

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 16680 of 2013 (H)

PETITIONER:

**T.S.BYJU, ASSISTANT ENGINEER, KERALA WATER AUTHORITY,
OFFICE OF THE CHIEF ENGINEER (CR), KOCHI - 682 011.**

**BY ADVS.SRI.B.RADHAKRISHNA PILLAI
SMT.S.AMBIKA DEVI**

RESPONDENTS:

- 1. KERALA WATER AUTHORITY, REPRESENTED BY ITS MANAGING DIRECTOR,
JALA BHAVAN, VELLAYAMBALAM, THIRUVANANTHAPURAM-695033.**
- 2. ACCOUNTS MEMBER, KERALA WATER AUTHORITY, JALA BHAVAN,
THIRUVANANTHAPURAM - 695 033.**
- 3. CHIEF ENGINEER (CR), KERALA WATER AUTHORITY, KOCHI-682 011.**
- 4. EXECUTIVE ENGINEER, W.S.DIVISION, KERALA WATER AUTHORITY,
KOCHI - 682 018.**
- 5. ASSISTANT EXECUTIVE ENGINEER, W.S.SUB DIVISION, THIRIPUNITHURA,
KOCHI - 682 031.**
- 6. ASSISTANT EXECUTIVE ENGINEER, S.V.SUB DIVISION, JALA BHAVAN,
THIRUVANANTHAPURAM - 695 033.**

R1-R5 BY ADV. SRI.GEORGE MATHEW, SC, KERALA WATER AUTHORITY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:- THE TRUE COPY OF THE INCUMBENCY DETAILS OF ASSISTANT ENGINEERS ISSUED BY THE 5TH RESPONDENT
- EXT.P2:- THE TRUE COPY OF THE LIST OF MARKLIST HANDED OVER BY THE PETITIONER AND TAKEN CHARGE BY MR.CHERIAN CHACKO , THE SUCCESSOR IN OFFICE, IN WATER SUPPLY SECTION NO I, THIRIPUNITHURA
- EXT.P3:- THE TRUE PHOTOCOPY OF LETTER NO A1-634/09 DTD 4/8/2010 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER
- EXT.P3(A):- THE TRUE PHOTOCOPY OF THE LETTER NO KWA/HO/IA.II/II/2004 DTD 24/6/2010 FROM THE 2ND RESPONDENT TO THE 4TH RESPONDENT
- EXT.P3(B):- THE TRUE PHOTOCOPY OF PAGE NO 18/50 , PROBABLY THE RELEVANT PAGE OF ORIGINAL S V REPORT OF THE 6TH RESPONDENT REGARDING THE PETITIONER
- EXT.P4:- THE TRUE PHOTOCOPY OF THE REPRESENTATION DTD 4/10/2010
- EXT.P5:- THE TRUE COPY OF THE REPRESENTATION DTD 27/2/2013 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT
- EXT.P6:- THE TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER TO THE PUBLIC INFORMATION OFFICER, UNDER THE 4TH RESPONDENT DTD 25/4/2013
- EXT.P6(A):- THE TRUE PHOTOCOPY OF THE REPLY FURNISHED TO THE PETITIONER BY THE PUBLIC INFORMATION OFFICER, UNDER THE 4TH RESPONDENT DTD 10/5/2013
- EXT.P7:- THE TRUE PHOTOCOPY OF LETTER NO A3-634/09 VOLUME II DTD 1/4/2013 ISSUED BY THE 4TH RESPONDENT TO THE 3RD RESPONDENT
- EXT.P7(A):- TRUE PHOTOCOPY OF LETTER UNDER REFERENCE IE LETTER NO.KWA/HO/IA II/8212/08 DATED 12.11.2012 OF THE 2ND RESPONDENT TO THE 4TH RESPONDENT
- EXT.P7(B):- THE TRUE PHOTOCOPY OF THE RELEVANT PAGES 20 AND 21 OF THE RE-EXAMINATION REPORT OF S V WITH THE REMARKS OF 6TH RESPONDENT REGARDING THE PETITIONER
- EXT.P8:- THE TRUE PHOTOCOPY OF PAGE NO 11 AND 12 AND TABLE 1 OF THE ORIGINAL S V REPORT OF THE 6TH RESPONDENT IN RESPECT OF SECTION 1, THIRIPUNITHURA

- EXT.P9:- THE TRUE PHOTOCOPY OF THE LIST OF MATERIALS AS ON 30/6/2008 SHOWN BY THE ASSISTANT ENGINEER, MR.RATHEESHKUMAR TO THE S V TEAM IE,THE 6TH RESPONDENT
- EXT.P10:- THE TRUE COPY OF THE LIST OF MATERIALS AS ON 12/5/2003 SHOWN BY THE PETITIONER TO THE 6TH RESPONDENT
- EXT.P11:- THE TRUE PHOTOCOPY OF THE LIST OF METERIALS AS ON 20/10/2008 HANDED OVER BY CHERIAN CHACKO AND TAKEN CHARGE BY RATHEESHKUMAR, ASSISTANT ENGINEER, W.S.SECTION 1, TRIPUNITHURA
- EXT.P12:- THE TRUE PHOTOCOPY OF THE LIST OF MATERIALS, REGISTERS , FILES TOOLS AND PLANTS, M BOOKS ETC HANDED OVER TO TR AJITHKUMAR BY THE PETITIONER
- EXT.P13:- TRUE PHOTOCOPY OF THE LIST OF REGISTERS AND FILES HANDED OVER BY THE PETITIONER TO CHERIAN CHACKO RELATING TO SECTION NO.I THRIpunithura
- EXT.P14:- TRUE PHOTOCOPY OF AI.526/04 DATED 25.11.09 OF THE 5TH RESPONDENT TO THE 4TH RESPONDENT

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 16680 of 2013 (H)

Dated this the 1st day of October, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P7, based on Exts.P7(a) and P7(b), fixing a liability of Rs.4,83,535/- and barring of two increments of the petitioner; who was an Assistant Engineer, with the Board.

2. The petitioner, admittedly, has retired on 30.09.2015. The entire controversy arose with a stock verification conducted on 30.06.2008 at Thripunithura Sub Division, wherein, for a period, the petitioner was holding charge in one of the Sections. In Thripunithura, there are two Water Supply Sections, I and II, of which the petitioner was the Assistant Engineer of Section No.1 between 22.11.2002 and 23.6.2005. During the said period he had also held additional charge of Section No.II between 1.5.2003 to 30.01.2004, 20.2.2004 to 17.8.2004 and 22.12.2004 to 31.1.2005. The petitioner, on moving out of

Section No.1 permanently, had, in fact, handed over charge to the incumbent Assistant Engineer, which is revealed at Ext.P2 as well as Ext.P13.

3. It is to be noticed that the stock verification for the period 5/2003 to 25.6.2008 occurred on 30.06.2008, after more than three years from the date on which the petitioner left Water Supply Section No.1 in Thripunithura. The petitioner was not issued any notice with respect to any discrepancy in the stock verification and was for the first time issued with Ext.P3 on 04.08.2010, when the petitioner was informed that liability is fixed by the Accounts Member for the period of incumbency under the Division and was requested to remit the amount to the Division. The petitioner was also supplied with Exts.P3(a) and P3(b) wherein the Accounts Member had informed such fixation of liability to the Executive Engineer, Water Supplies Division, Kerala Water Authority, Kochi, who is in charge of Thripunithura.

4. The various officers, holding charge of the two Divisions, during the period to which the stock verification related, were fixed with different amounts of liability. The petitioner, as is seen from Ext.P3(a), was initially fixed with a liability of Rs.12,61,480/75. The petitioner, immediately on receipt of Ext.P3 with the enclosures Exts.P3(a) and P3 (b), made a representation at Ext.P4 on 4.10.2010 to the Accounts Member, the 2nd respondent herein, contending that the nature of liability is not properly mentioned nor the criteria adopted revealed in the Order. It was also specifically contended that at no time, before the liability was fixed, the petitioner was informed of the said liability. The respondents did nothing after that and the petitioner, again, by Ext.P5 reiterated the contentions in Ext.P4 and sought for being absolved of the liability fixed. The respondents did not respond to either of the said objections filed before the competent authority.

5. The petitioner then by Ext.P6 dated 25.4.2013, under the Right to Information Act, sought for the documents which had eventually led to such liability being fixed. The petitioner's liability, as is revealed in Ext.P6(a), was said to be during the period when he had charge of the 1st Section and also additional charge of the 2nd Section. The Board without replying to the queries made and without considering the objections, again by Ext.P7(a) intimated the Executive Engineer that the liability has been fixed at Rs.4,83,535/- and a punishment of barring of two increments was also imposed on the petitioner. Ext.P7(a) communication of the Accounts Member to the Executive Engineer indicated a physical verification of materials having been conducted by the Accounts Member at the time of inspection.

6. The petitioner contends that the entire proceedings have been carried out in total violation of principles of natural justice and without any notice to the

petitioner and without, at all, participating him in the enquiry at the first stage, or at least at the second stage, when his objections against the fixation of liability was before the Accounts Member.

7. The learned Standing Counsel for the respondent Authority labours to justify the orders passed, on the ground that there was absolutely no maintenance of records in the Sections and that led to the findings of the Accounts Member, which clearly found loss having been caused to the Board and the same fixed as liability on the successive incumbents in charge of the two Sections at Thripunithura.

8. The impugned order, in fact, fixes a liability on the petitioner coming to Rs.4,83,535/- and also imposes a punishment. It is to be emphasised that the same is in total violation of principles of natural justice. The petitioner, at the time of inspection, was not the person in-charge of the Section. If at all, an inspection was conducted and discrepancies were noticed with respect to the materials,

that too, by reason of non-maintenance of registers, then the successive incumbents should have been put to notice of the same. Pertinent is also the contention raised by the petitioner that the stock-registers alone were taken note of, to find the shortfall of materials and none of the works carried out during the period was taken into account. It is significant that the petitioner could have pointed out the works carried out during the period from the records available with the Section and that would have indicated the materials employed in such work, which definitely would reduce the shortfall. A reading of Ext.P8, a table of physical verification of materials and the shortage arrived at, would indicate that the quantity available on 12.5.2003, as indicated in the stock-register, was taken as the basis and the physical stock available on 30.6.2008 compared with that. The finding was that the materials indicated in the stock-register in 2003 was not available on physical verification of the stock in 2008. In fact, there is no

recording of the stock available on 30.6.2008 nor was the works carried on between the period looked into, which could have definitely explained the reason for the materials being not found on physical verification. This Court is inclined to opine that the entire liability fixed is on extraneous considerations and fictitious.

9. In addition to that, what assumes significance is the total violation of principles of natural justice, as was noticed earlier. After the inspection, when shortfall was noticed, definitely the petitioner who was to be mulcted with the liability, ought to have been issued with a notice. Nothing was done thereon. Though the inspection is said to have been conducted on 30.6.2008, the first communication with respect to the liability was by Ext.P3 dated 4.8.2010. Subsequently, the petitioner on his own, raised an objection at Ext.P4 and reiterated it at Ext.P5. The respondents failed to respond to any of these communications, nor was the petitioner intimated of the

consideration of the objections or heard on that count. The petitioner was then, after three years, issued with Ext.P7 reducing the liability to Rs.4,83,535/-. This Court is unable to sustain such fixation of liability.

10. In the normal course, this Court would have referred back the proceedings to the authority, who has to re-commence proceedings from the stage at which such defect occurred. However, it is to be noticed that the petitioner had retired on 30.09.2015, the discrepancies noticed also relate to a date prior to 23.06.2005. Admittedly, going by Ext.P1, the petitioner was transferred out of Thripunithura Section on 23.06.2005. The Board had dragged its feet insofar as conducting the enquiry and had conducted it without any compliance of the normal rules and principles which govern such enquiry and fixation of liability. The petitioner had been mulcted with monetary liability and had also been imposed with a punishment, all without any hearing afforded to him. The entire exercise is

vitiated by arbitrariness. The capricious manner of fixation of liability; that too, without any notice, coupled with the inordinate delay in finalisation; warrant that the petitioner be totally exonerated of the liability and the punishment too has to be set aside. There is absolutely no basis on which the proceedings could be sustained. The long passage of time would also disable the petitioner from effectively defending the proceedings, if allowed to be resumed. This Court finds on facts that there would be absolutely no purpose in remanding the proceedings, especially since the entire proceedings relate to the period prior to 2005, i.e., 10 years back.

11. In such circumstance, Exts.P3, P3(a), P3(b), P7, P7(a), P7(b) and P8 would stand set aside insofar as it relates to the petitioner. The petitioner would be entitled to the entire retirement benefits and the pension papers would be processed expeditiously, ensuring that the same is despatched from the Office from which the petitioner

superannuated, within three months from the date of production of the certified copy of the judgment. The petitioner would also be entitled to any arrears of pay due by reason of the restoration of increments, which is a natural consequence of the punishment of barring of two increments being set aside. The proceedings shall stand cancelled and the pension shall be disbursed and the retirement benefits paid at any rate within three months from the date of receipt of the certified copy of this judgment.

Writ Petition allowed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE