

(2020) 11 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 25635 Of 2015 (D)

Sibi Thomas

APPELLANT

Vs

Kerala State Electricity Board Ltd And Ors

RESPONDENT

Date of Decision : 19-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 11 KL CK 0013

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : Sindhu Santhalingam, A.D. Shajan, K.S. Anil, Anchala C., Aneetha A.G.

Final Decision : Dismissed

Judgement

1. A departmental proceeding was initiated against the petitioner alleging six separate charges. Two of the charges related to delay in forwarding of bills, while two other charges related to acts of dereliction of duty and two others related to demand and acceptance of bribe. The enquiry officer found the petitioner guilty of charges of delay in forwarding bills and dereliction of duty. Charges for alleged demand and acceptance of bribe was found in favour of the petitioner and he was exonerated from those charges. Though a punishment of barring of two increments was proposed, pursuant to the reply notice submitted by the petitioner, by Ext.P8, a lenient view was taken and barring of only one increment with cumulative effect was imposed upon the petitioner by the 3rd respondent. In appeal by Ext.P10 order, the 2nd respondent rejected petitioner's appeal. The petitioner challenges the said orders imposing punishment of barring one increment with cumulative effect against him.

2. Petitioner is an Assistant Executive Engineer with KSEB. While so, according to him, on the basis of anonymous complaints, proceedings were initiated against him after placing him under suspension. Even though a disciplinary proceeding was conducted, by Ext.P6 report, the enquiry officer came to a wrong conclusion that petitioner was guilty of four out of the six charges levelled against him. Petitioner contends that the findings entered into in Ext.P6, which are prejudicial to him are totally without any basis or evidence. Petitioner thus challenges Ext.P6 enquiry report along with the orders imposing punishment upon him which are produced as Ext.P8 and Ext.P10.

3. A counter affidavit has been filed by the respondents stating that the petitioner was reported to have committed grave irregularities and misconduct and the bills of the specific works which were delayed was specified in the memo of charges and enquiry was conducted only after his explanations were found to be unsatisfactory. It was also stated that the delay in forwarding bills could not have been caused by a responsible officer and the same were proved in the enquiry proceedings. In fact, since the allegation of demand and acceptance of bribe had not been proved and the enquiry officer himself had found the petitioner not guilty of the said two charges it was pleaded that, that itself shows fairness in the enquiry conducted. Referring to the minimal punishment imposed respondents pleaded that no serious prejudice is caused to the petitioner.

4. In the reply affidavit, petitioner stated that he alone was targeted for punishment while others against whom evidence was available for the very same allegations were never proceeded with, which itself, according to the petitioner, shows the approach, attitude and conduct of respondents 2 and 3 as irregular.

5. I have heard Adv.Sindhu Santhalingam, who forcefully and with great persuasive skill argued that, there was no evidence of any nature whatsoever, to come to the conclusion that petitioner had committed misconduct. According to Adv.Sindhu, the jurisdiction under Article 226 of the Constitution of India though limited, could be exercised in the instant case since there was absolutely no evidence to show any type of delay or dereliction of duty on the part of the petitioner. She further contended that even though, the punishment imposed was not disproportionate, still, in a case where there was no evidence of any misconduct, the punishment imposed

in the present case could still be termed as disproportionate.

6. Adv.Aneetha, the learned Standing Counsel, on the other hand submits that this is not a case where jurisdiction under Article 226 of the Constitution

of India could be invoked since the zone of interference lies in a very narrow compass. According to her, the degree of proof required in departmental

proceedings is not as high as that in a criminal proceeding and insistence on proof beyond reasonable doubt is not required in a departmental enquiry.

She relied upon the decision in Secretary, Managing Committee BSM (PG) College, Roorkee v. Samrat Sharma and Others [(2019) 16 SCC 56] and

argued that sufficiency of evidence for proof of charges is not within the domain of judicial review and that courts cannot re-appreciate the evidence.

7. I have considered the arguments raised at the bar. It is true that the petitioner was proceeded against on the basis of six charges and the allegations

of demand and acceptance of bribe was not proved. However, the enquiry officer in his report Ext.P6 found that charge Nos.1 and 3, which related to

delay in forwarding of bills stood proved. Adv.Sindhu Santhalingam repeatedly drew my attention to the finding in Ext.P6 that 'the exact date of

submission of the bills to the Sub Division Office cannot be extracted from the available documents' and contended that the said finding relating to

charge No.1 shows that there was no evidence to prove the delay in submission of bills. Even though the aforesaid observation is made in Ext.P6, this

Court finds that one solitary sentence cannot be culled out from the report to arrive at a finding that there was no evidence.

In charge No.1 as well as in charge No.3, specific instances of delayed submission of bills have been mentioned and the delay in such submission have

also been narrated. In fact, instances have been mentioned where the bills had to be recovered by the Deputy Chief Engineer from the office causing

delays of three months and upwards for re-submitting the bills. It has been found in Ext.P8 also that the petitioner had kept the bills with him for more

than three months. Even in relation to Point No. 3, the enquiry officer has found that there was delay in resubmitting the bills. Merely because the

enquiry officer found responsibility upon the delay in another officer also, does not mean there was total absence of evidence against petitioner. Non-

initiation of proceedings mentioned in Ext.P6 against the other officer is not a factor that petitioner can rely upon to claim exoneration. That is a matter

for the department to decide separately. Thus relating to the charge of delay in submitting bills, it cannot be said that there was no evidence.

8. On the charge of dereliction of duty, the petitioner contends that since the duties have not been specified, he cannot be fastened with the charge of

dereliction of duty. According to the learned counsel, when the duties are not clear, casting of burden on the officer is not proper and without

identifying what the duties are, the petitioner cannot be found to have committed any misconduct. The learned counsel also cited the decision reported

in *A.L.Kalra v. Project and Equipment Corporation of India Ltd.* [(1984) 3 SCC 316] and an unreported decision in *W.A.No.1315/2011*, wherein a

Division Bench of this Court had held that “unless one knows what exactly were the duties and responsibilities assigned to the respondent herein,

certainly cannot allege that he violated the duties and responsibilities assigned to him”. An adverse inference was drawn in the said case due to the

absence of the material indicating duties and responsibilities.

9. Adherence to all legal directions of the superiors is unquestionably an inherent duty of every subordinate officer. At no point of time during the

enquiry, had the petitioner raised a contention that it was not his duty to forward the bills or to abide by the lawful directions of his superiors. In such

circumstances, the contention that there was no such specific duty assigned to him to obey lawful directions of the superiors or to process the bill are

both, not only an afterthought, but also duties inherently embedded in the position which the petitioner holds.

10. The jurisdiction under Article 226 of the Constitution of India as declared in several decisions of this Court as well as that of the Supreme Court

including *Samrat's case* (supra) is that it is not the decision which is the subject matter of judicial review, but it is the decision making process.

Sufficiency of evidence for proof of the charges against the delinquent officer is completely within the domain of the administrative authority. Courts

cannot re-appreciate evidence to come to a different conclusion. Interference by the courts can only be in cases where there is no evidence and when

there is some evidence, the courts must keep its hands off, unless the punishment imposed shocks the conscience of the court. In the decision reported

in *State of Bihar and Others v. Phulpari Kumari* [(2020) 2 SCC 130, it has been held as follows:-

6.1:- It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of "no evidence". Sufficiency of evidence is not within the realm of juridical review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry.

Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.

Â 6.2:- The High Court ought not to have interfered with the order of dismissal of the respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the inquiry officer.

11. Even in the decision relied upon by the learned counsel for the petitioner in *Narinder Mohan Arya v. United India Insurance Co.Ltd.* [(2006) 4

SCC 713] it is stated that "interference on the findings of a domestic enquiry by a writ court is limited and only in certain circumstances". Thus

the scope of interference in a departmental proceeding is very limited. There is some evidence atleast against the petitioner. It is not a case of no

evidence. The sufficiency of the evidence is not a matter for judicial review.

12. It is also relevant to note that the punishment imposed is also only one of barring one increment. Punishment imposed is a minor punishment. The

punishment imposed is also a factor that has to be borne in mind by this Court while deciding whether an interference is called for.

In view of the above, I do not find any reason to interfere with Ext.P6, P8 and P10. Hence, this writ petition is dismissed.