

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

W.P.(C).No.16596 of 2013 (Y)

PETITIONER(S):-

A.S. SAROJAM,
ASSISTANT SALESMAN (RETD.),
KERALA STATE CIVIL SUPPLIES CORPORATION,
KODUVELIPPADY HOUSE, P.O. THURAVOOR - 683572.

BY ADVS.SRI.V.RAJENDRAN
SRI.P.SAMSUDIN
SMT.P.RIJI.

RESPONDENT(S):-

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1. KERALA STATE CIVIL SUPPLIES CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
MAVELI BHAVAN, GNADHINAGAR, KOCHI-682 020.
 2. THE REGIONAL MANAGER,
KERALA STATE CIVIL SUPPLIES CORPORATION,
REGIONAL OFFICE, MAVELI BHAVN, GANDHINAGAR,
KOCHI-682020

R1 & 2 BY STANDING COUNSEL SRI. N.D. PREMACHANDRAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1:- TRUE COPY OF THE PROCEEDINGS DTD 24/7/2000 OF THE 2ND RESPONDENT.
- EXT.P2:- TRUE COPY OF THE MEMO OF CHARGES DTD 22/1/2011 OF THE 2ND RESPONDENT.
- EXT.P3(a):- TRUE COPY OF THE LETTER DTD 19/4/2011 OF THE ASST.MANAGER, KSCSC, PERUMBAVOOR TO THE 2ND RESPONDENT.
- EXT.P3(b):- TRUE COPY OF THE LETTER DTD 19/4/2011 OF THE OFFICER IN CHARGE, KSCSC, ALUVA TO THE 2ND RESPONDENT.
- EXT.P4:- TRUE COPY OF THE REPRESENTATION DTD 12/4/2011 OF THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P5:- TRUE COPY OF THE INFORMATION DTD 22/2/2013 FURNISHED TO PETITIONER BY THE PUBLIC INFORMATION OFFICER OF THE CORPORATION.
- EXT.P6:- TRUE COPY OF THE LETTER DTD 30/4/2013 OF THE STATE PUBLIC INFORMATION OFFICER OF THE CORPORATION.
- EXT.P7:- TRUE COPY OF THE LETTER DTD 16/7/2012 OF THE SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION BEURAU.
- EXT.P8:- TRUE COPY OF THE REPRESENTATION DTD 1/3/2013 OF THE PETITIONER TO THE 1ST RESPONDENT.
- EXT.P9:- TRUE COPY OF THE ORDER DATED 26.10.2013 OF THE 2ND RESPONDENT.
- EXT.P10:- TRUE COPY OF PROCEEDINGS DATED 16.08.2002 OF THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

- EXT.R1 TRUE COPY OF THE GOVT. ORDER VIDE G.O.(P).65/92/VIG. OF VIGILANCE DEPARTMENT DATED 12.05.92.

vkul/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.16596 of 2013-Y

Dated this the 25th day of November, 2015

JUDGMENT

The petitioner is concerned with disbursal of retirement benefit, which has been interdicted on the basis of a purported proceeding initiated after the retirement of the petitioner.

2 The petitioner, who was a Helper in the 1st respondent-Corporation working at the Maveli Store, Manjapra, was suspended by Exhibit P1 order. Exhibit P1 order dated 24.07.2000 was on account of detection of certain irregularities, which resulted in false Bank statements being forwarded to the respondent and the remittance having not been made in the Bank by the petitioner, who, though a Helper, was put in charge as the Shop Manager of the Maveli Store. In fact, two Helpers, one the petitioner and the other M.P.Abdul Shukkur, who held charge of the Store in different periods, were suspended under Exhibit P1.

3. Exhibit P1 order of suspension was issued, pending detailed enquiry to be conducted. Nothing transpired thereafter and the petitioner was taken back in service on the basis of a representation, as is indicated in Exhibit P10 order produced by the petitioner along with the reply affidavit. No whisper about the proceedings or the enquiry contemplated in Exhibit P1 is seen in Exhibit P10. Exhibit P10 is an order reinstating the petitioner in service and allowing her to continue. The petitioner, admittedly, retired after eight years, on 30.04.2010, without any proceedings being taken.

4. The petitioner having retired from service, was served with Exhibit P2 memo of charges, alleging that Rs.2,65,673.25 is fixed as liability against the petitioner with respect to the incident which occurred between 1997 and 2000 resulting in the suspension at Exhibit P1. The petitioner filed an application for examination of the records during the said period, which, according to the petitioner, was not available and for the said purpose, the petitioner has produced Exhibits P3(a) and P3(b), internal communications of the Corporation.

5. Though the respondent-Corporation has contended in the counter affidavit that an opportunity for hearing was granted to the petitioner and that the records were perused at the time of quantification, pursuant to Exhibit P2, the same is denied by the petitioner. Further, a reading of Exhibit P6 issued by the Head Office also goes against the specific statement in the counter affidavit and categorically states that no records are available. After affording an opportunity for hearing, the petitioner is said to have been issued with Exhibit P9 order, by which a liability of Rs.2,65,673.25 has been imposed on her.

6. The learned counsel appearing for the respondent-Corporation would rely on the provisions in the Kerala State Civil Supplies Corporation Helpers Service Rules, 1978 [for brevity "Service Rules of 1978"] to uphold the recovery effected. The specific contention of the learned Standing Counsel for the Corporation is that what is contemplated before imposition of punishment of recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach or orders or otherwise, which is shown as

a “minor penalty” under clause (d) of Rule 16(i) of the Service Rules of 1978, is a hearing and nothing more.

7. Rule 16 needs to be extracted to understand the contention of the respondent-Corporation:

“16. Disciplinary Action:

i) Any member of the establishment for good and sufficient reasons may be punished by imposing any of the following penalties, by the appointing authority.

Minor Penalties

- a) Censure
- b) Fine
- c) Withholding of increments with or without cumulative effect.
- d) Recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders or otherwise.
(Amended in the Board meeting on 29.8.86
Agenda No.7)

Major Penalties:

- e) Withholding of Promotion.
 - f) Dismissal from service.
- ii) No kind of punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against and he has been afforded an opportunity including a personal hearing if so demanded, to defend himself. No major penalty shall be imposed without holding a domestic enquiry. Every order awarding punishment shall

be communicated to the employee concerned in writing stating the grounds on which the punishment has been awarded.

iii) The disciplinary Authority for Helpers will be the Regional Manager concerned or the Managers in the Head Office and the Appellate Authority will be General Manager/Additional General Manager or Secretary. The Managing Director may review any disciplinary action at any stage and pass orders which will be final. The Disciplinary Authority will have powers to award all penalties except that of dismissal which will be awarded in consultation with the Managing Director. They will also have powers to keep the Helpers under suspension (Amended in the Board Meeting on 29.3.1986 Agenda No.7)".

8. A reading of the above Rule would indicate that no punishment could be awarded unless the specific allegation is informed in writing and an opportunity "**including** a personal hearing if so demanded", is afforded to defend the charges. It cannot at all be said that on a mere opportunity for personal hearing an employee could be mulcted with such liability. An opportunity to defend, definitely includes a proper proceeding to be conducted by the authority or by any other person authorised to so impose the penalty, giving full opportunity to peruse the documents and file objections and so on and so forth. Admittedly there is no such proceeding initiated and merely

after an alleged hearing the petitioner has been mulcted with the above liability.

9. It cannot at all be said that the Service Rules of 1978 sanction such imposition of penalty on a mere hearing given to the petitioner. A proper proceeding would necessarily indicate even examination of witnesses on the management side to prove the misappropriation; which could only find the liability on the delinquent, as alleged against the petitioner. Definitely when a punishment of recovery from pay of any pecuniary loss caused to the Corporation, even though a “minor penalty” as per the Rules, is intended to be imposed, there should also be proper quantification of such liability.

10. In the present case, the quantification has been an unilateral affair, without any opportunity to properly defend the allegations being offered to the petitioner. Further, it is to be noticed that the petitioner was proceed against long after retirement, that too about a decade, after the alleged incident. A reading of the memo of charges dated 22.01.2011, produced as Exhibit P2, would indicate that the allegations were between

15.01.1997 to 10.04.1997, 16.05.1997 to 02.01.1998 and 01.04.2000 to 24.07.2000.

11. Though the suspension was ordered by Exhibit P1 in 2000 itself pending enquiry, no proceedings were initiated. Subsequently, the petitioner was reinstated in the year 2002 and even after that she continued for about eight years in the Corporation; when the Corporation did not think it fit to initiate any departmental enquiry against the petitioner. The contention of the respondent-Corporation is that the same was not initiated since Exhibit R1 Government Order would indicate that no parallel proceedings could be initiated. Exhibit R1 is confined to the Government and also when a Vigilance Enquiry is initiated. There is nothing to indicate that there has been a Vigilance Enquiry initiated; nor that the Government Order at Exhibit R1, is adopted by the respondent-Corporation. Further, the contention of registration of a First Information Report would not in any manner interdict a parallel proceeding, since the criminal liability of an employee by reason of any misconduct alleged against the employee would be independent of the

departmental proceedings and the conclusion or result of either of it could affect the other. Different rules apply and evidence required is also of a different nature.

12. It is also to be noticed that Rule 16, as is extracted hereinabove, deals with disciplinary action against “any member of the establishment” and lists out the minor and major penalties that could be imposed. Admittedly the petitioner was not a member of the establishment after she retired. There is also no order indicated, of any proceedings initiated prior to her retirement, by which the petitioner was either communicated of a pending proceeding or her retirement made subject to such proceedings.

13. For all the above reasoning, it is found that Exhibit P9 cannot be sustained and the same is set aside. The suspension period also shall stand regularised and the same shall be reckoned as service for the purpose of computing the retirement benefits. However, no monetary benefits during the suspension period, except subsistence allowance, will be given, since the the petitioner has not chosen to challenge the same at

the appropriate time. Admittedly the petitioner's suspension was revoked in the year 2002 and thereafter she continued for about 8 years in the respondent-Corporation. Since this Court has directed regularisation of service, necessarily the petitioner is entitled to any revision of pay implemented in the respondent-Corporation reckoning that period also as service.

14. The retirement benefits due to the petitioner shall be paid within a period of five months from the date of receipt of a certified copy of this judgment, failing which the petitioner shall be entitled to 6% interest, on such dues from the date of expiry of one month from retirement. If any interest is mulcted on the Corporation, then on payment of the same the Corporation shall recover the same from such officer/officers of the Corporation who caused the delay.

The writ petition is allowed. No costs.

vku/-

Sd/-
K.Vinod Chandran
Judge.

[true copy]