

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WA.No. 2155 of 2015 IN WP(C).5700/2015

AGAINST THE ORDER IN WP(C) 5700/2015 of HIGH COURT OF KERALA DATED 20.7.2015

APPELLANTS/RESPONDENT 3 AND 4 IN WPC.:

1. DR.PADIYAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE
REPRESENTED BY ITS SECRETARY, CHOTTANIKARA, ERNAKULAM
KOCHI-682 312.
2. MR.R.GOPINATHA NAICK, SECRETARY
DR.PADIYAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE
CHOTTANIKARA, REPRESENTED BY ITS SECRETARY
CHOTTANIKARA, ERNAKULAM, KOCHI-682 312.

BY ADVS.SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINI
SRI.M.ASHOK KINI

RESPONDENTS/PETITIONER AND RESPONDENTS 1 AND 2 IN WPC:

1. SMT.S.N.SOBHA
W/O.SADASIVA SHENOY, LD CLERK
DR.PADIYAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE
CHOTTANIKARA, ERNAKULAM
RESIDING AT SHIVAPARAMBIL KALARIKKAL HOUSE
KARANAKODAM, THAMANAM PO, KOCHI-682032.
2. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT
GOVERNMENT SECRETARIAT, TRIVANDRUM-695 001.
3. THE PRINCIPAL AND CONTROLLING OFFICER
GOVT. HOMEOPATHIC MEDICAL COLLEGE, MACADE - P.O.
TRIVANDRUM-695 009.

R1 BY ADV. SRI.BENNY GERVACIS
R BY SR. GOVERNMENT PLEADER SRI.P.FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 16-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.VASHA, JJ.

Writ Appeal No.2155 of 2015

Dated this the 16th day of November, 2015

JUDGMENT

Asha, J.

This writ appeal is filed by Dr. Padiar Memorial Homeopathic Medical College and its Secretary, who were the respondents 3 and 4 in the writ petition, aggrieved by the judgment of the learned Single Judge by which the order of suspension, memo of charges as well as the order of punishment issued against the writ petitioner were quashed.

2. The writ petitioner was working as LD Clerk in Padiar Memorial Homeopathic Medical College. The writ petition was filed challenging Exts.P10 order of suspension, Ext.P11 memo of charges and P22 order awarding punishment of reduction in the time scale by 4 stages for a period of one year, having the effect of postponing of future increment, mainly on the ground that the order of suspension and memo of charges were issued in violation of the provisions in the first statute and the punishment is disproportionate.

3. On 27. 8. 2013, Ext P4 show cause notice was issued to the petitioner proposing disciplinary action against her, on the allegation that

on 24.8.2013, she left the office before office hours at 4.26 p.m. without obtaining permission. Thereafter she was placed under suspension as per Ext.P10 order dated 22.10.13. The writ petitioner challenged this order of suspension on the ground that as per Section 60(2) of the Kerala University Act, an order of suspension shall be issued only when disciplinary proceedings are already initiated against the delinquent. The order of suspension was followed by Ext.P11 memo of charges issued on 1.1.2014 which contained 7 charges. These memos of charges were challenged on the ground that those were not accompanied by statement of allegations, which is mandatory as per Statute 71 (2) of Kerala University (Conditions of Service of Teachers and Members of non-teaching staff) First Statute, 1979. The learned Single Judge set aside the memo of charges Ext.P11. Petitioner had submitted her explanation to the memo of charges vide Ext.P12 explanation. Even after setting aside the suspension and the memo of charges, the learned Single Judge, quashed the punishments imposed as per Ext.P22 also, on the ground that the same was disproportionate. This writ appeal is filed in these circumstances.

4. We heard Smt.Lakshmi Narayan, the learned Counsel appearing for the appellants and Sri.Benny Garvacis learned counsel appearing for the respondents.

5. Regarding the finding of the learned Single Judge on the issue regarding the order of suspension, we find that the order of suspension was issued before memo of charges were issued and hence it is in violation of Section 60(2) of the Kerala University Act, 1974, which is applicable to the non-teaching staff also and to those in the Kerala University of Health Sciences.

6. The memo of charges, is set aside on the ground that it is not accompanied by statement of allegations. On perusal of Ext P11, we find that each and every charges in Ext P11 are framed incorporating all the details of allegations explaining the instances factual circumstances leading to the charges. Charges 1, 2 and 3, which are found proved, read as follows:

"1. That on 14.8.2013 at 4.25 PM, you left the office before office hours, without obtaining prior permission from the Principal in Charge, which amounts so indiscipline of grave nature.

2. That you refused to accept the show cause notice dated 27.8.2013 sent to you by the Principal in Charge through Smt.Chithra.V, Attender, which amounts to indiscipline and insubordination of grave nature.

3. That on 27.08.2013 when the Principal in Charge asked you regarding leaving of the office without obtaining prior permission, you have replied to the effect that you will again leave the office without obtaining prior permission. But in your reply to the show cause notice dated 27.8.2013 which was served on you by the Principal himself, you have taken false contention that you left the office on 24.8.2013 at 4.26 PM after obtaining oral permission from the Principal in Charge, which amounts to indiscipline and insubordination of grave nature."

7. Therefore, we are of the opinion that even though a separate statement in the form of statement of allegations was not annexed to the memo of charges, the charges alleged in Ext P11 were self explanatory. Moreover, we find that the petitioner had filed Ext.P12 explanation answering each and every charges on factual as well as legal grounds. At the same time, no objection was also raised regarding the absence of a statement of allegations and no prejudice is seen caused to her on account of that. Therefore, it is clear that petitioner was able to understand the charges alleged against her even in the

absence of a statement of allegation. Therefore, we find that the setting aside of Ext.P11 memo of charges merely on the ground that it was not accompanied by a statement of allegations was unwarranted.

8. Then coming to the question of punishment, we find that three charges were found proved against the petitioner. The charge Nos.1 and 2 are that she left the office at 4.25 pm and she refused to accept show cause notice. As far as the third charge is concerned, the allegation is regarding insubordination and indiscipline. Even though we agree with the learned Single Judge that the punishment awarded is disproportionate, the learned Single Judge ought remitted the matter to the disciplinary authority to assess the gravity of the proved misconduct and to impose an appropriate punishment that is proportionate. We, therefore, modify that part of the judgment, and leave the matter to the disciplinary authority for reconsideration of the punishment on the basis of the evidence on record and in the light of the findings of the learned Single Judge. The appellants shall complete the proceedings within a period of two months from the date of receipt of a copy of the judgment.

9. As the learned Single Judge has quashed the order of suspension of petitioner, which we have upheld, we declare that the petitioner will be entitled to all monetary benefits due to her for the periods during which she was kept under suspension. The appellant shall finalise the proceedings and disburse all the benefit due to the petitioner within a period of three months from the date of receipt of a copy of this judgment.

With the above observations, writ appeal is disposed of.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
P.V.ASHA
JUDGE

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