IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

W.P.(C).No.35941 of 2009 (Y)

PETITIONER(S):-

P.DAVID XYLEM,
EXECUTIVE ENGINEER (RTD.),
ANAND BHAVAN, VIRALI,
KULATHOOR, UCHAKKADA P.O., THIRUVANANTHAPURAM,
PIN-695 506.

BY ADV. SRI.ANTONY M. AMBAT.

RESPONDENT(S):-

1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS CHAIRMAN, VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.

2. THE SECRETARY,
KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM.

R1 & 2 BY STANDING COUNSEL SRI.PULIKOOL ABUBACKER.
R1 & R2 BY ADV. SRI.K.S.ANIL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.35941 OF 2009-K

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	TRUE COPY OF THE ORDER OF SUSPENSION DATED 21.11.2005.
EXT.P2	TRUE COPY OF THE ORDER DATED 25.11.2005.
EXT.P3	TRUE COPY OF THE MEMO OF CHARGES DATED 30.11.2005.
EXT.P4	TRUE COPY OF THE ENQUIRY REPORT DATED 06.06.2006.
EXT.P5	TRUE COPY OF THE FINAL ORDER DATED 14.03.2007.
EXT.P6	TRUE COPY OF THE JUDGMENT DATED 11.03.2009.
EXT.P7	TRUE COPY OF THE COMMUNICATION DATED 28.07.2009.
EXT.P8	TRUE COPY OF THE COUNTER DATED 19TH JUNE 2007.
EXT.P9	TRUE COPY OF THE MEMO OF CHARGES ON 03.06.2008.
EXT.P10	TRUE COPY OF THE EXPLANATION DATED 30.07.2008.
EXT.P11	TRUE COPY OF THE ORDER DATED 10.10.2008.
EXT.P12	TRUE COPY OF THE APPEAL DATED 29.12.2008.
EXT.P13	TRUE COPY OF THE FINAL ORDER DATED 26.02.2009.
EXT.P14	TRUE COPY OF THE ORDER DATED 31.12.2008.
EXT.P15	TRUE COPY OF THE REPLY AFFIDAVIT DATED 04.08.2007.
EXT.P16	TRUE COPY OF THE BILL DATED 11.6.2003.
EXT.P17	TRUE COPY OF THE MEMORANDUM DATED 20.06.2003.
EXT.P18	TRUE COPY OF THE MEMO OF CHARGES DATED 30.03.2005.
EXT.P19	TRUE COPY OF THE REP;LY DATED 11.5.2005.
EXT.P20	TRUE COPY OF THE SHOW CAUSE NOTICE DATED 18.12.2007.
EXT.P21	TRUE COPY OF THE ORDER DATED 26/03/2008.

EXT.P22 TRUE COPY OF THE FINAL ORDER DATED 20.12.2008.

EXT.P23 TRUE COPY OF THE G.O. DATED 27.03.2002.

EXT.P24 TRUE COPY OF THE BOARD ORDER DATED 16.09.2002.

RESPONDENT'S EXHIBITS:-
---------- NIL.

vku/- [true copy]

K. Vinod Chandran, J

W.P.(C).No.35941 of 2009-K

Dated this the 03rd day of September, 2015

JUDGMENT

The petitioner is aggrieved with Exhibits P13, P20, P21 and P22 orders of the authorities of the Kerala State Electricity Board [for brevity "the Board"], mulcting a liability of Rs.63,137/- [Rs.56,772/- + Rs.6,365/-].

2. The petitioner, just prior to his retirement on 30.11.2005, was suspended from service on 21.11.2005 on the basis of an allegation levelled, of collusion with his brother where the latter used an agricultural connection for commercial purposes. The enquiry with respect to the said allegations ended in the acquittal of the petitioner. The disciplinary authority, however, found the petitioner to be guilty and imposed a punishment, which was set aside in Exhibit P6 judgment of this Court. The punishment imposed on the petitioner with respect to the allegations, found to have been proved by the disciplinary authority, was barring of one annual

increment without cumulative effect for six months. The petitioner, in W.P.(C).No.12252 of 2007, also sought for release of the entire Death-cum-Retirement Gratuity [for brevity “DCRG”]. The Board, through its counter affidavit, brought to the notice of the Court that there are two separate proceedings initiated for fixation of liability with respect to the loss caused to the Board. This Court, by Exhibit P6 judgment, directed payment of the balance DCRG after finalisation of such proceedings.

3. Exhibit P6 is dated 11.03.2009. Even before the disposal of the said writ petition, there was an order passed in one of the proceedings, which ended in a liability of Rs.6,365/- being mulcted against the petitioner which was sought to be recovered from the DCRG. Exhibit P13 is an order passed in appeal against such fixation of liability.

4. The other proceeding referred to in the counter affidavit was on the basis of an enquiry conducted by the Vigilance Wing, pursuant to the seizure of illicit liquor from a premise, in which also an agricultural connection was granted as consumer No.5426. The allegation of loss having been

caused, levelled against the petitioner, was with respect to down-sizing of a bill issued by the Board to the consumer and re-allocation of the tariff from LT VII A to LT V at the request of the consumer. A show cause notice was issued on 18.12.2007 as is indicated in Exhibit P20, seeking explanation as to why an amount of Rs.56,772/- shall not be fixed against the petitioner as loss sustained by the Board due to the action of the petitioner. Exhibit P21 proceedings found that the allegations are proved, after hearing the objections of the petitioner, and mulcted a liability of Rs.56,772/- on the petitioner. The same was confirmed in Exhibit P22 order, by the Board.

5. Exhibits P13, P20, P21 and P22 are orders passed by the authorities of the Board after examining the facts and the jurisdiction of this Court, exercised under Article 226 of the Constitution, is confined insofar as examining the irregularity in procedure or the sustainability of the above proceedings. No irregularity in procedure can be found and the only contention is with respect to the Board being interdicted from proceeding against the petitioner after his retirement.

6. The learned Standing Counsel appearing for the Board, however, relies on Note 3 to Rule 3 of Part III of Kerala Service Rules, which reads as under:

> "Note 3. The liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. The liabilities of a pensioner should be quantified and intimated to him".

The petitioner admittedly retired on 30.11.2005. The orders passed against the petitioner mulcting liability of Rs.6,365/- is not produced in the writ petition and in any event, it is within the three year period since Exhibit P13 refers to the order having been passed on 10.10.2008 and the appeal having been filed on 29.12.2008. Exhibit P20 proceedings were also issued on 18.12.2007 and the order of imposition of penalty at Exhibit P21 was passed on 26.03.2008, well within the period prescribed under Note 3 to Rule 3 of Part III KSR. This Court would not go into the facts or re-appreciate the same since this Court is not sitting in appeal from the orders impugned.

In the above circumstances, nothing survives in the writ petition and the same would stand dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]