

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 14098 of 2006 (C)

PETITIONER:

1. **PADMANABHAN P.N. (DIED)**
SUB ENGINEER (RETD), KERALA STATE ELECTRICITY, BOARD
ELECTRICAL MAJOR SECTION, CHITHIRAPURAM, IDUKKI DIST.
RESIDING AT, PADINJARAKARA, KARINKULAM
ADIMALI, IDUKKI, DISTRICT.

ADDL. PETITIONERS (LEGAL HEIRS) IMPEADED

2. **DEVAKY PADMANABHAN, AGED 60 YEARS, W/O. LATE PADMANABHAN P.N.**
RESIDING AT PADINJARAKARA, KARINKULAM, ADIMALI, IDUKKI DISTRICT
3. **DEEPAK PADMANABHAN, AGED 27 YEARS, S/O. LATE PADMANABHAN P.N.**
RESIDING AT PADINJARAKARA, KARINKULAM, ADIMALI, IDUKKI DISTRICT
4. **DIPIN PADMANABHAN, AGED 23 YEARS, S/O. LATE PADMANABHAN P.N.**
RESIDING AT PADINJARAKARA, KARINKULAM, ADIMALI, IDUKKI DISTRICT

ADDITIONAL PETITIONERS IMPEADED AS PER ORDER IN I.A. NO.2983/2015
DATED 8.10.2015

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.T.RAMPRASAD UNNI
SRI.S.M.PRASANTH
SRI.C.DINESH
SMT ASHA BABU
SMT AMMU CHARLES
SRI.G.RENJITH
SMT JINNU SARA GEORGE

RESPONDENTS:

1. **K.S.E.B.**
VYDUTHI BHAVAN, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY.
2. **THE CHIEF ENGINEER (HRM),**
KERALA STATE ELECTRICITY BOARD, PATTOM
THIRUVANANTHAPURAM.

**3. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, THODUPUZHA.**

**R1TO R3 BY ADV. SRI.K.S.ANIL, SC, KSEB
R1 TO R3 BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB
R1-R3 BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB
BY SRI.JOSE J.MATHEIKEL, SC, KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

- P1 : TRUE COPY OF THE MEMO OF CHARGES DATED 17.8.2002 ISSUED TO THE PETITIONER
- P2 : TRUE COPY OF THE REPLY TO THE SHOW CAUSE NOTICE SUBMITTED BY THE PETITIONER DATED 5.9.2002
- P3 : TRUE COPY OF THE MEMO OF CHARGES DATED 23.8.2003 ISSUED TO THE PETITIONER
- P4 : TRUE COPY OF THE REPLY DATED 6.10.2003 SUBMITTED BY THE PETITIONER
- P5 : TRUE COPY OF THE NOTICE OF ENQUIRY DATED 3.2.2004 ISSUED TO THE PETITIONER
- P5(2) : DO - DO DT. 8.3.2004 DO - DO
- P6 : TRUE COPY OF THE NOTICE OF ENQUIRY DTD.29.7.2004 ISSUED TO THE PETITIONER
- P7 : TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER DATED 7.10.2004
- P8 : TRUE COPY OF THE SHOW CAUSE NOTICE DATED 4.3.2005 ISSUED TO THE PETITIONER
- P9 : TRUE COPY OF THE REPLY PREFERRED BY THE PETITIONER DATED 25.8.2005
- P10 : TRUE COPY OF THE ORDER NO.GB1/DA/02-03/232 DATED 27.10.2005 ISSUED BY KSEB
- P11 : TRUE COPY OF THE APPEAL DATED 14.11.2005 SUBMITTED BY THE PETITIONER BEFORE R2
- P12 : TRUE COPY OF THE SHOW CAUSE NOTICE DATED 16.11.2005 ISSUED TO THE PETITIONER
- P13 : TRUE COPY OF THE ORDER NO. EBVS.1/14(C)/2003/1248 DATED 16.12.2005
- P14 : TRUE COPY OF THE ORDER NO.EBVS.1/16/2002/185 DATED 9.3.2006
- P15 : TRUE COPY OF THE ORDER NO.GB3/D/2001-02/77 DATED 20.4.2001 ISSUED BY THE EXECUTIVE ENGINEER, KATTAPPANA
- P16 : TRUE COPY OF THE JOINING REPORT DATED 15.5.2002 OF THE PETITIONER

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 14098 of 2006 (C)

Dated this the 8th day of October, 2015

J U D G M E N T

The first petitioner is no more, who is a retired Sub Engineer from the respondent Board. The 1st petitioner's estate is represented by the additional petitioners 2 to 4. The petitioner challenges two punishments imposed as per Exts.P10 and P13, the former confirmed in appeal by Ext.P14. These are with respect to two different enquiries initiated against the petitioner. What is to be noticed at the outset is that both the orders were passed after the superannuation of the petitioner on 30.8.2004.

2. Ext.P8 show-cause notice was with respect to an allegation levelled by Ext.P1 memo of charges dated 17.8.2002. The petitioner submitted a reply as per Ext.P2. Not being satisfied with the same, the disciplinary authority ordered a preliminary enquiry, which is said to have culminated in Ext.P8 show-cause notice and eventually

Ext.P10 order. Ext.P10 imposed a punishment of barring of two annual increments without cumulative effect and directed the monetary value to be recovered from the DCRG.

3. The second enquiry originated with Ext.P3 memo of charges, wherein there is also an allegation of financial loss caused to the Board. The petitioner is said to have replied to the same also by Ext.P3. This eventually culminated in Ext.P12 show-cause notice and Ext.P13 order, wherein the last increment of the 1st petitioner was directed to be barred and a recovery of Rs.35,300/- ordered, being the loss sustained to the Board.

4. The petitioner's contentions are manifold; (i) the petitioner could not have been proceeded with after retirement and (ii) no punishment could have been imposed long after the retirement. Further, the petitioner has a contention that the enquiry, though said to have been held; the petitioner was not participated in the same. The

show-cause notices, on the basis of the enquiry reports, in fact, found the offences alleged to be proved against the petitioner and was merely a show-cause on the proposed punishment. It is also submitted that no enquiry report was furnished to the petitioner in both the instances. The petitioner, hence, relying on **Managing Director, ECIL v. B. Karunakar - (1993) 4 SCC 727** contends that the entire proceedings are vitiated.

5. The learned Standing Counsel for the Board, however, asserts that the enquiry reports were supplied, as is indicated in the show-cause notices. The learned counsel also submits that though the monetary equivalent of the punishment imposed, could not be recovered, definitely, the loss caused could be recovered from the DCRG.

6. The show-cause notices with the two different enquires, after the receipt of the enquiry reports, are seen at Exts.P8 and P12. A reading of Ext.P8 would show that it reads as item no.6, an enquiry report and so does Ext.P12

as item no.5. However, not even the date of the said report is indicated in the said orders. Further, mere reference to the report is not what is contemplated in compliance of principles of natural justice, as has been delineated in the aforecited judgment. Evidently, no objection was called for from the petitioner with respect to the enquiry report. Ext.P8 indicates that the enquiry report was examined with the reply submitted by the petitioner to the memo of charges. Hence, no enquiry report was supplied as per Ext.P8 and no objections were called for. Ext.P8, merely on the basis of the enquiry report, found the petitioner guilty and imposed a punishment of barring of two annual increments and recovery of the monetary value equivalent to that, from the DCRG.

7. Ext.P12 also refers to the enquiry report but does not grant an opportunity to the petitioner to submit his objections with respect to the findings of the enquiry officer. The recital in Ext.P12 is to the effect that the

enquiry report was examined by the disciplinary authority and most of the charges were found to be proved beyond doubt. On that premise the petitioner was found to have committed grave offences and caused financial loss to the Board. It was, hence, the punishment of barring of two increment, and recovery of an amount of Rs.35,300/-, proposed against the petitioner. The said notice is also in clear violation of principles of natural justice.

8. The learned Standing Counsel for the respondent, to controvert the contention, would, in fact, refer to a statement in the counter affidavit that in the explanation to the show-cause notice, the petitioner had stated that the enquiry officer had erred in appreciating the evidence adduced before him and has come to the wrong conclusion. However, that statement cannot be relied on to hold that the enquiry report was, in fact, supplied. As was noticed earlier, both the show cause notices do not indicate that the enquiry report was an enclosure or that the same was

supplied to the petitioner and his objections called for. In fact, the show-cause notices indicate that the show-cause was only with respect to the proposed punishment and not on the findings in the enquiry report. If the Board had, in fact, supplied the enquiry report to the petitioner, the Board ought to have produced the same and ought to have substantiated the supply of such enquiry report by sufficient documents. Definitely, the Board would not have handed over, personally, the enquiry report, and it could only have been supplied to the petitioner by a covering letter, which obviously the Board has not cared to produce here.

9. Further, **Karunakar** (supra) specifically found that Courts could, in the event of production of the enquiry report, enter a finding that the supply would not have made any difference, on an appraisal of the evidence, and in such circumstances, consider the issue independent of the violations alleged. The Board in the present case, has not even cared to furnish the enquiry report along with its

counter affidavit. In such circumstance, the orders at Exts.P10, P13 and P14 are found to be bad.

10. Further, it is to be noticed that in judgment dated 28.08.2008 in **C.M. Latheef v. K.S.E.B. - W.P.(C) No.29208/2005**, wherein the respondent Board herein was a respondent, this Court had found that even if disciplinary proceedings can be continued after retirement, the same can be only for the purpose of assessing loss, if any, caused and for recovering the said loss from the incumbent concerned. Hence, the punishment imposed on the petitioner by the impugned orders definitely falls foul of the said declaration. The punishment imposed in the impugned orders also cannot be sustained for gross procedural irregularities. The recovery of loss in Ext.P13, as has been rightly pointed out by the learned counsel for the petitioner, is with respect to an amount; the determination of which is not substantiated by the Board, either by production of the enquiry report or by indicating the computation thereof.

11. Normally, when enquiry proceedings are set aside on the ground of violation of principles of natural justice, the Court has to necessarily direct it to be resumed from the point at which the defect occurred. However, in this case, going by the fact that the petitioner is no more and also the fact that the disciplinary proceedings were continued after retirement, this Court does not consider it proper to send it back for fresh consideration.

12. For all the above reasons, the impugned orders are found to be bad. Exts.P10, P13 and P14 would stand set aside. The writ petition would stand allowed. The 1st petitioner's retirement benefits and pension shall be re-fixed without reckoning the punishment of barring of increments, which has been set aside by this Court. The amounts withheld from the DCRG, as recovery pursuant to Ext.P13, shall also be paid to the additional petitioners.

13. The additional petitioners shall approach the Board with the certified copy of the judgment and the computation shall be made and arrears paid within a period of three months from the date of receipt of the certified copy of the order. If such payment is not made within the three month period, then the amount shall carry interest @ 6% from the date of payment and in such circumstance, the liability shall be fixed on the officer who committed the default.

The writ petition is allowed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE