IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 30651 of 2011 (F)

PETITIONER:

JOHN KOSHY, VADAKKEMELATHIL HOUSE,
MUTHALAKODAM, IDUKKI DISTRICT - 685 584.

BY ADVS. SRI. DINNY THOMAS
SRI. DOMINIC JOHNSON
SRI. ALBERT V.JOHN
SMT. M.SRUTHY

RESPONDENT:

KERALA STATE HOUSING BOARD,
REPRESENTED BY ITS SECRETARY, SANTHI NAGAR,
THIRUVANANTHAPURAM-1.

BY ADV. SRI. GEORGE BOBAN, SC, KSHB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 30651 of 2011 (F)

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1: COPY OF COMMUNICATION DATED 08.05.2006.

EXHIBIT-P2: COPY OF THE LAWYER NOTICE DATED 18.09.2006.

EXHIBIT-P3: COPY OF REPLY DATED 28.09.2006.

EXHIBIT-P4: COPY OF THE ORDER DATED 05.03.2010.

EXHIBIT-P5. COPY OF ORDER DATED 28.06.2011 OF THE HONOURABLE LOK AYUKTA.

RESPONDENTS' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

ww

ANIL K. NARENDRAN, J.

W.P.(C) No.30651 of 2011

--

Dated this the 17th day of July, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of certiorari to quash Exts.P1, P4 and P5 orders and a writ of mandamus commanding the respondent to pay his DCRG and other pensionary benefits including leave surrender amounts and also the amount due under provident fund scheme with 8% interest from 28.02.2006.

2. Going by the averments in the writ petition, the petitioner retired from service on 28.02.2006, while working as Upper Division Clerk in the Kerala State Housing Board, the respondent herein. According to the petitioner, the terminal benefits payable as on the date of retirement comes to Rs.1,62,382/-. But the petitioner was issued with Ext.P1 communication dated 08.05.2006 of the Joint Secretary of the respondent Board by which he was informed that a total liablility to the tune of Rs.1,43,757/- is outstanding against him. In such circumstances, the petitioner was directed either to produce the document settling the above liabilities or to submit his willingness to recover the said amount from his pensionary

benefits, within seven days from the date of receipt of that letter, so as to enable the respondent to sanction his pensionary benefits. The petitioner was also informed that, if no intimation is received within the aforesaid period, further steps will be taken to sanction pensionary benefits after withholding the above liabilities.

3. Instead of submitting any explanation pursuant to Ext.P1 communication, the petitioner caused to issue Ext.P2 lawyer notice dated 18.09.2006 calling upon the respondent to disburse his terminal benefits. To Ext.P2 lawyer notice, the respondent Board issued Ext.P3 reply pointing out the liabilities of the petitioner and that the amount of DCRG and terminal surrender of Earned Leave withheld can be released as and when the liabilities are settled. Later, on implementation of the General Pay Revision 2004, the petitioner was sanctioned with revised pensionery benefits such as monthly pension, commuted value, etc., vide Board Order dated 03.12.2007. Later, by Ext.P4 order dated 05.03.2010, the petitioner was sanctioned Rs.1,62,382/- towards the amount of DCRG and the benefit of Terminal Surrender of Earned Leave and sanction was also accorded to adjust the liability amounting to Rs.1,32,613/- due to

the Board, Rs.25,937/- to Kochi Regional Housing Board Employees Co-operative Society, and balance Rs.3832/- to Union Bank of India, Adimali Branch from the said amount due to him.

4. After receipt of Ext.P4 the petitioner approached Lok Ayukta in Complaint No.11 of 2011 complaining about the delay in disbursal of his retirement benefits. But the said complaint ended in dismissal by Ext.P5 order. It is aggrieved by Exts.P1, P4 and P5 orders, the petitioner is before this Court in this Writ Petition seeking various reliefs.

5. In spite of the service of notice, the respondent Board has not chosen to file any counter affidavit.

6. The fact that the terminal benefits due to the petitioner are withheld by the respondent Board is not in dispute. Though the petitioner retired from service as early as on 28.2.2006, his terminal benefits are not disbursed in view of the liability shown in Ext.P1 communication dated 8.5.2006. Going by Ext.P1, a communication issued to the petitioner immediately after his retirement from service, the total liability under the different heads comes to ₹1,43,757/-. Nearly 4 months after the receipt of Ext.P1 communication, the petitioner caused to issue Ext.P2 lawyer notice dated 18.9.2006 for disbursement of the terminal

benefits. To the said lawyer notice the respondent Board issued Ext.P3 reply dated 28.9.2006, pointing out that the terminal benefits are withheld in view of the liability shown in Ext.P1. Thereafter, the respondent Board issued Ext.P4 order dated 5.3.2010 sanctioning revised pensionary benefits admissible to the petitioner consequent on the implementation of General Pay Revision 2004, except DCRG and Terminal Surrender of Earned Leave, pending settlement of the liabilities. It was after the receipt of Ext.P4, the petitioner filed Complaint No.11 of 2011 before the Lok Ayukta, which resulted in Ext.P5 order passed by that authority.

7. It is not in dispute that, the petitioner received Ext.P1 communication issued by the respondent Board fixing liability in the year 2006 itself. Other than sending Ext.P2 lawyer notice, the petitioner has not taken any steps whatsoever, either to challenge the liability shown in Ext.P1 order or to furnish a proper explanation to the liability so fixed. A reading of Ext.P5 order passed by the Lok Ayukta would show that, the respondent Board has stated various reasons for sustaining the liability fixed in Ext.P1.

8. But it is a fact that, the liability fixed in Ext.P1 is without

notice to the petitioner. If that be so, the said action of the respondent Board is in violation of the principles of natural justice. The learned counsel for the petitioner would contend that, once the quantification of liability in Ext.P1 is found to be in violation of the principles of natural justice, Ext.P1 has to go and no quantification of liability at this distance of time is legally permissible since any such quantification is permissible only within a period of three years from the date of his retirement, in view of the mandate contained in Note 3 to Rule 3 Part III of the KSR. I am unable to agree. As evidenced by Ext.P1, immediately after the retirement of the petitioner on superannuation the quantified liability was intimated to him on 8.5.2006. The petitioner, who has not chosen to challenge the liability fixed in Ext.P1, at the appropriate time, cannot now contend that, in case Ext.P1 is found to be unsustainable due to lack of notice, he should be exonerated from all the liabilities mentioned therein.

9. I am of the view of that, even if Ext.P1 is found to be unsustainable due to absence of notice to the petitioner before quantification of the liability, it can be treated as a notice informing the petitioner the liability proposed to be fixed against

him. In that view of the matter, the contention of the learned counsel for the petitioner that no quantification of liability is possible at that point of time can only be repelled.

In such circumstances, this Writ Petition is disposed of with the following directions:-

1) Ext.P1 communication dated 8.5.2006 issued by the respondent Board fixing a total liability of ₹1,43,757/- on the petitioner shall be treated as a notice proposing fixation of such liability on the petitioner.

2) Within two weeks from the date of receipt of a certified copy of this judgment, the petitioner shall submit a detailed objection to the liability proposed in Ext.P1 communication.

3) On receipt of such an explanation, the competent officer in the respondent Board shall consider the same and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of such objection, untrammeled by any of the observations contained in Ext.P4 order passed by the Board.

4) The disbursement of the DCRG and terminal benefits, if any, payable to the petitioner shall be disbursed by the competent officer in the respondent Board, within a period of three months thereafter.

No order as to costs.

sd/-

ANIL K. NARENDRAN,
JUDGE

JV