

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 37323 of 2009 (I)

PETITIONER:

**KURIACHEN N.P., AGED 58 YEARS,
S/O LATE MR.PAILY PAILY, ASST.ENGINEER (RETD)
T.C.DIVISION, KSEB, KOTTAYAM
RESIDING AT, NEDUMTHADATHIL, KADAVOOR P.O.
POTHANICAUD (VIA), ERNAKULAM DT.**

**BY ADVS.SRI.P.M.MOHAMMED SHIRAZ
SMT.G.R.MANJU**

RESPONDENTS:

- 1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY IT'S SECRETARY, VYDYUTHI BHAVAN
PATTOM P.O., THIRUVANANTHAPURAM.**
- 2. THE CHIEF ENGINEER (HRM),
KSEB, VYDYUTHI BHAVAN, PATTOM P.O.
THIRUVANANTHAPURAM.**

**R1 & 2 BY ADVS. SRI.K.S.ANIL, SC, KSEB
SRI. ASOK M.CHERIYAN, SC, KSEB
SRI.PULIKOOL ABUBACKER, SC, KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1: TRUE PHOTOCOPY OF REPRESENTATION OF PETITINER DATED 01.11.2006
- P2: TRUE PHOTOCOPY OF LETTER NO.TRC/ALP/EB2/2007-08/809 DATED 23.08.2007
- P3: TRUE PHOTOCOPY OF LETTER NO.GB1/OP/2006-07/936/2.11.06 DATED 1.11.2006
- P4: TRUE PHOTOCOPY OF SHOW CAUSE NOTICE NO.E..V.S. 6/16/06/728 DATED 10.10.2006
- P5: TRUE PHOTOCOPY OF REPLY DATED 18.11.2006
- P6: TRUE PHOTOCOPY OF ORDER NO.E.B.V.S. 6/16/06/14 DATED 05.01.2007 OF 2ND RESPONDENT
- P7: TRUE PHOTOCOPY OF REPRESENTATION OF PETITIONER DATED 29.01.2007
- P8: TRUE PHOTOCOPY OF LETTER NO. EBPSXIII/1340/07/20 DATED 27.02.2008

RESPONDENT'S EXHIBITS

- R1(A) : TRUE COPY OF THE BOARD ORDER DATED 31.01.1997
- R1(B) : TRUE COPY OF THE B.O. DATED 14.11.2002
- R1(C) : TRUE COPY OF THE JUDGMENT DATED 26.11.2007 IN W.A. NO.2392/2007

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 37323 of 2009 (I)

Dated this the 11th day of November, 2015

J U D G M E N T

The petitioner, who had gone overseas for about 20 years in different spells and having not re-joined duty after the last spell of sanctioned leave expired, is before this Court challenging the termination effected.

2. Admittedly, the petitioner's sanctioned leave of the last spell expired on 31.3.2004 and the petitioner was to superannuate on 31.5.2006. The petitioner did not re-join duty at any time before the retirement. The petitioner has produced Ext.P1 communication dated 1.11.2006, after the date of the superannuation, claiming that he had applied for re-joining duty on 29.5.2006. There is nothing on record to indicate that such an application was made and in any event the alleged request was only two days before the date of retirement.

3. On 1.11.2006 itself a show cause notice was issued to the petitioner, on his approaching the authority, asking him why his services shall not be terminated. This culminated in Ext.P6 order being issued. The petitioner challenges that the proceedings under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 has not been complied with. The issue is no longer res integra and is covered by the judgment of this court produced as Ext.R1(c) in W.A. No.2392/2007. Almost identical is the case projected herein. Ext.R1(b) is the leave sanction order which contains the said clause:

“3. If the employee does not return to duty immediately on expiry of the leave sanctioned, his service will stand automatically terminated.”

4. Hence, going by the binding precedent, clause 9 of appendix 12-A of the Kerala Civil Services (Classification,

Control and Appeal) Rules, 1960 would not be applicable. The petitioner, on not rejoining duty, will be automatically terminated from the service.

The writ petition, hence, stands dismissed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE