

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WA.No. 826 of 2015

JUDGMENT DATED 04-03-2015 IN WP(C) 10568/2014

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APPELLANT(S)/RESPONDENTS IN WPC:

- 1. NATIONAL INSTITUTE OF TECHNOLOGY,
CALICUT, NIT CAMPUS P.O., CALICUT,
PIN-673 601, REPRESENTED BY ITS REGISTRAR.**
- 2. THE DIRECTOR,
NATIONAL INSTITUTE OF TECHNOLOGY, CALICUT,
NIT CAMPUS P.O., CALICUT, PIN-673 601.**

**BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI**

RESPONDENT(S)/PETITIONER IN WPC:

**SUBHASH K.M.,
ASSISTANT PROFESSOR (UNDER SUSPENSION),
DEPARTMENT OF ELECTRICAL ENGINEERING,
NATIONAL INSTITUTE OF TECHNOLOGY, CALICUT, PIN-673 601,
RESIDING AT MAVILA VEEDU, ROHINI, SINGLE STREET LANE,
BALARAMAPURAM P.O., THIRUVANANTHAPURAM, PIN-695 501.**

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

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-09-2015
THE COURT ON 23-09-2015, DELIVERED THE FOLLOWING:**

msv/

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

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W.A.No.826 of 2015

Dated this the 23rd day of September 2015

J U D G M E N T

Shaffique, J

This appeal is filed by the respondents in W.P.C.No.10568 of 2014 challenging the judgment dated 04/03/2015 by which the learned Single Judge allowed the writ petition and directed that the petitioner shall be reinstated within a period of two weeks from the date of receipt of a copy of this judgment.

2. The short facts involved in the writ petition are as under:

The respondent herein, who is hereinafter referred to as the petitioner, filed the writ petition challenging Exts.P1 and P6 and sought for a declaration that his suspension was invalid by virtue of Rule 10(7) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and for other consequential reliefs for reinstating him in service after cancelling his suspension.

3. It is contended that the petitioner, who was working as Assistant Professor in the Department of Electrical Engineering,

National Institute of Technology, Calicut was suspended from service w.e.f 29/12/2012 as per order dated 11/1/2013. Suspension happened to be made based on Crime No.36/2011 registered against him. After conducting an investigation, petitioner was arrested on 29/12/2012. Final report was submitted on 29/05/2013 for offences under Sections 376, 302 and 201 I.P.C read with Section 117(d) of the Kerala Police Act, 2011. He was in judicial custody from 30/12/2012 till 15/03/2013 and thereafter released on bail. Bail was granted on certain conditions. According to the petitioner, since he was suspended with effect from 29/12/2012, it was mandatory on the part of the committee under Rule 10(6) of the CCS (CCA) Rules to have reviewed his suspension before 28/03/2013. Petitioner submitted several representations for which there was no reply . It is stated that subsequently a review committee was constituted on 17/10/2013 which met on 07/11/2013 and it was recommended that the petitioner's suspension may be revoked w.e.f 01/02/2014. But, still no action was taken in the matter. Thereafter the Board of Governors, by Ext.P6 order, observed that the continuance of his suspension was necessitated in public

interest and therefore further review of the suspension can be made only on the basis of the final decision of this Court. Petitioner submitted that he was arrayed as an accused on account of an unfortunate incident that occurred on 24/04/2011 and he was only a scapegoat of the media hype that was given to the incident. It was stated that even otherwise, the respondents were bound to comply with the review committee report dated 07/11/2013 and there was no reason why the suspension order had been continued beyond the period specified by them. The learned Single Judge observed that when the review committee had already recommended re-induction of the petitioner from 01/02/2014, there was no other reason for taking a different view. However it was observed that it was open for the Institute to allocate any other assignment to the petitioner other than teaching.

4. While impugning the aforesaid judgment, it is argued that the offence charged against the petitioner being grave and involving moral turpitude, the learned Single Judge was not justified in directing cancellation of the suspension. It is argued that the Board of Governors of the Institute had gone into the

review committee recommendations and decided not to re-induct the petitioner till the case charged against him is over and he is acquitted. The said decision has been taken in public interest and in the interest of the institution and the students. It is argued that the petitioner, being a Lecturer, is alleged of committing rape as well as murder, and the victim herself was an Adhoc Lecturer of the college, who later joined as Full Time Research Scholar in the Department of Electronics and Communication. The student community, therefore, will not tolerate the petitioner to take classes, without him being completely exonerated from the charges levelled. It is also pointed out that the trial is to start soon and therefore his suspension can be reviewed after the trial is over.

5. It is also pointed out that the petitioner had to be kept under suspension on account of the conditions in the order passed by this Court in B.A.No.1845/2013 wherein the petitioner was not to enter the limits of Calicut District for a period of six months from the date of the order.

6. With reference to the contention regarding compliance of review in terms of Rule 10(6) of the CCS (CCA) Rules, it is

submitted that when the six months period was over, the review Committee considered the case of the petitioner and though they have recommended the reinstatement of the petitioner w.e.f 01/02/2014, the Board of Governors took a contrary view and awaited the final verdict from the High Court. Learned counsel submitted that, in fact, they were awaiting the decision in the trial rather than the judgment of the High Court in the above writ petition.

7. Learned counsel also placed reliance on the judgment in **Union of India v. Rajiv Kumar** [(2003) 6 SCC 516], **Manager Nirmala Senior Secondary School, Port Blair v. N.I.Khan and Others** [(2003) 12 SCC 84] and **Ajay Kumar Choudhary v. Union of India and another** [2015(1) ILR Kerala Series 767] to substantiate the necessity for keeping the petitioner under suspension.

8. On the other hand, the learned counsel for the petitioner relies upon the judgment of the Supreme Court in **Union of India v. Dipak Mali** [2010(2) SCC 222] to contend that if there is no review being conducted after a period of 90 days in terms with Rules 10(6) and (7) of the CCS (CCA) Rules, suspension

gets automatically vacate. Paragraph 10 is relevant which reads as under:

“10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioners' case came up for review on 20-10-2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of sub-rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.”

9. Having heard the learned counsel on either side, it is rather clear that though the petitioner has been involved in serious offences, in so far as his service condition is concerned, the appellants are bound to take into consideration the relevant rules to continue his suspension. He was suspended with effect from 29/12/2012 in terms of Rule 10(6) of the Rules, review

committee ought to have considered extension or revocation of his suspension within a period of 90 days. Apparently the same has not been done. Rule also provides for subsequent reviews before the expiry of the extended period of suspension. It is also provided that extension of suspension shall not be for a period exceeding 180 days at a time. Rules 10(6) and (7) are extracted in para 2 of the judgment in **Dipak Mali** (supra) which is extracted hereunder:

“2. Under Rule 10 of the Central Civil Services (CCA) Rules, 1965 amended by Notification dated 23/12/2003, sub-rules (6) and (7) were inserted. As the same are relevant to the facts of this case, the same are extracted hereinbelow:

“10. (6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, on the recommendation of the Review Committee constituted for the purposes and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before the expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) Notwithstanding anything contained in sub-rule (5), an order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days."

10. Apparently, such a review committee has not been formed within the time, as specified under rules. But, still thereafter review was held on 07/11/2013 and their report indicated re-induction of the petitioner w.e.f 01/02/2014. Once the review committee has given their decision, appellants were bound to comply with the same. However, the same has not been done. Whereas, by Ext.P6 order, the Director of the Institution directed continuance of the suspension till the case before the High Court is over.

11. It is argued by the learned counsel for the respondent that the said eventuality has also happened and even after Ext.P6 dated 15/05/2014, no review has been held within the periods specified under Rule 10(6). Though the learned counsel for the appellants relied upon the other provisions especially Rule 10(9), we do not think that such provisions can have application to the

factual circumstances involved in the matter. The short question was whether there was compliance of Rule 10(6) of the Rules. First of all, review committee was not constituted within the time as prescribed under the rules. Secondly, though belatedly the review committee considered the matter, the decision of the committee has not been implemented. The decision of the review committee was to re-induct the petitioner w.e.f 01/02/2014 and thereafter also, the management decided not to re-induct the petitioner. But, after the decision of the review committee, no further review had been held till date. In the above circumstances, we are of the view that the judgment in **Dipak Mali** (supra) squarely applies to the facts of the case. We do not think that the judgments relied upon by the learned counsel for the appellants will be applicable to the facts involved in the case. Under such circumstances, the learned Single Judge was justified in directing the 2nd respondent to reinstate the petitioner.

12. Taking into consideration the submission of the learned counsel for the appellants that the offences charged are of very grave nature, the learned Single Judge himself had observed that any other assignment can be given to the petitioner to avoid any

embarrassment to the staff and students. Under such circumstances, we do not find any reason to interfere with the judgment of the learned Single Judge and accordingly the writ appeal is dismissed.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

