

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 4388 of 2015 (W)

PETITIONER(S):

DR.M.P.ANITHA,
PRINCIPAL (UNDER SUSPENSION), SNM TRAINING
COLLEGE, MOOTHAKUNNAM,
ERNAKULAM - 683 516, RESIDING AT AJAY, PERIYAR ENCLAVE,
MOOTHAKUNNAM P.O., N. PARAVUR, ERNAKULAM - 683 516.

BY ADV. SRI.M.P.PRAKASH

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. VADAKKEKARA HINDU MATHA DHARMA PARIPALANA SABHA,
MOOTHAKUNNAM, NORTH PARAVUR,
ERNAKULAM - 683 516, REPRESENTED BY IT'S SECRETARY.

3. MANAGER,
SNM TRAINING COLLEGE, MOOTHAKUNNAM,
ERNAKULAM - 683 516.

4. SNM TRAINING COLLEGE, MOOTHAKUNNAM,
REPRESENTED BY ITS PRINCIPAL IN CHARGE,
NORTH PARAVOOR, ERNAKULAM - 683 516.

5. MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS, ATHIRAMPUZHA, KOTTAYAM,
REPRESENTED BY ITS REGISTRAR.686 001

6. VICE CHANCELLOR,
MAHATMA GHANDHI UNIVERSITY, PRIYADARSHINI HILLS,
ATHIRAMPUZHA, KOTTAYAM.686001

7. K.S. BALASUBRAMANIAN,
S/O. SANKARA NARAYANAN, MANAGER
SREE NARAYANA MANGALAM GROUP OF EDUCATIONAL INSTITUTION,
MOOTHAKUNNAM, NORTH PARAVOOR, ERNAKULAM - 683 516.

8. PRADEEP ABRAHAM VARGHESE,
ADVOCATE AND ENQUIRY OFFICER, MANGATHAMCHERIL HOUSE,
NO. 1, SUBASH NAGAR, EDAPALLY
KOCHI - 682 024.

R8 BY ADV. SRI.P.RAMAKRISHNAN
R8 BY ADV. SMT.PREETHI KESAVAN
R8 BY ADV. SRI.T.C.KRISHNA

R8 BY ADV. SMT.ASHA K.SHENOY
R8 BY ADV. SRI.C.ANIL KUMAR
R2-R4 & 7 BY ADV. SRI.K.JAJU BABU (SR.)
R2-R4 & 7 BY ADV. SMT.M.U.VIJAYALAKSHMI
R BY GOVERNMENT PLEADER SUNITHA VINOD
R BY SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

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EXT.P1.TRUE COPY OF THE SHOW CAUSE NOTICE DATED 23/1/2014 ISSUED BY THE 3RD RESPONDENT

EXT.P2.TRUE COPY OF THE REPLY DATED 28/1/2014.

EXT.P3.TRUE COPY OF THE SHOW CAUSE NOTICE DATED 21/4/2014 ISSUED BY THE 3RD RESPONDENT

EXT.P4.TRUE COPY OF THE REPLY DATED 28/4/2014.

EXT.P5.TRUE COPY OF THE EXPLANATION OF THE SUPERINTENDENT DATED 20/2/2014.

EXT.P6.TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES.

EXT.P7.TRUE COPY OF THE AGREEMENTS DATED 6/7/2011 AND 25/11/2011.

EXT.P8.TRUE COPY OF THE SHOW CAUSE NOTICE DATED 21/4/2014 ISSUED BY THE 3RD RESPONDENT

EXT.P9.TRUE COPY OF THE REPLY GIVEN BY THE CLERK DATED 23/4/2014.

EXT.P10.TRUE COPY OF THE REPLY DATED 28/4/2014 OF THE PETITIONER.

EXT.P11.TRUE COPY OF THE SUSPENSION ORDER DATED 5/5/2014 ISSUED BY THE 3RD RESPONDENT

EXT.P12.TRUE COPY OF THE LETTER DATED 6/5/2014 OF THE 3RD RESPONDENT DIRECTING TO HAND OVER CHARGE.

EXT.P13.TRUE COPY OF THE LETTER DATED 10/5/2014 OF THE PETITIONER

EXT.P14.TRUE COPY OF THE LETTER DATED 8/7/2014 OF THE PETITIONER

EXT.P15.TRUE COPY OF THE SHOW CAUSE NOTICE DATED 15//2014 ISSUED BY THE 3RD RESPONDENT

EXT.P16.TRUE COPY OF THE REPLY DATED 21/7/2014 OF THE PETITIONER.

EXT.P17.TRUE COPY OF THE PETITION DATED 16/10/2014 OF THE MANAGEMENT

EXT.P18.TRUE COPY OF THE REPRESENTATION DATED 4/8/2014 SUBMITTED BEFORE THE VICE CHANCELLOR OF THE MAHATMA GANDHI UNIVERSITY.

EXT.P19.TRUE COPY OF THE REPRESENTATION DATED 25/8/2014 SUBMITTED BEFORE THE PRO-VICE CHANCELLOR OF THE MAHATMA GANDHI UNIVERSITY

EXT.P20.TRUE COPY OF THE REPRESENTATION DATED 4/9/2014 SUBMITTED BEFORE THE VICE CHANCELLOR OF THE MAHATMA GANDHI UNIVERSITY

EXT.P21.TRUE COPY OF THE LETTER DATED 25/9/2014 OF THE REGISTRAR OF MAHATMA GANDHI UNIVERSITY

EXT.P22.TRUE COPY OF THE LETTER DATED 9/10/2014 OF THE REGISTRAR OF MAHATMA GANDHI UNIVERSITY

EXT.23.TRUE COPY OF THE SHOW CAUSE NOTICE DATED 28/10/2014 OF THE 3RD RESPONDENT

EXT.P24.TRUE COPY OF THE JUDGMENT IN WPC NO.29124/2014.

EXT.P25.TRUE COPY OF THE MEMO OF CHARGES DATED 10/1/2015.

EXT.P26.TRUE COPY OF THE WRITTEN STATEMENT OF DEFENSE SUBMITTED BY THE petitioner

EXT.P27.TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE VICE CHANCELLOR.

EXT.P28.TRUE COPY OF THE LETTER DATED 5/2/2015 OF THE 3RD RESPONDENT
RESPONDENT(S) ' EXHIBITS
-----:

EXT.R3(A): COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER ON 2/3/2015 BEFORE THE ENQUIRY OFFICER.

EXT.R3(B): COPY OF THE COMMUNICATION SUBMITTED THE PETITIONER'S COUNSEL BEFORE THE ENQUIRY OFFICER ON 6/3/2015.

EXT.R3(C): COPY OF THE PROCEEDINGS OF THE ENQUIRY OFFICER CONDUCTED ON SNM TRAINING COLLEGE, MOOTHAKUNNAMON 6/3/2015.

/TRUE COPY/

P.S. TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 4388 OF 2015

Dated this the 1st day of April, 2015

JUDGMENT

The petitioner is the Principal of SNM Training College, an aided college affiliated with Mahatma Gandhi University. The petitioner is under suspension from 5/5/2014 onwards, as per Ext.P11. Thereafter, by proceedings dated 28/10/2014 punishment of dismissal from service has been proposed on the petitioner by the management. Challenging the above, the petitioner approached this court by filing W.P.(C) No.29124/2014. This court disposed the writ petition interfering with Ext.P11 and directed that the parties should be relegated to disciplinary proceedings with the position of status quo ante to the proposed punishment. The management was also given liberty to issue fresh memo of charges. The petitioner approached this Court challenging the memo of charges and also continuation of suspension.

2. The main argument raised by the learned counsel for the petitioner is that memo of charges are vague and do not reflect misconduct as contemplated under Statute 75 of Chapter 45 of Mahatma Gandhi University Statutes, 1997. The learned counsel relying on the judgment of this Court in **F.Augustine Mathew v. Devamatha College (2002 (3) KLT 509)**, submits that once the charges are vague and could not qualify the misconduct, as contemplated under the statutory provisions, the entire charges are liable to be quashed. It is further argued that memo of charges were issued only on January 2015 and the petitioner is entitled for reinstatement.

3. In this matter the management has filed a counter affidavit. The learned senior counsel appearing for the management submits that continuation of suspension is in compliance with the judgment of this court in Ext.P24. It is further submitted that the suspension order was challenged in an earlier writ petition resulted in Ext.P24 judgment and this court did not interfere with the suspension order. It is further submitted that this Court cannot invoke judicial review in respect of an on going disciplinary proceedings on a

challenge on which fact finding is required.

4. Statute 75 of Chapter 45 of Mahatma Gandhi University Statutes stipulates procedure for imposing major penalties. That statute stipulates that for taking action against the teachers of a private college, such authority shall frame definite charge or charges which shall be communicated to the teacher of a private college together with the statement of the allegations on which each charge is based, and of any other circumstance which it is proposed to take into consideration in passing orders on the case. Thereafter, after receiving a written statement, if any from the teacher within the time allowed, the authority shall decide whether he proceeded with enquiry or not. The argument is that the management ought to have addressed itself merit of allegation before proceeding further in the light of statute 75. I am afraid, this argument on the side of the petitioner can be accepted at this stage. It is an admitted position that there is no challenge against the judgment in W.P(C) No.29134/2014 (Ext.P24) and right of parties are restored status quo ante before proposing to impose punishment and with liberty to the management to serve fresh charges on the petitioner. Therefore, in the light

of the judgment, the petitioner cannot contend that management should have adverted to the statute 75 before proceeding further. In the light of the judgment in W.P.(C) No. 29134/2014 this argument of the petitioner is repelled.

5. The Next question to be considered is whether the charges are vague or indefinite. The charge is essentially allegation of facts. Whether the factual allegation would constitute 'misconduct', so as to make the charge of definite nature, is a matter which requires enquiry. This court invoking judicial review under Article 226, ordinarily is not called upon to probe with such fact finding. The question whether the charge is a definite or not has to be raised by the petitioner before the enquiry officer. It is for the enquiry officer to decide whether the charge is definite or not. Therefore, declining jurisdiction on this challenge, this argument is also repelled.

6. The next point is whether this charge would amount to misconduct as contemplated under statutes 39 of of Chapter 45 of Mahatma Gandhi University Statute, which reads as follows:

“39. Certain lapses of teachers to

constitute improper conduct: The following lapses on the part of a teacher in a private college shall constitute improper conduct inviting disciplinary action:-

(1). failure to perform his academic duties such as coming to the class without preparation for conducting lecture classes demonstration, assessment, guidance, invigilation, tc.

2). gross partiality in assessment of students deliberately over marking or under marking or attempting at victimization on any ground whatsoever.

3) inciting students against other students or colleagues or against the University or the State Government or the Central Government.

Provided that expression of differences of opinion on principles at a seminar, or other place, where students are present shall not be deemed to constitute improper conduct:

4) raising questions of caste, creed, religion race or sex in his relationship with his colleagues and trying to use the above consideration for the improvement of his

prospects.

5). refusal to carry out the decisions by appropriate administrative or academic bodies or functionaries of the University which are not against the provisions of any law for the time being in force.”

7. Statute 39 of Chapter 45 of the Mahathma Gandhi University Statute 1997 enumerates certain lapses on the part of teachers to constitute improper conduct inviting disciplinary action. Though I am not expressing anything on the merit on the scope of interpretation of Chapter 39 , nevertheless I am of the view that whether particular act would fall within the definition of statute 39 or not has to be examined by the enquiry officer. It is open for the enquiry officer to find whether any other act other than enumerated in Statute 39 on the part of the delinquent would also constitute misconduct. Essentially these are all matters to be adverted by the enquiry officer himself. This Court's jurisdiction under Article 226 cannot be invoked to decide a question, which primary authority needs to be addressed at the first instance. In that view of the matter, the petitioner's

challenge on this ground also cannot be entertained.

8. The petitioner submits that in terms of Section 63 (4) of the Mahatma Gandhi University Act, the entire disciplinary proceedings are vitiated as three months period is over and the management has failed to get permission from the Vice Chancellor. It is also argued that Section 63 (1) of the Mahatma Gandhi University Act gives unbridled power to the Management to suspend an employee and therefore above power is discriminatory. In this regard, the petitioner draws this Court's attention to Section 63(1) and 63 (4) of the Mahatma Gandhi University Act, which reads as follows:

"63.Disciplinary powers of Educational Agency over teachers of private Colleges:(1). The Educational Agency may at any time place a teacher of a Private College under suspension when any disciplinary proceedings is proposed to be taken against him or when such disciplinary proceedings are pending.

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(4). Any disciplinary proceedings against a teacher of a private college by the educational agency shall be completed within a period of three months or within such further period as may be allowed by the Vice-Chancellor."

This argument of the counsel for the petitioner cannot be accepted for the simple reason that the parties were relegated to the disciplinary proceedings by this court. The petitioner did not canvass any argument based on Section 63(1) and 63 (4) even though such plea was available to him at that time. Therefore, the second prayer in this writ petition is more academic in the sense that the petitioner cannot be granted any relief in this matter.

9. The only question now remains is whether continuation of the suspension of the petitioner is justified or not. I have adverted to the nature of allegation against the petitioner in the memo of charges. Having gone through the allegation against the petitioner, I am of the view that the petitioner cannot be reinstated as Principal. However, nothing prevents her from discharging duties as a teacher in the college. In that view of the matter, taking into account the fact that it is almost ten months have been lapsed since the suspension, the petitioner shall be reinstated in the service forthwith. In the light of the above following directions are issued:

- i). The petitioner is at liberty to take up all contentions

regarding the nature of charges in the light of Statute 39 under Chapter 45 before the enquiry officer .

ii). The petitioner shall be reinstated in the service forthwith.

iii). The petitioner shall not discharge duties and responsibility of the principal till the outcome of the disciplinary proceedings. The present arrangement made by the management in the post of Principal can be continued till the outcome of the disciplinary proceedings.

iv). The petitioner shall co-operate with the enquiry proceedings.

v). However, If the disciplinary proceedings are not concluded within three months or within the extended period, (if permission is granted by the Vice Chancellor,) the petitioner shall be restored with all the duties and responsibility of the Principal.

The writ petition is disposed of as above. No cost.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/true copy/ PS to Judge.

