 12th day of February, 2015

JUDGMENT

The petitioner, who retired from the service of the 1st respondent Board on 31.08.1999 while working as an Assistant Engineer, approached this Court through the present writ petition, aggrieved by Ext.P8 and P8(a) demand notices issued under the Kerala Revenue Recovery Act, for recovery of an amount of Rs.2,16,268/.

2. It is the case of the petitioner that, subsequent to his retirement and after sanctioning his pensionary benefits, the 3rd respondent had issued a notice fixing a liability of Rs.1,34,102/- by stating that, the said amount represented the materials that had been drawn by the petitioner while in service, and which had not been accounted for by him. While the liability to the said extent was fixed on the petitioner, the said order of the 3rd respondent (Ext.P2 dated 01.08.2003) so contemplated recovery of the liability from future pensionary benefits that were due to the petitioner. Pursuant to Ext.P2, when steps were initiated by the 1st respondent Board, to withhold the amounts mentioned in Ext.P2 from the DCRG amounts that were payable to the petitioner, the petitioner approached this Court through W.P.(C) No.34470 of 2003, which was disposed by Ext.P4 judgment

which quashed Ext.P2 order of the 3rd respondent, and directed the respondent Board to disburse the amounts withheld by it from the DCRG due to the petitioner. It would appear that later on, the 1st respondent Board attempted a recovery of the amount in Ext.P2 order through deduction from the commuted value of pension and arrears of DA due to the petitioner. This prompted the petitioner to once again approach this Court through W.P.(C) No.15410 of 2005 which was disposed by Ext.P7 judgment wherein this Court took notice of the fact that, through Ext.P4 judgment it had already quashed Ext.P2 order, and hence, there was no basis for the deduction of the said amounts from the emoluments that were due to the petitioner. Thereafter, by recording the submission of the standing counsel for the respondent Board that, the commuted value of pension and arrears of DA will be granted to the petitioner, subject to the right of the Board to proceed against the petitioner for recovery of the alleged liability by invoking the provisions of the Public Accountants Act, the writ petition was disposed by allowing the petition. In the present writ petition, the petitioner impugns Exts.P8 and P8(a) notices that have been issued under the Kerala Revenue Recovery Act. It is contended that insofar as Ext.P2 order of the 3rd respondent has already been quashed by Ext.P4 judgment of this Court and it is not in dispute that the respondent Board did not carry the matter further through any appeal against the said judgment, the liability fixed under Ext.P2 stands quashed, and therefore, there was no liability for recovery of which Exts.P8 and P8(a) notices could have been issued against the petitioner.

3. I have heard Sri.B.Unnikrishna Kaimal, learned counsel for the petitioner, Sri.Pulikool Abubacker, learned Standing counsel for respondent Nos.1 to 3 and Sri.Lonachan P.V., learned Government Pleader for the respondent Nos.4 and 6.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I note that insofar as in the instant case, the liability that is sought to be recovered from the petitioner is the one fixed in Ext.P2 order of the 3rd respondent and the said order has since been quashed by Ext.P4 judgment of this Court and further the said judgment has attained finality owing to no appeal having been preferred against the said judgment by the respondent Board, there is no liability subsisting against the petitioner, the recovery of which could be effected through Exts.P8 and P8(a) notices. Although, the 1st respondent in its counter affidavit would contend that the recovery is sought to be done in terms of the Public Accountants Act, there is no details forthcoming with regard to any proceedings under the said Act, which culminated in the fixation

of any liability against the petitioner, the recovery of which is now sought to be done.

5. Under those circumstances and taking note of Exts.P4 and P7 judgment already passed by this Court, I am of the view that Exts.P8 and P8(a) notices issued under the Revenue Recovery Act cannot be legally sustained. Resultantly, I allow the writ petition by quashing Exts.P8 and P8(a) notices. No costs.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/13/02/