

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 24TH DAY OF FEBRUARY 2020 / 5TH PHALGUNA, 1941

WP(C).No.22113 OF 2012(L)

PETITIONER:

SREEDEVI.K.S.
(EMPLOYEE CODE NO.3397), SPECIAL GRADE ASSISTANT,
KERALA STATE FINANCIAL ENTERPRISES LTD.,
THRIPPUNITHURA.

BY ADVS.
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.S.A.ANAND
SMT.L.AMMU PILLAI
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SMT.N.SANTHA

RESPONDENTS:

- 1 THE KERALA STATE FINANCIAL ENTERPRISES LTD.
REPRESENTED BY ITS MANAGING DIRECTOR, CORPORATE
OFFICE, "BHADRATHA", THRISSUR, PIN:680 020.
- 2 THE MANAGING DIRECTOR
THE KERALA STATE FINANCIAL ENTERPRISES LTD.CORPORATE
OFFICE, "BHADRATHA", THRISSUR, PIN:680 020.

R1 BY ADV. SRI.P.BENNY THOMAS
R1 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1 BY ADV. SRI.P.GOPINATH
R1 BY ADV. SRI.K.JOHN MATHAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 24th day of February 2020

The grievance of the petitioner, who is working in the Kerala State Financial Enterprises Limited as Special Grade Assistant, is as against the delay in finalising the disciplinary action initiated against her in the year 2002 and secondly on the denial of promotion to her as Assistant Manager.

2. The petitioner submits that she was placed under suspension as per Ext.P1 memo dated 11.09.2002 alleging willful negligence and grave procedural lapses. The suspension was followed by Ext. P2 memo of charges seeking her explanation, issued on 07/02/2003. The allegation was that the petitioner left the bunch of keys including the key of cash sales in the office itself in an unsafe manner on 05.09.2002 which has led to loss of a sum of Rs.5,11,816/- (Rupees Five lakh eleven thousand eight hundred and sixteen only). It was alleged that the collusion for embezzlement of cash cannot be ruled out in the process. It was also alleged that the petitioner kept the bunch of keys in

an unsafe manner and left the office, fully knowing that it may entail catastrophic consequences that may ensue by such reckless action. The petitioner submitted Ext.P3 explanation on 22.02.2003. Dissatisfied with the explanation, the respondents ordered an enquiry. An enquiry officer was appointed. The petitioner was reinstated and posted as Senior Assistant in Trissur-III(Patturakkal) as per Ext.P4 order dated 03.12.2004. The enquiry officer submitted Ext.P5 report dated 25.06.2008 along with his letter dated 01.07.2008. The petitioner points out that the enquiry officer had in the domestic enquiry report, dated 25.06.2008, found that the petitioner is not guilty of the charges. But final orders are not yet issued. It is stated that even before the enquiry report was submitted, the petitioner was promoted as Special Grade Assistant as per Ext.P6 order on 05.10.2007. Subsequent to the filing of the enquiry report, the respondents published Ext.P7 notice dated 06.07.2010, publishing the seniority list of test qualified Assistants eligible for promotion as Assistant Managers as on 01.07.2010. In Ext P7 seniority list, petitioner was included as serial

number 18. But she was denied promotion when 104 of her juniors were granted promotion as Assistant Managers as per order dated 07.08.2010. Aggrieved by the same, the petitioner submitted Ext.P8 representation on 11.08.2010 requesting promotion as Assistant Manager with effect from 07.08.2010 with all consequential service and monetary benefits. It is stated that as per Ext.P9 order her request was rejected stating that a criminal case was registered in respect of the cash theft occurred in September, 2002 at the Ernakulam main branch when the petitioner was the cashier. It is stated that the enquiry Officer did not rule out the negligence and dereliction of duty on her part stating that the loss caused to the company cannot be compensated and a decision was pending on the same.

3. The petitioner points out that another set of 129 juniors were promoted as Assistant Managers on 24.02,2011 and immediately thereafter she approached this Court. It is stated that the criminal case was registered by the CBI. It is stated that CBCID has closed the criminal case registered against the petitioner.

4. The learned counsel for the petitioner points out that the respondents have not passed any orders to drop further proceedings against the petitioner despite the fact that the petitioner was found not guilty by the enquiry officer in Ext.P5 inquiry report. It is also pointed out that during the pendency of the writ petition, petitioner was granted promotion as Assistant Manager and thereafter as Manager grade IV, both on provisional basis on the basis of interim orders passed by this Court from time to time.

5. The respondents have filed a counter affidavit admitting that the petitioner was included in the list of eligible candidates for promotion as Assistant Manager and also that the petitioner was denied promotion on account of the disciplinary action pending against her.

6. The petitioner also points out that several persons junior to her got promotion. The disputes are not seen finalised evenafter about 10 years of the filing of the enquiry report.

7. The contention of the respondents is that final orders in the departmental proceedings were not

issued as they were waiting for orders in the criminal case.

8. On consideration of the contentions on both sides it is seen that the inquiry Officer has submitted Ext.P5 enquiry report as early as on 25.06.2008 concluding as follows:

"In the light of the above discussions, I am of the view that the management has failed to prove the allegations against the delinquent employee beyond doubt. She may be negligent but there is nothing to show that she was acting with malafide intentions. Hence there is no merit in the allegations and it is found accordingly."

9. It is not proper for the respondents not to finalise the disciplinary action even after about 12 years of the enquiry report, under the guise of the pendency of criminal case. Now that the criminal case is also closed, there is no reason for any further delay in finalisation of the departmental proceedings.

10. It is settled law that there is no bar in conducting departmental action when criminal proceedings are pending and the employer need not wait for the conclusion of the criminal proceedings for

conducting or finalising the departmental action, except in a very few cases. In the present case there were no such hurdles.

11. In the above circumstances there shall be a direction to finalise the disciplinary action against the petitioner within a period of one month from the date of receipt of a copy of the judgment. The question relating to regularisation of the period of suspension shall also be taken up and orders shall be passed in accordance with the law within a further period of one month. The claim of the petitioner for regular promotion with effect from the date on which her juniors were promoted shall also be considered depending upon the final orders to be passed in the departmental proceedings and she shall be granted the benefits within a further period of two months.

The Writ Petition is disposed of as above.

Sd/-

P . V . ASHA

JUDGE

DM

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE MEMO NO.48963 DATED 11/09/2002 OF THE 1ST RESPONDENT.
EXHIBIT P2	TRUE COPY OF THE MEMO NO.48963 DATED 07/02/2003 OF THE 2ND RESPONDENT.
EXHIBIT P3	TRUE COPY OF THE EXPLANATION DATED 22/02/2003 SUBMITTED BY THE PETITIONER TO EXT.P2.
EXHIBIT P4	TRUE COPY OF THE MEMO NO.48963 DATED 03/12/2004 OF THE 1ST RESPONDENT.
EXHIBIT P5	TRUE COPY OF THE LETTER DATED 01/07/2008 ALONG WITH THE ENQUIRY REPORT.
EXHIBIT P6	TRUE COPY OF THE ORDER NO.4130/ADMN. DATED 05/10/2007 OF THE 1ST RESPONDENT.
EXHIBIT P7	TRUE COPY OF THE RELEVANT EXTRACT OF NOTICE NO.4130/T DATED 06/07/2010 OF THE 2ND RESPONDENT.
EXHIBIT P8	TRUE COPY OF THE REPRESENTATION DATED 11/08/2010 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
EXHIBIT P9	TRUE COPY OF THE LETTER NO.48963/4130 (P) DATED 29/09/2010 OF THE 2ND RESPONDENT.
EXHIBIT P10	TRUE COPY OF THE ORDER NO.4130 DATED 08/11/2012 ISSUED BY THE 2ND RESPONDENT ON BEHALF OF THE 1ST RESPONDENT.
EXHIBIT P11	TRUE COPY OF THE NOTICE NO.4130/T DATED 24/05/2016 OF THE MANAGING DIRECTOR.
EXHIBIT P11 (A)	TRUE COPY OF THE RELEVANT EXTRACT OF THE APPENDED ELIGIBILITY LIST OF ASSISTANT MANAGER/ DEPUTY MANAGER.
EXHIBIT P12	TRUE COPY OF THE NOTICE NO.4130/T DATED 13/06/2018 OF THE MANAGING DIRECTOR OF THE KERALA STATE FINANCIAL ENTERPRISES LTD.
EXHIBIT P13	TRUE COPY OF THE ORDER NO.4130 DATED 20/06/2018 OF THE MANAGING DIRECTOR, KERALA STATE FINANCIAL ENTERPRISES LTD.

//TRUE COPY//
PA TO JUDGE