
(2014) 07 KL CK 0267
In the High Court Of Kerala
Case No : Writ Appeal No. 1562 of 2012

M. Mohanan

APPELLANT

Vs

The Kerala State Electricity Board

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Citation : (2014) 07 KL CK 0267

Hon'ble Judges : Ashok Bhushan, J;A.M. Shaffique, J

Bench : Division Bench

Advocate : Johnson Gomez and S. Biju (Kizhakkanel), Advocate for the Appellant; K.S. Anil, Adv., SC, KSEB and R. Gopan, Advocate for the Respondent

Judgement

Ashok Bhushan, J.—Heard learned counsel for the appellant as well as the learned Standing Counsel for respondents 1 to 5. No one appeared for 6th respondent.

2. The appellant who is the writ petitioner filed this writ appeal being aggrieved of only a part of the judgment of the learned Single Judge dated 02.07.2012 in W.P.(C). No. 16057 of 2008, in so far as the learned Single Judge has upheld the findings in the impugned orders regarding regularization of the period of suspension. The appellant who was working as an overseer was proceeded with disciplinary enquiry and by Ext.P3 order dated 01.03.2006, he was exonerated from the charges levelled against him. The relevant portion of the said order as contained in last paragraph is extracted as under:

The above facts explicitly shows that the charges levelled against him could not be proved. Accordingly it is hereby ordered that the disciplinary proceedings initiated against Sri. Mohanan Overseer be finalised by exonerating him from the charges levelled against him and the period of suspension spent by him be treated as duty, and regularised as per rules.

3. It appears that the sixth respondent has filed some complaint before the Lok Ayukta and as per some observation/order of the Lok Ayukta the matter was

taken by the Deputy Chief Engineer, who issued notice dated 27.06.2006 to the appellant/petitioner and called upon him to appear for personal hearing on 29.06.2006. Petitioner/appellant submitted a reply as well. However the 4th respondent decided to review Ext.P3 order and thereafter, the Deputy Chief Engineer passed an order on 26.07.2006 barring one increment of petitioner and the period of suspension spent by the petitioner/appellant was to be treated as eligible leave and regularized as per rules.

4. The petitioner submitted an appeal before the Chief Engineer which was rejected. Thereupon he submitted a review petition before the second respondent who passed a totally non speaking order and thereafter the petitioner/appellant approached the first respondent requesting to reduce the punishment. It was considered by the Board and Ext.P10 order was passed confirming the decision of the 2nd respondent. Being aggrieved of this petitioner/appellant filed the writ petition challenging order of the Deputy Chief Engineer awarding punishment as well as subsequent orders. The learned Single Judge allowed the writ petition, setting aside Exts. P6, P8, P9 and P10 orders. However, the learned Single Judge while allowing the writ petition made the following observations:

However, the findings in the impugned orders regarding regularisation of the period of suspension is upheld.

The petitioner/appellant aggrieved by the said part of the judgment of the learned Single Judge has come up in appeal.

5. The learned counsel for the appellant submits that the disciplinary proceedings have already been finalized and hence no further proceedings ought to have been taken, more so, when the learned Single Judge himself has set aside the order of the Deputy Chief Engineer (Ext.P6) and all subsequent orders. There was no occasion to treat the suspension period as eligible leave. At this stage it is relevant to quote the relevant findings of the Deputy Chief Engineer which has been upheld by the learned Single Judge. Deputy Chief Engineer in his order dated 26.07.2006 in Ext.P6 last paragraph observed as follows:

Sri. M. Mohanan, Overseer could not submit a satisfactory reply to the show cause notice. Hence it is hereby ordered that one increment of Sri. M.Mohanan, Overseer, Electrical section, Peyad may be barred without cumulative effect and the period of suspension spent by him may be treated as eligible leave and regularized as per rules.

The case is disposed of accordingly.

6. The learned Single Judge having set aside Ext.P6 and all subsequent orders, the findings regarding treating the suspension as eligible leave automatically falls on the ground. In view of the setting aside of Ext.P6 and subsequent orders, there was no occasion to treat the suspension period as eligible leave. In the facts of the case, as the petitioner has already been exonerated of charges by

the Executive Engineer and suspension period having been treated as duty, subsequent orders having been set aside, there is no question to treat the petitioner's suspension as eligible period for leave.

Thus we are satisfied that the following part of the judgment of the learned Single Judge deserves to be set aside:

However, the findings in the impugned orders regarding regularisation of the period of suspension is upheld

The said part is set aside the the writ appeal is allowed to the said extend.