

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 10838 of 2009 (Y)

PETITIONER(S):

**K.V.GEORGE, S/O.K.P.VARKEY,
AGED 58 YEARS, RESIDING AT KAIRALI COMPLEX,
THONDAYAD, CHEVARAMBALAM P.O., KOZHIKODE.**

**BY ADVS.DR.K.P.SATHEESAN (SR.)
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.SIDDHARTH KRISHNAN**

RESPONDENT(S):

- 1. THE SECRETARY, KSEB,
VYDHUDDHI BHAVAN, PATTOM P.O.,
THIRUVANANTHAPURAM.**
- 2. CHIEF ENGINEER (HRM), KSEB,
VYDHUDDHI BHAVAN, PATTOM P.O.,
THIRUVANANTHAPURAM.**
- 3. EXECUTIVE ENGINEER,
ELECTRICAL DIVISION, KSEB,
GANDHI ROAD, KOZHIKODE.**

BY ADV. SRI.PULIKOOL ABUBACKER, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: A TRUE COPY OF THE SUSPENSION ORDER DTD.17.5.2000.
- EXT.P2: A TRUE COPY OF ENQUIRY REPORT.
- EXT.P3: A TRUE COPY OF THE JUDGMENT IN SESSIONS CASE NO.79/01
DTD.28.3.2008.
- EXT.P4: TRUE COPY OF LETTER DTD.30.7.2008.
- EXT.P5: A TRUE COPY OF THE LETTER DTD.23.6.2006 ISSUED BY THE
3RD RESPONDENT.
- EXT.P6: A TRUE COPY OF THE ORDER NO.PAI/PPO-36438 DTD.12.11.07 ISSUED BY THE
2ND RESPONDENT.
- EXT.P7: TRUE COPY OF THE REPRESENTATION DTD.6.5.2008.
- EXT.P8: TRUE COPY OF THE LAWYER NOTICE DTD.9.2.09.
- EXT.P9: TRUE COPY OF THE LETTER ISSUED BY THE VINAYAKA MISSION
UNIVERSITY DTD.NIL.
- EXT.P10: A TRUE COPY OF THE ORDER OF 2ND RESPONDENT DTD.NIL NO.EBUS
5/13/08/535.
- EXT.P11: A TRUE COPY OF THE LETTER RECEIVED UNDER RIGHT INFORMATION
ACT, DTD.30.4.2009.
- EXT.P12: A TRUE COPY OF THE LETTER RECEIVED UNDER RIGHT INFORMATION
ACT, DTD.27.3.2009.
- EXT.P13: A TRUE COPY OF THE LETTER RECEIVED UNDER RIGHT TO INFORMATION
ACT, DTD.26.2.2009.
- EXT.P14: A TRUE COPY OF THE REPLY DTD.22.7.2009.
- EXT.P15: TRUE COPY OF THE MEMO OF CHARGES DTD.2.3.2005.
- EXT.P16: TRUE COPY OF THE REPLY TO THE MEMO OF CHARGES DTD.27.4.2005.
- EXT.P17: TRUE COPY OF THE SHOW CAUSE NOTICE DTD.7.3.2009.
- EXT.P18: TRUE COPY OF THE REPLY TO THE SHOW CAUSE NOTICE DTD.21.3.2009.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

C.K.ABDUL REHIM,J.

WP(C).NO. 10838 of 2009

Dated this the 23rd day of February, 2014

JUDGMENT

The petitioner retired from service of the Kerala State Electricity Board (KSEB) on 30.6.2006 as Senior Superintendent (NC). While in service the petitioner was suspended by virtue of Ext.P1 order with effect from 13.5.2000, based on the allegation that he was arrested in a criminal case on 13.5.2000 and was remanded by the Judicial First Class Magistrate IV, Kozhikode till 27.5.2000. The suspension was ordered by invoking clause 16 of Para 4 of the Disciplinary Manual of Government of Kerala, on the basis that the petitioner was under judicial custody for more than 48 hours. It is evident that, despite releasing of the petitioner on bail on 17.5.2000, the order of suspension continued and the petitioner was reinstated only on 22.1.2005. Meanwhile a departmental enquiry was ordered

against the petitioner on the basis of a 'Memo of Charges' issued alleging that (a) the petitioner had abducted a girl named Rosily alias Liji aged 25 years from her house and (b) married her inspite of the fact that he is having a living spouse. The departmental enquiry had culminated in Ext.P2 report. The enquiring authority found that there is no proof regarding the allegation of abduction and therefore the 1st charge is not proved. With respect to the 2nd charge of bigamy it was found that the petitioner had entered into an agreement with the above said lady, but the same was cancelled subsequently. It is found that the said lady was already married to another man and is living with her husband. The enquiring authority found that eventhough the offence under section 494 IPC was not proved, under the above mentioned circumstances the petitioner had committed an offence for the purpose of the service Rules and hence the charge stands proved. According to the petitioner, copy of the enquiry report was not furnished to

him. Ext.P2 copy was obtained later only under the Right to Information Act, during the year 2009. It is pointed out that the criminal case charged against the petitioner was acquitted through Ext.P3 judgment of the Sessions Court, dated 28.3.2008. The petitioner had also raised allegation that the enquiry was conducted in a biased manner without affording adequate opportunity to him. However, after his retirement the petitioner was sanctioned with payment of provisional pension alone. Terminal benefits like DCRG, commutation of pension etc were not settled and paid. Therefore the petitioner had submitted Ext.P7 representation before the 3rd respondent, on 6.5.2008, requesting to exonerate him from the disciplinary proceedings. Subsequently a lawyer notice was caused to the respondents as per Ext.P8 requesting to regularise the period of suspension and to make payment of the legitimate claims of the petitioner based on his retirement. Since no action was taken on the basis of Exts.P7 and P8,

the petitioner had approached this court by filing the above writ petition.

2. On 6.4.2009 this court had passed an interim direction to the 2nd respondent to take a decision on Ext.P7 and to grant the various benefits due to the petitioner within a period of two months from the date of receipt of the copy of the order. Pursuant to the said order the 2nd respondent had issued Ext.P10 proceedings, during July 2009. It is revealed that a show cause notice was issued to the petitioner proposing punishment of barring of 2 increments with cumulative effect and ordering regularisation of the period of suspension by applying principle of "no work no pay". The petitioner submitted a reply to the said show cause notice on 22.7.2009. But the 3rd respondent had confirmed the punishment as proposed. But on the basis of the interim order passed by this court on 6.4.2009 the 2nd respondent had reconsidered the matter. It was observed that the petitioner deserves punishment as he had violated

Rule 93(i) of the Government Servant Conduct Rule and tarnished the image of the Board. Observing that, the criminal court has not ordered any honourable acquittal against the charge of abduction and taking a lenient view, it was ordered to impose punishment of barring one increment without cumulative effect for a period of one year and to regularise the period of suspension as eligible leave, if the petitioner desires so, otherwise to treat the period of suspension as 'non-duty' by applying the principle of "no work no pay". It is evident that the 2nd respondent has issued Ext. P10 order, treating Ext.P7 as an appeal filed by the petitioner against the punishment imposed by the 3rd respondent. By virtue of amendment effected to this writ petition, the petitioner is challenging Ext.P10 proceedings.

3. The 1st respondent had filed counter affidavit contending that the disciplinary proceedings was initiated on the basis of grave misconduct and therefore the punishment imposed is sustainable. It is further stated that, pursuant to

the interim order of this court the pensionary claims due to the petitioner was already sanctioned and disbursed. According to the respondents, the period of suspension was regularised by applying the principle of "no work no pay" and since the petitioner was detained in custody in connection with the criminal case, it cannot be said that the suspension was wholly unjustified merely because he was discharged in the criminal case subsequently.

4. Facts revealed as above would indicate that the petitioner was arrested in a criminal case on 13.5.2000 and on that basis he was suspended from service, with effect from the said date. It is evident that despite he was released bail on 17.5.2000, the petitioner was not reinstated till 22.1.2005. It is evident from Ext.P15 that a disciplinary action was proposed only after reinstatement of the petitioner by issuing a Memo of Charges dt. 2.3.2005. Evidently an enquiry was conducted during the period when the petitioner was continuing in service and Ext.P2 report of

enquiry was submitted when the petitioner was in service. But the disciplinary authority has not taken any action on the basis of the report of enquiry, till the superannuation of the petitioner on 30.6.2006. Thereafter, without any justifiable reason, various terminal benefits due to the petitioner was withheld, despite representations made by the petitioner as per Ext.P7 on 6.5.2008 and despite demand made through Ext. P8 lawyer notice caused on 9.2.2009. It is evident from Ext.P10 that a show cause notice proposing punishment was issued to the petitioner, for the first time, by the 3rd respondent only on 7.3.2009. It is revealed from Ext.P10 that the punishment was imposed by the 3rd respondent through a proceedings issued on 13.4.2009. Subsequently the 2nd respondent, on consideration of Ext.P7 as directed by this court, had reduced the quantum of punishment treating Ext.P7 as an appeal.

5. Prime question mooted for consideration is as to

the sustainability of the punishment imposed by the 3rd respondent on 13.4.2009, which was modified by the 2nd respondent through Ext.P10 proceedings in July 2009. Admittedly the enquiry was completed during the period when the petitioner was in service. Despite retirement of the petitioner on 30.6.2006, the matter was kept pending indefinitely till the 3rd respondent had imposed punishment on 13.4.2009. Apart from the delay caused in this matter, question arises as to whether the punishment imposed by the 3rd respondent after retirement of the petitioner is sustainable or not. Learned Standing Counsel appearing for the respondents contended that the disciplinary action being initiated when the petitioner was continuing in service can be proceeded and finalised in view of Rule 3 of Part III KSR. But Rule 3 as well as Rule 3A of Part III KSR enables continuance of the disciplinary proceedings initiated before retirement only for the limited purpose of deciding as to whether any recovery of pensionary benefits to the extent of

pecuniary loss caused to the Government is warranted, in view of any guilt or grave misconduct or negligence on the part of the employee while in service. In the case at hand, the increment bar imposed by the 3rd respondent, which was modified by the 2nd respondent on the basis of the findings that the misconduct alleged against the petitioner was proved, cannot be sustained. It is well settled that exercise of powers vested under Rule 3, which enables finalisation of disciplinary actions after superannuation, only contemplates under a limited scope of deciding whether any recovery from the pension and other benefits need to be imposed to the extent of pecuniary loss caused by such misconduct or negligence of the employee. Since there is absolutely no finding to the effect that any pecuniary loss has been caused based on the misconduct proved, imposition of the punishment of increment bar, after retirement of the petitioner, cannot be sustained. There exist no employer-employee relationship after retirement of the petitioner on

30.6.2006, and the respondents are not entitled to impose any punishment on the petitioner.

6. On the above context, it is to be held that Ext.P10 order passed by the 2nd respondent to the extent it directed to treat the period of suspension as eligible leave or as 'non duty,' also cannot be sustained. Continuance of the disciplinary proceedings after retirement of the petitioner cannot be sustained on the facts and circumstance of the case, since the respondents have no case that the disciplinary action need to be finalised for the purpose of effecting any recovery with respect to any pecuniary loss caused to the KSEB. Hence Ext.P10 order is unsustainable in the eye of law and warrants interference. It is for the respondents to take a fresh decision with respect to the claim for payment of the benefits due for the period during which the petitioner was kept under suspension.

7. Under the above mentioned circumstances the writ petition is allowed and Ext.P10 order as well as proceedings

issued by the 3rd respondent imposing punishment dated 13.4.2009 are hereby quashed. The 2nd respondent is directed to take a decision on the basis of the claim made by the petitioner for payment of the benefits due for the period he was kept under suspension, from 13.5.2000 till 22.1.2005. A decision in this regard shall be taken by the 2nd respondent after affording an opportunity of personal hearing to the petitioner within a period of two months from the date of receipt of a copy of this judgment. Consequential benefits if any shall be disbursed to the petitioner thereafter, without any further delay.

C.K.ABDUL REHIM, JUDGE

Pmn/

