

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C) .No. 10152 of 2011 (T)

PETITIONER(S) :

B.PRAVEEN KUMAR,
VALIYA VEEDU, KONNAMANKARA,
ADOOR P.O., PATHANAMTHITTA DISTRICT,
(EX-ENGINEER, KERALA ELECTRICAL AND ALLIED
ENGINEERING, CO.LTD, KASARAGOD UNIT).

BY ADV. SRI.N.SASIDHARAN UNNITHAN.

RESPONDENT(S) :

-
1. KERALA ELECTRICAL AND ALLIED ENGINEERING CO.LTD.,
REP.BY ITS MANAGING DIRECTOR,
HOUSING BOARD OFFICE COMPLEX, PANAMPILLY NAGAR,
KOCHI, PIN-682 036.
 2. MANAGING DIRECTOR,
KERALA ELECTRICAL AND ALLIED ENGINEERING CO. LTD.,
HOUSING BOARD OFFICE COMPLEX, PANAMPILLY NAGAR,
KOCHI, PIN-682 036.
 3. GENERAL MANAGER(PERSONNEL AND ADMN.) ,
KERALA ELECTRICAL AND ALLIED ENGINEERING CO.LTD.,
HOUSING BOARD OFFICE COMPLEX, PANAMPILLY NAGAR,
KOCHI, PIN-682 036.
 4. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

R1-3 BY ADV. SRI.M.K.THANKAPPAN

R4 BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI
BY SRI.SASIDHARAN UNNITHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P-1: TRUE COPY OF THE OFFICE ORDER NO.GMPA/33/10659/95 DT. 16/01/95 ISSUED TO THE PETITIONER.
- EXT.P-2: TRUE COPY OF THE ORDER NO.GMPA/33/7581 DATED 13/02/1996 ISSUED TO THE PETITIONER.
- EXT.P-3: TRUE COPY OF THE LETTER NO.GMPA/1-A/2405/02 DATED 19/10/2002 ISSUED TO THE PETITIONER.
- EXT.P-4: TRUE COPY OF THE ORDER NO.,MPA/41/2515/2002 DT. 26/10/2002 ISSUED TO THE PETITIONER.
- EXT.P-5: TRUE COPY OF THE REQUEST DATED 4/10/2005 OF THE PETITIONER.
- EXT.P-6: TRUE COPY OF THE G.O.(RT)NO.1177/05/ID DATED 24/11/2005.
- EXT.P-7: TRUE COPY OF THE LETTER GMPA/1/A/2608/05 DATED 01/12/2005 ISSUED TO THE PETITIONER.
- EXT.P-8: TRUE COPY OF THE NOTICE NO.GMPA/33/770/10 DATED 15/06/2010 ISSUED TO THE PETITIONER.
- EXT.P-9: TRUE COPY OF THE LETTER SENT BY THE PETITIONER DATED 10/07/2010..
- EXT.P-10: TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD.
- EXT.P-11: TRUE COPY OF THE MEMO NO.GMPA/13/2890/11 DATED 20/01/2011 ISSUED TO THE PETITIONER.
- EXT.P-12: TRUE COPY OF THE MEMO NO.GMPA/13/3203/11 DATED 21/02/2011 ISSUED TO THE PETITIONER.
- EXT.P-13: TRUE COPY OF THE RELEVANT PAGES OF THE STANDING ORDER ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

- EXT.R1(A): TRUE COPY OF THE GOVT. CIRCULAR NO.13818/BF2/02/PLG DATED 4/12/03.
- EXT.R1(B): TRUE COPY OF THE LETTER NO.MPA/52/139/11 DATED 14/01/2011.
- EXT.R1(C): TRUE COPY OF THE DEPARTMENTAL FINDINGS REPORT DATED 20/01/11.
- EXT.R1(D): TRUE COPY OF THE ACKNOWLEDGEMENT CARD.

INDEX

- DOCUMENT NO.1 : TRUE COPY OF STANDING ORDERS FOR EMPLOYEES WHO ARE CLASSIFIED AS MANAGERIAL PERSONNEL ARE NOT COVERED BY I.D. ACT, 1947.
- DOCUMENT NO.2 : TRUE COPY OF LEAVE RULES NOTIFIED ORDER NO.GMPA/1/559/96 DATED 24/04/96.
- DOCUMENT NO.3 : TRUE COPY OF GOVERNMENT CIRCULAR NO.10432/BPE-1/95/PLG. DATED 20/01/1996 GRANT OF LEAVE WITHOUT ALLOWANCES TO EMPLOYEES OF PUBLIC SECTOR UNDERTAKING GIUDELINES.
- DOCUMENT NO.4 : TRUE COPY OF DECISION TAKEN AT THE 183RD BOARD MEETING HELD ON 03/06/2002 PUBLISHED LETTER NO.S1/857/02 DATED 17/06/2002.
- DOCUMENT NO.5 : TRUE COPY OF THE CIRCULAR NO.GMPA/01/1043/02 DATED 26/06/2002 AS PER THE DECISION TAKEN AT THE 183RD BOARD MEETING.
- DOCUMENT NO.6 : TRUE COPY OF THE CIRCULAR NO.MD.03/320/2002 DATED 28/03/2002 WAGES & SALARIES FOR THE MONTH OF MARCH, 2002.
- DOCUMENT NO.7 : TRUE COPY OF THE NOTE NO.MD.04/051/2002 DATED 29/05/2002- ALL DEPT. HEADS AND UNITS-RELATED TO THE SALARY OF THE EMPLOYEES DURING JANUARY, FEBRUARY, MARCH, 2002.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

=====

W.P(C) No.10152 of 2011

=====

Dated this the 1st day of September, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P12 order by which the petitioner was dismissed from service by the respondents.

2. The petitioner joined the respondent company as an Engineer in 1995. While working in Kasaragod unit, he was sanctioned leave without allowance upto 25.10.2010 as per Ext.P7 order. The petitioner alleges that while on leave, the company issued Ext.P8 notice intimating the proposal of amalgamation of the Kasaragod unit with BHEL and directed him to rejoin duty on getting further communication. Thereafter, the petitioner sent Ext.P9 representation requesting to transfer him to any other unit of the respondent company with permission to continue on the sanctioned leave.

3. The petitioner while eagerly waiting for a reply for rejoining, the second respondent issued Ext.P11 show cause notice

immediately followed by Ext.P12 dismissal order. The petitioner alleges that no charge memo was issued to him and no enquiry was conducted with notice to him before passing Ext.P12 dismissal order. The copy of the enquiry report, if any, was not given to the petitioner and no reasonable opportunity as given to him to put forth his defence; it is alleged. It is with this background, the petitioner has approached this Court.

4. In the counter affidavit filed by the respondent State, it was contended that the petitioner was appointed as Engineer in the respondent company on 16.1.1995. While he was working in the Kasaragod unit, he was sanctioned leave without pay and allowance for a period of three years based on his request. He was relieved from the unit on 26.10.2002. Further based on his request, the period of leave was extended for another 5 years with effect from 26.10.2005 vide GMPA/1-A/2608/05 dated 1.12.2005. the above leave period expired on 25.10.2010; it is contended. It was further contended that Clause '3' of the Order dated 1.12.2005 explicitly states that the employee should report back for duty immediately

on expiry of the leave period sanctioned to him, failing which his service would be deemed as terminated.

5. It was further contended that on expiry of the leave period, the petitioner neither reported for duty nor submitted any request for leave. A departmental enquiry was conducted wherein it was confirmed that the petitioner had not reported for duty on the expiry of the sanctioned period of leave. Based on the enquiry report, a registered memo was issued to the petitioner wherein he was directed to show cause in writing within 7 days of receipt of the memo why he should not be dismissed from the service of the respondent company. In spite of receipt of the memo, the petitioner neither gave an explanation to the memo nor reported in person at the company.

6. It was further contended that an agreement for formation of a joint venture company between Government of Kerala and M/s.BEHL was in final stages and Kasaragod unit of the company along with employees had to be part of the new company. Since the petitioner was an employee of the Kasaragod unit, notice was

issued to him giving him sufficient notice to join the company. In his reply, the petitioner requested to transfer him to the HO or any other factory with permission to continue on leave already sanctioned. The leave sanctioned to the petitioner expired on 25.10.2010 and upon expiry of the leave, he had not reported for duty. As such, he had been unauthorisedly absent from duty; it was contended.

7. It was further contended that the memo was issued to the petitioner on 21.1.2011. In spite of receiving the memo he failed to respond to the same. Therefore, he was dismissed from the service on 21.2.2011. It was stated that the petitioner has failed to make a request for sanctioning further leave and he was liable to report for duty immediately on expiry of the leave sanctioned. The petitioner overstayed for a period of three months and 26 days, which is a considerable period. The petitioner had not requested to grant extension of time for giving a reply to the memo served on him. Hence the averment that he was engaged in collecting some relevant materials for submitting a proper reply is not true.

8. It was further contended that the notice was given on 15.6.2010 while the petitioner was on sanctioned leave. If at all the petitioner had to join for duty as early as on 15.7.2010 it would have been a date before the expiry of sanctioned leave. The notice was not a document sanctioning long leave to the petitioner. His representation was to transfer him to other unit with permission to continue on leave already sanctioned. It was stated the petitioner was not dismissed while he was on sanctioned period of leave and he was dismissed vide memo dated 21.2.2011 which was after three months and 26 days of his unauthorised absence. Only his dismissal was pre-dated as he was unauthorisedly absenting from duty from 26.10.2010.

9. It was further contended that as an employee of the respondent company, the petitioner should have reported for duty on expiry of the period of leave sanctioned. Being an employee of the company, it is dereliction of duty. As per Clause 'd' of the Government circular No.13818/BPE2/02 dated 4.12.2003 management of the public sector undertaking would have to ensure

that the employee proceed on leave only after the leave is duly sanctioned by the board of directors or other competent authority of the public sector undertaking. Further as per clause 'e' of the above circular, employees who absent themselves without getting the leave duly sanctioned should be treated as on unauthorised absence and action should be taken to terminate their service. The petitioner had availed a total of 8 years loss of pay leave. Any further leave could be sanctioned only with the approval of the Government. The petitioner is very well aware of the procedure regarding the sanctioning of leave. In spite of the same, he refused to take necessary steps to apply sufficiently in advance so that the management could not either get approval from the Government or to reject his leave with property intimation to him.

10. The first respondent company has filed a counter affidavit contending as follows:

It was contended that the petitioner was appointed as Engineer (Service and Sale) of the respondent company on 16.1.1995 and regularised in service as per Ext.P2 on 16.1.1996. the

petitioner acquired 7 years experience in various fields of the respondent company and expressed his idea to start his own business and submitted a representation dated 4.10.2002 for granting loss of pay leave for doing own business. The management of the respondent company sanctioned his request and issued Ext.P3 order and relieved him from the KEL Kasaragod unit on 26.10.2002. The leave sanctioned by the respondent company was for 3 years at first instance with certain terms and conditions. Clause 3 of Ext.P3 specifically directed that the petitioner should report back for duty at Kasaragod unit immediately on expiry of the leave period sanctioned to the petitioner failing which his service would be deemed as terminated. The petitioner duly accepted Ext.P3 order and was relieved as per Ext.P4. After three years of leave, the petitioner again submitted Ext.P5 representation and requested for extension of loss of pay. The said request was submitted through proper channel. The management of the respondent company referred the matter vide letter dated 18.10.2005 to the Government for granting permission

to extend the leave for another period of 5 years without pay and allowances. The Government considered and approved the matter subject to the terms and conditions stipulated in the Government Circular dated 24.11.2005 and the Government intimated the same vide Ext.P6. The management of the company extended the LWA for a further period of 5 years as per the terms and conditions of the Government circular dated 4.12.2003. A copy of the said circular is produced as Ext.R1(a). As per clause 3 of Ext.P7 the petitioner is also liable to report for duty immediately on expiry of the leave period. Clause 3(1) of Ext.R1(a) directed that if an employee, availing himself of the leave without allowances, does not return to duty immediately on the expiry of the leave, he should be treated as on unauthorised absence and action should be taken to terminate his service. Again the Government has clarified in the said order (clause no.5) the managing director/chief executives of the public sector undertakings would be responsible for the observance of the said instructions. No relaxation in the above conditions would be allowed; it was contended.

It was further contended that the respondent company issued letter to the petitioner regarding formation of New Joint Venture Company and his service is inevitable for further proceedings. In response to the above letter, the petitioner submitted Ext.P9. In Ext.P9, the petitioner admitted that he had invested huge amount for his own business and the business is going on. The petitioner asserted that he was continuing on leave and doing self employment. It was contended that the petitioner enjoyed 8 years long leave from 26.10.2002 to 25.10.2010 for conducting his own business and the leave period expired on 25.10.2010.

It was further contended that on expiry of the leave period, the petitioner neither reported for duty nor submitted any request for extension of leave. Hence, he is on authorised absence. The respondent company issued direction for departmental enquiry and the authorised Deputy General Manager (R.O) for conducting the enquiry. The company has received letter from the concerned officer vide letter dated 14.1.2011 intimating

unauthorised absence of the employees, including the petitioner, who had not reported for duty on expiry of leave sanctioned. Copy of the letter is produced and marked as Ext.R1(b) along with the counter. The findings recorded by the officer is based on the materials available on record and on proper appreciation of evidence and a report was submitted. Copy of the departmental findings report dated 20.1.2011 is produced and marked as Ext.R1 (c). Then the respondent company issued registered memo dated 20.1.2010 (Ext.P11) to the petitioner wherein the respondent clearly intimated that you have been sanctioned long leave initially for a period of three years from 26.10.2002 and the leave was further extended to another 5 years vide memo dated 1.12.2005. The above leave period expired on 25.10.2010. However, you have not reported for duty so far and as such your absence from duty from 26.10.2010 is treated as unauthorised absence. As per clause 12(1) of the standing orders applicable to the petitioner, absence without leave or overstaying the sanctioned without sufficient ground or satisfactory explanation is a

misconduct and also directed to reply in writing within seven days of receipt of the memo why he should not be dismissed from the service of the company. The said letter was received at the appropriate time. The copy of the acknowledgment card is produced and marked as Ext.R1(d). In spite of receipt of the memo, the petitioner neither gave any explanation to the memo nor reported in person in the company. It is absolute misconduct on the part of the petitioner; it is conducted. The petitioner is liable to obey the Government circular, standing orders and the terms and conditions of Ext.P7. As per the Ext.R1(a) Government order, the M.D/Chief Executive of the Public Sector Undertakings (PSU) would be responsible for observance of [terms and condition nos.1 to 6 in Ext.R1(a)] above instructions. No relaxation in the above conditions would be allowed.

11. Arguments have been heard.

12. The allegation against the petitioner is that he did not report for duty after the period of sanctioned leave was over. Undoubtedly, as per the standing orders issued by the respondent

company, the absence without leave or overstaying sanctioned leave without sufficient ground or satisfactory explanation is a misconduct on the part of the employee. The following is the procedure for initiating disciplinary action and or imposing punishment:

“A charge sheet will be given to the employee concerned and he will be asked to give his explanation. On receipt of the explanation, in case the alleged misconduct prima facie appears to be of a serious nature, the management may place the employee under suspension pending enquiry. In other cases the Management will decide whether a formal enquiry should be conducted, and if the decision is for an enquiry an enquiry shall be ordered to be conducted. The management will, on receipt of the finding of the enquiry authority or in cases where no enquiry is ordered may, on receipt of the explanation, issue notice to the employee to show cause why a specific punishment should not be meted out to him. On receipt of his reply or in the absence of one on the expiry of the date by which the reply is called for, the Management will pass suitable orders.”

13. Here the petitioner has been initially granted leave without pay and allowance for three years and upon his request, the leave was extended for a further period of 5 years by the

respondent company as evident from Ext.P7. The leave was on the specific condition in paragraph 5 of Ext.P7 that leave once granted would not be cancelled under any circumstances and he will not be allowed to join back during the leave period. Therefore, the petitioner was bound to continue on leave till its expiry on 25.10.2010. While continuing on leave, the respondent issued Ext.P8 notice dated 15.6.2010 requiring the petitioner to make preparations for joining duty at Kasaragod unit. The petitioner alleges that in Ext.P8, it was also stated further intimation regarding actual date on which he has to join duty would be intimated later. The specific case of the petitioner is that no such communication has been issued to him. On getting Ext.P8 notice, the petitioner sent Ext.P9 reply requesting permission to continue on leave which was already sanctioned and requested for a transfer to any other unit of the respondent company.

14. The petitioner further alleges that with an intention to rejoin the respondent company, he started winding up of his self employment and has been waiting for a reply from the company to

join duty. The petitioner while waiting for a reply from the company for joining duty, the company issued Ext.P11 memo dated 20.1.2011 intimating that a departmental enquiry was conducted in which he was found to be on unauthorised absence from duty. Based on the findings of the enquiry, it was proposed to terminate the petitioner from service and the petitioner was permitted to show cause as to why he should not be terminated.

15. On a specific query put by me during the course of argument to the learned counsel for the respondent company as to whether any memo of charges has been issued to the petitioner, the learned counsel for the respondent answered in the negative. He maintained the stand that as the petitioner was holding the post of officer such a procedure is not mandatory. The learned counsel for the respondent failed to point out any rule which exempts the company from issuing memo of charges. Being a Government owned company, the respondent company is bound to follow the rules relating to the disciplinary proceedings to be initiated against the employees. No memo of charges have been issued or no formal

enquiry has been conducted. All on a sudden the petitioner was served with Ext.P11 letter proposing to dismiss him from service.

16. Ext.P13 is the copy of the relevant pages of the standing order applicable to the petitioner. In paragraph 15 of the standing order it was specifically stated that as part of the procedure for punishment, a charge sheet has to be given to the employee and his explanation has to be obtained and an enquiry would be ordered (see supra). However, no charge sheet was issued to the petitioner. Therefore, Ext.P12 dismissal order was issued in gross violation of the standing order and against the principles of natural justice. The violation of the mandatory procedure provided in Ext.P13 invalidates the entire disciplinary proceedings and, therefore, the extreme punishment of dismissal of the petitioner from service is unsustainable.

17. Though it was strenuously argued by the learned counsel for the respondent company that the petitioner has an alternate remedy of filing appeal before the appropriate authorities, I am not inclined to accept the same as the entire proceedings are vitiated

on account of the illegalities pointed out above.

Therefore, the writ petition is allowed. Ext.P12 is quashed. The respondents are directed to reinstate the petitioner in the service of the respondent company, in accordance with law, within one month from the date of receipt of a copy of this judgment with continuity of service and back wages from 26.10.2010. This will not stand in the way of the respondent company in initiating fresh disciplinary proceedings against the petitioner on account of the alleged mis-conduct, if they choose.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj