

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 36262 of 2005 (P)

PETITIONER(S):

**C.S. PEETHAMBARAN, S/O. SANKARAN NAIR,
AGED 55 YEARS, RESIDING AT KORATTIYEDATH HOUSE
ALAGAPPA NAGAR, THRISSUR.**

**BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.SANTHOSH (PODUVAL)**

RESPONDENT(S):

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVAN
THIRUVANANTHAPURAM.**
- 2. THE CHIEF ENGINEER,
(HUMAN RESOURCE MANAGEMENT) KERALA STATE
ELECTRICITY BOARD, THIRUVANANTHAPURAM.**
- 3. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, TRICHUR.**
- 4. THE EXECUTIVE ENGINEER,
ELECTRICAL DIVISION, TRICHUR EAST.**
- 5. GOVERNMENT OF KERALA, REPRESENTED BY
ITS CHIEF SECRETARY, THIRUVANANTHAPURAM.**

R1-R4 BY ADV. SRI.RAJU JOSEPH (SR.), KSEB

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

APPENDIX

PETITIONER'S EXHIBITS:

- P1: COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 31.05.2005
- P2: COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE FOURTH RESPONDENT DATED 17.10.2005
- P3: COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 14.11.2005
- P4: COPY OF THE ORDER FROM THE SECOND RESPONDENT TO THE PETITIONER DATED 18.10.2005
- P5: COPY OF THE JUDGMENT IN OP NO.19564 OF 1997 DATED 22.09.2005 BEFORE THIS HON'BLE COURT
- P6: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 18.11.2005
- P7: COPY OF THE JUDGMENT DATED 10.06.2015 IN CRIMINAL APPEAL NO.972 OF 2005 OF THIS HON'BLE COURT

RESPONDENTS' EXHIBITS:

- R1(A): COPY OF THE STATEMENT OF ALLEGATION NO.EBI/920/98-99 DTD. 23.12.98 ISSUED BY KSEB
- R1(B): COPY OF THE MEMO OF CHARGES NO.EBI/920/98-99 DTD. 23.12.98 ISSUED BY KSEB
- R1(C): COPY OF THE SUSPENSION ORDER DTD. 19.11.98 NO.GB 3/M-18/98 ISSUED BY KSEB
- R1(D): COPY OF THE REINSTATEMENT ORDER NO.GB 3/M-18/98/6140 DTD. 22.02.1999 ISSUED BY KSEB
- R1(E): COPY OF THE ORDER NO.EBI/920/98-99 DTD. 04.01.1999 ISSUED BY KSEB
- R1(F): COPY OF THE ORDER NO.EBI/920/98-99/2005 DTD.15.04.2005 ISSUED BY KSEB
- R1(G): COPY OF THE LETTER NO.VIG.ALL 4629/98/1578 DTD. 08.05.2003

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.36262 of 2005

Dated this the 10th day of August, 2015

JUDGMENT

The petitioner retired from service of the Kerala State Electricity Board while working as Sub Engineer in Electrical Major Section, Mannuthy. He has filed this writ petition seeking a writ of certiorari to quash Ext.P2 show-cause notice dated 17.10.2005 issued by the 4th respondent and also Ext.P4 order passed by the 2nd respondent dated 18.10.2005.

2. Going by the averments in the writ petition, while the petitioner was working as Sub Engineer, a criminal case was registered against him for offences punishable under Sections 7 and 13(1) read with Section 13(2)(d) of the Prevention of Corruption Act, 1988 on the allegation that he had accepted Rs.1,500/- as bribe from one Mr.Sreedharan for giving agricultural connection to his property. On 18.08.1999, crime against the petitioner was registered by the Vigilance and Anti Corruption Bureau, Thrissur. In the background of registration of that crime, the petitioner was suspended from service by

order dated 03.01.2000 issued by the 2nd respondent. Aggrieved by the order of suspension the petitioner had approached this Court in O.P. No.1258/2000 and pursuant to the judgment dated 25.07.2000 in that writ petition he was reinstated in service on 01.08.2000. While continuing as such, he retired from service on 31.05.2005 on attaining the age of retirement which is evident from Ext.P1. At the time of retirement, the disciplinary proceedings initiated against the petitioner was not concluded. Later the petitioner was convicted by judgment dated 31.05.2005 of the Enquiry Commissioner and Special Judge (Vigilance), Thrissur in CC No.9/2001 and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.5,000/- under Section 7 of the Prevention of Corruption Act, and to undergo rigorous imprisonment for one year under Section 13(2) read with 13(1)(d) of the said Act, and another term of rigorous imprisonment for three months under Section 417 of Indian Penal Code. On 17.10.2005, the 4th respondent issued Ext.P2 show-cause notice in the disciplinary proceedings initiated against the petitioner, calling for his written explanation in the matter of punishment proposed to be inflicted. A reading of Ext.P2 show-cause notice would show that the

charges levelled against the petitioner are insubordination to superiors, suspected attempt of misappropriation of Board's money and tarnishing the image of the Board among public. It is alleged in the show-cause notice that the petitioner has accepted Rs.1,500/- as bribe from one Santhosh, S/o Vasu. The said Vasu is the brother of Sreedharan, who was a consumer under the Electrical Section, Mannuthi with consumer No.11142.

3. After detailed departmental enquiry, the Enquiry Officer submitted his report dated 02.08.2005. After examining the report submitted by the Enquiry Officer, the 4th respondent came to the conclusion that the first and second charges levelled against the petitioner stand proved. On the basis of the findings of the Enquiry Officer, the 4th respondent found it necessary to impose the following punishments against the petitioner;

- 1) To realize the cost of additional deposit work amounting to Rs.3701/- and its interest @ 12% per annum for the period from 12/1998 till the date of payment. The reduction shall be made good from the petitioner either in cash or from his eligible DCRG.
- 2) Incremental value for one year without commutative effect shall be recovered from DCRG, since the petitioner had already retired from service.

- 3) The period spend under suspension shall be treated as suspension itself.

By Ext.P2 show-cause notice the petitioner was directed to submit his written explanation within a period of 15 days. The petitioner was also permitted to peruse the relevant records and also to take extracts of the same from the office of the 3rd respondent, if he is desirous to do so. On receipt of Ext.P2 show-cause notice the petitioner submitted Ext.P3 explanation before the 4th respondent specifically denying the findings in the enquiry report.

4. While so, based on the conviction in CC No.9/2001, the 2nd respondent issued Ext.P4 order dated 18.10.2005 whereby the petitioner was dismissed from service with effect from 03.01.2000, the date on which he was placed under suspension. On receipt of Ext.P4 order, the petitioner submitted Ext.P6 representation before the 2nd respondent for taking a lenient view, considering the fact that he is a person with disabilities. It was thereafter, the petitioner has approached this Court in this writ petition seeking a writ of certiorari to quash Exts.P2 and P4 and seeking a writ of mandamus commanding the 2nd respondent to consider Ext.P6 request made by the petitioner within a time

limit to be prescribed by this Court. The petitioner has also sought for a writ of mandamus commanding the respondents to consider him as retired on superannuation on 31.05.2005, as evidenced by Ext.P1, and to grant him pension and all pensionary benefits forthwith.

5. A counter affidavit has been filed on behalf of respondents 1 to 4 contending, inter alia, that Ext.P2 show-cause notice issued by the 4th respondent and Ext.P4 order of punishment imposed by the 2nd respondent are perfectly legal and no interference is warranted. The respondents would point out that even before the petitioner was placed under suspension as per order dated 03.01.2000, based on the recommendations of the Director, Vigilance and Anti-Corruption Bureau, a vigilance case was registered against him on 18.08.1999. He was also placed under suspension for the very same charge by the 3rd respondent on 03.01.2000. Respondents would contend that, as per explanation (a) under Rule 3 Part III KSR, a departmental proceedings shall be deemed to be instituted on the date on which statement of charges is issued to the employee or the pensioner or if the employee has been placed under suspension from an earlier date, on such date. Since the petitioner was

placed under suspension on 03.01.2000, the disciplinary proceedings started on the date of his suspension from service and as such proceedings can be continued even after his retirement.

6. By order dated 06.02.2006, this Court directed the respondents to pass appropriate orders sanctioning provisional pension to the petitioner, within a period of three weeks. The said interim order of this Court was under challenge in WA No.1247/2006, which ended in dismissal by order dated 25.07.2006 in WA No.1247/2006.

7. During the pendency of this writ petition, the petitioner was acquitted in Criminal Appeal No.972/2005 filed before this Court against the conviction and sentence in CC No.9/2001 on the file of the Enquiry Commissioner and Special Judge (Vigilance). A copy of the aforesaid judgment in Criminal appeal 972/2005 is produced as Ext.P7 alongwith IA No.8769/2015 in WPC No.36262/2005.

8. I heard the arguments of the learned counsel for the petitioner and also the learned Senior Counsel appearing for the respondents.

9. The issue that arises for consideration in this writ

petition is as to the legality or otherwise of Ext.P2 show-cause notice issued by the 4th respondent and also Ext.P4 order dated 18.10.2005 of the 2nd respondent.

10. The fact that a criminal case was registered against the petitioner under the provisions of the Prevention of Corruption Act read with Section 417 of the Indian Penal Code is not in dispute. It was in connection with certain misconducts, the petitioner was issued with Ext.P2 show-cause notice of the 4th respondent, to which he submitted Ext.P3 reply. As I have already noticed, Ext.P2 show-cause notice was issued after conducting a departmental enquiry against the petitioner in which the charges levelled against him were found to be proved. On receipt of Ext.P2, the petitioner submitted Ext.P3 reply. But before the respondents could proceed further with Ext.P2, petitioner was convicted in CC No.9/2001 and sentenced to undergo rigorous imprisonment. Therefore, based on the conviction and sentence imposed by the Vigilance Court, the petitioner was dismissed from service vide Ext.P4 order dated 18.10.2005. Now, as evident from Ext.P7, the petitioner has been acquitted in Criminal Appeal No.972/2005, on a finding that, the defence case is quite acceptable that the amount of

Rs.1,500/- was received by the petitioner towards the cost of additional electric post required for giving service connection to the property of PW2. The Appellate Court found that, the evidence of PW2 does not contain anything against the petitioner and in the absence of any evidence proving the essentials of the offence under Section 7 or under Section 13(2) of the Prevention of Corruption Act, the petitioner cannot be convicted and as such he is liable to be acquitted.

11. As I have already noticed, the dismissal of the petitioner from service by Ext.P4 order passed by the 2nd respondent is solely based on his conviction in CC No.9/2001. If that be so, on the petitioner being acquitted by the Appellate Court in Ext.P7 judgment, the punishment of dismissal from service imposed vide Ext.P4 order passed by the 2nd respondent cannot be sustained. In such circumstances, this Court has no option other than to set aside Ext.P4 order passed by the 2nd respondent by which the petitioner was imposed with a punishment of dismissal from service.

12. As far as Ext.P2 show-cause notice issued by the 4th respondent is concerned, it is not in dispute that in respect of the incident which resulted in registration of a criminal case against

the petitioner under the provisions of the Prevention of Corruption Act, departmental enquiry was conducted after appointing an Enquiry Officer, who submitted his report based on which the petitioner was issued with Ext.P2 show-cause notice proposing certain punishment, to which he submitted Ext.P3 reply. In the meantime, the petitioner was dismissed from service vide Ext.P4 order, as a result of which, the 4th respondent could not proceed further with Ext.P2. It is a well known law that, merely for the reason the delinquent employee is acquitted in the criminal case arising out of the very same set of charges, he is not entitled for an automatic exoneration from the charges levelled against him in the departmental proceedings initiated. Since the degree of proof in a criminal case and that in a departmental proceedings are entirely different, a mere acquittal in the criminal case would not entitle the delinquent employee an order of automatic exoneration from the charges levelled against him in the departmental proceedings. If that be so, in view of Ext.P4 order being set aside by this judgment, the 4th respondent will be at liberty to proceed with Ext.P2 show-cause notice and pass appropriate orders thereon, after considering Ext.P3 reply submitted by the petitioner. The process in this

regard shall be completed within a period of one month from the date of receipt of a certified copy of this judgment, with notice to the petitioner and after affording him a reasonable opportunity of being heard. Any order passed by the 4th respondent in this regard should be a reasoned order reflecting consideration of the various contentions raised by the petitioner in Ext.P3 reply. Needless to say that disbursement of the pensionary benefits payable to the petitioner shall be subject to the outcome of the decision that has to be taken by the 4th respondent, as directed above.

Once the proceedings pursuant to Ext.P3 show-cause notice are concluded, as directed above, the competent among respondents 2 to 4 shall take necessary steps to disburse the terminal benefits payable to the petitioner, which shall be done within a period of two months thereafter.

SD/-
ANIL K. NARENDRA,
JUDGE

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