

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WA.No. 1743 of 2014 ()

**AGAINST THE JUDGMENT IN WP(C) 23402/2012 OF THIS HONOURABLE COURT
DATED 04-08-2014**

APPELLANT/2ND RESPONDENT IN WP(C) :

**THE CENTRE FOR DEVELOPMENT OF IMAGING TECHNOLOGY (C-DIT)
CHITHRANJALI HILLS, THIRUVALLOM
THIRUVANANTHAPURAM- 695 027
REPRESENTED BY ITS DIRECTOR.**

BY STANDING COUNSEL SRI.C.S.AJITH PRAKASH

RESPONDENTS / PETITIONER & 1ST & 3RD RESPONDENTS INWP(C) :

- 1. P.V. UNNIKRISHNAN
AGED 50 YEARS, S/O. P.P. VASUDEVAN, JOINT DIRECTOR
C-DIT (UNDER SUSPENSION) CHITHRANJALI HILLS
THIRUVALLOM, THIRUVANANTHAPURAM- 695 027
RESIDING AT TRA, 41, GRANMA
THIRU NAGAR, PANGAPPARA,
THIRUVANANTHAPURAM - 695 581**
- 2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
INFORMATION & PUBLIC RELATIONS (E) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001**
- 3. THE DIRECTOR,
VIGILANCE AND ANTI CORRUPTION BUREAU, PMG
THIRUVANANTHAPURAM - 695 033.**

**R1 BY ADV. SRI.P.NANDAKUMAR
R2 & R3 BY SR. GOVT. PLEADER SRI. VIJU ABRAHAM**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11-12-2014,
ALONG WITH WA NO. 1853/2014, THE COURT ON 02-02-2015 DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE A1 : COPY OF THE G.O.(MS) NO. 17/2003/CAD DATED 12-5-2003.

**ANNEXURE A2 COPY OF THE RULES NAMED AS THE CENTRE FOR
DEVELOPMENT OF IMAGING TECHNOLOGY-SERVICE RULES.**

RESPONDENT'S ANNEXURES :

**ANNEXURE R1(a) : COPY OF THE CERTIFICATE OF REGISTRATION AND
MEMORANDUM OF ASSOCIATION AND RULES AND
REGULATIONS.**

ANNEXURE R1(b) COPY OF CONDUCT RULES AND DISCIPLINARY RULES.

ANNEXURE R1(c) COPY OF THE MINUTES OF THE MEETING DATED 29.1.1997.

**ANNEXURE R1(d) COPY OF THE MEMO OF CHARGES DATED 23.1.1991 ISSUED
UNDER THE DISCIPLINARY RULES.**

//TRUE COPY//

P.S. TO JUDGE

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Ashok Bhushan, Ag. C.J & A.M. Shaffique, J.

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W.A. Nos. 1743 & 1853 of 2014

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Dated this, the 2nd day of February, 2015.

J U D G M E N T

Shaffique, J.

These appeals have been filed against the judgment dated 4.8.2014 in W.P (C) No. 23402/2012. W.A. No. 1743/2014 is filed by the 2nd respondent in the writ petition and W.A. No. 1853/20145 is filed by respondents 1 and 2 in the writ petition.

2. The writ petition is filed by the 1st respondent in these appeals, who is hereinafter referred to as the petitioner, challenging the order of suspension issued by the 1st respondent inter alia contending that the rules for disciplinary procedure framed by the 2nd respondent do not envisage a suspension from service by the Government. As far as the petitioner is concerned, the competent authority to place him under suspension is the Director, with the approval of the Executive Committee. Though the petitioner is working as Joint Director, his lien was in the post of Registrar. Therefore, the order of suspension could not be passed by the Government. According to him, the Government has usurped the power of the Director and suspended him by way of Ext. P5, which, according to him, is against Rule 5 of the Rules of Disciplinary Procedure.

3. The facts involved in the writ petition would disclose that the petitioner, while working as Maintenance Engineer in Electronics in the Kerala State Film Development Corporation (KSFDC), was appointed as Registrar in Centre for Development of Imaging Technology (C-DIT) as per order dated 17.5.1990. While working as Registrar of the C-DIT, he was instructed to take up the responsibility of Information Kerala Mission, which was a project of C-DIT. He was posted as Executive Mission Director of Information Kerala Mission as per order dated 9.11.1999 retaining his lien in C-DIT. While working so, he was appointed as Member of Kerala State Planning Board on 11.8.2006, after relieving from the post of Executive Mission Director. Subsequently, as per Government Order dated 2.1.2010, his appointment in the Kerala State Planning Board was treated as 'on deputation' from C-DIT. His term in the Planning Board expired on 17.5.2011 and as per order dated 20.9.2011, he was posted as Joint Director of C-DIT. Ext. P2 is the said order. Thereafter, he was appointed as Joint Director of C-DIT as per proceedings dated 3.10.2011.

4. The 2nd respondent has issued to the petitioner a communication dated 1.10.2012 by which he was informed that the Government by order dated

29.9.2012 has placed him under suspension. Exts. P4 and P5 are such orders. The reasons stated in the suspension order is that a Vigilance case has been registered against him with reference to the period while he was working as Executive Mission Director at Information Kerala Mission. The offences alleged are under Section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act and Section 120B of the Indian Penal Code. The petitioner preferred a review against the order of suspension, which came to be rejected by Ext. 5(a) dated 2.8.2013. Hence, he had approached this Court.

5. It was inter alia contended that the Government had no power to suspend him from service and that apart, there was no situation warranting such suspension as he has not committed any of the alleged illegality or impropriety in the post he was holding in C-DIT. The allegations raised were with reference to matters related to Information Kerala Mission.

6. Counter affidavit was filed by the 1st and 3rd respondents. The 1st respondent contended that the petitioner, while holding the post of Executive Mission Director of Information Kerala Mission, had remitted an amount of Rs. 34,77,950/- as rent charges of the said website for two years without obtaining Government sanction. Further, by abusing his official position as

public servant, he procured research and advisory service from M/s. Gartner Limited without observing proper formalities and thereby spending the said amount. Vigilance enquiry was conducted and based on the report, a case was registered on 2.8.2012. It is stated that Information Kerala Mission was established on 1.8.1999 and so far it is not registered as an autonomous body. It is further stated that as per service rules in C-DIT, the appointing authority of the Director of C-DIT and Registrar is the Government. The C-DIT organization was established in the year 1988 and as per Rule 10 of the Kerala Civil Services (Classification, Control & appeal) Rules, the Government, who is the appointing authority, has the power to suspend an employee under special circumstances.

7. In the counter affidavit filed by the 3rd respondent, they reiterated the same stand as that of the 1st respondent.

8. The learned Single Judge, after hearing either parties, allowed the writ petition forming an opinion that since the petitioner is a person appointed as Registrar, C-DIT, the authority competent to suspend him is Director of C-DIT, as per Rule 5 of the Rules of Disciplinary Procedure of the Employees of C-DIT. It was further found that Rule 10 of Kerala Civil

Services (Classification, Control & Appeal) Rules applies only to Government servants defined under Rule 2(d) of the Rules. Though a review petition was filed by respondents 1 and 3 as R.P. No. 801/2014 pointing out the fact that the rule relied upon by the petitioner has not been approved by the Government, the review petition came to be dismissed.

9. While impugning the judgment of the learned Single Judge along with the order passed in the review petition, it is inter alia contended that the rules as approved by the Government was produced along with the review petition. Annexure A1 is the said rules. As per Annexure A1, the Director and Registrar are appointed by the Government. The petitioner was Registrar of C-DIT originally and after completion of his term of deputation as Member of the Kerala State Planning Board, he was allowed to join C-DIT as Director protecting his pay as Registrar since there was no vacancy of Registrar. Therefore, it is argued that the Government being the appointing authority has every right to place the petitioner under suspension. Further, it is contended that Ext. P5 order of suspension was issued based on the request made by the Director of Vigilance and Anti Corruption Bureau. The suspension of the petitioner was pending investigation of the Vigilance case. It is further

argued that C-DIT is a fully Governmental organization and the petitioner was appointed by the Government. Even if it is argued that Rule 10 of KCS (CC&A) Rules is not applicable, by virtue of Section 16 of the General Clauses Act, when the power to appoint is with the Government, such authority has the right to suspend or dismiss the Government staff.

10. In W.A. No. 1743/2014 as well, same contentions are raised by the appellant.

11. Heard the learned senior Government Pleader Sri. Viju Abraham appearing in W.A.No. 1853/2014, learned counsel for the appellant in W.A. No. 1743/2014 Sri. C.S. Ajith Prakash and Sri. P. Nandakumar, learned counsel appearing for the writ petitioner.

12. Two issues arise for consideration in this case. One is whether the Government has the power to suspend the petitioner from service and secondly, whether the order of suspension can be continued with reference to an alleged embezzlement of funds that happened several years back while the petitioner was working in another department.

13. The main crux of the argument of the writ petitioner is based on the rules for disciplinary procedure, which is approved by the management of C-DIT. It is not in dispute that as per Rule 5 of the Rules

of Disciplinary Procedure of the employees of C-DIT, the authority competent to place the petitioner under suspension is the Director with the approval of the Executive Committee. According to the Government, the said Rules have not been approved by the Government and only the Rules that is approved by the Government can be relied upon. Reference is made to Annexure 1 filed along with the review petition. Annexure 1 indicates that the Government has approved the service rules for C-DIT as per Government Order dated 12.5.2003.

14. It is argued that as per the service rules, which is approved by the Government, clause 1.4 is relevant, which is extracted as under:

“1.4. For those persons appointed on deputation basis to the Centre from Central or State Government service or other autonomous bodies, these rules shall apply so far as they are not prejudicial to their rights under the terms and conditions of such deputation.

For the Director & Registrar of the Society, who are appointed by the Government of Kerala, these rules shall apply so far as they are not prejudicial to their rights under the terms and conditions of their service as decided by the Government.”

General conditions of service is provided under Chapter 2. Clause 2.5 reads as under:

“2.5. Appointing Authority: The appointing authority for all the posts shall be the Director of C-DIT based on the recommendation of the Selection Board

constituted by Executive Committee. The selection board should have a nominee of Government, The Director and Registrar are appointed by Government.”

Apparently, the rules approved by the Government does not prescribe any procedure for disciplinary enquiry or suspension of an employee. But the fact remains that the appointing authority of the petitioner is the Government. When the Government is the appointing authority, the Government has the power to remove him from service.

15. The question is whether the power to suspend can be invoked by the Government. It is evident from Ext. P4 that the Registrar had informed the petitioner about the recommendation of the Director of Vigilance and Anti Corruption Bureau. Ext. P5 is the Government Order dated 29.9.2012, wherein it is stated that the Director of Vigilance and Anti Corruption Bureau has requested to place the former Executive Mission Director of Information Kerala Mission, who is working as Joint Director, C-DIT to suspend him from service for smooth conduct of investigation. This order is issued by the Government, taking into account the public interest for a proper and fair investigation of the Vigilance case. The direction was issued to Registrar, C-DIT to implement the order and report compliance. It is pursuant to the same that Ext. P4 has been issued

by the Registrar.

16. The learned counsel for the writ petitioner relied upon the judgment of this Court in **Suredran K. v. Government of Kerala & Others**, 2008 (3) KHC 738 (DB), wherein this Court having taken note of a suspension which was pending enquiry, has observed in paragraph 4 as under:

“4. It was argued that the reopening of a closed matter itself is illegal and the long delay in issuing a show cause notice itself vitiates the disciplinary proceedings. All these matters can be raised by the appellant if finally disciplinary action is taken. But the question is whether he should be suspended pending enquiry. It is well settled law that for every allegation of misconduct an employee need not be suspended pending enquiry. It is true that usually this Court will not interfere with an order suspending an employee pending enquiry. The power to suspend an employee should be exercised with caution and care as an order of suspension pending enquiry may put the employee into shame and humiliation. Of course, if the continuance of the employee in the same place affects the disciplinary proceedings, the employer can suspend the employee. Whether an employee should be suspended pending enquiry will depend upon various circumstances. Suspension pending enquiry though cannot be considered as a punishment, it cannot be disputed that it causes real hardship to an employee. The stigma attached cannot be ignored. The object in placing an employee under suspension pending enquiry is to enable the administration to conduct the proceedings smoothly so as to establish the allegations or the charge against the employee. If he is allowed to continue on duty, there may be occasion for tampering with the evidence so that the investigation cannot be successfully conducted. The power to suspend is discretionary. There should be

material to justify the suspension. The order should be free from the taint of mala fides, arbitrariness and extraneous considerations. Subjective satisfaction regarding suspension should be based on objective considerations and relevant circumstances. The suspension order should be sparingly passed in compelling circumstances. It is true that commission of grave misconduct may be a ground for suspending an employee, but the need for suspending an employee would not necessarily depend upon the gravity of the charges alone. The disciplinary authority should consider whether it is necessary to keep the employee away from the post. A person who is alleged to have embezzled public funds can be suspended immediately to prevent him from committing further embezzlement or doing something to cover up the fraud, but, it is not proper to suspend an employee posted elsewhere for an alleged irregularity committed nine years back, the file of which was closed. In *N. Prabhakar Murthy v. Tirumala Tirupathi Devasthanams*, 1992 (1) SLR 555, it was held that the action taken by the authorities by suspending an employee on the ground of the charges issued after a long lapse of six years is illegal and arbitrary and calls for interference by the High Court. If there is no possibility of tampering with the evidence, suspension need not be made. Since the appellant was transferred back to the parent department in 1999 and is now working in Palakkad (another district) in a totally different department, continuation of his service will not affect the enquiry. His suspension pending enquiry, nine years after the the commission of alleged misconduct based on a matter which was closed clearly establishes that there is no reason for suspending the appellant pending enquiry. Victimization can be inferred on the facts and circumstances of this case. It is arbitrary and illegal and warrants interference."

It was held that suspension order should be sparingly passed and that too in compelling circumstances. The

need for suspending an employee would not necessarily depend upon the gravity of the charges alone. It is for the disciplinary authority to give him away from the post. The argument on this basis is two fold. One is that the allegation is with reference to certain matters which took place several years back in a different organization and secondly, the disciplinary authority had no occasion to apply its mind to the facts of the case as to whether the petitioner should be kept under suspension.

17. If we are of the view that the Government, being the appointing authority has the power to suspend the petitioner from service, the matter ends there. In the absence of any arbitrariness or malafides in suspending the employee, whether the suspension should be revoked or not is purely a matter for the authority who suspended the petitioner from service to decide. Having regard to the fact that the Government is treated to be the appointing authority in respect of Registrar, if there are no rules governing the disciplinary action, the Government will have power to suspend him from service.

18. Now, the question to be considered is the relevance of the rules relied upon by the petitioner. According to the learned Government Pleader, the said rules have not been approved by the Government.

Whether the rules require to be approved by Government is a question of fact which requires to be considered or is it that the rules can be approved by the Executive Committee of C-DIT. The rules relating to the constitution of C-DIT has been produced as Ext.R1 (a) which clearly indicates the extent of Governmental control in the formation and functioning of C-DIT. Clause 26 of Rules and Regulations (Appendix B) of Ext.R1(a) indicates that prior approval from the Government is required for certain enumerated matters. Sub clause (vi) indicates that "Framing and amendment of Rules regarding the conditions of service of employees of the Society" is also an enumerated matter. Petitioner relies upon Ext R1(c) minutes of meeting held on 29.1.1997 in which resolution was passed as item no.7 approving the Service Rules, Employees' Conduct Rules and Disciplinary procedure of C-DIT staff. It is not in dispute that Service Rules produced as Annexure- A2 (W.A.No.1743/2014) has been approved by the Government on 12.5.2003. But there is no material to indicate that the Rules for Disciplinary Procedure which by itself forms part of conditions of service, has been approved by the Government, as required in terms of clause 26(vi) of the Rules and Regulations of C-DIT. Therefore petitioner cannot claim any benefit based on

Rule 5 of Rules for Disciplinary Procedure.

19. Under such circumstances, we have no hesitation to treat the Government as the appointing authority and therefore has the right to suspend the petitioner from service. Further, the suspension of the petitioner while holding the post of Registrar of C-DIT is being done in respect of an allegation that occurred while he was working in the Information Kerala Mission. The petitioner was a person who was appointed by the Government in C-DIT. Thereafter, he was sent on deputation in C-DIT. For all practical purposes, the Government having exercised the power to suspend him from service, the same cannot be treated as bad in law. Hence learned single Judge was not justified in taking a view based upon Rule 5 of Rules for Disciplinary Procedure.

20. Coming to the next point with reference to the validity or otherwise of the suspension order, it is a matter to be considered by the Government and this Court cannot sit in appeal against the discretion exercised by the Government in suspending him, unless there is arbitrariness in the said decision. It is a fact that the Vigilance Department has recommended suspension based on an enquiry and the matter is still under investigation. Therefore, it is for the Vigilance Department to complete the investigation and inform

the Government about the outcome of the said decision. At this stage, it may not be possible for a writ court to interfere with the order of suspension.

In the result, the appeals are allowed and we set aside the judgment in the writ petition and the order in R.P.No.801/2014 and dismiss the writ petition.

Sd/-

Ashok Bhushan, Ag. Chief Justice

Sd/-

A.M. Shaffique, Judge.

Tds/