

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

W.P.(C).No.31482 of 2009 (E)

PETITIONER(S):-

K.P. USHA KUMARI,
USHUS, ALANADU PO, PIN - 686651,
KOTTAYAM (DT)

BY ADV. SRI.SEBASTIAN DAVIS.

RESPONDENT(S):-

1. K.S.E. BOARD,
REPRESENTED BY ITS CHAIRMAN,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.
2. THE CHIEF ENGINEER (HRM),
K.S.E.B., PATTOM, THIRUVANANTHAPURAM.
3. EXECUTIVE ENGINEER
ELECTRICAL DIVISION, K.S.E.B., PALA.
4. ACCOUNTS OFFICER, PENSION AUTHORIZATION,
OFFICE OF THE CHIEF ENGINEER (HRM), VYDYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM.

R1 to R4 BY STANDING COUNSEL SRI.PULIKOOL ABUBACKER.

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 SHOW CAUSE NOTICE ISSUED BY THE 2ND RESPONDENT
 TO THE PETITIONER ON 04.02.98.
- EXT.P2 REPLY TO EXT.P1 BY THE PETITIONER DATED 17.03.2008.
- EXT.P3 ORDER OF THE 2ND RESPONDENT DATED 24.01.2009.
- EXT.P4 ORDER DATED 15.06.2009 PASSED BY R1.
- EXT.P5 ORDER DATED 22.9.2009 PASSED BY R4.

RESPONDENT'S EXHIBITS:-

NIL.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.31482 of 2009-E

Dated this the 01st day of October, 2015

JUDGMENT

The petitioner is aggrieved by Exhibits P3, P4 and P5. Exhibit P3 is an order in a disciplinary proceedings initiated prior to the petitioner's retirement, imposing a punishment of barring the last three increments without cumulative effect; which has a retrospective effect since the petitioner had received the said amounts and had retired from service long prior to Exhibit P3 order. Exhibit P4 is an order in appeal, rejecting the same. Exhibit P5 quantified the punishment in monetary terms and deducted the said amounts from the Death-cum-Retirement Gratuity [for brevity "DCRG"] due to the petitioner. Exhibit P3 in addition to the imposition of punishment, also ordered regularisation of the suspension period as Leave Without Allowance [for brevity "LWA"], which was stated to be not liable to be counted for any service benefits.

2. The petitioner, admittedly, was proceeded against for a misconduct which occurred in the year 1997. The petitioner is also said to have been suspended from service between 06.12.1997 and 06.07.1998. Enquiry proceedings were held and the same having not concluded, the petitioner retired from service on 31.01.2008. The petitioner, after retirement, was served with a show cause notice at Exhibit P1, which indicated that the enquiry found the petitioner to be guilty of the misconduct and that the disciplinary authority concurred with the said finding. The petitioner was offered fifteen days time to submit her reply to the proposed punishment; the proposal being barring of three increments with cumulative effect and recovery of Rs.24,301/90 [Rupees twenty four thousand three hundred and one and paise ninety only], computed as the loss sustained to the Board.

3. The petitioner submitted detailed objections as per Exhibit P2, which was found to be unsatisfactory and Exhibit P3 order was passed. By the time Exhibit P3 was passed, the petitioner made good the loss, alleged to be

sustained to the Board. The same is specifically noticed by the disciplinary authority in Exhibit P3. However, the disciplinary authority, despite the fact that the petitioner had retired, went ahead and proceeded to award punishment of barring three increments without cumulative effect and directed the same to be realized from the DCRG/Arrear claims. The petitioner's suspension period though ordered to be regularised as LWA, was directed; not to count for any service benefits.

4. It is to be noticed that the Kerala Service Rules [for brevity "KSR"] is applicable to the Board. Rule 3 of Part III KSR though permitting disciplinary proceedings to be continued after retirement, there can be no recovery except for the loss computed in such disciplinary proceedings. The issue with respect to imposing a punishment 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”.

In such circumstances, there could have been no punishment imposed after retirement and the monetary value of the punishment could not also have been deducted from the DCRG/Arrear claim, even going by the provisions of the KER.

5. The learned Standing Counsel appearing for the Board would specifically point to paragraph 9 of the counter affidavit to sustain the order of deduction, which is extracted hereunder:

“It is submitted that, since the petitioner retired from service, monetary value equivalent to the three increments barred without cumulative effect was adjusted from the DCRG. Therefore the monetary value equivalent of the increment barred amounting to Rs.46,800/- adjusted from the DCRG is in order”.

6. It cannot at all be said that merely because the punishment could be computed monetarily, the same could be recovered from the DCRG especially since the specific provision is for recovery of loss caused and not the monetary computation of any punishment imposed. Further, the loss caused, which was computed as per Exhibit P1 show cause notice, has already been made good by the petitioner.

7. In the above circumstances, this Court is of the opinion that Exhibits P3, P4 and P5 cannot be sustained. The disciplinary authority having directed regularisation of the suspension period, as LWA, ought not to have declined the same to be computed for service benefits. The said issue is also covered by a Division Bench judgment of this Court in W.A.No.1194 of 2010 dated 07.10.2010, wherein identical issue was considered and it was held that, having regularised the period of suspension, the authority could not hold that the period of suspension would not be counted for any purpose. Both the judgments above referred were against the respondent-Board and the Board cannot take any different

stand. In such circumstance, while upholding Exhibit P3 only with respect to the regularisation of the suspension period of the petitioner, the punishment imposed as also the rider that the period of LWA would not be counted for service benefits are set aside. Exhibits P4 and P5 would also stand set aside.

The writ petition is allowed. The petitioner shall be paid the entire DCRG with 6% interest. The petitioner shall also be entitled to approach the authority to compute the period spent on suspension, regularised as LWA, to be treated as service and the petitioner's retirement benefits shall be revised in accordance with that. The entire amounts shall be paid within a period of three months from today. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]