

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 20038 of 2003 (I)

PETITIONER(S) :

S.REGHUKUMARAN
(EXECUTIVE ENGINEER,KSEB,RTD. ON 30.4.2001)
(AGED 57 YRS), S/O.SEKHARAN
MUNDAKKAVILA, NEAR POST OFFICER
CHATHANNOOR P.O.,KOLLAM

BY ADV. SRI.K.P.RAJEEVAN

RESPONDENT(S) :

1. STATE OF KERALA, REP. BY ITS
CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM
2. KERALA STATE ELECTRICITY BOARD
REP. BY ITS SECRETARY
VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM
3. CHIEF ENGINEER (HRM), KSEB
VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM
4. ACCPOUNTS OFFICER (PENSION AUDIT)
KSEB, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM

R, BY ADV. GOVERNMENT PLEADER SHRI.ABHIJIT LESIL
R2-R4 BY ADV. SRI.P.SANTHALINGAM (SR.)
R2-R4 BY ADV. SRI.S.SHARAN,SC,K.S.E.BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 20038/2003

PETITIONER'S EXTs:

EXT.P1: TRUE COPY OF LETTER NO:EBPS 9/805/2001 DT.26.4.2002

EXT.P2: -DO- REPRESENTATION FILED BY THE PETITIONER TO THE 3RD
RESPONDENT

EXT.P3: -DO- LETTER NO:PA XI/PPO - 27085 DT.2.5.2002

EXT.P4: -DO- REPORT OF THE KERALA LOK AYUKTA DT.15.3.2003 IN
COMPLAINT NO:910 OF 2001

RESPONDENTS' EXTs:

EXT.R2A: TRUE COPY OF THE NOTICE NO:EBPS.9/805/2001/18 DT.26.4.2002
OF THE CHIEF ENGINEER (HRM), KSEBOARD

EXT.R2B: -DO- OF THE LETTER NO:PA XI, PPO 27085 DT.2.5.2002 OF THE
CHIEF ENGINEER (HRM), KSEBOARD

EXT.R2C: -DO- OF THE LETTER NO:CE(I&DS) VIG/2001/79 DT.26.3.2002 AND
92 DT.17.4.2002 OF THE CHIEF ENGINEER (CIVIL) INVESTIGATION AND DAM
SAFETY KSE BOARD

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO.20038 OF 2003

Dated this the 10th February, 2015.

JUDGMENT

The petitioner, a retired employee of the second respondent, Kerala State Electricity Board has filed this writ petition complaining that the amount of Death Cum Retirement Gratuity ('DCRG' for short) payable to him, has not been paid, till date. The petitioner retired from service as an Executive Engineer on 30.4.2001. However, his DCRG was not paid. While so, about one year after his retirement he was issued with Ext.P1 notice by the third respondent informing him that a liability of Rs.2,24,047/- had been fixed on him. Since his DCRG amount was Rs.1,83,200/- the balance amount of Rs.40,847/- fixed as liability on him would be recovered from his monthly pension at the rate of 10% of the pension amount.

2. The petitioner replied to Ext.P1 by submitting Ext.P2 on 29.4.2002. The petitioner requested for being furnished with the details of the charge against him. The report on the basis of which he was found guilty and liable, the calculation of the liability fixed on him and other details were also sought. He had requested for such details because he had not been issued with any notice or other communication at any time during his period of service, finding fault with him on any count. The petitioner did not receive any reply to Ext.P2. Instead, the fourth respondent issued Ext.P3 dated 2.5.2002 on the very same terms indicated in Ext.P1. According to the petitioner the fourth respondent was not competent to issue Ext.P3. The petitioner therefore challenged the said proceedings before the Lok Ayukta. As per Ext.P4 report, the Lok Ayukta found that the petitioner was entitled to be paid the entire amount of DCRG due to him. It is not in dispute that the said order has not been complied with till date.

3. This writ petition was admitted on 26.6.2003. On 13.3.2007 this Court has passed the following order:-

“The Secretary of the KSEB will file a counter affidavit in this case and along with it he will produce copy of the proceedings determining liability against the petitioner. He will specifically name the person who represented the matter before the Lok Ayukta that led to Ext.P4 report which establishes complete non-co-operation and irresponsible behaviour on the part of the KSEB. Counter affidavit will be filed within a week from now.

Issue copy to SC, KSEB”

Though a counter affidavit has been filed in this case, the documents required to be produced as per the order dated 13.3.2007 have not been produced.

4. According to the counter affidavit, there were complaints regarding many of the works that were executed under the petitioner. Therefore, Ext.P1 was issued, the petitioner's explanation was considered and the liability was

fixed as per Ext.P3.

5. I have heard Adv.K.P.Rajeevan who appears for the petitioner as well as Adv.S.Sharan who appears for the KSEB and the Govt. Pleader who appears for the first respondent.

6. It is clear from the pleadings in this case that, other than Exts.P1 to P3 no proceedings were initiated against the petitioner at any time for fixing any liability on him. In other words, the procedure stipulated by Part III of KSR has not been followed for fixing liability on the petitioner. Therefore, it has to be held that no liability has been fixed on the petitioner, in accordance with law. The petitioner has not been put on notice regarding the charges against him. He has not been provided with an opportunity to answer the charges or to rebut them. Therefore, it is held that the liability fixed on the petitioner as per Exts.P1 and P3 are unsustainable. Exts.P1 and P3 are for the said reason, set aside.

7. It is to be noticed that, the unsatisfactory state of

affairs with respect to the proceedings initiated against the petitioner has been taken note of by the Lok Ayukta in Ext.P4 report. The report is dated 15.3.2003. Respondents 2 to 3 did not choose to pay the amount due to the petitioner even after Ext.P3. Nor has Ext.P3 been challenged before any superior forum. The amount of DCRG payable to the petitioner has not been paid in spite of Ext.P4. Consequently, the petitioner who retired on 30.4.2001 has not been paid his DCRG, for the last 14 years. The petitioner is entitled to be compensated for the delay, for which there is absolutely no justification. The responsibility for the delay has to rest squarely on the shoulders of respondents 2 to 4. Therefore, the claim of the counsel for the petitioner that the petitioner is entitled to receive the amount of DCRG with interest is justified.

8. The conduct of respondents 2 to 4 in the present case of retaining the DCRG amount of the petitioner without

there being any proceedings fixing any liability on him and thereafter, in not making payment of the amount even after the Lok Ayukta directed the payment to be made, in Ext.P4 report reveals that the persons who are responsible for making the payment were paying only scant regard to the process of law. Therefore, this is a fit case in which it is necessary to award interest on the DCRG amount at the rate of 12% per annum.

9. The second respondent shall be at liberty conduct an enquiry, identify the persons who are responsible for causing the delay in payment of the petitioner's DCRG, all these years and to recover the amount of interest that has been ordered to be paid as above, from the persons who were actually responsible.

For the foregoing reasons this writ petition is allowed. Exts.P1 and P3 are quashed. The respondents are directed to pay the amount of Rs.1,83,200/- being the amount of DCRG

payable to the petitioner, with interest thereon at the rate of 12% per annum from 30.7.2001 till the date of payment. The payment shall be made as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment.

Sd/-
K. SURENDRA MOHAN
Judge

jj

/True copy/

K.Surendra Mohan, J.

WPC No: 20038 of 2003

Judgment

10th February, 2015.