

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 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WA.No. 2659 of 2015

AGAINST THE INTERIM ORDER IN W.P.(C).NO.33926/2015, DATED 24-11-2015

APPELLANT(S)/PETITIONER IN W.P.(C) :

**ARUN P.G., S/O.PUSHPANGADHARAN,
AGED 35 YEARS, WORKER,
KERALA STATE HANDICAPPED PERSONS WELFARE CORPORATION,
POOJAPPURA, THIRUVANANTHAPURAM,
RESIDING AT VASANTHA VILASOM,
RADHAKRISHNA LANE VAZHYILA, PEROORKADA,
THIRUVANANTHAPURAM.**

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENT(S)/RESPONDENTS IN W.P.(C) :

- 1. THE STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO
GOVERNMENT, SOCIAL JUSTICE (D)DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. THE MANAGING DIRECTOR,
KERALA STATE HANDICAPPED PERSONS WELFARE CORPORATION,
POOJAPURA, THIRUVANANTHAPURAM - 695 012.**

R1 BY SR.GOVERNMENT PLEADER SRI.P.IDAVIS

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1: A TRUE PHOTOCOPY OF THE INTERIM ORDER PASSED BY THE LEARNED SINGLE JUDGE ON 09.11.2015 IN W.P.(C).NO.33926/2015.**
- ANNEXURE A2: A CERTIFIED COPY OF INTERIM ORDER PASSED ON 24.11.2015 IN W.P.(C).NO.33926/2015 PASSED BY THE LEARNED SINGLE JUDGE.**
- ANNEXURE A3: A CERTIFIED PHOTOCOPY OF THE INTERIM ORDER DATED 25.11.2015 PASSED BY THE LEARNED SINGLE JUDGE.**
- ANNEXURE A4: A TRUE PHOTOCOPY OF THE OUTPATIENT RECORD AND THE CERTIFICATE ISSUED BY THE CONCERNED DOCTOR.**
- ANNEXURE A5: A TRUE PHOTOCOPY OF THE OUTPATIENT RECORD AND THE CERTIFICATE ISSUED BY THE CONCERNED DOCTOR.**
- ANNEXURE A6: A TRUE PHOTOCOPY OF THE ORDER DATED 06.11.2015 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ASHOK BHUSHAN, CJ & A.M.SHAFFIQUE, J

W.A. No. 2659 of 2015

Dated this the 9th day of December, 2015

JUDGMENT

Shaffique, J

This writ appeal has been filed against the interim order dated 24.11.2015 in Writ Petition(C). No.33926 of 2015 by which learned Single Judge had vacated the interim order of stay which has been granted on 9.11.2015. The short facts involved in the writ petition would disclose that the petitioner apprehending that disciplinary action might be taken against him challenged Exhibit P2 show cause notice and Exhibit P3, a direction issued by the Government to take immediate action against him. He also for a direction to consider his representation, Exhibit P4.

2. By the interim order dated 9.11.2015, the learned Single Judge has stayed further proceedings pursuant to Exhibit P3. Exhibit P3 is a letter issued by the Government recommending to the Managing Director, Kerala State Handicapped Persons Welfare Corporation calling upon him to

take major disciplinary action against the petitioner for terminating his service with immediate effect. When the case came up for hearing on 24.11.2015, learned Single Judge modified the said order observing that since the petitioner has been terminated from service on 6.11.2015 and the order of termination was served on him, the stay shall not be operative. The respondent was directed to file counter affidavit within a period of two weeks. The matter again came up for hearing on 25.11.2015, wherein the petitioner contended that he was not given the communication regarding termination of service. Learned Single Judge took note of the fact that learned Special Government Pleader has produced the records and it was found that the communication was sent on 6.11.2015 by registered post, which was refused by the petitioner and endorsement of the postal authority is seen on the registered cover. On that basis, it was observed that the interim order shall stand vacated, since the petitioner had suppressed the facts and attempted to evade service. When it was stated that copy was not served on the petitioner, learned Special Government Pleader was directed to give copy of the order to the petitioner's counsel.

3. It is inter alia contended by learned counsel for the appellant that the learned Single Judge has committed serious error in vacating the interim order. It is argued that the order dated 6.11.2015 was not served on the petitioner and a reading of the said order itself would indicate that it was pre-dated. That apart it was stated that there was no reason for terminating the petitioner based on the direction issued by the Government .

4. On the other hand, learned Special Government Pleader submits that the facts involved in the case clearly disclose that the learned Single Judge was justified in vacating the interim order.

5. Having regard to the aforesaid factual contentions, we do not think that we should enter into the merits of the controversy. The learned Single Judge having granted an interim order, had vacated the same proceeding on the basis that petitioner had already been terminated from service on 6.11.2015 and that he had approached this Court only on 9.11.2015. That apart, though the order of termination was sent by registered post, he refused to receive the same.

6. Having regard to the fact that it is open for the

petitioner to challenge the order of termination, we do not think that this court will be justified in interfering with the order of the learned Single Judge vacating the stay granted in the matter.

Accordingly we do not find any ground to interfere in the matter. The writ appeal is dismissed. It shall be open for the appellant to approach the learned Single Judge for an early hearing of the matter.

Sd/-

ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-

A.M.SHAFFIQUE,
JUDGE