

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

WP(C).No. 12714 of 2010 (L)

PETITIONER(S):

**K.K.KARAPPANKUTTY, CHIEF OF GENERATION
(POSTED AS CHIEF ENGINEER, DAM SAFETY)
KERALA STATE ELECTRICITY BOARD,
V AIDYUTHI BHAVANAM, PATTOM
THIRUVANANTHAPURAM.**

BY ADV. SRI.S.RAMESH BABU

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, POWER DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. KERALA STATE ELECTRICITY BOARD
(MANAGING COMMITTEE) REPRESENTED BY ITS SECRETARY,
VAIDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.**
- 3. THE CHAIRMAN (SPECIAL OFFICER),
KERALA STATE ELECTRICITY BOARD,
VAIDYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM.**
- 4. THE LEGAL ADVISER & DISCIPLINARY ENQUIRY OFFICER,
KERALA STATE ELECTRICITY BOARD
VAIDYUTHI BHAVANAM, PATTOM.**

**R1 BY GOVERNMENT PLEADER SAIDALAVI.K.K.
R2-R4 BY ADVS. SRI.K.S.ANIL, SC, KSEB
SRI. ASOK M.CHERIYAN, SC, KSEB
SRI.PULIKOOL ABUBACKER, SC, KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE G.O.(RT) 58/98/PD DATED 19.3.1998.
- EXT.P2 COPY OF THE JUDGMENT DATED 2.6.2000 WA NO. 455 OF 2000.
- EXT.P3 COPY OF THE ORDER DATED 5.10.2007.
- EXT.P4 COPY OF THE VIDE G.O. (RT) NO. 319/05/PD DATED 1.9.2005.
- EXT.P5 COPY OF THE G.O. (RT) NO. 60/08/PD DATED 10.3.2008.
- EXT.P6 COPY OF THE MEMO OF CHARGES ALONG WITH STATEMENT OF ALLEGATIONS DATED 3.9.2008 ISSUED BY THE THIRD RESPONDENT..
- EXT.P7 COPY OF THE REPLY DATED 22.10.2008 SUBMITTED BY THE PETITIONER
- EXT.P8 COPY OF THE COMMUNICATION DATED 6.1.2009 ISSUED BY THE CHIEF VIGILANCE OFFICER.
- EXT.P9 COPY OF THE BOARD ORDER B.O.(FB) NO.285/2009 DATED 4.2.2009
- EXT.P10 COPY OF THE LETTER DATED 28.3.2009 ISSUED BY THE CHIEF VIGILANCE OFFICER.
- EXT.P11 COPY OF THE REPLY DATED 17.4.2009 SUBMITTED BY THE PETITIONER
- EXT.P12 COPY OF THE ORDER NO.VIG.AII/5614/2008 DATED 26.6.2009 OF THE THIRD RESPONDENT.
- EXT.P13 COPY OF THE NOTICE DATED 3.2.2010 ISSUED BY THE 4TH RESPONDENT.
- EXT.P14 COPY OF THE REPLY DATED 11.2.2010 SUBMITTED BY THE PETITIONER
- EXT.P15 COPY OF THE G.O.(MS) NO. 38/08/PD DATED 26.9.2008.

WP(C).No. 12714 of 2010 (L)

RESPONDENTS EXHIBITS:

EXT.R2(a): COPY OF G.O.(MS) NO.37/2008/PD DATED 25.9.2008

EXT.R2(b): COPY OF THE ORDER DATED 02.01.2004

TRUE COPY

P.A. TO JUDGE

Mn

A.V.RAMAKRISHNA PILLAI, J

WPC No.12714 of 2010

Dated this the 2nd day of September, 2015

JUDGMENT

The petitioner was working as Chief Engineer (Dam Safety) in the Kerala State Electricity Board is challenging the disciplinary action initiated against him by the Chairman of the Board.

2. The matter in issue concerns the issue of memo of charges on the petitioner by the Chairman (Special Officer), KSEB. The petitioner alleges that in accordance with the Regulations, the appointing authority in respect of the Chief Engineer in the Board is the Kerala State Electricity Board and not the Chairman. According to him, the chairman is neither the appointing authority nor the disciplinary authority in respect of Chief Engineers. The chairman has also not been delegated with the power of appointing authority. Therefore, the

initiation of proceedings by the third respondent against the petitioner is unsustainable; it is alleged. In the light of the Transfer Scheme prepared by the Government, the Government is the appointing authority in respect of the post of Chief Engineer. Moreover, the petitioner was holding the post of Chief of Generation which is the post equivalent to the member of the Board. Therefore, according to the petitioner, the initiation of disciplinary proceedings by the third respondent is unsustainable. It is with this background the petitioner has come up before this Court.

3. The second respondent filed a counter affidavit contending as follows:

Sri.K.K.Karappankutty was removed from the post of Chief of Generation of KSE Board and posted as Chief Engineer (IPDS), KSE Board, Vidyuthi Bhavanam, Thiruvananthapuram, vide BO (CM) No.616/2008 (Estt.III/1555/2007) dated 11.3.2008 with effect from 11.3.2008 till the completion of the

enquiry against him in connection with the unauthorised awarding of the work for the construction of Stop Log Yard and allied works at Pamba, Lower Periyar Hydro Electric Project.

Subsequently, Sri.K.K.Karappankutty, Chief Engineer (IPDS) (formerly Chief Engineer (Civil Construction), Vydyuthi Bhavan, Thiruvananthapuram) was charge sheeted vide Memo of charges No.VIG/All/4794/08 dated 19.6.2008 for having awarded the contract for the construction of Stop Log Yard and allied works at Pambla, Lower Periyar Hydro Electric Project without permission of the Board.

The Chairman after having examined the statement of defense of the delinquent officer submitted on 14.10.2008 along with the other related documents had ordered to conduct a detailed enquiry by the Legal Adviser & Disciplinary Enquiry Officer, KSE Board, vide proceedings No.VIG/All/4794/2008 dated 13.11.2008.

The enquiry report of the Legal Adviser & Disciplinary Enquiry Officer dated 7.3.2009 substantiated beyond any doubt that the act of the delinquent officer tantamount to official misconduct, dereliction of duty and misuse of official powers.

The chairman as well as the full time members examined the enquiry report furnished by the Legal Adviser & Disciplinary enquiry Officer, KSE Board. The full time members recommended imposing major penalty under Section 16 of KSE Board (CC&A) Regulation 1969, on the delinquent officer for the violation of the standing orders of the Board and Sri.K.K.Karappankutty being an officer of the level of the Chief Engineer, the chairman, KSE Board proposed the punishment of reduction in the rank in seniority list to the junior most among the Chief Engineer (Civil) vide show cause notice No.VIG/All/4794/08 dated 23.4.2009. According to the second respondent, since the reply to the show cause notice submitted by Sri.K.K.Karappankutty

was not convincing to the Chairman as well as the full time members of KSE Board, the chairman decided to impose the proposed punishment and issued orders No.VIG/All/4794/08 dated 20.10.2009. Even though there is no relevance at present to Section 10(4) of the Supply Act, 1948, also in accordance with the same, the incumbent is ineligible for being reappointed as member of the Board, consequent to the issue of the order dated 20.10.2009. The delinquent officer has filed WPC No.37623/2009 before this Court challenging the above order.

It is submitted by the second respondent that as per clause 5(6) of the G.O.(MS) No.37/2008/PD dated 25.9.2008, the existing officers and employee of the Board subject to their conditions of service, will continue to discharge their duties, responsibilities, obligation and functions as was done before as per the existing delegation of powers on behalf of the Government in place of the Board

and in the name of Kerala State Electricity Board till it is re-vested in a company by the State Government in accordance with sub section (2) of Section 131 of the Electricity Act, 2003 and the officers and employees who are discharging their duties under the scheme during this period shall be deemed to be under the services of the State Government. Moreover as per clause 7(9) of the aforesaid Government order, it has been specifically noted that all proceedings including disciplinary proceedings pending against the personnel as on the date of vesting and initiated thereafter till re-vesting which relates to misconduct, lapses or acts of commission or omission committed before the date of transfer shall not abate and be continued by the transferee.

4. Arguments have been heard.

5. Before the initiation of the present disciplinary proceedings, the petitioner who was the member of the Kerala State Electricity Board (Chief

of Generation) has been demoted as the lowest among the Chief Engineers which was challenged by the petitioner in WPC No.37623/2009. In that case also, the respondent Board has filed a detailed counter affidavit wherein they have justified the action initiated against the petitioner and the penalty imposed.

6. The main argument advanced by the petitioner in this writ petition is that the chairman of the Electricity Board has no delegated power of the appointing authority to impose the penalty imposed upon the petitioner. The same argument was raised by the petitioner in the previous case also where the petitioner attacked the initiation of disciplinary proceedings against him on the ground that there was no decision, at any point of time, by the respondent Board to initiate proceedings against the petitioner. It was argued in that case that the minutes in the concerned file had been manipulated to make it appear that there was a decision by the

members of the respondent Board to initiate disciplinary action against the petitioner. In that case, this Court observed that bringing down the petitioner from the post of Chief of Generation to the post of Chief Engineer and thereafter reducing him to the junior-most Chief Engineer amounted to reduction in rank and therefore, it should have been in conformity with the requirement of Article 311 of the Constitution of India which requires that before imposing such punishment, the Government Servant should be heard in the matter of acceptance of his guilt. This Court also observed that in the light of two Government Orders the institution of KSEB did not exist any longer. It was also found that it is discernible that the process of the Transfer scheme as well as the vesting and reverting of the rights and obligations in terms of 131(2) of the Act was on going at that point of time. It was also observed that the employees of the former KSEB are now employees of the Government which status will

continue till there is formation of company in terms of the Transfer scheme. The aforesaid writ petition was allowed for the main reason that the show cause notice issued to the petitioner was only to the proposed punishment after acceptance of an enquiry report and, therefore, there was no independent consideration as to the guilt or otherwise of the petitioner in the matter by the second respondent.

7. Today when the matter came up for hearing, the learned counsel for the petitioner would submit that after the disposal of the aforesaid writ petition, the petitioner was re-inducted as the member of the Board and his demitted office in that capacity. In this case, the petitioner would point out that not satisfied with the harassment already meted out, the petitioner was served with memo of charges and statement of allegations by the third respondent dated 3.9.2008 requiring his explanation as to why action should not be initiated against him in terms

of Kerala State Electricity Board (Classification, Control & Appeal) Regulations 1969. Ext.P6 is the statement of allegations which is stated to be issued on an interim report dated 24.1.2008 of the committee constituted by the Board. The petitioner points out that Ext.P1 was not issued based on any decision taken by the Board to initiate disciplinary action against the petitioner. It has been issued solely at the instance of the chairman. It is also pointed out that the third respondent chairman unilaterally decided that the explanation given by the petitioner to the memo of charges and statement of allegations were not satisfactory and that the petitioner's deposition at the personal hearing was also not convincing and issued letter dated 28.3.2009 through the Chief Vigilance Officer requiring the petitioner to submit specific explanation in the matter within seven days from the date of receipt of the said communication. Ext.P10 is the copy of the communication.

8. The competence of the third respondent has to be considered in the light of Electricity Act, 2003 and subsequent developments.

9. The learned counsel for the petitioner would argue that even going by the erstwhile regulations viz. Kerala State Electricity Board Employees (Classification, Control and Appeal) Regulations, 1969, it can be seen that the chairman is not the appointing authority in respect of the chief engineers. The appointing authority in relation to the category of chief engineer is the Board. The power of appointment has not been delegated by the Board at any point of time to any other authority including the chairman. Under Regulation 12, the authority competent to impose a major penalty is the appointing authority or any higher authority. In the present case, the Board being the appointing authority as also the higher authority in the hierarchy, the only competent body to impose punishment on the petitioner as also other Chief

Engineers is the Board. The decision in the previous writ petition is also proceeded on the aforesaid lines.

10. It is crucial to note that the stand of the Board initially was to appoint a committee to look into the matter relating to the construction of the work. On receipt of the report of the committee, the decision taken by the Board as evidenced by Ext.P9 was to seek explanation from the concerned officers including the Chief Engineer. Such explanations have been submitted and were pending. However, no further action has been taken by the Board on that. Therefore, it is not only pre-mature on the part of the third respondent to have initiated action unilaterally by the issuance of Ext.P6 followed by Ext.P12.

Therefore, on a consideration of the materials now placed on board, this Court is of the view that memo of charges and Exts.P6 and P12 are incompetent and the same are only to be annulled.

In the result, this writ petition is allowed.
Exts.P6 and P12 are quashed.

It is hereby declared that the third respondent is incompetent to initiate or take disciplinary action against the petitioner as Chief of Generation or as the Chief Engineer of the Board.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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P.S.TO JUDGE