

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 23334 of 2006 (C)

PETITIONER(S):

**O.S.SOMAN, SUB ENGINEER (RTD.)
(GENERATION SUB DIVISION, SHOLAYAR)
RESIDING AT UTHIKKUZHA HOUSE, VAZHOOR
KOTTAYAM DISTRICT.**

**BY ADVS.SRI.B.SAJEEV KUMAR
SRI.M.K.THANKAPPAN**

RESPONDENT(S):

- 1. THE CHAIRMAN, KERALA STATE
ELECTRICITY BOARD (KSEB IN SHORT), VAIDHYUTHY BHAVAN
THIRUVANANTHAPURAM.**
- 2. KERALA STATE ELECTRICITY BOARD
(KSEB IN SHORT), REP. BY ITS SECRETARY
VYDYUTHI BHAVAN, THIRUVANANTHAPURAM.**
- 3. THE CHIEF ENGINEER (HRM),
KERALA STATE ELECTRICITY BOARD, THIRUVANANTHAPURAM.**

**R,R1TOR3 BY ADV. SRI.K.S.ANIL, SC, KSEB
R BY SRI.JOSE J.MATHEIKEL, SC, KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1** COPY OF THE ORDER DT D.4.4.02 ISSUED BY THE 3RD RESPONDENT SUSPENDING THE PETITIONER.
- EXT.P2** COPY OF THE MEMO OF CHARGES DTD.6.5.02 WITH STATEMENT OF ALLEGATION ISSUED BY THE 3RD RESPONDENT.
- EXT.P3** COPY OF THE EXPLANATION DTD.30.5.02 SUBMITTED BY THE PETITIONER.
- EXT.P4** COPY OF THE ORDER DTD.4.9.02 ISSUED BY THE 3RD RESPONDENT REVOKING THE SUSPENSION OF THE PETITIONER AND REINSTATING HIM IN SERVICE.
- EXT.P5** COPY OF THE ORDER NO.B1-14312/94/CEI DTD.26.2.94 PASSED BY THE CHIEF ELECTRICAL INSPECTOR, TRIVANDRUM
- EXT.P6** SHOW-CAUSE NOTICE DTD.24.8.04 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT.
- EXT.P7** COPY OF THE EXPLANATION DTD 17.09.04 PREFERRED BY THE PETITIONER IN RESPONSE TO EXT.P6
- EXT.P8** COPY OF THE ORDER NO.EBES/4/26B/97/656 DTD.4.11.04 PASSED BY THE 3RD RESPONDENT.
- EXT.P9** COPY OF THE APPEAL DTD.11.11.04 PREFERRED BY THE PETITIONER BEFORE THE 1ST RESPONDENT, AGAINST EXT.P8.
- EXT.P10** COPY OF THE ORDER NO.VIG.BIII/3959/01/17 DTD.2.1.06 PASSED BY THE 1ST RESPONDENT.
- EXT.P11** COPY OF THE REPRESENTATION DTD.22.3.06 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR DISBURSEMENT OF THE EXCESS RECOVERY IN VIEW OF EXT.P10.

RESPONDENTS EXHIBITS:

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

=====

W.P.(C) No.23334 of 2006 - C

=====

Dated this the 8th day of October, 2015

J U D G M E N T

The petitioner is aggrieved by Ext.P8 order as confirmed in appeal by Ext.P10. The petitioner was proceeded with, on an inspection conducted by the Anti Power Theft Squad (APTS). A charge memo was issued at Ext.P2 dated 06.05.2002. The petitioner along with four others were proceeded against. The petitioner submitted his explanation by Ext.P3. Though the petitioner was initially suspended, the petitioner was reinstated in service by Ext.P4. An enquiry is said to have been conducted and there is a show cause notice issued at Ext.P6. The petitioner submitted his reply as per Ext.P7.

2. The disciplinary authority after considering the reply, passed Ext.P8 order imposing a punishment of barring of one increment with cumulative effect and recovery of an amount

of Rs.9,28,909.10; 1/5th of which was determined as the petitioner's liability. The petitioner filed an appeal at Ext.P10. The punishment was confirmed but however, the liability was reduced substantially to Rs.69,773/-, wherein again the petitioner's liability was 1/5th. The petitioner admits that the enquiry report was supplied to him and that he was participated in the enquiry.

3. However the petitioner retired on 30.11.2003. The punishment imposed of barring one increment with cumulative effect cannot hence be sustained. The very same issue was considered by this Court in W.P.(C) No. 29208 of 2005 dated 28.08.2008 and W.A No. 1194 of 2010 dated 07.10.2010, wherein the respondent Board itself was the respondent. This Court found that after retirement, no proceedings could be continued, but for recovery of amounts determined as loss and there could be no recovery of monetary value of punishment imposed. The punishment also cannot be sustained.

4. In such circumstance, while confirming the liability of 1/5th of Rs.69,773/-, it is made clear that the punishment cannot be sustained. Exts.P8 and P10 would be modified to the extent of setting aside the punishment imposed of barring one increment with cumulative effect. The petitioner shall approach the Board and the petitioner's retirement benefits as also the pension shall be recomputed after taking into account the one increment, which was barred on punishment, which punishment has been set aside by this Court.

The writ petition would stand allowed to that extent.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/09 /10 /2015

// true copy //

P.A to Judge.