

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 22826 of 2005 (P)

PETITIONER(S):

M.VARGHESE, AGED 57N YEARS,
S/O.M.G.LUKOSE, MADATHILETHU, VETTOOR P.O.
KUMBAZHA, PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY THE
PRINCIPAL SECRETARY, HOUSING DEPARTMENT
KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE KERALA STATE HOUSING BOARD, REP.
BY ITS SECRETARY, SANTHI NAGAR, THIRUVANANTHAPURAM
3. THE CHAIRMAN, K.S.H.B. SHANTHI NAGAR,
THIRUVANANTHAPURAM.
4. THE SECRETARY, K.S.H.B. SHANTHI NAGAR,
THIRUVANANTHAPURAM.
5. THE DIRECTOR, VIGILANCE AND ANTI
CORRUPTION BUREAU, THIRUVANANTHAPURAM.

R,R2TO4 BY ADV. SRI.A.JAYASANKAR, SC KSHB, TVM
R2-R4 BY ADV. SRI.GEORGE BOBAN, SC, K.S.H.B.
R1 &5 BY ADV. GOVERNMENT PLEADER SMT. SUNITHA VINOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE SUSPENSION ORDER DT 17.01.2001 ISSUED BY THE SECRETARY, KSHB

EXT.P2: COPY OF THE MEMORANDUM OF CHARGES DT 14.03.2001

EXT.P3: COPY OF THE WRITTEN STATEMENT OF DEFENCE SUBMITTED BY THE PETITIONER DT 31.10.2001.

EXT.P4: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE HON'BLE MINISTER FOR REVENUE AND HOUSING DATED 11.03.2002.

EXT.P5: COPY OF THE SHOW CAUSE NOTICE DT 15.05.2002

EXT.P6: COPY OF THE REPLY SUBMITTED BY THE PETITIONER DT 10.06.2002 TO EXT.P5

EXT.P7: COPY OF THE APPEAL SUBMITTED BY THE PETITIONER TO THE CHAIRMAN, KSHB DT 01.07.2002.

EXT.P8: COPY OF THE ORDER PASSED BY THE SECRETARY, KSHB DT 04.07.2002

EXT.P9: COPY OF THE APPEAL SUBMITTED BY THE PETITIONER TO THE CHAIRMAN OF THE KSHB DATED 28.7.2002 AGAINST EXT.P8

EXT.P10: COPY OF THE JUDGMENT IN O.P NO. 25484/2002 DATED 13.09.2002.

EXT.P11: COPY OF THE ORDER DT 27.9.2002 ISSUED BY THE 4TH RESPONDENT

EXT.P12: COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DT 19.2.2003

EXT.P13: COPY OF THE REVISION PETITION ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT DT 25.3.2003

EXT.P14: COPY OF THE ORDER DT 9.4.2003 PASSED BY THE 3RD RESPONDENT

EXT.P15: COPY OF THE REPRESENTATION DT 21.4.2003 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT

EXT.P16: COPY OF THE LETTER DT 10.11.2003 ISSUED BY THE VIGILANCE OFFICER ON BEHALF OF THE 4TH RESPONDENT

EXT.P17: COPY OF THE REVISION PETITION DT 19.5.2003 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT

WP(C).No. 22826 of 2005 (P)

EXT.P18: COPY OF THE MEMORANDUM OF CHARGES AND MEMO OF ALLEGATIONS

EXT.P19: COPY OF THE REPLY SUBMITTED BY THE PETITIONER DT 20.3.2003 TO
EXT.P17.

EXT.P20: COPY OF THE REPRESENTATION DT 20.9.2003 SUBMITTED BY THE
PETITIONER TO THE DY. DIRECTOR OF PANCHAYATH

EXT.P21: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE
4TH RESPONDENT DATED 15.12.2003

EXT.P22: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE
4TH RESPONDENT DT 16.2.2004

EXT.P23: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE
4TH RESPONDENT DT 12.04.2004

EXT. P24: COPY OF THE ORDER ISSUED BY THE 4TH RESPONDENT DT 6.11.2004

EXT.P25: COPY of the COMMUNICATION DT 6.11.2004 ISSUED BY THE 4TH
RESPONDENT TO THE PETITIONER

EXT.-P26: COPY of the PENSION PAYMENT ORDER ISSUED BY THE CHIEF ACCOUNTS
OFFICER OF THE 2ND RESPONDENT DT 17.11.2004

EXT.P27: COPY of the REPRESENTATION DT 10.12.2004 SUBMITTED TO THE 4TH
RESPONDENT

EXT.P28: COPY of the COMMUNICATION DT 27.12.2004 ISSUED BY THE FIRST
RESPONDENT

EXT.P29: COPY of the REPRESENTATION DT 14.3.2005 SUBMITTED TO THE 4TH
RESPONDENT

RESPONDENTS EXHIBITS:

EXT.R1(a): TRUE COPY of the ORAL TESTIMONY of the PETITIONER BEFORE THE
ENQUIRY OFFICER

EXT.R1(b): TRUE COPY OF THE REPORT OF DIRECTOR VIGILANCE AND ANTI
CORRUPTION BUREAU.

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No.22826 of 2005

Dated this the 09th day of December, 2015

J U D G M E N T

The petitioner challenges, the punishment, imposed on disciplinary enquiry, which order was issued at Ext.P8 dated 04.07.2002. There is an amendment application filed as I.A No.17824/2015 wherein the petitioner seeks to bring in a pleading as to the non supply of the enquiry report, as an additional ground. Since the writ petition has been pending so long, this Court is not inclined to allow the amendment prayed for. Amendment application is hence rejected.

2. The brief facts to be noticed herein are that the petitioner had been an Accounts Officer with the Housing Board. Certain irregularities in sanction of loans were detected and the petitioner was suspended by Ext.P1 dated 17.01.2001. Subsequently a memo of charges was issued, which is seen at Ext.P2, alleging misconduct with respect to defects noticed in five accounts

maintained with the Board. An explanation was given at Ext.P3 , which was found to be unsatisfactory. The further proceedings with respect to the enquiry is not available in the records, since the petitioner contends that though the enquiry was conducted and he was participated, no enquiry report was supplied to him and he was merely served with Ext.P5 notice. This Court had, in fact, directed the respondent Board to produce the enquiry report which has now been produced by a memo in August, 2015. It is to be noticed that the pleadings in defence, does not contain a specific contention that the petitioner was supplied with the enquiry report, obviously since the petitioner did not raise such a claim. Be that is it may, the non-supply of the enquiry report, goes to the root of the matter, since it is a clear violation of principles of natural justice. The plea on that count being a legal ground, infringing upon the valuable right of audi alteram partem, could be raised at any stage. Definitely the same has to emanate from the documents available.

Hence this Court has to examine whether in fact, the enquiry report was supplied or not.

3. The learned Standing Counsel for the respondent Corporation would take me through the final order passed, wherein it is specifically stated that the petitioner was given all opportunity to defend his case. However, the significant aspect would be as to whether the petitioner was supplied with the enquiry report and whether objections were called for, from the petitioner, with respect to the findings in the enquiry report before the disciplinary authority found the petitioner to be guilty of the offences alleged against him, as found by the enquiry officer also. Admittedly, the enquiry officer has found proved, the guilt of the petitioner in the enquiry report produced herein.

4. The Government, in the counter affidavit placed on record, states that a vigilance enquiry is pending, but the petitioner's contention is that the petitioner was only summoned as

a witness and not arrayed as accused. In any event, the question of pendency of the vigilance case is not an issue and what one has to look at is whether the disciplinary proceedings and the order passed imposing a punishment can be sustained.

5. Examining the contention of the non-supply of the enquiry report, one has to look at Ext.P5. Ext.P5 is a show cause notice on the conclusion of the enquiry proceedings. Though the enquiry report 10.05.2002 is referred to therein, there is no whisper about the supply of enquiry report as such. Again, going through the recitals in Ext.P5, it cannot be said that disciplinary authority intended at any time to supply the enquiry report or call for objections from the petitioner regarding the findings in the enquiry report. This Court emphatically says so, since the disciplinary authority in Ext.P5 in the 5th paragraph says that after consideration of the enquiry report read as 7th paper it was found that all the accused officers including the petitioner herein had

committed serious offences attracting disciplinary action which included irregularities, lapses, negligence and financial loss caused to the Board. The Board is also said to have sustained financial loss coming to an amount of Rs.73,170/-. After finding so, the provisional decision to recover the loss suffered by the Board and to impose a punishment of barring of one increment without cumulative effect was proposed. The opportunity for giving an explanation was confined to the proposed punishment. Hence a reading of Ext.P5 show cause notice would indicate specifically that there was non-supply of the enquiry report and the petitioner was also not allowed to make his objections to the findings in the enquiry report. This vitiates the order passed by the disciplinary authority as has been held by the Hon'ble Supreme Court in ECIL v. B Karunakar [1993 (4) SCC 727] which has been reiterated by the Hon'ble Supreme Court in 2014 (7) SCC 340 Union of India and Others v. R.P Singh.

6. In such circumstance, Ext.P8 has to be set aside, for reason of the petitioner having not been supplied with the enquiry report and having been not invited to file objections to the findings in the enquiry report. The peremptory finding of guilt by the disciplinary authority vitiates the entire process.

7. Normally, on finding a procedural defect in the conduct of the enquiry and the imposition of punishment, this Court should remand back the matter to the authority for resuming the proceedings from the stage at which it has been stopped. However, herein it is to be noticed that the petitioner has retired on 28.02.2003 and at this stage, there would be no purpose in remanding the matter. Further it is also to be noticed that the recovery sought to be effected at Ext.P5 was from the DCRG of the petitioner which is not permissible under Rule 3 Note (3) of the Kerala Service Rules (Part III) as has been reiterated by a Division Bench of this Court in 2014 (3) KHC 167 (Kerala State Electricity

Board, Tvm v. K Kesavan).

8. Further contention is that the petitioner by reason of the suspension order has been deprived of his eligible salary and allowances during the said period. The petitioner was suspended by Ext.P1 on 17.01.2001. The disciplinary proceedings concluded with Ext.P8 order dated 04.07.2002. The petitioner was offered a reinstatement by Ext.P11 on 27.09.2002 but, however, only on condition of remitting the entire amounts mulcted as liability on the petitioner. The said order directing refund of the loss suffered by the petitioner, as a pre-condition, was set aside as unusual and unjust in Ext.P10 judgment. Hence the period of such reinstatement has to be regularised. Considering the long distance of time and also taking into account the admitted case of the petitioner that he had been paid subsistence allowance during the period, the petitioner shall be entitled to full salary and allowances for the period between 17.01.2001 to 27.09.2002, which

shall be paid after deducting the subsistence allowance already paid. The petitioner shall also be entitled to be disbursed with the entire amounts retained from the DCRG which was mulcted as loss suffered by the Board. The petitioner shall be paid simple interest at the rate of 6% till payment. The entire amounts shall be paid within a period of three months from the date of receipt of a certified copy of this judgment, failing which the petitioner shall be paid interest at the rate of 10% and the difference in interest shall be recovered from the officer who committed such default.

Writ petition is allowed. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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//true copy//

P.A to Judge