

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYASHTA, 1937

WP(C).No.31060 of 2012 (F)

PETITIONER:

**P.A.THANKAPPAN,PALLIKUDIYIL HOUSE,
S/O.AYYAPPAN,AGED 61 YEARS,VADATTUPARA P.O.
ERNAKULAM DISTRICT,PIN-686691.**

**BY ADVS.SRI.BIJU MARTIN
SRI.M.M.SALIM**

RESPONDENT'S:

- 1. THE TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY,
NANDANCODE,THIRUVANANTHAPURAM.**
- 2. DEVASWOM COMMISSIONER,
TRAVENCORE DEVASWOM BOARD,
NANDANCODE,THIRUVANANTHAPURAM.**
- 3. DEPUTY DEVASWOM COMMISSIONER,
TRAVENCORE DEVASWOM BOARD,HARIPPAD.**
- 4. ASSISTANT DEVASWOM COMMISSIONER,
TRAVENCORE DEVASWOM BOARD,
MAVELIKKARA GROUP.**
- 5. SUB GROUP OFFICER,EVOOR SREEKRISHNA TEMPLE,
SUB GROUP EVOOR.**

BY ADV.SRI.D.SREEKUMAR, SC, TDB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31.3.2015 THE COURT ON 26-05-2015, DELIVERED THE FOLLOWING:**

pk

W.P(C) NO.31060/2012

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE LEAVE APPLICATION SUBMITTED BY THE
PETITIONER DATED 30.4.2004.

EXT.P2:TRUE COPY OF THE SUSPENSION ORDER ISSUED BY THE 3RD
RESPONDENT DATED 2.10.2004.

EXT.P3:TRUE COPY OF THE COVERING LETTER ISSUED BY THE 4TH
RESPONDENT DATED 10.11.2004.

EXT.P4:TRUE COPY OF THE ORDER ROC NO.3/10P & S DATED 22.10.2010.

EXT.P5:TRUE COPY OF THE JUDGMENT IN W.P(C) NO.4319/2011
DATED 10.2.2011.

EXT.P6:TRUE COPY OF THE ORDER NO.R.O.C.1744/2011 MIS 2 DATED 8.4.2011.

EXT.P7:REPRESENTATION FILED BY THE PETITIONER DATED 5.12.2011.

EXT.P8:TRUE COPY OF THE PAPER REPORT PUBLISHED IN MALAYALA
MANORAMA DAILY DATED 9.10.2010.

EXT.P9:TRUE COPY OF THE ORDER NO.R.O.C1744/2011 MIS.2 DATED 30.7.2012.

EXT.P10:TRUE COPY OF THE JUDGMENT IN W.A. NO.1878/2006 DATED 10.6.2011.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.31060 of 2012

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Dated this the 26th day of May, 2015

JUDGMENT

Ext.P9 order passed by the first respondent by which, Ext.P7 representation for granting pension to the petitioner treating the period of suspension as period on duty for all purposes was rejected is under challenge in this writ petition.

2. The petitioner joined the service of the first respondent board as Mahout on 15.3.1992. On 2.10.2004, the third respondent suspended the petitioner from service. The petitioner alleges that no enquiry was conducted and no show cause notice or memo of charges was issued to him.

3. The suspension was challenged by the petitioner before this Court and in W.P(C) No.12490 of 2010 this Court directed the respondents to regularise the petitioner's suspension. It was also directed that the terminal benefits due to him and arrears of

subsistence allowance, if any, due to him shall be quantified and admissible amount shall be disbursed to him within two months from the production of the copy of the judgment. Thereafter, the respondents issued order dated 22.10.2010 to the petitioner, rejecting his request for monthly pension. Aggrieved by the said order, the petitioner preferred statutory appeal before the first respondent on 18.11.2010.

4. However, as the first respondent has not taken any action on the appeal, the petitioner was compelled to file W.P(C) No.4319 of 2011. Thereafter, the appeal was considered by the first respondent and the petitioner's claim was rejected on 8.4.2011. The petitioner further alleges that after receiving the order, he filed petition dated 9.6.2011 for reviewing the order. Thereafter he submitted Ext.P7. Since Ext.P7 was not considered by the respondent, he filed W.P(C) No.9801 of 2012 before this Court. During the pendency of the above writ petition, the first respondent considered and rejected

Ext.P7 representation. The petitioner further alleges that while considering his representation, the first respondent failed to consider various contentions raised by him. It is with this background, the petitioner has come up before this Court.

5. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent board.

6. The grievance of the petitioner is that the first respondent passed Ext.P9 without conducting any enquiry and proper verification of the records. According to the petitioner, he entered the service of the respondent board as Mahout on 15.3.1992 and demitted his office on 31.8.2007. The petitioner points out that he is having 15 years of service under the respondents, including his suspension period. Therefore, according to the petitioner, he is fully entitled for monthly pension.

7. The definite stand taken by the respondents is that, the petitioner had service of eight years only while the required

qualifying service is nine years and one month. As per the existing rules, the petitioner who is not having qualified service, is not entitled to pension. The grievance of the petitioner is that the period during which he was placed under suspension has to be reckoned as qualifying service. It is trite that the period under suspension can be treated as period on duty only if the suspension is wholly unjustifiable. A specific order to that effect has to be passed for reckoning the period of suspension as period on duty.

8. Though the petitioner is relying on Ext.P10, which is the copy of the judgment in W.A No.1878 of 2006, it cannot be said that the petitioner is similarly situated. In the aforesaid case, the respondents have prevented the appellant from discharging his duties. Therefore, it was held that the respondent cannot take advantage of their fault and deny wages to the employees.

9. It appears from Ext.P6 that the respondents have also considered whether the petitioner is entitled for ex gratia pension. Ex

gratia pension under the board was extended to those employees who demitted their office prior to 1.4.85. The petitioner herein demitted his office only on 31.7.2007 and, therefore, he is not entitled for *ex gratia* pension also as per the norms followed by the respondent board.

10. On a consideration of the entire materials placed on record, this Court is of the definite view that the petitioner is not entitled to the reliefs prayed for.

Therefore, the writ petition fails and accordingly, it is dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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