

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 13TH DAY OF AUGUST, 2015/22ND SRAVANA, 1937

W.P.(C).No. 2016 of 2009 (M)

PETITIONER(S):

M.RADHAKRISHNAN,
ASSISTANT SALESMAN (UNDER SUSPENSION),
MAVELI STORE, KERALA STATE CIVIL SUPPLIES CORPORATION,
VALAPAD, THRISSUR DISTRICT.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENT(S):

1. KERALA STATE CIVIL SUPPLIES CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR, MAVELI BHAVAN,
GANDHI NAGAR, KOCHI.
2. THE ADDITIONAL GENERAL MANAGER (P&A),
KERALA STATE CIVIL SUPPLIES CORPORATION,
MAVELI BHAVAN, GANDHI NAGAR, KOCHI.

R1-R2 BY ADV. SRI. N.D.PREMACHANDRAN, SC, SUPPLYCO.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04.08.2015,
ALONG WITH W.P.(C) NO. 29979/2014, THE COURT ON 13.08.2015 DELIVERED THE
FOLLOWING:

P.T.O.

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1 TRUE COPY OF THE REPRESENTATION DATED 28.11.2008 FILED BY THE PETITIONER ALONG WITH OTHERS SIGNED BY 316 SALESMEN WORKING IN THE CORPORATION BEFORE THE 1ST RESPONDENT.
- EXT. P2 TRUE COPY OF THE MEMORANDUM DATED 25.12.2008 SUBMITTED BY THE ASSOCIATION BEFORE THE 1ST RESPONDENT.
- EXT. P3 TRUE COPY OF THE NEWS REPORT APPEARED IN THE MANGALAM DAILY DATED 04.01.2009.
- EXT. P4 TRUE COPY OF THE NEWS REPORT APPEARED IN THE MATHRUBHUMI DAILY DATED 04.02.2009.
- EXT. P5 TRUE COPY OF THE ORDER NO.D24/402/09 DATED 06.01.2009 ISSUED BY THE 2ND RESPONDENT.
- EXT. P6 TRUE COPY OF THE MEMO OF CHARGES AND STATEMENT OF ALLEGATIONS DATED 15.01.2009 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER (PRODUCED BY THE PETITIONER ALONG WITH THE REPLY AFFIDAVIT AND MARKED).
- EXT. P7 TRUE COPY OF THE REPRESENTATION DATED 16.03.2009 SUBMITTED BY THE PETITIONER AND OTHER OFFICE BEARERS.

RESPONDENTS' EXHIBITS:

- EXT. R1(1) THE PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 20.04.2008.
- EXT. R1(2) THE PHOTOCOPY OF THE PROCEEDINGS DATED 17.03.2008.
- EXT. R1(3) THE PHOTOCOPY OF THE PROCEEDINGS DATED 07.11.2008.

//TRUE COPY//

P.S. TO JUDGE

St/-

C.R.

SHAJI P. CHALY, J.

W.P.(C) Nos.2016 of 2009 & 29979 of 2014

Dated this the 13th day of August, 2015

JUDGMENT

As the parties in the writ petitions are one and the same and the subject matter for consideration are intrinsically connected, I propose to dispose of the above writ petitions by a common judgment.

2. Brief facts in each of the writ petitions are narrated hereunder:

W.P.(C) No.2016 of 2009

3. Petitioner was working as Assistant Salesman in the Valapad Maveli Store of the 1st Respondent Corporation. Petitioner was issued with Ext.P5 order dated 06.01.2009 placing him under suspension from service pending enquiry, for the reason that the petitioner convened press conference, which was evident from 'Mathrubhumi Daily' dated 04.01.2009, 'Mangalam Daily' dated 06.01.2009 and the 'Hindu newspaper', without securing permission from the authority concerned and attributing allegations against the

Government and the 1st Respondent Corporation. The suspension order further read that in view of the press conference conducted by the petitioner without permission, he has violated Rule 5 of the Kerala State Civil Supplies Corporation Service Rules, 1974 and Rule 13(1) of the Helper Service Rule, 1978 and he has further dis-reputed the 1st Respondent Corporation while working as an employee of the Corporation. It was also stated in Ext.P5 order of suspension that on an earlier occasion i.e. on 10.03.2008, petitioner had published a newspaper report in 'Mathrubhumi Daily', attributing allegations against the State Government and dis-reputing the goodwill of the 1st Respondent Corporation and thereupon he was suspended, and later on, the Corporation after considering his request, reinstated the petitioner in service.

4. It is thus, challenging Ext.P5 order of suspension, the writ petition was filed by the petitioner basically contending that the action of the 1st Respondent Corporation was violative of freedom of speech guaranteed to the petitioner under Article 19(1)(a) of the Constitution of India. During the pendency of the writ petition, 1st Respondent has served petitioner with

Ext.P6 memo of charge pursuant to Ext.P5 order of suspension and thereupon the writ petition was amended seeking to quash Ext.P6 memo of charges also.

5. Respondents have filed counter affidavit and additional counter affidavit to the writ petition and the amended writ petition, respectively, refuting the allegations and claims contained in the writ petition. In the counter affidavit dated 20.02.2009, Respondents have contended that the writ petition was not maintainable since Ext.P5 order of suspension was issued consequent to the petitioner indulging in illegal activities against the rules of the 1st Respondent Corporation. That even though petitioner had committed similar misconduct earlier by publishing a newspaper report in the 'Mathrubhumi Daily' dated 10.03.2008 against the interest of the 1st Respondent Corporation, same was condoned consequent on the admission made by the petitioner and also considering the undertaking that the same mistake will not be repeated in future, petitioner was reinstated in service by imposing a minor penalty of barring two increments and posted as Shop Manager in charge of Maveli Store, Valapad in Palakkad region. It was further contended that petitioner took

membership of a political party and actively participated in political activities of the said party in spite of being an employee of the 1st Respondent Corporation in violation of prohibition contained under Rule 57 of the Kerala State Civil Supplies Corporation Rules, 1974. Apart from other contentions so raised, it was further contended that a press conference was convened by the petitioner at the Ernakulam Press Club on 03.01.2009 and warned of a token strike on 26.03.2009, threatening with closure of all Supplyco outlets in the event of Supplyco Management failing to reach a decision on their demands on or before 20.02.2009. Apart from the same, it was declared that the Union formed by the petitioner will go ahead with an indefinite strike to disrupt the functions of Supplyco outlets during Onam season in the year 2009. The petitioner also addressed newspapers and media tarnishing the image of the Corporation and also with the intention of furthering his political career, and therefore the said conduct of the petitioner was against Rule 58 of the Service Rules of the 1st Respondent, which prohibited any employee from making public or publish any document, paper or information which may come into his possession in his official capacity except

with the permission of the Managing Director of the 1st Respondent Corporation.

6. Rule 13(i) of the Kerala State Civil Supplies Corporation Helpers Service Rules, 1978 read thus:

"13. Duties, responsibilities and conduct

(i) No helper shall, except when generally or specially empowered or permitted in this behalf by the Managing Director, communicate directly or indirectly any information which has come into his possession in the course of his official duties or has been prepared or collected by him in the course of such duties, whether from official sources or otherwise, to any other person, or institution or to the press."

7. On a reading of the said rule, what is prohibited thereunder is any communication directly or indirectly which has come into the possession in the course of official duty of a helper or has been prepared or collected by him in the course of such duties whether from official sources or otherwise to any person or institution or to the press. On a reading of Ext.P4 paper publication, apparently, there was an information passed on by the petitioner with regard to the nature of appointments made in the 1st Respondent Corporation. Therefore, even if that was not an information received from an official source, it could be treated as one received by the

petitioner otherwise than official source and therefore revealing to a press, according to me, is a subject matter covered by Rule 13(i) of the Rules cited supra. Moreover, the misconduct need not be one that is mentioned under a Rule but on the other hand, it could be any other conduct of an employee affecting the prestige, reputation, goodwill or morality of a person or institution also.

8. Apart from the same, Rule 58 of the Kerala State Civil Supplies Corporation Service Rules, 1974, an employee is prohibited from making public or publishing any document, paper or information which may come into his possession in his official capacity except with the permission of the Managing Director. On a reading of the said rule, the issue under consideration may not have a direct impact but the petitioner being the General Secretary of a trade union, should have shown restraint to make reckless statement against the 1st Respondent Corporation. So also, as per Rule 57 of the Service Rules, an employee is prohibited from taking part in politics or any political demonstration etc. etc. Going by one of the charges alleged in Ext.P6 was that, the petitioner was a member of a political party and whether he was a member or

he continues to be a member was a factual aspect to be considered by the Respondents during the course of the enquiry and therefore in a proceeding under Article 226 of the Constitution, I may not be able to find out the said factual aspect especially since the same being a subject matter to be proved by adducing necessary evidence by the Respondents.

9. Further contention of the petitioner that other office bearers of the Association participated in the press conference, were not proceeded with and petitioner alone was singled out and carried out suspension, was denied and further contended that the petitioner had indulged in the very same misconduct by publishing of a newspaper report in 'Mathrubhumi Daily' on 10.03.2008. Apart from the said contention, it was also stated that the petitioner addressed letters directly to Ministers and took membership of political parties which are against Rule 60 (a) and 67(1) of the Conduct Rules. So also, it was contended that since the trade union formed by the petitioner without required strength of members, was not a registered trade union and therefore it had no right to participate in collective bargaining. On all these accounts, it was contended that the action taken by the 1st Respondent by issuing Ext.P5 and

placing the petitioner under suspension was well founded for gross misconduct on the part of the petitioner in violation of the rules in vogue.

10. Petitioner has filed reply and denied the allegations raised in the counter affidavit filed by the Respondents and also reiterated the stand taken in the writ petition. Later, the Corporation has filed additional counter affidavit pursuant to the amendment made by the petitioner to the writ petition based on Ext.P6 charge memo issued, justifying and reiterating the stand of the 1st Respondent. Additional reply affidavit was filed by the petitioner to the additional counter affidavit filed by the Respondents, reiterating his stand in the writ petition and also refuting the allegations made in the additional counter affidavit of the Respondents.

11. Heard the learned counsel for the petitioner, Adv. K.R.Ganesh and the learned Standing Counsel for the Respondents, Adv. N.D.Premachandran. Perused the pleadings in the writ petition, counter affidavits, reply affidavits and the documents produced by the rival parties.

12. The learned counsel for the petitioner contended that suspension based on Exts.P3 and P4 newspaper

publications can never be sustained under law since the same was not casting any aspersions or allegations against the Respondents and the petitioner has carried out the publication in his status as the General Secretary of the trade union formed as per Ext.P1 bye law. He further contended that the action of the Respondents by suspending him from service was nothing but interference with the fundamental right guaranteed under Article 19(1)(a) of the Constitution of India and therefore petitioner was fully justified in approaching this Court by invoking Article 226 of the Constitution of India.

13. So also, it was contended by the learned counsel that the newspaper report contained in Exts.P3 and P4 was on the basis of Ext.P2 representation dated 25.12.2008 submitted by the petitioner and other office bearers for and on behalf of the Union to the Chairman and Managing Director of the 1st Respondent Corporation. And therefore the Respondents were aware of the demands made by the petitioner for and on behalf of the Union and viewed in that manner there was no violation of any rules of the 1st Respondent Corporation so as to suspend him from service pending enquiry. To substantiate the contentions so raised, learned counsel for the petitioner

has invited my attention to the decision in '**Kameshwar Prasad and Others v. State of Bihar and another**' [AIR 1962 SC 1166] and contended that under similar circumstances the Hon'ble Apex Court interfered with the disciplinary action taken against the petitioners therein. The learned counsel has invited my attention to paragraph 13 which read thus:

"13. The first question that falls to be considered is whether the right to make a "demonstration" is covered by either or both of the two freedoms guaranteed by Art. 19(1)(a) and 19(1)(b). A "demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or society as by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognised that the argument before us is confined to the rule prohibiting

demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Art. 19(1)(a) or 19(1)(b). A demonstration might take the form of an assembly and even the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1) (a) & 19(1)(b).

x x x x x x
 x x x x x x."

14. So also, learned counsel has brought my attention to the decision in '**O.K. Ghosh and another v. E.X. Joseph**' [AIR 1963 SC 812] and referred to paragraphs 8 and 13 and contended that in the said judgment, the question was regarding violation of Rule 4(a) of the Central Civil Services Conduct Rules, 1955, wherein the participation of central Government employees in demonstration was the question and it was held that the said rule violated Article 19(1)(a) and (b) of the Constitution and therefore struck down.

15. In my view, the said judgments were rendered by the Hon'ble Apex Court with reference to the peculiar facts and circumstances of the said cases, i.e. participation of

employees in demonstrations without causing any disturbance or indulging in violent act. In that context of the matter, Hon'ble Apex Court was of the considered opinion that the demonstration conducted by the employees or workers was nothing but a visible manifestation of the feelings or sentiments of an individual or a group. But, here in this case, the issue is with regard to the imputations made against the 1st Respondent Corporation in Exts.P3 and P4 to the effect that the conduct of the Corporation by making deputation to various posts from outside sources without considering the workers/employees of the Corporation, that the employees of Corporation were treated like slaves and on the other hand, deputed persons were treated like owners and in Ext.P4, threat was raised with an intention to coerce the 1st Respondent to agree with the demands, which read thus:

“അശാസ്ത്രീയമായ ഡെപ്യൂട്ടേഷനാണ് സപ്ലൈകോയിൽ ഇപ്പോൾ നിലനിൽക്കുന്നത്. സ്വന്തം ജീവനക്കാരായ അസി.സെയിൽസ് മാനുവൽ അടിമകളാക്കി, വിരുന്ന്കാരായി വരുന്ന ഡെപ്യൂട്ടേഷൻ ജീവനക്കാരെ ഉടമകളാക്കുന്ന അനാവശ്യമായ നടപടിയാണു ഇപ്പോഴുള്ളത്. ഇത് അവസാനിപ്പിക്കണം. ഫിബ്രവരി മാസത്തിനുള്ളിൽ ഡെപ്യൂട്ടേഷൻ പൂർണ്ണമായി അവസാനിപ്പിച്ച് അസി.സെയിൽസ് മാനുവൽക്ക് പ്രമോഷൻ നൽകാനുള്ള നടപടി സ്വീകരിച്ചില്ലെങ്കിൽ ഓണക്കാലത്ത് സപ്ലൈകോ ജീവനക്കാർ സ്ഥാപനങ്ങൾ അനിശ്ചിതമായി അടച്ചിടുമെന്ന് എംപ്ലോയീസ് ഫോറം ഭാരവാഹികൾ പറഞ്ഞു.”

16. The learned counsel for the petitioner has read out the rules and contended that there was no express prohibition under the rules disabling the petitioner from convening a press conference, and that too, for and on behalf of the trade union of which he was the General Secretary. The learned counsel contended that the Rules mentioned under Ext.P5 suspension order did not enable the Respondents to initiate any disciplinary proceedings against the petitioner. It was also contended that the news reports contained under Exts.P3 and P4 did not constitute any misconduct as provided under the Rules of the 1st Respondent nor any other misconduct was discernible from the said newspaper reports.

17. The learned counsel for the petitioner further contended that the rules relating to the Helpers will not apply to the petitioner since he was Assistant Salesman. But the learned Standing Counsel for the Respondents contended that the post of Assistant Salesman was nothing but re-designation of the post of Helper and therefore the said rules are applicable. I find force in the said contention. So also, the learned counsel for the petitioner contended that Rules of the

Kerala State Civil Supplies Corporation Service Rules, 1974 also do not prohibit convening of a press conference and in that view of the matter, the entire action pursuant to Exts.P5 and P6 are arbitrary and illegal exercise of power liable to be interfered under Article 226 of the Constitution. It was further contended by the learned counsel that the charge as per Ext.P6 was not specific and therefore liable to be quashed for want of specific details in order to enable the petitioner to file a proper reply for the same. The learned counsel has invited my attention to the decisions reported in '**Kunhabdulla v. Union of India & Others**' [1983 KLT 1017] and '**Ibrahim v. Kerala Wakf Board**' [1985 KLT 24] and contended that the judgments rendered in the said decisions were under identical circumstances as that of Exts.P3 and P4 and therefore the petitioner is entitled to get the protection of the principles laid down under the said judgments. On going through the judgments, I found that the facts and circumstances in the said judgments relating to the publication of news reports vis-a-vis the representation made by the employees therein were entirely under different context. There, the employees had brought the attention of the management to a news report

appeared in the print media attributing allegations against the management and in that circumstances this Court held that the petitioner therein did not indulge himself in any misconduct so as to suspend him from service.

18. Learned counsel for the Respondents, on the other hand, contended that the petitioner was not entitled to invoke the jurisdiction of this Court since the conduct of the petitioner was in clear violation of the rules of the 1st Respondent referred *supra* and on a reading of Exts.P3 and P4 news reports, they *prima facie* tarnished the reputation of the 1st Respondent and also acted against its interests. Further, learned counsel contended that in Exts.P3 and P4, there was a clear threat put forth by the petitioner to the effect that if the demands raised by the trade union of which the petitioner was the General Secretary were not recognized, the Union will close down all the shops of the Corporation. Learned counsel for the Respondents has also reiterated the contentions raised in the counter affidavits and submitted that the action initiated by the Respondents pursuant to Exts.P5 and P6 were clearly sustainable under law in view of the violation of the rules and that the charges contained in Ext.P6 were very specific and

clear enabling the petitioner to defend the same properly and effectively and therefore they were entitled to proceed with the enquiry. Learned counsel also contended that pursuant to the interim order passed by this Court dated 09.03.2015, the Respondents have completed the enquiry and a preliminary show cause notice was issued to the petitioner proposing punishment and the petitioner had issued a reply to the same also. The learned counsel also submitted that the decision pursuant to the enquiry could not be taken pursuant to the direction contained in the interim order referred *supra*.

19. Having considered the rival submissions advanced by the learned counsel, in my view, the sustainability of Exts.P5 and P6 orders are largely dependant on Exts.P3 and P4 newspaper reports, even though as per Ext.P6 charge, other allegations are also raised against the petitioner. The foremost contention advanced by the learned counsel for the petitioner was that even if the entire newspaper report contained under Exts.P3 and P4 are taken into account, the same will not constitute any misconduct. Learned counsel also contended that even though in Ext.P4 it was said that if the demands of the union will not be recognized by the management, they will

resort to closure of shops, the same was not followed by the action threatened thereunder and therefore same cannot be considered as a misconduct in order to proceed with an enquiry. I have gone through Exts.P3 and P4 and found that the remarks contained therein, especially in Ext.P4, there are derogatory remarks against the management and also a threat that if the demands raised by the union are not agreed upon or recognized, they will resort to closure of the shops belonging to the 1st Respondent, which according to me, was a sort of coercion attempted by the petitioner in order to force the management to concede to the demands made, and if not, they will take law into hands and close down the shops. Then the learned counsel contended that the judgments cited supra reported in '**Kunhabdulla's case**' and in '**Ibrahim's case**', the action therein was tested against Article 19(1)(a) and (b) of the Constitution of India and held that the action initiated by the authorities thereunder was in gross violation of the fundamental rights and in this case also similar circumstances have occurred.

20. In my view, '**Kunhabdulla's case**' (*supra*) is concerned, there the question was a letter addressed to the

editor of a newspaper aimed at focussing the attention of the Railway Administration on the need for providing safety measures to prevent recurrence of accidents or adverse effect of what he thought to be reprehensive measures against Railway workmen and so far as the judgment in the case of '**Ibrahim's case**' (supra) is concerned, that was a case where a letter signed by eighteen persons including the petitioner drawing attention of the Wakf Board to newspaper reports appeared in newspapers contending allegations relating to transactions involving Wakf properties and requested for conduct of an enquiry into the allegations contained in the newspaper reports. There, the Court held that there was no reckless or scurrilous attack against the Wakf Board made, by submitting a representation signed by eighteen persons including the petitioner therein. According to me, in this writ petition, the circumstances contained is different from the circumstances contained in the said judgments. Here, in this case, as I pointed out earlier, on a reading of Exts.P3 and P4, there were imputations made against the management and also threat advanced. Even though the threat was not followed by any action, the publication of such a newspaper

report itself, according to me, is a misconduct.

21. In this context, it would be worthwhile to extract paragraph 6 of the judgment in '**State of Punjab and Others v. Ram Singh Ex-Constable**' [(1992) 4 SCC 54], which held as follows:

"6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

x x x x x"

Therefore, violation of any law, degradation of institution indulging in activities affecting morality and decency, negligence, threat etc. etc. are all misconducts entitled to be enquired by the employer under a specified circumstance. So also, misconduct literally means wrong or improper conduct

reasonably regarded as disgraceful or dishonourable which will tarnish or disrepute a person or institution. Therefore, according to me, the newspaper reports amount to misconduct liable to be proceeded in an enquiry.

22. Even though petitioner is seeking refuge under Article 19(1)(a) and (b) of the Constitution, the same is not an absolute right conferred on the petitioner. According to me, the right to freedom of speech and expression contained under the Constitution is circumscribed by sub-article (2) of Article 19. Moreover, petitioner, who clamour that he had the protection of Article 19(1)(a) of the Constitution, to have convened a press conference, should bear in mind, the right so enjoyed by him should not have in any way interfered with the right enjoyed by another under the very same Article, to live with dignity and decency. It is equally important to note that the liberty of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution brace within its sphere the corresponding duty, obligation and responsibility and impose limitations on the enjoyment of that liberty. So also, the Hon'ble Apex Court had occasion to consider a similar circumstance in the judgment in '**M.H. Devendrappa v. The**

Karnataka State Small Industries Development Corporation' [AIR 1998 SC 1064]. There, the question was a letter addressed by an employee to the Governor of Karnataka on behalf of the Karnataka State Small Industries Development Corporation Employees' Welfare Association in which he stated that the Corporation was likely to be wound up on account of bad administration, corruption and nepotism. Further, the employee issued a press statement which was published in a Karnataka Daily 'Samyuktha Karnataka' of the same date, welcoming the dismissal of the then Chairman of the appellant Corporation from the Presidentship of the Bangalore City District Congress Committee and further expressed the hope that political leaders would prevail upon the Government and remove him from the Chairmanship of the Respondent Corporation, thereby saving lakhs of rupees. Hon'ble Apex Court, considering the issue relating to the fundamental right guaranteed under Article 19(1)(a) and 19(1)(c), held in paragraphs 13 and 22 as follows:

"13. The right to freedom of speech and expression is subject to reasonable restrictions under Article 19(2). Such restrictions can be in the interest of sovereignty and integrity of India, security of the State,

friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Similarly, Article 19(1)(c) is also subject to reasonable restrictions under Article 19(4). Such reasonable restrictions can be made, inter alia, in the interest of public order or morality. Article 19(2) or 19(4) may not be directly relevant in the present case in view of the provisions contained in Rule 22 of the Service Rules. Rule 22 of the Service Rules is not meant to curtail freedom of speech or expression or the freedom to form associations or unions. It is clearly meant to maintain discipline within the service, to ensure efficient performance of duty by the employees of the Corporation, and to protect the interests and prestige of the Corporation. Therefore, under Rule 22 an employee who disobeys the service Rules or displays negligence, inefficiency or insubordination or does anything detrimental to the interests or prestige of the Corporation or acts in conflict with official instructions or is guilty of misconduct, is liable to disciplinary action. Rule 22 is not primarily or even essentially designed to restrict, in any way, freedom of speech or expression or the right to form associations or unions. A Rule which is not primarily designed to restrict any of the fundamental rights cannot be called in question as violating Article 19 (1)(a) or 19(1)(c). In fact, in the present proceedings the constitutional validity of Rule 22 is not under challenge. What is under challenge is the order of dismissal passed for violating Rule 22 when the impugned conduct which violates Rule 22 is held out as an exercise of a right under Article 19(1)(a) or 19(1)(c).

22. In the present case, the appellant had made a direct public attack on the head of his organisation. He had also, in the letter to the Governor, made allegations against various officers of the Corporation with whom he had to work and his conduct was clearly detrimental to the proper functioning of the organization or its internal discipline. Making public statements against the head of the organisation on a political issue also amounted to lowering the prestige of the organisation in which he worked. On a proper balancing, therefore, of individual freedom of the appellant and proper functioning of the Government organisation which had employed him, this was a fit case where the employer was entitled to take disciplinary action under Rule 22."

23. Therefore, in my view, the news reports contained in Exts.P3 and P4 cannot be brushed aside by contending that the said news reports authored by the petitioner were protected under Article 19(1)(a) of the Constitution. Of course, the subject matter of the newspaper report was a matter to be enquired into in the enquiry and the petitioner was not entitled to invoke the jurisdiction conferred on this Court under Article 226 of the Constitution. Moreover, there was no violation of any fundamental right since Ext.P5 suspension order was issued pending domestic enquiry and the

petitioner was extended with opportunity to prove his innocence.

24. The next contention advanced by the learned counsel was that the charges as per Ext.P6 charge memo were not specific and therefore liable to be quashed for want of specific details so as to enable the petitioner to defend the same properly. In that context, learned counsel has invited my attention to the decision in '**Viswamithran v. Manager, S.N. College & Others**' [1997(1) KLJ 147], wherein a Division Bench of this Court held that charge issued to an employee should be specific, precise and intelligible and further that the management cannot escape the said liability by contending that the delinquent knows about the charge and if not the entire disciplinary proceedings will be violative of the principles of natural justice. That was a judgment rendered by this Court, setting aside an order passed by the Calicut University Appellate Tribunal sustaining the enquiry conducted by the University and imposition of punishment thereupon. According to me, the factual circumstances contained in the said case was entirely different especially for the reason that, that was a revision preferred against an order of the University Appellate

Tribunal, wherein the question was sustenance of the enquiry report and the employee therein has taken the vague nature of the charge as a defence in the enquiry proceedings. But here, in this case, the petitioner has raised such a question in the writ petition, without even filing a reply either to Ext.P5 order of suspension or Ext.P6 charge memo. In my view, the nature of the charge was a factual aspect to be thrashed out by the petitioner in the enquiry proceedings. So also, on a perusal of Ext.P6 charge memo, I do not think that the charges contained therein are vague. They are clear enabling the petitioner to issue reply to the same and furthermore, it was a vital defence for the petitioner in the enquiry. Since that question was a question of fact, I do not think that the same was a subject matter for the petitioner to invoke the discretionary jurisdiction conferred on this Court under Article 226 of the Constitution. I refrain from making any further comments on the charge memo for the reason that the same may affect the petitioner in the enquiry proceedings in view of the order I propose to pass.

25. Yet another contention advanced by the learned counsel for the petitioner was that even though he was a

member of the political party earlier, he resigned from the same and therefore the charge against the petitioner contained in Ext.P6 against the political activities carried on by him was not sustainable. According to me, the said aspect is also a factual matter which will have to be considered in the enquiry proceedings. In that view of the matter, on facts and on perusal of the Rules of the 1st Respondent referred *supra* by the rival parties, petitioner prima facie had exceeded in his conduct and thereby his actions attained the magnitude and character of a misconduct which enabled the Respondents to issue Exts.P5 and P6 in order to elicit the truth. Furthermore, even though the news report contained in Ext.P4 was not followed by any action as threatened, same was prima facie a misconduct affecting discipline. Learned counsel for the petitioner also contended that the news report contained in Ext.P4 regarding closure of the shops was not true. According to me, that was all the more, a reason for the petitioner to have cooperated with the enquiry and proved his innocence. It is a well settled proposition of law that suspension pending enquiry is not at all a punishment, but the same was only an enabling circumstance to the delinquent employee to prove his

innocence of the misconduct alleged against him as per the charges framed. Petitioner consequent to the institution of enquiry was always at liberty to put forth his defence and prove his innocence.

26. In that view of the matter, I am of the considered opinion that the action taken by the Respondents as per Ext.P5 was in accordance with law and therefore the petitioner was not entitled to secure any relief invoking the jurisdiction conferred on this Court under Article 226 of the Constitution of India and therefore the writ petition is dismissed, however making it clear that the observations and findings are rendered only for the purpose of consideration and disposal of the questions raised in the writ petition and the same should not stand in the way of the petitioner, to put forth his defence in the enquiry proceedings including the facts and legal circumstances narrated in this writ petition and the enquiry authority as well as the disciplinary authority will take a decision, wholly based on the enquiry proceedings and untrammelled by any observations or findings contained in this judgment.

W.P.(C) No.29979 of 2014

27. This writ petition was filed by the petitioner seeking direction to the 1st Respondent to consider and pass orders promoting the petitioner as Junior Assistant from the date on which his junior was promoted and for other consequential reliefs.

28. Petitioner was appointed as Assistant Salesman in the 1st Respondent Corporation on 08.06.2001 on the advice of the Kerala Public Service Commission in the scale of pay of Rs.7610-9940. Petitioner is basically a Law graduate and due to pressing family reasons, he has been working as Assistant Salesman in the Corporation. He belongs to Scheduled Caste community. Petitioner was qualified to be appointed as Junior Assistant on the higher pay scale of Rs.9940-16580. In pursuit of filling up of the post of Junior Assistant by promotion, the Respondent Corporation conducted an eligibility test on 10.06.2012 and petitioner has come out successful and he was placed at Sl.No.142 as per Ext.P1 seniority list. When the petitioner understood that up to his immediate rank holder was promoted and while he was eligible to be promoted,

Sl.No.143 and four other juniors up to Sl.No.148 were promoted as Junior Assistant as per Ext.P2 order dated 25.09.2014 issued by the 3rd Respondent. It was also contended that as per Ext.P3 order dated 31.10.2014, again, 36 persons were promoted, out of which, 35 persons were juniors to the petitioner. The petitioner was subjected to discrimination being a member of the Scheduled Caste community and being a Law graduate among other subordinate staff. It was his contention that the attitude of the Respondents was to harass the petitioner in view of his trade union activities and the non grant of promotion to the petitioner is a visible representation of continuance of the harassment meted out to him after suspending him from service on 06.01.2009. Petitioner was reinstated pursuant to the interim order passed by this Court in I.A.No.3799 of 2009 in W.P.(C) No.2016/2009 dated 27.05.2009 and with effect from 28.07.2011.

29. It was also contended that the petitioner was again placed under suspension from 29.11.2012 alleging irregularities in noting ration card numbers of the customers in the register during Onam season and thereupon disciplinary

action was initiated and the same culminated without any penalty and the petitioner was asked to remit a sum of Rs.35,694/- being the loss sustained by the Corporation consequent to the conduct of the petitioner. It was his further case that the said amount was remitted by him and thereupon he was reinstated in service on 23.07.2013, which is evident by Ext.P5 order of the 1st Respondent dated 21.04.2014. It was also stated that when he came to know about his supercession to the post of Junior Assistant by several number of his juniors, Ext.P6 representation was submitted and in spite of the same, he was not promoted to the post of Junior Assistant. It was thus aggrieved, this writ petition was filed.

30. The Respondents have filed a statement and contended that as per the decision of the Board of Directors dated 15.03.2012, it was decided that employees having a liability of Rs.20,000/- and more or involved in police case/vigilance case/disciplinary case shall not be considered for promotion to the next higher post. It was also stated that taking into consideration the said decision petitioner was not considered for promotion, since he was kept under suspension pending enquiry by the proceedings dated 06.01.2009 and

thereafter charge sheeted, which was the subject matter of Exts.P5 and P6 in W.P.(C) No.2016 of 2009. It was also contended that even though the petitioner was reinstated in service pursuant to the suspension dated 23.07.2013 on the petitioner agreeing to remit the amount of Rs.35,694/- towards the loss sustained by the Corporation, the petitioner has not paid the entire amount and an amount of Rs.17,691.87 was still outstanding from the petitioner and in view of the pendency of the disciplinary proceedings against the petitioner, as per the decision of the Board referred supra, petitioner was not entitled to be promoted to the post of Junior Assistant.

31. On appreciating the pleadings and the rival submissions made by the learned counsel and on perusal of the documents produced, I found that even though in the statement submitted by the Respondents it was contended that the petitioner could not be provided with promotion to the post of Junior Assistant pursuant to a decision of the Board of Directors dated 15.03.2012, petitioner has not cared to challenge the same. The learned counsel for the petitioner contended that since the post of Junior Assistant was not a

selection post, the pendency of disciplinary proceedings was not a prohibition or drawback to promote the petitioner to the post of Junior Assistant. In that context, petitioner has invited my attention to the judgment of the Hon'ble Apex Court in **'H.P. State Electricity Board v. Shri K.R. Gulati'** reported in [J.T. 1998 (1) SC 387] and canvassed the proposition that since the post to which the promotion sought for was not a selection post, the pendency of the disciplinary proceedings could not be pressed into service by the Respondents to decline promotion. In my view, in the decision cited *supra*, the Hon'ble Apex Court was considering the question of promotion to a non-selection post and held in paragraph 7 as follows:

"7. It is in this context an ancillary question required to be answered namely whether the departmental promotion committee could have held the respondent unsuitable for the post of senior stenographer merely on the ground that he has lost touch in stenography. The answer to this must be in the negative. Since under the Regulations as well as the Appendix, the criteria for promotion to the non-selection post being seniority the departmental promotion committee could not have held the respondent unsuitable for the post of senior stenographer. The decision of the departmental promotion committee, therefore, was wholly erroneous."

32. The principles laid down in the said case has no

bearing to the issues involved in this writ petition. Learned counsel for the petitioner could not point out any of the enabling rules of the Respondent Corporation entitling the petitioner to seek promotion during pendency of the disciplinary proceedings and moreover, petitioner had no case that the decision of the Director Board referred *supra* was constituted in violation of any of the rules in force. That apart, as contended by the learned counsel for the Respondents, the Director Board of the 1st Respondent Corporation has taken a categorical decision prohibiting promotion of the employees under the eventualities referred *supra* and that, the order of the Director Board was also not under challenge in the writ petition.

I find force in the said contention advanced by the learned counsel and in the present fact scenario, I do not think that the petitioner is entitled to get any reliefs sought for in the writ petition. Accordingly, the said writ petition is also dismissed.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge