

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 26TH DAY OF SEPTEMBER 2022 / 4TH ASWINA, 1944

WP(C) NO. 9290 OF 2021

PETITIONER:

A.G.DINESH
AGED 60 YEARS
KATTILAPARAMP HOUSE, VATTEKUNNAM,
EDAPPILLY NORTH P.O., KOCHI- 682 024.
BY ADV JOSE J.MATHAIKAL

RESPONDENTS:

- 1 THE KERALA STATE ELECTRICITY BOARD LIMITED
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY, PIN - 695 004.
- 2 THE CHAIRMAN AND MANAGING DIRECTOR
THE KERALA STATE ELECTRICITY BOARD LIMITED,
VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM, PIN - 695 004.
- 3 THE CHIEF ENGINEER (HRM)
THE KERALA STATE ELECTRICITY BOARD LIMITED,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM, PIN-695004
BY ADV SRI.K.S.ANIL, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16.09.2022, THE COURT ON 26.09.2022 DELIVERED THE FOLLOWING:

ANU SIVARAMAN, J

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W.P.(C).No.9290 of 2021

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Dated this the 26th day of September, 2022

JUDGMENT

This writ petition is filed seeking the following prayers:

“i) To issue a writ of certiorari or such other appropriate writ order or direction calling for the records relating to Exhibit P9 and quash the same.

i) To direct the respondents to sanction and pay the full amount of pension to the petitioner from the date of his retirement on 17.11.2014 and continue to pay the same every month.

iii) To direct the respondents to forthwith regularize the suspension period of the petitioner from 21.6.2003 to 7.11.2006 as duty and pay all consequential benefits to him within a prescribed time limit.

iv) To direct the third respondent to forthwith take a decision on the arrears of salary and allowances due to the petitioner as directed in Exhibit P9 order of the second respondent within a prescribed time limit.”

2. Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

3. It is submitted by the learned counsel for the petitioner that the petitioner, who was working as Senior Superintendent in the Kerala State Electricity Board, was placed under suspension on 21.06.2006 on allegations with regard to assisting in theft of electricity by

consumer. It is submitted that a memo of charges was issued to him on 02.08.2006 to which the petitioner submitted his reply. Finding the reply unsatisfactory, a disciplinary enquiry was ordered to be conducted against the petitioner. The petitioner had been reinstated in service on 07.11.2006, pending finalization of the disciplinary proceedings. After conduct of the enquiry, an order was passed on 07.11.2014 imposing the penalty of removal from service on the petitioner. The petitioner preferred an appeal before the 2nd respondent as against the order of removal. By Ext.P1 proceedings dated 06.08.2015, the 2nd respondent considered the pathetic condition of the family of the appellant and, taking a lenient view, decided to modify the punishment of removal as compulsory retirement with effect from the date of removal. It is contended that Ext.P2 Non Liability Certificate was also issued to the petitioner stating that there are no liabilities to the Board or the Government outstanding from the petitioner. However, the retirement benefits were not disbursed to the petitioner. The petitioner submitted Ext.P3 petition before the 2nd respondent seeking the release of the retirement benefits.

4. It is submitted that on 25.10.2017, Ext.P4 order was passed by the 2nd respondent contending that Rule 6(a) of Part III, KSR provides power in the authority which passed the order of punishment to order a reduction either in pension or DCRG or both. Therefore, the 2nd respondent, after examining the entire file, decided to reduce 50% of the eligible pension of the petitioner and settled his pensionary benefits. It is submitted that the petitioner had submitted representations against the said order which were rejected by Ext.P6. The petitioner thereupon approached this Court filing W.P. (C).No.6725/2020. This Court considered the contentions advanced on either side and held as follows:

“5. Even when I hear Sri.M.K.Thankappan on the afore lines, the fact remains that in Ext.P1, the competent Authority - namely the Chairman and the Managing Director did not mention anything about the reduction of the pension of the petitioner but only modified his earlier punishment of removal from the service as compulsory retirement. Obviously therefore, when Ext.P1 is silent as regards the pension of the petitioner, it is seriously doubtful whether Ext.P2 could have been issued by the same Authority invoking the powers under Rule 6(a) Part III of the KSR, particularly when the said Rule obligates the Authority - while imposing the punishment - to deal with the question of reduction of pension also. The fact that Ext.P1 is silent is admitted and therefore, the acme question is whether the Chairman and the Managing Director could have issued Ext.P2 in such a manner, which, prima facie appears to impose

a double punishment on the petitioner.

6. Even though I have recorded my preliminary observations as afore, I am of the certain view that the Chairman and the Managing Director must hear the petitioner also and then take a fresh decision relating to his pension, since I cannot find favour with Ext.P2 as it is presently framed.

In the afore circumstances and for the reasons above, I set aside Ext.P2; and consequentially, direct the Chairman and the Managing Director to take a fresh decision as regards the pension of the petitioner, adverting specifically to the applicable statutory provisions and also after affording an opportunity of being heard to the petitioner - either physically or through video conferencing - thus leading to an appropriate decision thereon, as expeditiously as is possible, but not later than six weeks from the date of receipt of a copy of this judgment.”

Thereafter, the petitioner submitted Ext.P8 representation which was ultimately decided by Ext.P9 order. The 2nd respondent after considering the contentions of the petitioner found that Rule 6(a) of Part III, KSR provides power to the authority who imposed the punishment of compulsory retirement to make orders on whether the pension or gratuity should be admitted in full or not. It was held that since the 2nd respondent had imposed the punishment of compulsory retirement by reducing the punishment of removal already inflicted on the petitioner, the 2nd respondent was fully competent to pass an order under Rule 6(a) of Part III, KSR reducing the pension. It was found

that the reduction of pension at the hands of pension sanctioning authority, which is the Board in the instant case, would be required only for reduction of pension under Rule 2 or 3 or Rule 59 of Part III, KSR read with Regulation 12(2) of the KSEB Employees (Classification, Control & Appeal) Regulations, 1969. It was therefore found that since Rule 6(a) of Part III, KSR empowered the reduction of pension by the same authority which imposes the punishment of compulsory retirement, the orders passed by the 2nd respondent were fully competent.

5. The learned counsel for the petitioner submits that Rule 6(a) specifically provides that an employee who has been compulsorily retired from service would be entitled to pension unless the authority which imposes the punishment specifically directs the reduction of pension or DCRG or both if the circumstances of any particular case warrant such reduction. The specific case of the learned counsel for the petitioner is that the question whether any reduction in pension or DCRG is warranted in the particular facts and circumstances of a case is a question which has to be decided by the competent authority at the

time when the punishment of compulsory retirement is being imposed, which is the point in time where all the relevant documents and materials are available with such authority and the petitioner is on notice with regard to the punishment being imposed.

6. A detailed counter affidavit has been placed on record by the respondents. It is contended by the respondents that a plain reading of the Rule does not support the contention that an order of reduction of pension or gratuity which the competent authority has the power to order should be passed at the time when the punishment is being imposed. It is contended that all the contentions of the petitioner have been specifically adverted to and considered while passing Ext.P9 order. It is submitted that the Rule does not mandate that while issuing orders of compulsory retirement, the competent authority should specify therein itself the details of pension or death-cum-retirement gratuity sought to be reduced under Rule 6(a). It is further contended that Ext.P9 itself would show the circumstances under which the orders came to be passed separately. It is submitted that the petitioner had challenged the order of compulsory retirement imposed on him by

filing W.P.(C).No.26496/2015. It is in the meanwhile that the petitioner had submitted representations for release of pensionary benefits. The Chief Engineer (HRM) therefore pointed out that, as compulsory retirement was awarded as penalty on proved offences, necessary action has to be taken by the competent authority who inflicted the punishment of compulsory retirement with regard to rate of pension payable to the petitioner. It is submitted that, accordingly, the Board had decided to reduce 50% of the eligible pension vide proceedings dated 25.10.2017. It is contended that the entire aspects of the matter had been considered and it was found that, in the facts and circumstances of the instant case, an order of reduction in pension is perfectly warranted. It is further stated that orders have been passed treating the period of suspension as leave without allowance.

7. Having considered the contentions advanced on either side, I notice that this Court in Ext.P7 judgment had specifically directed the consideration of the contention raised by the petitioner that an order of reduction of pension has to be passed when the question of penalty is being considered and not thereafter. A reading of Rule 6(a) would also

make it clear that the competent authority is to pass orders authorizing pension to an officer who is compulsorily retired from service provided no orders are passed reducing the pension by the authority which imposed the penalty of compulsory retirement.

8. The rule specifically reads as follows:-

“6. (a) An employee compulsorily retired from service by way of penalty may be granted by the authority competent to impose such penalty, pension and death-cum-retirement gratuity admissible to the employee on the date of such retirement, provided, however that the authority imposing the penalty of compulsory retirement may order at reduction either in pension or in death-cum-retirement gratuity or in both if the circumstances of any particular case warrant such reduction.”

9. In the instant case, the order reducing the punishment of removal to compulsory retirement had been passed by the appellate authority as early as on 06.08.2015. The entire records of the enquiry along with the appeal submitted by the petitioner were available with the 2nd respondent when Ext.P1 order was rendered. However, after adverting to the gravity of the charges proved against the petitioner, but taking a lenient view, the 2nd respondent decided to modify the punishment of removal as compulsory retirement with effect from the date of removal from service. There was no decision taken in Ext.P1

to order reduction of pension. It is admitted that a writ petition had been filed by the petitioner as against Ext.P1, pending the same, the petitioner had preferred Ext.P3 representation seeking release of pensionary benefits. It is thereafter that Ext.P4 order was passed on 25.10.2017.

10. It is trite law that pension is a legal right available to an employee on the basis of long years of service rendered by him and the said right can be taken away only after following due procedure. It is pertinent to note that even in a case where an employee is dismissed or removed for misconduct, insolvency or inefficiency, compassionate allowances amounting to $2/3^{\text{rd}}$ of the pension can be granted in special circumstances. Further, Rule 6(c) provides that where a person, who has been granted pension on compassionate retirement dies, and his family is entitled to a family pension under Section 7 of Part III KSR.

11. On a close reading of the provisions of the KSEB Employees (Classification, Control & Appeal) Regulations, I notice that orders

adverse to the interest of an employee are liable to be passed after conduct of a due enquiry as provided in the said Regulations. Rule 6(a) of Part III, KSR provides that pension and death-cum-retirement gratuity admissible to the employee on the date of such retirement is liable to be granted to an employee by the competent authority provided that the authority imposing the penalty may order reduction if the circumstances of any particular case warrant such reduction. Therefore, the question whether a particular case where compulsory retirement is imposed warrants reduction in pension or gratuity or both is to be specifically considered by the authority imposing the punishment. According to me, it appears that such consideration whether the penalty should result in any reduction in pension or DCRG is a decision which has to be taken by the authority at the time of imposition of penalty itself. If not, the entire exercise of appreciation of the factors which lead to the imposition of the penalty will have to be redone at a later point in time which, according to me, would be impermissible since that would amount to a re-appreciation of the facts involved and therefore to double jeopardy.

12. In the above facts and circumstances, I am of the opinion that the impugned order rejecting the claims of the petitioner is unsustainable. The same is therefore set aside. There will be a direction to the respondents to pay the pensionary benefits due to the petitioner, taking note of the fact that the order of compulsory retirement imposed on the petitioner by Ext.P1 did not provide in any reduction in pension. The monetary benefits with arrears thereof shall be calculated and released to the petitioner within a period of three months from the date of receipt of a copy of this judgment. The request of the petitioner for regularizing the period of suspension as duty, as also the grant of arrears thereof, shall be considered by the respondents with notice to the petitioner. Appropriate orders shall be passed within a period of 3 months from the date of receipt of a copy of this judgment.

This writ petition ordered accordingly.

Sd/-

ANU SIVARAMAN
JUDGE

APPENDIX OF WP(C) 9290/2021

PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE COPY OF ORDER NO.VIG/A1/4695/06 DATED 06/08/2015 BY R2.
- EXHIBIT P2 TRUE COPY OF NON LIABILITY CERTIFICATE DATED 29/3/2016.
- EXHIBIT P3 TRUE COPY OF PETITION DATED 17/7/2017 BY PETITIONER.
- EXHIBIT P4 TRUE COPY OF ORDER NO.VIG/A1/4695/2006/2772 DATED 25/10/2017 BY R2.
- EXHIBIT P5 TRUE COPY OF PETITION DATED 20/12/2019 BY PETITIONER.
- EXHIBIT P6 TRUE COPY OF LETTER DATED 12/2/2020 FROM CHIEF VIGILANCE OFFICER.
- EXHIBIT P7 TRUE COPY OF JUDGMENT DATED 16/12/2020 IN WP(C) 6725/2020.
- EXHIBIT P8 TRUE COPY OF PETITION DATED 22/1/2021 BY PETITIONER.
- EXHIBIT P9 TRUE COPY OF ORDER NO.VIG/A1/4695/2006/401 DATED 23/2/2020 BY R2.
- EXHIBIT P10 TRUE COPY OF CIRCULAR NO.65/94/FIN. DATED 26/11/1994.
- EXHIBIT P11 TRUE COPY OF SUSPENSION ORDER DATED 21/6/2006.
- EXHIBIT P12 RUE COPY OF REINSTATEMENT ORDER DATED 7/11/2006.
- EXHIBIT P13 TRUE COPY OF ORDER DATED 23/1/2017 BY R2 REGULARISING SUSPENSION.

RESPONDENTS' EXHIBITS: NIL