

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WA.No. 1868 of 2015 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 10830/2013 DATED 28-05-2015)

APPELLANT(S)/RESPONDENTS:

- 1. KERALA STATE ELECTRICITY BOARD,
VYDHYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM,
PIN-695 004, REPRESENTED BY ITS SECRETARY.**
- 2. THE CHAIRMAN,
KERALA STATE ELECTRICITY BOARD, VYDHYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM, PIN-695 004.**
- 3. THE SECRETARY,
KERALA STATE ELECTRICITY BOARD, VYDHYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM, PIN-695 004.**
- 4. THE CHIEF ENGINEER,
KERALA STATE ELECTRICITY BOARD,
OFFICE OF THE CHIEF ENGINEER (HRM),
VYDHYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM,
PIN - 695 004.**

BY ADV. SRI.K.M.SATHYANATHA MENON,SC,KSEB

RESPONDENT/PETITIONER:

**C.S.MADHUSOODANAN,
CHANDRAVILASOM HOUSE, CHIRAKKADAVU CENTRE P.O.,
THEKKETHUKAVALA, PONKUNNAM,KOTTAYAM - 686 519
(RESPONDENT WHILE WORKING AS SENIOR ASSISTANT AT
ELECTRICAL DIVISION PONKUNNAM).**

BY ADV.SRI.N.RAGHURAJ

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 16-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

=====

W.A. No. No. 1868 of 2015

=====

Dated this, the 16th day of October, 2015

J U D G M E N T

Shaffique, J.

Respondents in WP(C) No.10830/13 are the appellants, who challenged judgment dated 28/5/2015 by which learned Single Judge had set aside Exts.P2, P5 and P10 orders issued by the appellant Board in respect of the punishment imposed on the respondent herein, who is hereinafter referred to as the petitioner.

2. The short facts involved in the writ petition would disclose that after conducting an enquiry, the disciplinary authority issued Ext.P2 order dismissing the petitioner from service. The matter was carried in appeal which was confirmed by the appellate authority as per Ext.P5 and later by the Board as per Ext.P10. The petitioner *inter alia* contended that the entire process of disciplinary action was in gross violation of the principles of natural justice. It was contended that the enquiry as

well as the disciplinary proceedings taken by the disciplinary authority was without giving him an opportunity to adduce evidence, verify the documents and even the enquiry report was not issued before issuing Ext.P1 show cause notice.

3. The main contention urged by the petitioner was with reference to Ext.P1 show cause notice. It was alleged that the same was issued contrary to the judgment in ***Managing Director, E.C.I.L, Hyderabad v. B. Karunakar*** [(1993) 4 SCC 727].

4. The respondent Board took up a contention that immediately after Ext.P1 show cause notice was issued, on the request of the petitioner, copy of the enquiry report was submitted and enquiry and disciplinary proceedings were conducted in strict compliance of the principles of natural justice. Petitioner was afforded a fair opportunity to defend his case and it was ultimately found that the petitioner was guilty of the charges levelled.

5. Petitioner also had a case that the notice for hearing before the Board was received a day after the date fixed for hearing and this fact was virtually admitted by the Board. Learned

Single Judge after considering the matter formed an opinion that the Board had not given a copy of the enquiry report before proposing punishment. On that basis, learned Single Judge set aside the entire disciplinary action initiated as per Exts.P2, P5 and P10 and directed the Board to conclude the proceedings from the stage of enquiry report. It was also observed that the period during which the petitioner was kept out of service shall be treated as suspension and that he should be paid subsistence allowance.

6. Learned counsel for the appellants Sri.K.M.Sathyanatha Menon while impugning the aforesaid judgment submits that the Board has taken appropriate action in the matter relating to the enquiry and the enquiry report having been supplied, no prejudice has been caused to the petitioner in defending the matter. It is also contended that the learned Single Judge was not justified in directing that the period during which the petitioner was kept out of employment shall be reckoned as suspension and now obligation is cast upon the appellants to pay subsistence allowance. This, according to the learned counsel, was a matter for the Disciplinary Authority to take a decision.

7. Heard the learned counsel for the respondent Sri.N.Raghuraj, who relies upon the judgment of the Supreme Court in **E.C.I.L** (supra) and also the judgment of a Division Bench of this Court in **Sudhakaran C.B. v. Cochin Educational Society** (2009 (1) KHC 685).

8. There is no dispute about the legal position as settled by **E.C.I.L** (supra), which was followed by this Court in **Sudhakaran's case** (supra). The disciplinary authority before proceeding to consider the enquiry report is bound to provide a copy of the enquiry report to the delinquent employee and explanation has to be called for even before proposing such a punishment. Apparently that has not been done in the above case and therefore, the learned Single Judge was justified in setting aside Exts.P2, P5 and P10.

9. Though it was strenuously argued by the learned counsel for the appellants that there is no necessity to give such an opportunity, we do not agree with the same as the issue is already covered by the judgments aforesaid.

10. Having regard to the latter part of the judgment wherein the learned Single Judge had directed the period in which

the petitioner was kept out of employment to be considered as suspension and to pay subsistence allowance, we do not think that such a direction could have been issued by the learned Single Judge. When the matter was remitted to the disciplinary authority, it is for the disciplinary authority to decide under what circumstances the period in which the petitioner was kept out of employment should be treated, either as suspension or in any other manner. Under such circumstances, while confirming the view taken by the learned Single Judge setting aside Exts.P2, P5 and P10 and directing reconsideration of the matter, we set aside that part of the judgment which directs “the period during which the petitioner was kept out of service can be reckoned as period of suspension for which the petitioner would be entitled for subsistence allowance as per rules”.

11. Learned counsel for respondent submits that the Board has issued a notice dated 10/9/2015 providing him a copy of the enquiry report and calling upon him to give explanation regarding the enquiry report within fifteen days.

We take on record the aforesaid submission and we allow the appeal in part setting aside that part of the judgment of the

W.A. No.1868/15

-:6:-

learned Single Judge directing the period in which the petitioner was kept out of employment to be treated as suspension and directing subsistence allowance to be paid. It is made clear that the said question is left open to be decided by the disciplinary authority.

(sd/-)

ASHOK BHUSHAN, CHIEF JUSTICE

(sd/-)

A.M. SHAFFIQUE, JUDGE

True Copy PS to Judge

Rp

19/10/2015