

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 29508 of 2013 (K)

PETITIONER(S):

S.D.JEYAPRASAD
S/O.LATE SUKUMARAN DEVADAS, LUTETIA, CONCORDIA LANE
PEROORKADA.P.O., THIRUVANANTHAPURAM-695 005.

BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.T.K.BIJU (MANJINIKARA)

RESPONDENT(S):

1. GOVERNMENT OF KERALA
REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
DEPT. OF ENVIRONMENT, GOVT. SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. KERALA STATE POLLUTION CONTROL BOARD
PLAMOOD, PATTOM, THIRUVANANTHAPURAM-695 004
REPRESENTED BY ITS MEMBER SECRETARY.

3. CHAIRMAN
KERALA STATE POLLUTION CONTROL BOARD, PLAMOOD, PATTOM
THIRUVANANTHAPURAM-695 004.

ADDL R4. SIMON K FRANCIS, DIRECTOR
M/s.CANON GRANITES PRIVATE LIMITED
PERUMBILAVU P O, KUNNAMKULAM
THRISSUR DISTRICT

(ADDL. R4 IS IMPEADED VIDE I.A.NO.14381 OF 2014 DATED 08.04.2015)

R2 BY ADV. SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD
RADDL 4 BY ADV. SRI.T.C.SURESH MENON
RADDL 4 BY ADV. SRI.P.S.APPU
RADDL 4 BY ADV. SRI.A.R.NIMOD
R BY GOVERNMENT PLEADER: ADV.SMT. M J RAJASREE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXT P1- TRUE COPY OF G.O.[MS]NO.104/2005/H & FWD DATED 16.4.2005 ISSUED BY THE IST RESPONDENT.

EXT P2- TRUE COPY OF THE REPORT BEARING NO.PCB/TSR/CA/85/97 DATED 28.5.2005 SENT BY THE ENVIRONMENTAL ENGINEER, PCB, THRISSUR.

EXT P3- TRUE COPY OF THE MEMO OF CHARGES BEARING NO.11787/A1/08/ENVT. DATED 31.10.2008 ALONG WITH STATEMENT OF ALLEGATIONS ISSUED BY THE IST RESPONDENT.

EXT P4- TRUE COPY OF THE EXPLANATION DATED 10.8.2009 SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT.

EXT P4(A)- TRUE COPY OF G.O.[RT]NO.71/09/ENVT. DATED 31.8.2009 ISSUED BY THE IST RESPONDENT.

EXT P5- TRUE COPY OF THE ORDER GO[MS]NO.03/09/ENVT. DATED 19.9.2009 NOTIFIED IN THE KERALA GAZETTE NO.45 DATED 17.11.2009 BY THE GOVERNMENT.

EXT P6- TRUE COPY OF THE ORDER NO.GO[RT]NO.22/10/ENVT. DATED 24.3.2010 ISSUED BY THE IST RESPONDENT.

EXT P7- TRUE COPY OF THE NOTICE NO.16664/A1/09-ENVT. DATED 27.3.2010 ISSUED BY THE IST RESPONDENT.

EXT P8- TRUE COPY OF THE PROCEEDING NO.16664/A1/09/ENVT. DATED 14.6.2010, ISSUED BY THE IST RESPONDENT.

EXT P8(A)- TRUE COPY OF THE JUDGMENT DATED 9.11.2010 IN WP[C] NO.11235/2010 OF THIS HON'BLE COURT.

EXT P9- TRUE COPY OF THE ORDER DATED 23.11.2010 IN SPECIAL LEAVE TO APPEAL(CIVIL)NOS.32394-32936/2010 OF THE HON'BLE SUPREME COURT OF INDIA.

EXT P10- TRUE COPY OF THE JUDGMENT DATED 8.11.2011 IN W.P[C] NO.25661/2011 OF THIS HON'BLE COURT.

EXT P11- TRUE COPY OF THE ORDER G.O.[RT] NO.119/12/ENVT. DATED 7.8.2012 ISSUED BY THE IST RESPONDENT.

EXT P12- TRUE COPY OF THE ORDER NO.PCB/E2/949/2010 DATED 5.11.2011 ISSUED BY THE 3RD RESPONDENT.

EXT P13- TRUE COPY OF THE REPRESENTATION DATED 2.11.2011 SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT.

EXT P14- TRUE COPY OF THE PROCEEDING DATED 5.11.2012 OF THE GOVERNMENT.

RESPONDENT(S) ' EXHIBITS:

EXT R2(a) : TRUE COPY OF THE LETTER NO.PCB/E2/949/2010 DATED 01.01.2011 SENT BY THE CHAIRMAN, PCB TO THE SECRETARY TO GOVERNMENT, ENVIRONMENT (A) DEPARTMENT

EXT R2(b) : TRUE COPY OF THE LETTER NO.27/A1/11/ENVT DATED 27.10.2011 SENT BY the PRINCIPAL SECRETARY TO GOVERNMENT TO THE CHAIRMAN, PCB

EXT R2(c) : TRUE COPY OF the PROCEEDINGS NO.PCB/E2/949/2010 DATED 05.11.2011

EXT R2(d) : TRUE COPY OF THE LETTER NO. PCB/E2/949/2010 DATED 07.12.2011 SENT BY THE CHAIRMAN, PCB TO THE PRL.SECRETARY TO GOVERNMENT

EXT R2(e) : TRUE COPY OF THE G.O(Rt).NO.119/12/ENVT. DATED 07.08.2012

EXT R2(f) : TRUE COPY OF THE LETTER NO. PCB/E2/949/2010 DATED 26.09.2012 SENT BY THE PCB TO THE PRL.SECRETARY TO GOVERNMENT

EXT R2(g) : TRUE COPY OF THE GOVERNMENT LETTER NO.3410/A1/11/ENVT. DATED 05.11.2012

EXT R2(h) : TRUE COPY OF THE LETTER NO. PCB/E1/5229/05 DATED 05.02.2008 SENT BY THE PCB TO THE SECRETARY TO GOVERNMENT

EXT R2(i) : TRUE COPY OF THE LETTER NO.PCB/E1/5229/05 DATED 07.05.2010 SENT BY THE PCB TO THE SECRETARY TO GOVERNMENT

EXT R2(j) : TRUE COPY OF THE LETTER NO.PCB/E1/817/11 DATED 04.10.2013 SENT BY THE PCB TO THE SECRETARY TO GOVERNMENT

EXT R2(k) : TRUE COPY OF THE LETTER NO.PCB/E1/9362/2012 DATED 21.11.2013 SENT BY the PCB TO THE SECRETARY TO GOVERNMENT

EXT R4(a) : TRUE COPY OF THE ORDER IN SLP(C) .NOS.32934-32936/2010 ON the FILE OF THE SUPREME COURT OF INDIA, NEW DELHI DATED 24.02.2014

EXT R4(b) : TRUE COPY OF THE JUDGMENT IN CONTEMPT CASE (CIVIL) NO.842/2014 ON THE FILE OF THIS HONOURABLE COURT DATED 27.08.2014

EXT R4(c) : TRUE COPY OF THE ORDER G.O.(M.S)NO.10/14/ENVT. ISSUED BY the GOVERNMENT OF KERALA DATED 14.08.2014

True Copy/

P A to Judge

A.MUHAMMED MUSTAQUE, J.
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W.P(C).No.29508 of 2013
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Dated this the 08th day of April, 2015

JUDGMENT

The petitioner entered in the service of Kerala State Pollution Control Board as Assistant Engineer on 28.07.1978. The petitioner thereafter was promoted on higher cadre and finally was appointed as full time Member Secretary of the Kerala State Pollution Control Board on 16.04.2005. While petitioner officiating Member Secretary, he was appointed as Chairman of the Board. The date of superannuation of the petitioner was on 31.03.2010. The petitioner was appointed as Chairman of the Board on 31.08.2009. The petitioner was removed from the post of Chairman as per Government order dated 20.11.2010. Petitioner was able to continue after the superannuation on account of his appointment as Chairman of the Board. The petitioner was terminated in terms of Rule 5(3) of Water (Prevention and Control of Pollution) Act, 1974. Petitioner approached this Court for disbursal of pensionary benefits.

2. In this matter, a third party got impleaded as per I.A.No.14381 of 2014. He points out that at his instance, petitioner along with others were trapped while accepting bribe of

₹15,00,000/-. It is further submitted that petitioner challenged his removal from service as per I.A.No.11235 of 2010 and same was dismissed. It is also submitted that Government has granted permission for him to initiate criminal action against the writ petitioner. The intervener opposed granting terminal benefits to the petitioner.

3. The Board filed a counter affidavit through Member Secretary. In the counter in para 5, it is stated as follows:

“As the petitioners service for the period from 01.04.2010 to 21.11.2010 was not treated as re-employment, he continued to receive the same salary which he was receiving earlier. Hence Government was also addressed to consider the same to fix the salary for the above period vide letter No.PCB/E2/949/10 dated 07.12.2011 which is produced herewith and may be marked as Ext.R2(d)”

It is also stated in the counter, Board has sanctioned provisional pension to the petitioner with effect from 22.11.2010. In the counter affidavit filed by the Board, it would reveal that Board could not pay the pensionary benefits to the petitioner on account of the delay in responding to their request by the Government for treating the period from 01.04.2010 to 21.11.2010.

4. The right to obtain pensionary benefit is a right to property as stated in the judgment of the Supreme Court in **State of Jharghand Vs. Jitendra Kumar Srivastava (2013 (3) KLT 782(SC))**. There is no proceeding concluded against the petitioner for declining pensionary benefits. The criminal case against the petitioner is also not concluded. If any loss is caused to the State or Board on account of payment of terminal benefits, same has to be protected. Therefore, with a liberty to recover the same and without prejudice to the ongoing criminal prosecution, petitioner shall be paid his terminal benefits. The petitioner's claim for reckoning the period from 01.04.2010 can be decided only after obtaining the views of the Government.

In the light of the above, the following directions are issued:

(i) The terminal benefits shall be paid to the petitioner, treating the date of superannuation on 31.03.2010, within a period of two months from the date of receipt of a copy of this judgment.

(ii) The benefit of the period from 01.04.2010 till 20.11.2010 can be reckoned only based on the decision of the Government.

(iii) Government shall take a decision for reckoning the period from 01.04.2010 till 20.11.2010 within a period of four months.

(iv) The payment of terminal benefits will not exculpate the petitioner from any of the criminal charges levelled against him nor will absolve him from any liability to the State or to the Board from proceeding for recovery.

The Writ Petition is disposed of . No costs

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

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