

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 1945 of 2015 (P)

PETITIONER(S):

**DR.SHYLAJA K.NAIR,
LECTURER AND DRAWING & DISBURSING OFFICER
(UNDER SUSPENSION), SREE VIDYADHIRAJA
HOMEOPATHIC MEDICAL COLLEGE, NEMAM,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.S.PRASANTH (AYYAPPANKAVU),
SMT.VARSHA BHASKAR.**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HEALTH & FAMILY WELFARE (J) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 005.**
- 2. KERALA UNIVERSITY OF HEALTH SCIENCES,
REPRESENTED BY THE REGISTRAR,
MULAKUNNATHUKAVU, THRISSUR.**
- 3. MANAGER,
SREE VIDYADHIRAJA HOMEOPATHIC MEDICAL COLLEGE
AND SECRETARY, SHREE VIDYADHIRAJA VIDYA SAMAJAM,
ASWATHI, HINDU MISSION ROAD,
THIRUVANANTHAPURAM-695 001.**
- 4 THE PRINCIPAL & CONTROLLING OFFICER,
GOVT. HOMEOPATHIC MEDICAL COLLEGE,
THIRUVANANTHAPURAM.**

**R1 & R4 BY SR. GOVT. PLEADER SRI.C.S. MANILAL.
R2 BY ADV. SRI.P.SREEKUMAR, SC.
R3 BY SRI.N.NANDAKUMARA MENON, SENIOR ADVOCATE
ADVS. SRI.SANTHAN V.NAIR,
SRI.V.GOPIKRISHNA.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON 20/03/2015 DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE G.O.(RT) NO.1627/2009/H&FWD DATED 12/06/2009 ISSUED BY THE 1ST RESPONDENT.
- EXT.P2 COPY OF THE G.O.(RT) NO.1438/2014/H&FWD DATED 07/05/2014 ISSUED BY THE 1ST RESPONDENT.
- EXT.P3 COPY OF THE ORDER NO.37/SVVS/2014 DATED 05/05/2014 ISSUED BY THE 3RD RESPONDENT.
- EXT.P4 COPY OF THE MEMO OF CHARGES AND STATEMENT OF ALLEGATIONS DATED 05/05/2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXT.P5 COPY OF THE REPORT DATED 20/05/2014 SUBMITTED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT.
- EXT.P5A COPY OF THE LETTER DATED 13/05/2014 SENT BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT.
- EXT.P6 COPY OF THE INTERIM ORDER DATED 10/06/2014 STAYING THE OPERATION OF EXT.P3 SUSPENSION ORDER IN WP(C).NO.13986/2014.
- EXT.P7 COPY OF THE JUDGMENT DATED 17/09/2014 IN W.A. NO. 1945/2009.
- EXT.P8 COPY OF THE LETTER NO.SVVS/56/2014 DATED 08/10/2014 SENT BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXT.P9 COPY OF THE INTERIM ORDER DATED 20/10/2014 IN WP(C).NO. 25180/2014.
- EXT.P10 COPY OF THE LETTER NO.6604/AC.B/KUHS/2012 DATED 09/10/2014 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.
- EXT.P11 COPY OF THE ORDER NO.SVVS/05/2015 DATED 14/01/2015 ISSUED BY THE 3RD RESPONDENT.
- EXT.P12 COPY OF THE LETTER NO.29037/J2/2014/H&FWD DATED 13/10/2014 ISSUED BY THE 1ST RESPONDENT TO THE 4TH RESPONDENT.
- EXT.P13 COPY OF THE MEMO CHARGES AND STATEMENT OF ALLEGATIONS DATED 14/01/2015 ISSUED BY THE 3RD RESPONDENT.S

RESPONDENT'S EXHIBITS:-

- EXT.R3A COPY OF THE G.O.(MS) 105/95/H&FWD DATED 22/04/1995.

WP(C).No. 1945 of 2015 (P)

- EXT.R3B** COPY OF THE COUNTER AFFIDAVIT DATED 27/05/2013 FILED BY THE PRINCIPAL AND CONTROLLING OFFICER IN WP(C).NO.19975/2009.
- EXT.R3C** COPY OF THE STATEMENT SHOWING THE STAFF FIXATION OF TEACHING STAFF OF SVHM COLLEGE AS PER G.O.(MS) 203/2006/H&FWD DATED 22/09/2006.
- EXT.R3D** COPY OF THE ORDER NO.SVVS/58/2010 DATED 17/07/2010.
- EXT.R3E** COPY OF THE LETTER DATED 29/10/2014 SENT BY THE CCH TO THE REGISTRAR OF THE UNIVERSITY.
- EXT.R3F** COPY OF THE LETTER DATED 11/02/2015 ISSUED BY THE SUB TREASURY OFFICER, TRIVANDRUM.
- EXT.R3G** COPY OF THE LETTER DO NO.29037/J2/2014/H&FWD DATED 01/10/2014.
- EXT.R3H** COPY OF THE EXPLANATION REPORT DATED 31/12/2014 SUBMITTED BY THE MANAGEMENT TO THE GOVERNMENT.
- EXT.R3I** COPY OF THE LETTER DATED 07/01/2015 ISSUED BY THE MANAGEMENT TO THE GOVERNMENT.
- EXT.R3J** COPY OF THE PROCEEDINGS DATED 07/01/2015 OF THE KERALA HUMAN RIGHTS COMMISSION IN HRMP NO.8322/2014.

//TRUE COPY//

P.S. TO JUDGE

rs.

A. MUHAMED MUSTAQUE, J.

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W.P.(C) No.1945 of 2015

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Dated this the 20th day of March, 2015

JUDGMENT

The petitioner is the senior most lecturer in Sree Vidhyadhiraja Homeopathic Medical College, Nemam, Thiruvananthapuram. She was appointed as a Drawing and Disbursing Officer of the above Medical College by the Government Order dated 07.05.2014. The petitioner approached this Court challenging Ext.P11 suspension order issued by the management.

2. The petitioner attributes mala fides in issuing Ext.P11 order and also submits that this was issued to overcome the earlier direction of this Court.

3. The brief facts of this case is necessary to understand the nature of order passed in Ext.P11. The petitioner has been suspended in an earlier occasion on 05.05.2014. The above suspension order is produced as Ext.P3. The memo of charges issued to the petitioner along with suspension order is produced as Ext.P4. The petitioner's case is that it was issued with ante date to see that the petitioner has not taken charge as a Drawing

and Disbursing Officer, as appointed by the Government Order dated 07.05.2014 which is produced as Ext.P2. The petitioner has a case that the 3rd respondent was appointed as a Principal by the management and her appointment was not approved by the Government and in order to deny the legitimate claim of the petitioner, the above suspension order was issued.

4. This Court by an interim order dated 11.06.2014 in W.P. (C) No.13986 of 2014 stayed the operation of suspension order and directed to re-instate the petitioner in service. The writ petition was taken up with Writ Appeal No.1945 of 2009 by the Division Bench. The Writ Appeal was filed by the Management aggrieved by dismissal of the Writ Petition challenging the Government Order dated 12.06.2009 appointing the petitioner as Drawing and Disbursing Officer. The Writ Appeal filed by the Management has been dismissed by the Division Bench. The writ petition filed by the petitioner herein has been allowed by setting aside the suspension order dated 05.05.2014.

5. The Division Bench in paragraph 23 of the judgment dated 17.09.2014 observed as follows:-

“ W.P(C).No.13986 of 2014 has been filed by Dr.Shylaja K.Nair challenging order dated 5.5.2014 allegedly placing the petitioner under suspension. Copy of the suspension order dated 5.5.2014 was served on Dr.Shylaja K.Nair on 10.5.2014 by special messenger. In paragraph 10 of the Writ Petition there is specific pleading to that effect. It was further pleaded by the petitioner that suspension order was in fact back dated to get over and frustrate the order of the Government dated 7.5.2014, by which the Government reinforced the order appointing Dr.Shylaja K.Nair as Drawing and Disbursing Officer. The Government, on the representation of Dr.Shylaja K.Nair, has directed the Principal and Controlling Officer of the Government Homoeopathic Medical College to conduct an enquiry, in the enquiry it has been categorically stated that suspension order dated 5.5.2014 was framed back date to nullify the Government order dated 7.5.2014. Dr.Shylaja K.Nair in her Writ Petition has specifically pleaded that she was present in the College on 6th and 8th May, 2014, but the order was not served on her. The Government has also stated that the order was served on the Government on 10.5.2014 and even to the Principal and Controlling Officer the order was served only on 9.5.2014. The College has filed a detailed counter affidavit running in 12 pages, but no specific reply on the allegations made in paragraphs 10, 12 and 13 of the Writ Petition has been given. We are satisfied that suspension by management was wholly malafide and just to create obstruction in enforcement of Government order dated 7.5.2014, by which Dr.Shylaja K.Nair was directed to work as Drawing and Disbursing Officer.”

6. It is thereafter the present suspension order has been issued and the same is produced as Ext.P11. It is now admitted that all the proceedings pursuant to earlier suspension order and memo of charges have been dropped. It has to be noted in present order of suspension, the reason stated against the petitioner for placing her under suspension are referable to the events prior to the earlier suspension order. Certain other allegations are raised regarding her habit and conduct. It is also stated that she has not signed the Attendance Register of the staff of the College even on a single day. It is also stated that the petitioner has not signed the salary bill entrusted to her.

7. I am not entering into the merit of the allegations against the petitioner. The allegations attributed to the petitioner is in fact in relation to her duties attached as a Drawing and Disbursing Officer in the college. The Manager has in fact challenged the appointment of her as Drawing and Disbursing Officer. The petitioner's case is that the Manager is not allowing her to discharge her duties as Drawing and

Disbursing Officer .

8. Considering the fact that no other serious allegations are levelled against her after the interference of this Court with the earlier suspension order, I am of the view that the suspension of the petitioner is unwarranted. The suspension should be based on the objective consideration and institutional interest should be the paramount factor to be taken into account to keep the petitioner out of service. It cannot be imposed as a punishment on the petitioner. In the light of the facts and circumstances of the case, I am of the view that the continuation of the petitioner in the college would no way affect on going disciplinary proceedings. Therefore, Ex.P11 suspension order is set aside, subject to outcome of disciplinary proceedings.

The writ petition stands allowed. No orders as to cost.

A. MUHAMED MUSTAQUE, JUDGE

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