

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 26839 of 2008 (T)

PETITIONER(S):

**P.NARAYANAN
'ANJALI', POST NILAMBUR
NEAR FOREST OFFICE COMPOUND, NILAMBUR
MALAPPURAM DISTRICT.**

BY ADV. SRI.BENOY K.KADAVAN

RESPONDENT(S):

- 1. THE CHIEF ENGINEER(HRM), K.S.E.B., AND
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN
PATTOM, THIRUVANANTHAPURAM.**
- 2. THE CHAIRMAN,
KERLAL STATE ELECTRICITY BOARD, THIRUVANANTHAPURAM**
- 3. THE STATE OF KERALA REP. BY IS SECRETARY
DEPARTMENT OF POWER, SECRETARIAT, THIRUVANANTHAPURAM.**

**R,R1,2 BY ADV. SRI.K.S.ANIL, SC, KSEB
R,R1 & R2 BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB
R1,R2 BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB
R3 BY ADV. GOVERNMENT PLEADER SRI. T.R. RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE MEMO OF THE CHARGES ISSUED TO THE PETITIONER BY THE DY. CHIEF ENGINEER, ELECTRICAL CIRCLE, MANJERI DTD. 27.10.97
- EXT.P2 COPY OF THE REPLY DTD. 17.11.97 SUBMITTED BY THE PETITIONER TO EXT.P1 CHARGE MEMO
- EXT.P3 COPY OF THE SHOW CAUSE NOTICE DTD. 5.10.06 ISSUED BY THE CHIEF ENGINEER (HRM)
- EXT.P4 COPY OF THE REPLY DTD. 26.10.06 SUBMITTED BY THE PETITIONER TO EXT.P3 SHOW CAUSE
- EXT.P5 COPY OF THE ORDER OF THE CHIEF ENGINEER (HRM) DTD. 4.9.07
- EXT.P6 COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE CHIEF ENGINEER AGAINST EXT.P5 ORDER ALONG WITH A STAY PETITION DTD. 9.10.07
- EXT.P7 COPY OF THE ORDER DTD. 19.4.08 PASSED BY THE CHAIRMAN OVER EXT.P6 APPEAL
- EXT.P8 COPY OF THE REPORT OF THE EXECUTIVE ENGINEER DTD. 17.9.96
- EXT.P9 COPY OF THE LETTER SUBMITTED BY THE ELECTRICAL INSPECTOR, MALAPPURAM.
- EXT.P10 COPY OF THE LETTER SUBMITTED BY K.M. SREERAJAN, SUB ENGINEER TO THE DEPUTY CHIEF ENGINEER DTD. 11.11.97
- EXT.P11 COPY OF THE PROCEEDINGS OF THE CHAIRMAN DTD. 24.3.08

RESPONDENTS EXHIBITS:

NIL

// TRUE COPY //

PA TO JUDGE

SB

K. VINOD CHANDRAN, J.

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Dated this the 6th day of November, 2015

J U D G M E N T

None appeared for the petitioner. The petitioner, a retired employee of the Kerala State Electricity Board, challenges Ext.P5 order, by which the petitioner was imposed with a punishment of barring of one increment for six months without cumulative effect and recovery of 60% of the compensation awarded by a Subordinate Court with interest thereon.

2. This is a classic case, in which lethargy of the officers of the Board has resulted in the Court striking down the award of punishment and the attempt to recover the loss caused by reason of the negligence of the officers of the Board. An accident is said to have occurred on 21.05.1996, due to electrocution, in which one P.S. John Palankara met with his death. The electrocution is said to have occurred through a

power line drawn by the Electricity Board. The legal heirs of the deceased persons filed O.S No. 39 of 2000 before the Subordinate Court Manjeri claiming compensation, which decreed the suit and awarded a compensation of Rs.2,45,000/- with interest from the date of death. The decree was on 12.08.2004.

3. The Board filed an appeal from the above decree and judgment of the Subordinate Court in R.F.A No. 321 of 2006 before this Court. Though the delay occurred as such is not disclosed from the judgment of R.F.A No. 321 of 2006, it is evident that the appeal was dismissed for reason of the application for condonation of delay having been rejected.

4. In any event, immediately after the accident, a memo of charges was issued against the petitioner, who was holding the charge of Assistant Engineer, Electrical Major Section, Nilambur, in whose jurisdiction, the electrocution occurred. The electrocution was alleged to be by reason of lack

of supervision by the petitioner in the drawing of an 11 KV line. The enquiry initiated in the year 1997 is said to have culminated in a show cause notice on 05.10.2006, produced at Ext.P3, wherein the petitioner was asked to explain as to why a major punishment of barring of last three increments with cumulative effect and recovery of 60% of the compensation shall not be imposed on the petitioner.

5. The petitioner had filed an explanation as is indicated at Ext.P4, finding which to be unsatisfactory, the Board issued Ext.P5 order, wherein a punishment of barring of one increment for six months without cumulative effect and recovery of 60% of the compensation awarded with interest thereon was mulcted on the petitioner. By that time, the petitioner had retired on 31.05.2003.

6. The issue with respect to imposition of punishment after retirement of an employee is covered by the judgment of this Court in W.P.(C) No. 29208 of 2005, dated 28.08.2008,

paragraph 3 of which is extracted hereunder:-

“The imposition of punishment of three increments after retirement and recovery of monetary value of those increments in view of retirement is impermissible under law. It is seen that an amount of Rs.13,132/- has been recovered from the petitioner by way of excess payment during the period 4/90 to 12/97 due to wrong fixation. It is also to be seen that petitioner was in service upto 2001 and there was no recovery. Even after three years also, there is no recovery. Therefore, recovery of such amounts paid during a period of four years prior to retirement is impermissible under Rule 3 Part III of Kerala Service Rules. Therefore, recovery made under those two heads is impermissible”.

Hence, there can be no punishment imposed after retirement and the monetary value of the punishment cannot also be deducted from the D.C.R.G even going by the provisions of the Kerala Service Rules (K.S.R).

7. The further contention of the petitioner is against the recovery ordered. The learned Standing Counsel for the respondent Board submits that recovery in any event is permitted by Rule 3 of Part III of K.S.R, which is adopted to the Board and its employees are regulated by the same. Even with

respect to such recovery, the liabilities as per Note 3 to Rule 3 K.S.R and intimated to him before retirement, if possible, and if or after retirement within a period of three years of becoming a pensioner. Herein, it is to be noticed that the enquiry itself commenced in the year 1997. The date of the enquiry report is not clear. But show cause notice with respect to the punishment and the findings in the enquiry were issued in the year 2006, by which time, the decree of the Civil Court allowing the claim to the legal heirs of the deceased had been passed on 12.08.2004.

8. It is pertinent that no separate decision for quantification of the liability was taken against the petitioner. The disciplinary authority on receipt of the enquiry report merely issued a show cause notice proposing a punishment of imposition on major penalty and also recovery of the amounts, which the Board had paid in satisfaction of the decree. In fact a separate proceeding for quantification of the amounts should have been taken. Even without going into that, it is to be

noticed that the petitioner retired on 31.05.2003 and the judgment of the Civil Court came on 12.08.2004. As was noticed earlier, the appeal filed was grossly delayed, which led to the dismissal of the appeal itself. After about two years from the date of passing of the decree, a show cause notice was issued on the basis of the independent departmental enquiry; seeking recovery of 60% of the compensation awarded. The show cause notice at Ext.P3 itself was on 05.10.2006, three years after the date of retirement of the petitioner. Hence even going by the K.S.R, the petitioner could not have been mulcted with the liability and no recovery could be effected.

9. For all the above reasons, the order at Ext.P5 cannot be sustained. While setting aside Ext.P5, this Court cannot but express its anxiety insofar as the public authority being mulcted with such liability, when evidently the accident which gave rise to the claim for compensation, was due to the negligence of the officers of the Board. In the present case, it is

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seen that the Board was further negligent in filing the appeal from the award of compensation and had also dragged its feet insofar as not concluding the enquiry against the negligent officer, within a reasonable time.

The writ petition hence would stand allowed with the above observations.

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

SB/06/11/2015

// true copy //

P.A to Judge.