

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 22941 of 2012 (P)

PETITIONER(S):

**C.V.SETHUMADHAVAN, AGED 56 YEARS,
S/O. LATE C.M.KUTTATHARAKAN,
'SRILAKSHMI', VADAKKANGADI HOUSE, SOUTH NADA,
ANGADIPPURAM P.O., PERINTHALMANNA TALUK,
MALAPPURAM DISTRICTPIN- 679 321.**

**BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR**

RESPONDENT(S):

- 1. THE SECRETARY,
KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM - 695 004.**
- 2. CHIEF ENGINEER (HRM),
KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM - 695 004.**

BY ADV. SRI.K.S.ANIL, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 22941 of 2012 (P)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT-P1 - TRUE COPY OF THE REPRESENTATION DATED 28-7-2011 SUBMITTED
BY PETITIONER BEFORE THE 2ND RESPONDENT

EXHIBIT-P2 - TRUE COPY OF THE ORDER DATED 5.5.2012 ISSUED BY THE
2ND RESPONDENT

EXHIBIT-P3 - TRUE COPY OF THE ORDER DATED 24.12.2011 ISSUED BY THE
1ST RESPONDENT.

EXHIBIT-P4: TRUE COPY OF THE ORDER DATED 23.7.2013 ISSUED BY THE
2ND RESPONDENT.

EXHIBIT-P5: TRUE COPY OF THE ORDER DATED 25.7.2003 ISSUED BY THE
1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22941 of 2012

Dated this the 8th day of January, 2015

J U D G M E N T

The petitioner, a former employee of the respondent Board, who demitted his office on 30.11.2010 while holding the post of Assistant Executive Engineer (Electrical), has approached this Court for a direction to the respondent Board to disburse the statutory pension, DCRG, commutation of pension, pay revision arrears, family pension and leave surrender benefits.

2. The petitioner alleges that even though he demitted his office on 30.11.2010, he is getting only a minimum pension of ₹2,400/-. According to the petitioner, in a trap case, the Vigilance registered a case against the petitioner alleging that he had accepted bribe from one Ubaid. The petitioner alleges that he is having 32 years of service and the said case was registered just 87 days before his retirement. According to him, he is in financial

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crisis; and he has to meet his treatment expenses, educational expenses of his son, who is studying for B.Tech, and has to maintain his unmarried daughter. It is with this background, the petitioner has come up before this Court.

3. In the statement filed by the respondent Board, they are harping upon the vigilance case now pending against the petitioner. It was argued that as per G.O.(P) No.803/2002/Fin dated 30.12.2002, the pensionary benefits of employees, against whom cases are pending before judiciary, can be finally settled only after the disposal of cases.

4. Arguments have been heard.

5. This Court, as per interim order dated 18.12.2012, directed the respondent Board to release the provisional pension and the pay revision arrears due to the petitioner as per Ext.P3 at the earliest. The learned counsel for the petitioner submits that the same has been paid.

6. Evidently, and admittedly too, the petitioner demitted his office on 30.11.2010 while he was holding the post of Asst. Executive Engineer (Electrical). The pensionary benefits have been withheld on the ground that a vigilance case is pending against him. As per Rule 3 Part III of KSR, the petitioner is not entitled to get gratuity or death-cum-retirement-gratuity as a vigilance case is pending against him. However, there is no provision under the Rule for withholding of surrender value of earned leave. After the retirement of the petitioner, he has submitted a representation before the 2nd respondent for the disbursement of surrender value of earned leave. However, as per Ext.P4 order dated 23.07.2013, his representation has been rejected by the 2nd respondent.

7. A Division Bench of this Court in **Kerala State Electricity Board, Thiruvananthapuram & Another vs. K. Kesavan** [2014 (3) KHC 167] observed that to take away part or full of pension or gratuity or even leave

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encashment without any statutory provision and under the umbrage of administrative instructions, cannot be countenanced.

8. In the petitioner's case, the surrender value of earned leave has been withheld on the basis of Ext.P4 order and not on the basis of any statutory provision. The administrative instructions cannot supplement the rule; and therefore, Ext.P4 is per se illegal and arbitrary.

On a consideration of the entire materials now placed on board, this writ petition is disposed of directing the 2nd respondent to disburse DCRG and the surrender value of earned leave of the petitioner within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE

bka/-