

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WA.No. 2195 of 2015 ()

WP(C) 30651/2011 of THIS HONOURABLE COURT

APPELLANT/PETITIONER IN WPC :

**JOHN KOSHY, VADAKKEMELATHIL HOUSE,
MUTHALAKODAM, IDUKKI DISTRICT - 685584.**

**BY ADVS.SRI.DINNY THOMAS
SRI.JAISHANKAR V.NAIR
SMT.ROSHNI MANUEL**

RESPONDENT/RESPONDENT IN WPC :

**KERALA STATE HOUSING BOARD,
REPRESENTED BY ITS SECRETARY,
SANTHI NAGAR, THIRUVANANTHAPURAM-I**

BY SRI.GEORGE BOBAN, SC, K.S.H.B.

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

=====

W.A. No. 2195 of 2015

=====

Dated this, the 7th day of October, 2015

J U D G M E N T

Shaffique, J.

Petitioner in WP(C) No.30651/2011 has filed this appeal challenging the judgment dated 17/7/2015 by which the learned Single Judge disposed of the writ petition with the following directions;

"1) Ext.P1 communication dated 8.5.2006 issued by the respondent Board fixing a total liability of ₹1,43,757/- on the petitioner shall be treated as a notice proposing fixation of such liability on the petitioner.

2) Within two weeks from the date of receipt of a certified copy of this judgment, the petitioner shall submit a detailed objection to the liability proposed in Ext.P1 communication.

3) On receipt of such an explanation, the competent officer in the respondent Board shall consider the same and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of such objection, untrammelled by any of the observations contained in Ext.P4 order passed by the Board.

-:2:-

4) The disbursement of the DCRG and terminal benefits, if any, payable to the petitioner shall be disbursed by the competent officer in the respondent Board, within a period of three months thereafter.”

2. Writ petition was filed by the appellant/petitioner challenging Exts.P1, P4 and P5 orders issued by the respondent Kerala State Housing Board. Ext.P1 is an order dated 8/5/2006 by which respondent had informed the petitioner that he is under obligation to pay certain amounts to the Board. By virtue of the said document, he was requested to produce the document settling the said liabilities or to submit his willingness to recover the said amount from the pensionary benefits within a period of seven days. It was further mentioned that if no intimation was received within the stipulated time, steps will be taken to sanction the pensionary benefits after withholding the aforesaid liability. The liability quantified was for an amount of ₹1,43,757. Petitioner submitted Ext.P2 notice denying the liability and calling upon the respondent authority to pay the amount towards DCRG and other benefits due to the petitioner within ten days. By Ext.P3 letter dated 28/9/2006, the respondent had informed the petitioner that liability has already been fixed as informed to the petitioner in terms of Ext.P1. It was also observed that the liability exceeds the

-:3:-

amount of DCRG. Further, it was mentioned that petitioner has also some personal liability to the tune of ₹35,000/- in Union Bank of India, Adimali Branch and also the Regional Housing Board Employees Co-operative Society. It was therefore stated that the DCRG and terminal surrender of Earned Leave have been withheld subject to the condition that the same will be released as and when the liabilities are settled. It seems that the matter remained silent for quite some time. By a further order dated 5/3/2010, the respondent had informed the petitioner that an amount of ₹1,62,282/- is sanctioned towards DCRG and the benefit of terminal surrender of Earned Leave and sanction was also accorded to adjust the liability amounting to ₹1,32,613/- due to the Board, ₹25,937/- to the Kochi Regional Housing Board Employees Co-operative Society and the balance ₹3,832/- to Union Bank of India, Adimali Branch. Against the aforesaid adjustment being made, the petitioner preferred complaint before the Lok Adalath as complaint No.11/2011. The same came to be dismissed as per order dated 28/6/2011. Thereafter, the petitioner has approached this Court challenging Exts.P1, P4 and P5. Learned Single Judge after evaluating the contentions urged on behalf of the petitioner observed that no opportunity was given to

the petitioner before fixing the liability in terms of Ext.P1 and therefore the writ petition was disposed of with the directions as stated above.

3. Learned counsel for the appellant submits that learned Single Judge having come to a finding that Ext.P1 was not sustainable as the liability was fixed without notice ought to have directed the respondent to pay the entire DCRG and other benefits legally due to the petitioner with interest. It is stated that as per Note 3 to Rule 3 of Part III KSR, liability cannot be fixed after a period of three years. In the present case, it is stated that liability has been fixed after a period of three years. Learned Single Judge ought to have directed payment of the entire DCRG and other benefits legally due to the petitioner and should not have directed reconsideration of the fixation of liability in terms of Ext.P1.

4. On the other hand, learned counsel appearing on behalf of the respondent Board supported the stand taken by the Board.

5. Learned counsel for the appellant also referred to the judgment of this Court in Somarajan Nair v. State of Kerala (2015 (2) KLT 753) to contend that after a period of three years from the

date of retirement, it was not possible for the department to fix the liability or recover any amount in terms of Note 3 to Rule 3 of Part III KSR.

6. The short question to be considered in the above appeal is whether the learned Single Judge was justified in directing reconsideration of Ext.P1. It is apparent from the material available on record that the petitioner retired from service on 28/2/2006. Ext.P1 is an order by which the liability of the petitioner had been quantified and was intimated to the petitioner as early as on 8/5/2006. Therefore, it cannot be stated that the liability has not been fixed at all in terms of Note 3 to Rule 3 of Part III KSR. However, petitioner have objected to Ext.P1 by issuing Ext.P2 notice, thereafter did not proceed further. Board however by their letter dated 28/9/2006 informed the petitioner about the rejection of his contention and has reiterated the position that the liability fixed in terms of Ext.P1 is legally due to the Board. Nothing was done by the petitioner thereafter. Ext.P4 is only a communication by which Board had informed the petitioner about the adjustment they have made in respect of the amounts payable and recoverable from the petitioner. After adjusting the said amount, no amount was due to the petitioner

as well.

7. Petitioner did not challenge the same but moved the Lok Adalath which authority had dismissed the petitioner's application.

8. From the facts available on record, it is therefore clear that even if it is contended that the petitioner was not given notice before fixation of liability, petitioner did not opt to challenge Exts.P1 or P3 within a reasonable time. Petitioner kept absolutely quiet and had moved the Lok Adalath only after Ext.P4 adjustment letter had been received from the Board. Under such circumstances, the learned Single Judge had only given an opportunity to the petitioner to ventilate his grievance in regard to the fixation of liability. We are, therefore, of the view that once the liability had been fixed in terms of Ext.P1, petitioner cannot take shelter under Note 3 to Rule 3 of Part III KSR and claim that Ext.P4 is barred by limitation. Ext.P4 is only a communication by which the petitioner was informed about the adjustment in regard to the DCRG with reference to the amounts payable by him. Under such circumstances, we do not think that the learned Single Judge had committed any error in deciding the case. Learned Single Judge had given only one more opportunity to the

-:7:-

petitioner to ventilate his grievance.

9. We do not find any reason to interfere with the said directions issued by the learned Single Judge and accordingly, the appeal is dismissed.

Learned counsel for the appellant however submits that if his liability is reduced and if any amount is payable to him, appropriate direction be issued for payment of interest. Taking into consideration the aforesaid facts and circumstances, we direct the respondent Board to consider whether the petitioner is entitled for any amount towards DCRG and other amounts after fixation of liability and whether any interest could be payable on account of the delay in finalising the amount due to the petitioner. Petitioner shall submit his objection, if any, within a period of four weeks.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

7/10/2015

//True Copy//

PS to Judge