

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(C).No. 37539 of 2008 (R)

PETITIONER :

J.KUMARA BABU
SASTHAMKONAM MEKKUMKARA PUTHEN VEEDU,
POOVACHAL P.O., KATTAKADA
THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENTS :

1. THE KERALA STATE CIVIL SUPPLIES CORPORATIONCORPORATION LIMITED
P.B. NO. 2030, MAVELI BHAVAN
MAVELI ROAD, GANDHI NAGAR, KOCHI 682 020
REP. BY ITS MANAGING DIRECTOR.
2. THE REGIONAL MANAGER, KERALA STATE
CIVIL SUPPLIES CORPORATION LTD., T.C.24/469, PRS ROAD,
THYCAUD, THIRUVANANTHAPURAM.
3. THE ASSISTANT MANAGER, KERALA STATE
CIVIL SUPPLIES CORPORATION LTD., DISTRICT DEPOT
THIRUVANANTHAPURAM.
4. THE BOARD OF DIRECTORS,
KERALA STATE CIVIL SUPPLIES CORPORATION LTD.
P.B. NO. 2030, MAVELI BHAVAN
MAVELI ROAD, GANDHI NAGAR, KOCHI 682 020.

R1 TO R4 BY ADVS. SMT.MOLLY JACOB,SC,SUPPLYCO
SRI.MATHAI VARKEY MUTHIRENTHY, SC, SUPPLYCO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF THE PROCEEDINGS NO.B7.12461/03 DATED 31.12.2003 OF 2ND RESPONDENT

EXT.P2 : THE EXPLANATION SUBMITTED BY THE PETITIONER TO EXHIBIT P1

EXT.P3 : TRUE COPY OF THE PROCEEDINGS NO.B7.2113/04 DATED 4.6.2004

EXT.P4 : TRUE COPY OF EXPLANATION SUBMITTED BY THE PETITIONER TO MEMO NO.B7.1694/04 ON 10.8.2004

EXT.P5 : A TRUE COPY OF THE EXPLANATION DATED 30.10.2004 TO MEMO NO.B7-6679/04

EXT.P6 : A TRUE COPY OF EXPLANATION DATED 30.10.2004 TO MEMO NO.B7-6723/04

EXT.P7 : TRUE COPY OF EXPLANATION DATED 30.10.2004 TO MEMO NO.B7.2113/04

EXT.P8 : A TRUE COPY OF PROCEEDINGS NO.T.810313/04(a) DATED 5.2.07 OF 2ND RESPONDENT

EXT.P9 : A TRUE COPY OF THE PROCEEDINGS NO.T8/1587/06(3) DATED 17.1.2007 OF THE 2ND RESPONDENT

EXT.P10 : TRUE COPY OF THE EXTRACT OF MINUTES OF 302ND BOARD OF DIRECTORS MEETING HELD ON 7.12.2004

EXT.P11 : A TRUE COPY OF EXTRACT ORDER NO.11252/D390/F&CSD PUBLISHED IN KERALA GAZETTE DATED 20.10.1990

EXT.P12 : A TRUE COPY OF THE PROCEEDINGS NO.D12/20460/04 DATED 28.1.2006 OF PERSONNEL OFFICER

EXT.P13 : A TRUE COPY OF THE PROCEEDINGS NO.D21-16249/06 DATED 18.12.2006 OF THE 1ST RESPONDENT

EXT.P14 : A TRUE COPY OF THE ORDER DATED 3.4.2008 IN COMPLAINT NO.3425/06 OF LOK AYUKTA

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.37539 of 2008

Dated this the 28th day of January, 2015

J U D G M E N T

The petitioner retired from the service of the 1st respondent on 30.09.2004 while he was working as a Helper. The petitioner's complaint is that, the entire Death Cum Retirement Gratuity ('DCRG' for short) payable to him has been denied by fixing a liability on him in excess of the actual amount due to him. The petitioner's gratuity amount is ₹41,548/-. A liability of ₹43,723.71/- has been imposed on him. Thereby, the petitioner's gratuity has been effectively denied to him in full.

2. The petitioner was working as a Helper at the Petroleum Retail Outlet conducted by the 1st respondent at Vellayambalam, Thiruvananthapuram. As per Ext.P1 memo of charges dated 31.12.2003, it was alleged that in view of the shortage in stock detected, disciplinary proceedings were contemplated against him. The statement of allegations form part of Ext.P1. The petitioner submitted his explanation, Ext.P2. According to the petitioner, the shortage is attributable to evaporation of both Petrol and Diesel and that, the same is within the levels of shortage permissible on the ground of evaporation. Ext.P3 is another memo of charges dated 04.06.2004. In Ext.P3 also, there are allegations of shortage in fuel. Ext.P4 is the explanation submitted by the petitioner. Exts.P5 to P7 are the representations submitted by the petitioner. Thereafter, as

per Ext.P8 proceedings dated 05.02.2007 an amount of ₹6,245/- was directed to be recovered from the petitioner as cost of the shortage in fuel that was detected. As per Ext.P9 proceedings dated 17.01.2007, with respect to which shortage was detected, an amount of ₹7,178/- was directed to be recovered from the petitioner. As per Ext.P12, the total amount fixed as liability on the petitioner has been reduced to ₹43,723.71/-. Though the petitioner has submitted an appeal against the said proceedings, the same has been rejected as out of time by Ext.P13. The petitioner has thereafter, filed this writ petition challenging the orders fixing liability on him.

3. According to Adv.Sri.D.Kishore, the learned counsel for the petitioner, as per Ext.P10 order, the Board of Directors of the 1st respondent has fixed the limit of evaporation of motor spirit that was permissible at 0.30% for Petrol and up to 0.15% for Diesel in Petrol Bunks. According to the counsel for the petitioner, the limit is arbitrary and is violative of the limits accepted in the petroleum industry. Therefore, it is contended that Ext.P10 Board order is unsustainable and liable to be set aside. The counsel places reliance on Ext.P11 order dated 20.10.1990 issued under Section 3 of the Essential Commodities Act, 1955 by the Central Government to point out that, evaporation handling losses in motor spirit has been fixed at 0.75% on annual average sales of 0-600 kilolitres and 0.60% on annual average sales of above 600 kilolitres. The liability fixed on the petitioner has been

calculated on the basis of evaporation loss permitted by Ext.P10 alone. Therefore, it is contended that the same is defective. Computed on the basis of Ext.P11, it is contended that the evaporation losses would be within permissible limits and as a consequence, the entire liability fixed on the petitioner would be wiped off. The impact of Ext.P11 has not been considered by any of the authorities while fixing the liability on the petitioner. Therefore, the counsel seeks the issue of appropriate directions setting aside Exts.P8, P9, P10 and P13 orders.

4. Heard. A perusal of Exts.P1 and P3 show that, substantial quantities of motor spirit was found to be short on inspections conducted at the Petroleum Retail Outlet at Vellayambalam. Exts.P8 and P9 are separate orders in which, shortage of various articles were detected, which included 12,227 litres of motor spirit. The total cost of such shortage has been worked out and fixed at ₹3,49,814.47/- in Ext.P8. In Ext.P9, the value of the shortage detected is ₹3,91,829.67/-. The shortage detected is substantial and cannot be dismissed lightly. Therefore, the value of the shortage has been fixed as liability on all the persons who were in charge of the Petroleum Retail Outlet at the relevant time.

5. The contention of the learned counsel for the petitioner is that, allowance should have been given to the petitioner for evaporation of the motor spirit, on the basis of Ext.P11 Government Order. A perusal of Ext.P11 Government Orders shows that, the same is an order issued

by the Central Government for the purpose of calculating shortage due to evaporation while transferring motor spirit from the depot of an oil company to a dealer. It is true that the definition of Dealer in the said Government Order takes in an agent or salesman of the dealer also. The contention of the learned counsel for the petitioner is that, the 1st respondent being a dealer of motor spirit, Ext.P11 applies in the present case also. However, what is to be noticed in the present case is that, the shortage here was not detected while transferring fuel from the depot of oil company to the retail outlet. The shortage has been detected in the present case in the stock that was available at the retail outlet for which, the persons who were in charge of the Petroleum outlet are answerable. Considering the quantity of motor spirit that has been found to be short, it cannot be said that the same could be dismissed as shortage due to mere evaporation. I notice that the petitioner has no explanation for the shortage, other than evaporation. It is also worth noticing that in Ext.P9, apart from the shortage in motor spirit, shortage in other articles also have been detected. For the above reasons, I do not find any infirmity in the impugned orders that are challenged in this writ petition.

In the result, this writ petition is dismissed.

Sd/-

K.SURENDRA MOHAN, JUDGE.

AV