

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 21288 of 2004 (H)

PETITIONER:

**B.S.JAYAKUMAR, S/O.K.P.BHASKARAN NAIR,
KAVITHA NIVAS, T.C. 54/2352, PAPPANANCODE P.O.
THIRUVANANTHAPURAM.**

BY ADV. SRI.K.B.PRADEEP

RESPONDENT:

**THE TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY
OFFICE OF THE TRAVANCORE DEVASWOM BOARD
NANTHANCODE P.O., THIRUVANANTHAPURAM.**

**BY ADVS. SRI.K.N.VENUGOPALA PANICKER, SC, TDB
SRI.D.SREEKUMAR, SC, TDB
SRI.S.GOPAKUMARAN NAIR, SC, TDB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF THE ORDER DATED 23.3.2002 ISSUED BY THE CHIEF ENGINEER OF THE RESPONDENT, TDB**
- P2 : TRUE COPY OF THE CHARGE-MEMO DATED 4.12.2002 ISSUED BY THE RESPONDENT**
- P3 : TRUE COPY OF THE SHOW CAUSE NOTICE DATED 25.7.2003 ISSUED TO THE PETITIONER BY THE RESPONDENT**
- P4 : TRUE COPY OF THE REPLY DATED 27.8.2003 TO EXT.P3**
- P5 : TRUE COPY OF THE NOTICE DATED 24.1.2004 ISSUED BY THE RESPONDENT**
- P6 : TRUE COPY OF THE REPLY DATED 9.2.2004 TO EXT.P5**
- P7 : TRUE COPY OF THE ORDER DATED 24.5.2004 ISSUED BY THE RESPONDENT**

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 21288 of 2004 (H)

Dated this the 15th day of October, 2015

J U D G M E N T

The petitioner was proceeded, for alleged supervisory lapse insofar as a compound wall construction by a contractor, under the supervision of the petitioner, resulted in using granite stones lying within the temple premises, which belonged to the temple.

2. The petitioner was an overseer, who claims that he had supervision of various works going on in the Devaswom and he could not be expected to be personally present in every work site. However, on his detecting the use of old granite stones lying in the compound of the temple, in the construction of the compound wall, at the subject site, he immediately informed the same to the Board. The superior officer being the Assistant Engineer under the Devaswom Board inspected the site, identified the stones used in such construction and is also said to have

reduced such amounts from the contractor's bill .

3. In any event, the petitioner was proceeded departmentally, by Ext.P1, by which a show cause notice was issued. A memo of charges was issued to the petitioner and two others who were Watchmen, by Ext.P2. The specific allegation charged against the petitioner was, as noticed above, supervisory lapse. A domestic enquiry was conducted against the allegations and by Ext.P7 the disciplinary authority concurred with the finding of guilt of the Enquiry Officer and imposed a punishment of barring of one increment with cumulative effect, which is claimed to be a minor punishment.

4. I have heard the learned counsel for the petitioner as also the learned Standing Counsel for the Board.

5. The petitioner, in fact, contends that there could be no supervisory lapse alleged against the petitioner since it was the petitioner who reported the use of the stones by the contractor. The petitioner also specifically refers to the

enquiry report, in which PW3, the Devaswom Assistant Engineer, who was the immediate superior of the petitioner, had deposed to the effect that the petitioner himself had pointed out the use of the granite stones upon which an inspection was conducted and the stones identified, the value of which was reduced from the Bill to the contractor.

6. However, the Hon'ble Supreme Court has time and again, cautioned this Court sitting under Article 226 of the Constitution of India from interfering with the factual findings entered into in the departmental enquiry as concurred by the disciplinary authority. Further, the supervisory lapse occurred insofar as the granite stones lying inside the temple being used by the contractor. In fact, the petitioner who was the overseer was expected to have prevented such use by the contractor. Though it is claimed that the timely action of the petitioner had prevented any loss being caused to the Board, the findings

of the enquiry report shams the stones used were not on one particular instance, but were spread over a number of days. Hence, definitely a supervisory lapse has occurred, but however, no loss has been caused. The finding of supervisory lapse, hence, cannot be interfered with.

7. The next contention raised by the petitioner is on the gravity of the offence and disproportionate nature of the punishment imposed. As has been noticed above, there is no loss caused to the Board and eventually it was the report made by the petitioner to his superior officer that resulted in the detection and identification of the stones as also the reduction of the value from the bill.

In such circumstance, this Court is of the opinion that the punishment imposed is grossly disproportionate. The punishment shall be modified to that of barring of one increment without cumulative effect. Ext.P7 would stand modified to that extent. The petitioner's monetary benefits,

on restoration of the increment, shall be paid within a period of three months from the date of receipt of the certified copy of this judgment.

The writ petition is disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE

//True Copy//

P.A. to Judge