

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WP(C).No. 6708 of 2012 (K)

PETITIONER(S) :

K.ANIL KUMAR
ASSISTANT ENGINEER, TRANSMISSION CIRCLE
KERALA STATE ELECTRICITY BOARD, ELECTRICAL DIVISION
ALAPPUZHA, RESIDING AT 'ASHWATHY', KOMANA
AMBALAPUZHA, ALAPPUZHA DISTRICT.

BY ADV. SRI.S.SANAL KUMAR

RESPONDENT(S) :

1. THE KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS CHAIRMAN
THIRUVANANTHAPURAM-695 001.

2. THE CHIEF ENGINEER (H.R.M.)
HUMAN RESOURCE MANAGEMENT
THE KERALA STATE ELECTRICITY BOARD
THIRUVANANTHAPURAM-695 001.

3. DEPUTY CHIEF ENGINEER
TRANSMISSION CIRCLE
THE KERALA STATE ELECTRICITY BOARD
ALAPPUZHA-688 001.

4. THE EXECUTIVE ENGINEER
ELECTRICAL DIVISION
THE KERALA STATE ELECTRICITY BOARD
ALAPPUZHA-688 001.

R BY ADV. SRI.K.S.ANIL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 6708 of 2012 (K)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER OF DEPUTY CHIEF ENGINEER, ELECTRICAL DIVISION, ALAPPUZHA DATED 31.05.2000.

EXT.P2: COPY OF THE MEMO OF CHARGES DATED 3.8.2004.

EXT.P3: COPY OF THE REPLY TO THE MEMO OF CHARGES SUBMITTED BY THE PETITIONER DATED 2.9.2004.

EXT.P4: COPY OF THE ORDER OF THE DEPUTY CHIEF ENGINEER, ELECTRICAL CIRCLE, ALAPPUZHA DT.3.8.04.

EXT.P5: COPY OF THE JUDGMENT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM DT.31.10.07 IN C.C.NO.32 OF 2002.

EXT.P6: COPY OF THE REPRESENTATION MADE BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P7: COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 7.10.2008.

EXT.P8: COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 27.4.09.

EXT.P9: COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 6.4.09.

EXT.P10: COPY OF THE ORDER OF THE CHAIRMAN, KERALA STATE ELECTRICITY BOARD DATED 23.12.2009.

RESPONDENTS' EXHIBITS

NIL.

/true copy/

P.S to Judge

P.V.ASHA, J.

W.P(c) No.6708 of 2012-K

Dated this the 3rd day of June, 2015

JUDGMENT

The petitioner is challenging the orders Exts.P9 and P10, by which the period during which he was kept under suspension, which was originally treated as duty for all purposes by the Deputy Chief Engineer, was reviewed and treated initially as leave without allowance in Ext.P9 and on appeal as duty for all purposes including the pensionary benefits other than payment of salary.

2. The petitioner, while working as an Assistant Engineer under the Kerala State Electricity Board (hereinafter referred to as 'K.S.E.B') in Electrical Major Section, Ambalapuzha, was placed under suspension as per Ext.P1 order issued by the Deputy Chief Engineer on 31.05.2000 pending disciplinary proceedings against him. The petitioner was caught red handed by the Vigilance and Anti Corruption Bureau while accepting bribe from an applicant for an agricultural connection. A crime was also registered against him. By Ext.P4 order issued

on 3.8.2004 he was reinstated in service without prejudice to the disciplinary proceedings and without prejudice to the vigilance case pending against him. Memo of charges was issued on the very same day by a separate proceedings with the allegation that the petitioner while accepting bribe from an applicant for effecting agricultural connection was caught red handed by V.A.C.B on 29.05.2000; committed dereliction of duty and tarnished the image of the Bord. In the statement of allegations it was stated that the Executive Engineer, Electrical Division, Alappuzha reported that the petitioner while accepting bribe from a prospective consumer was caught red handed and arrested by the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau on 29.05.2000 and he had accepted bribe for the issuance of feasibility certificate to the prospective agricultural consumer and had been acquitted in Case No.Vc1/2000 of Vigilance and anti-corruption Bureau, Alappuzha. It was further stated that by accepting the bribe, he tarnished the image of the K.S.E.B and resulted in irreparable damage to the reputation of the Board and hence his retention in service was not desirable. The petitioner submitted an explanation to the memo of charges denying the allegations

levelled against him and stating that the Deputy Superintendent of Police, VACB, Alappuzha was budged to the pressure exerted by the entire lobby of ice plants implicated him with oblique purpose of wrecking vengeance using the consumer Mr.Abdul Salam. It was stated he was falsely implicated by Mr.Abdul Salam in collusion and connivance with the local ice plant lobbies as he had detected theft and other serious irregularities in the ice plants under Ambalappuzha section. The petitioner therefore requested to drop the charges against him.

3. While so by judgment dated 31.10.2007 in P.C.No.32/2002 the court of Enquiry Commissioner and Special Judge acquitted the petitioner, after trial, on finding that there was absolutely no evidence against the petitioner. In paragraph 6 of the judgment, the Enquiry Commissioner and Special Judge found as follows:

“6. xxxx xxxx x xxxxxxxx xxxxxx xxxxx In the cross-examination of PW1 it is brought out tht there were several Ice plants within the jurisdiction of Ambalappuzha Electricity Office and the accused had taken stringent measures for collecting the electric charges from those ice plants and with the intervention of antitheft squad, several cases were taken against the owners of such ice plants and Sharafudeen who was then working as Assistant Executive Engineer of

Ambalappuzha Electrical Major Section also became inimical towards the accused as the accused had taken steps against his brother who was having an Ice Plant. The fact that the brother of Sharafudeen was having an ice plant in that place and that most of the Ice plants in that area were owned by members of Muslim community are clearly brought out in evidence in this case. It is also found that the accused was taking earnest and stringent steps for preventing theft of electricity by the owners of such ice plants and for collecting electricity charges from these ice plants. These aspects cannot be overlooked in the light of the evidence given by PW1 that the trap was arranged at the instance of PW4 and Sri.Koya, a Vigilance Official. It is also deposed by PW1 in cross examination that all statements and records were recorded at the Vigilance Office by the said Sri.Koya the Vigilance Official."

Further it was found that the PW1 himself at whose instance the trap was planned was found to have fabricated false evidence and it was found that he was liable to be prosecuted for the same.

4. Paragraph 15 of the judgment reads as follows:

"15. Point No.5: From the discussion held above, I hold that the prosecution has failed in proving the offences charged against the accused in this case. Therefore he is entitled to an acquittal in this case. Before parting with this matter, it is to be clarified that as PW1 had wilfully and knowingly given false evidence and also fabricated false evidence with intent that it should be used in this case, PW1 is liable to be prosecuted as provided by Section 344

of CrI.P.C.”

Hence the petitioner was found not guilty of the offences charged against him under Sections 7 and 13(2) read with 13(1) (b) of Prevention of Corruption Act.

5. On the basis of the judgment the petitioner submitted a representation before the Deputy Chief Engineer, requesting for regularisation of the period during which he was kept under suspension and pointing out that he was acquitted by the criminal court and hence his contention that he was innocent and was falsely trapped into the case by the ice plant lobbies at Ambalappuzha in collusion with the departmental staff then working , are not true. Therefore he requested to grant service benefits and regularisation for the above period. Thereafter the Deputy Chief Engineer passed Ext.P7 order dated 7.10.2008 dropping the disciplinary action against the petitioner and it was further ordered that the period spent by him under suspension will be treated as the period spent on duty. In the order passed by the Deputy Chief Engineer, after explaining the charges alleged against him with reference to the explanation as well as the judgment of the court of Enquiry Commissioner and Special Judge, the Deputy Chief Engineer found that apart from the fact

that he was charge sheeted on the basis of his arrest by the VACB while accepting bribe, there was no other charges against him. It was also found that the explanation of the petitioner in the statement of facts was corroborated in paragraph 15 of the judgment whereby the PW1 has been ordered to be prosecuted for giving false evidence under Section 344 Cr.P.C. It was in those circumstances that it was decided to drop further proceedings against the petitioner. But thereafter the Deputy Chief Engineer issued another order on 06.04.2009 on the basis of the directions issued by the Chief Engineer in letter No.EBVS.4/57/2001/133 dated 20.02.2009 treating the period of suspension as leave without allowance. The petitioner approached the Chairman of the K.S.E.B in appeal against this order and Ext.P10 order was passed thereafter. The Chairman of the K.S.E.B after examining the case found that since the petitioner was cleared of having committed any offence he should be treated as innocent and there was no justification for the delay in reinstating him and he should not be penalised for it. However, since he had not worked during the period of suspension, it was found that he cannot be paid salary for the said period, except the subsistence allowance. Hence it was

ordered that the entire period of suspension will be treated as duty for all purposes including pensionary benefits other than payment of salary. It is against these orders Exts.P9 and P10, that the petitioner has approached this Court.

6. The contention of the petitioner that disciplinary authority had rightly decided to treat his period of suspension as duty, which was reviewed without any authority on direction by the Chief Engineer. It is also contended that the appellate authority did not consider the fact that the petitioner secured honourable acquittal and hence he was entitled to get the entire benefit of service for the period he was kept under suspension.

7. The respondents have filed a counter affidavit admitting the acquittal of the petitioner based on evidence. As regards the pay and allowances of the petitioner, the respondents stated that in view of the fact that the petitioner has not worked during the period of his suspension, he was not entitled to the pay for the said period in the light of the judgment of the Supreme Court in **Ponnamma v. State of Kerala** [(1997) 9 SCC 36]. The learned counsel also relied on the decision reported in **Haryana Roadways v. Rudhan Singh** [(2005) 5 SCC 591] to the effect that payment of back wages on

reinstatement is not entitled to get back wages as a rule of thumb. They further relying on **Anilkumar Gupta v. State of Bihar** [(1996) 7 SCC 83] and **Saran Kumar Gour v. State of U.P** [1993 Suppl(2) SCC 749] contended that the petitioner is not entitled to back wages. It is also stated that the suspension of the petitioner on account of the arrest in connection with a criminal case cannot be said to be wholly unjustified and therefore Rule 56B(3) of Part I KSR cannot be applied to the facts of the case.

8. I heard the learned counsel for the petitioner as well as the learned Standing Counsel for the Board. The fact that the petitioner was implicated in a crime and he was placed under suspension for the period from 29.05.2000 to 3.8.2004 is not disputed. In Ext.P6 order dropping the disciplinary action against the petitioner, the disciplinary authority has found that the explanation furnished by the petitioner to the effect that he was falsely implicated by one Mr.Abdul Salam in connivance with the local ice plant lobbies for having detected theft of energy or other irregularities in the electrical section under Ambalappuzha was seen corroborated in the judgment dated 31.10.2007 of the Enquiry Commissioner and Special Judge and moreover that,

Mr.Abdul Salam was ordered to be prosecuted under Section 344 Cr.P.C. It is also relevant to note that the Enquiry Commissioner and the Special Judge has in paragraph 6 noticed that the petitioner was taking earnest and stringent steps for preventing theft of electricity by the owners of ice plants for collecting the electricity charges from the ice plants and those aspects cannot be overruled in the light of the evidence that the trap was arranged at the instance of PW4 - Shri Koya, a vigilance official. In the said circumstances, the petitioner cannot be faulted for the imprisonment he had to suffer for being on vigilant and diligent the department. Moreover he was placed under suspension for a long period of four years. On account of the fact that the petitioner was kept under suspension on account of false complaints, he cannot be made to suffer. In this case initially the disciplinary authority has decided to treat the period of suspension as on duty. Further it is seen that without even giving a notice to him, it was considered as leave without allowance. Apparently the order passed by the Deputy Chief Engineer reviewing his own order was issued by the Chief Engineer for which there is no explanation. It is pertinent to note that the appellate authority also found that the proceedings

against the petitioner keeping him under suspension for a long period was unjustified. Therefore just because he happened to be kept out of service for no fault on his part, he cannot be denied the pay and allowances due to him.

9. Relevant provision regarding the regularisation of suspension is Rule 56(B) in the cases where reinstatement is ordered after disciplinary proceedings. Section 56(B)(1) reads as follows:

“When an officer who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, or has retired from service on superannuation before the conclusion of the disciplinary proceedings against him the Authority Competent to order reinstatement shall consider and make a specific order.

(a) regarding the pay and allowances to be paid to the officer for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.”

10. Rule 56B(3) reads as follows:

“Where the Authority competent to order reinstatement is of the opinion that the suspension was

wholly unjustified, the officer shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the officer had been delayed owing to reasons directly attributable to the officer, it may after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the officer shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.”

Rule 56B(4) provides that in a case falling under sub-rule(3), the period of suspension shall be treated as a period spent on duty for all purposes. In all other cases the period of suspension has to be regularised only after affording an opportunity to the employee against the proposal regarding the proposed regularisation.

11. The question regarding the regularisation of the period of suspension was an issue under consideration before this Court in several cases, including **Mohandas v. State of Kerala** [2008(3) KLT 62]. Paragraph 21 of that judgment reads as follows:

“21. The consistent view that has been taken by the Apex Court and this Court as to the scope of the right available to a Government servant, construing the provisions of Part I of the KSR, is that an order will have to be passed by the Government or the competent authority as regards the pay and allowances of the Government servant in relation to the period when he was absent from duty and the manner in which the period when he was kept out of service is to be treated. Except in cases where the acquittal by the criminal court is an ‘honourable acquittal or cases where the Government servant is acquitted of blame’, in all other cases, the competent authority is entitled to exercise its discretion and decide the manner in which the period during which the Government servant was kept out of duty should be treated and the quantum of the pay and allowances given to him subject, of course, to the condition that it shall not be lower than the subsistence allowance which he has already drawn.”

Therefore, in this case it can be seen that the entire case foisted against the petitioner came out to be false and the only reason for getting the petitioner under suspension is admittedly the criminal case. In that background, when the disciplinary action itself is dropped seeing that the entire action which led to the trial that ultimately ended in acquittal was on non existent facts, for which the petitioner cannot be made to suffer, especially in

cases where he was implicated for wrecking vengeance on account of his diligence and to protect the department. In these circumstances, there is no reason in saying that there was justification in placing him under suspension. When the very purpose for the criminal case is gone, there is no basis in the contention that there was justification in suspension. More over he was unnecessarily kept under suspension for a long period of 4 years. Apart from that for the mental agony he had suffered on account of his suspension followed by trial, he cannot be further saddled with other loss.

Therefore the orders Exts.P9 and P10 are set aside. The petitioner will be entitled to full pay and allowances for the entire period during he was kept under suspension.

This Writ Petition is allowed accordingly.

Sd/-
(P.V.ASHA, JUDGE)

rtr/