

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 5700 of 2015 (J)

PETITIONER(S):

**SMT.S.N.SOBHA, AGED 55 YEARS,
W/O.SADASIVA SHENOY, L.D.CLERK
DR.PADIAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE
CHOTTANIKKARA, ERNAKULAM
RESIDING AT SHIVAPARAMBIL KALARIKKAL HOUSE,
KARANAKODAM, THAMANAM P.O., KOCHI-682032.**

**BY ADVS.SRI.BENNY GERVACIS
SMT.K.MAJEEDA HAMEED**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE PRINCIPAL AND CONTROLLING OFFICER
GOVERNMENT HOMEOPATHIC MEDICAL COLLEGE, IRANIMUTTUM
MANAKKAD POST, THIRUVANANTHAPURAM-695009.**
- 3. DR.PADIAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE
CHOTTANIKKARA, REPRESENTED BY ITS SECRETARY
CHOTTANIKKARA, ERNAKULAM-682312.**
- 4. MR.R.GOPINATHA NAICK
SECRETARY
DR.PADIAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE
CHOTTANIKKARA, REPRESENTED BY ITS SECRETARY
CHOTTANIKKARA, ERNAKULAM-682312.**

**R3 & 4 BY ADV. SMT.R.RANJINI
R BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMPIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1 : TRUE COPY OF THE GO (MS)NO.99/13/H&FWD DT.22-3-2013.
EXT. P2 : TRUE COPY OF THE INTERIM ORDER IN WPC 27461/12 DT.28-1-13.
EXT. P3 : TRUE COPY OF THE JUDGMENT IN OS 983/05 DT.27-11-2006.
EXT. P4 : TRUE COPY OF THE SHOW CAUSE NOTICE DT.27-8-13 ISSUED BY R3.
EXT. P5 : TRUE COPY OF THE REPLY DT.29-8-2013 FILED BY THE PETITIONER.
EXT. P6 : TRUE COPY OF THE SHOW CAUSE NOTICE DT.2-9-13 ISSUE BY R3.
EXT. P7 : TRUE COPY OF THE SHOW CAUSE NOTICE DT.13-9-13 ISSUE BY R3.
EXT. P8 : TRUE COPY OF THE SHOW CAUSE NOTICE DT.23-9-13 ISSUE BY R3.
EXT. P9 : TRUE COPY OF THE SHOW CAUSE NOTICE DT.11-10-13 ISSUE BY R3.
EXT. P10 : TRUE COPY OF THE ORDER OF SUSPENSION DT.22-10-13 ISSUED BY R3.
EXT. P11 : TRUE COPY OF THE MEMO OF CHARGES ISSUED TO THE PETITIONER BY R3 DT.1-1-14.
EXT. P12 : TRUE COPY OF THE WRITTEN STATEMENT OF DEFENCE DT.18-1-2014.
EXT. P13 : TRUE COPY OF THE COMMUNICATION DT.19-3-2014 ISSUED BY R3.
EXT. P14 : TRUE COPY OF THE NOTICE DT.19-3-14 ISSUED BY R3.
EXT. P15 : TRUE COPY OF THE INTERIM ORDER IN WPC 10251/14 DT. 11-4-2014.
EXT. P16 : TRUE COPY OF THE NOTES OF ARGUMENT SUBMITTED BY THE PETITIONER DT.1-7-14.
EXT. P17 : TRUE COPY OF THE ENQUIRY REPORT DT.10-7-14.
EXT. P18 : TRUE COPY OF THE INTERIM ORDER IN WPC 10251/14 DT.11-8-14.
EXT. P19 : TRUE COPY OF THE EXPLANATION DT.26-10-14 SUBMITTED BY THE PETITIONER.
EXT. P20 : TRUE COPY OF THE JUDGMENT IN WPC 10251/14 DT.19-1-15.
EXT. P21 : TRUE COPY OF THE COMMUNICATION DT.6-2-15.
EXT. P22 : TRUE COPY OF THE ORDER OF PUNISHMENT DT.6-2-15.
EXT.P23: COPY OF THE SHOW CAUSE NOTICE DATED 20.2.2015 ISSUED BY THE 4TH RESPONDENT.
EXT.P24: COPY OF THE TABLE OF TIME SCALE OF PAY AS PER THE PAY REVISION ORDER G.O.(P) 85/2011/FIN DATED 25.2.2011.

RESPONDENT(S)' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

'C.R.'

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5700 OF 2015 (J)

Dated this the 20th day of July, 2015

J U D G M E N T

The petitioner had joined the 3rd respondent College as a Typist cum clerk with effect from 7.7.1981. She was later promoted as U.D. Clerk and further as Head Clerk with effect from 1.12.1999. In the year 2000, the Direct Payment System was introduced in the College, and with effect from 7.12.2009, the Kerala University of Health Sciences Act, 2010 came to govern the service conditions of teaching and non-teaching staff in the respondent College. In the writ petition, the petitioner challenges Ext.P22 order, whereby, a punishment was imposed on the petitioner pursuant to disciplinary proceedings that were initiated against her.

2. The facts in the writ petition would reveal that, on 24.8.2013, the petitioner had left office half an hour earlier without formally informing the Principal in charge of the College. In connection with the said incident, as also the other related charges, the petitioner was served with Exts.P4, P6, P7, P8 and P9 show cause notices, all

between August and October, 2013, whereby, her explanation was sought on various incidents, which, according to the management, amounted to gross acts of indiscipline/insubordination on the part of the petitioner. Although the petitioner replied to the said show cause notices, by Ext.P10 order dated 22.10.2013, she was placed under suspension. A perusal of Ext.P10 suspension order indicates that the management was not satisfied with the explanations submitted by the petitioner, and was of the opinion that the acts of misconduct/misbehavior, on the part of the petitioner, warranted disciplinary action. It was also intimated to the petitioner that, pending domestic enquiry, she was suspended from service with immediate effect, and that she could claim subsistence allowance as per the Rules in force. Thereafter, on 1.1.2014, Ext.P11 memo of charges was served on the petitioner, which contained seven charges. It is significant to note that along with the said memo of charges, there was no statement of allegations served separately on the petitioner. The petitioner, on receipt of the memo of charges, submitted her explanation indicating inter alia that the memo of charges that was issued to her was in violation of the statutory provisions that govern disciplinary proceedings in the respondent

College. It was also her case that the entire process was vitiated by mala fides, and that the charge memo was issued in a pre-meditated manner. The respondent management, however, proceeded with the disciplinary proceedings, by appointing an enquiry officer. Although the petitioner challenged the order of suspension, as also the charge memo issued to her, on the ground that they were issued in violation of the statutory provision, through a writ petition [W.P.(C). No.10251/2014], the said writ petition was subsequently closed, leaving it open to the petitioner to challenge any orders that were passed in the disciplinary proceedings initiated against her. While closing the writ petition, this Court also left all issues open to be considered by the disciplinary authority in the disciplinary proceedings that were initiated against the petitioner. The Enquiry officer subsequently drew up an enquiry report, a copy of which was forwarded to the petitioner along with the show cause notice, by the management. The objections of the petitioner were called for and the petitioner was asked to show cause why the enquiry report should not be accepted and a punishment imposed on her. By Ext.P19 communication dated 26.10.2014, the petitioner preferred a detailed explanation against acceptance of the enquiry report. Thereafter, the

disciplinary authority proceeded to pass Ext.P22 order dated 6.2.2015 imposing a punishment of “reduction in time scale by four stages for a period of one year having the effect of postponing future increments” to the petitioner. It is Ext.P22 order, imposing the said punishment, that the petitioner has impugned in the present writ petition. The petitioner also impugns Exts.P10 and P11 suspension order and charge memo on the ground that the said order and memo were issued in contravention of the provisions of the Kerala University Act, 1974, and the Kerala University First Statutes, which governed the disciplinary proceedings initiated against her by the respondent College, pursuant to Section 58 of the Kerala University of Health Sciences Act, 2010.

3. A counter affidavit has been filed on behalf of respondents 3 and 4. Therein, the sequence of events which led to the issuance of the show cause notices, the suspension order and the punishment order on the petitioner, are narrated in detail. It is in particular pointed out that the stand of the petitioner, that the provisions of the Kerala University First Statutes were not complied with while completing the disciplinary proceedings against the petitioner, was

without any substance since the show cause notices served on the petitioner clearly narrated the conduct of the petitioner, for which the petitioner was being proceeded against. It is the stand of the respondents that inasmuch as there was no prejudice caused to the petitioner, and she was duly informed of the circumstances under which the respondents were proceeding against her, the petitioner could not be heard to complain of any prejudice caused to her by a non-adherence to the statutory procedure. As regards the issuance of the suspension order, it is stated that the power to suspend an employee is inherent in every employer, and inasmuch as the suspension order in this case was served on the petitioner after the issuance of show cause notices to the petitioner, and considering her reply and in contemplation of a domestic enquiry, there was nothing irregular in the passing of the said order. With regard to the imposition of a punishment on the petitioner, and the contention of the petitioner that the same was disproportionate to the offences that were proved against the petitioner, it is stated that the punishment was not disproportionate and it was a correct punishment that was imposed taking into account the degree of insubordination and indiscipline which was found against the petitioner in the domestic

enquiry.

4. I have heard the learned counsel for the petitioner, learned Standing counsel for respondents 3 and 4 and the learned Government Pleader for respondents 1 and 2.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that the writ petition, in its challenge against Exts.P10, P11 and P22, must necessarily succeed. It is the specific contention of the petitioner in the writ petition that, as per the provisions of Section 58 of the Kerala University of Health Sciences Act, 2010, the provisions of Sections 51 to 68 of the Kerala University Act in respect of affiliated private aided colleges shall apply in respect of private aided colleges affiliated to the University. As per Section 60(1) of the Kerala University Act, 1974, the conditions of services of teachers of private colleges including conditions relating to pay, pension, provident fund, gratuity, insurance and age of retirement, shall be such as may be prescribed by the Statutes. Sub section (2) of Section 60 clearly mandates that no teacher of a private college shall be kept under suspension by the

educational agency except when disciplinary proceedings are initiated against him. The provisions of the said section also indicate that a suspension beyond 15 days is possible only if there is a permission granted by the Vice Chancellor of the University for the same. Counsel for the petitioner would contend that, inasmuch as in the instant case, Ext.P10 order of suspension clearly indicated that disciplinary proceedings had not been initiated in the manner contemplated under the Kerala University Act, the order of suspension passed against the petitioner was in contravention of the said provisions under the Kerala University Act. In support of the said submission, the petitioner would rely on the decision of the Supreme Court in **P.R. Nayak v. Union of India [(1972) 1 SCC 332]**, wherein, interpreting a similar provision, the Supreme Court found that when the express words in a Statute indicated that a suspension order could be passed only after the commencement of disciplinary proceedings, then a suspension order that was passed in anticipation or in contemplation of disciplinary proceedings could not be treated as a valid order of suspension. It is the case of the petitioner, therefore, that, in the instant case, the suspension order having been passed before the service of any formal memo of charges on the

petitioner, it had to be seen as a case where the suspension order was passed before the commencement of disciplinary proceedings against the petitioner. Secondly, with regard to Ext.P11 charge memo served on the petitioner, it is the stand of counsel for the petitioner that, as per the provisions of the Kerala University (Conditions of Service of Teachers and Members of non-teaching staff) First Statutes, 1979, and in particular, Statute 71 thereof, no order imposing any of the penalties specified in items (iv) to (vii) of Statute 69 could be passed except after an enquiry to be held in accordance with the provisions of the said Statute. Reference is made to clause (2) of Statute 71 to contend that the said Statute contemplates the framing of definite charge or charges which had to be communicated to the teacher of a private college, together with a statement of allegations on which each charge is based, and of any other circumstances which it was proposed to take into consideration while passing orders on the case. It is the specific contention of counsel for the petitioner that, in the instant case, it is not in dispute that along with Ext.P11 memo of charges, there was no statement of allegations that was forwarded to the petitioner by the respondents. It is also the case of the petitioner that the punishment that was eventually imposed, namely, "reduction

in time scale by four stages for one year having effect of postponing future increments” is not one that is specified as a major penalty that can be imposed in terms of Statute 69 of the Kerala University First Statutes, 1979. I find force in the aforesaid contentions of counsel for the petitioner inasmuch as it is not in dispute that the order of suspension was passed only on 22.10.2013, much before Ext.P11 memo of charges was served on the petitioner on 1.1.2014. The provisions of Section 60 (2) of the Kerala University Act, 1974 are very clear when it states that a teacher of a private college can be kept under suspension by the educational agency only when disciplinary proceedings are initiated against him. As in the instant case, in the absence of service of a charge sheet as contemplated under the statute, it could not be said that the disciplinary proceedings against the petitioner had been initiated, the action of the respondents in placing the petitioner under suspension even before the service of Ext.P11 charge memo on the petitioner, has necessarily to be seen as in violation of the statutory provisions. That apart, Ext.P11 memo of charges, when served on the petitioner, was not accompanied by a statement of allegations, which was a mandatory requirement under Statute 71 of the Kerala University First Statutes,

1979. It is trite that when a Statute prescribes a manner for pursuing disciplinary proceedings, then the respondents could have pursued the same only in the manner provided by the Statute and in no other manner **[See Nazir Ahmed v. Emperor [AIR 1936 PC 253]]**. The said legal proposition has been followed subsequently in various decisions of this Court as also of the Supreme Court. In the light of the said legal position, I am not impressed with the contentions of counsel for the respondents, that there was no prejudice caused to the petitioner by the non service of a statement of allegations along with the charge memo, and that the issuance of show cause notices prior to the charge memo should be seen as the initiation of disciplinary proceedings against the petitioner, since the statutory provisions are very clear when they indicate that the commencement of disciplinary proceedings would not be until the charge memo, duly accompanied by a statement of allegations, was served on the petitioner. This Court cannot ignore the mandatory provisions of the Statute and interpret the same in a manner that would defeat the very intent of the statutory provisions. Resultantly, I hold the disciplinary proceedings initiated against the petitioner to be vitiated on account of a non-compliance with the statutory provisions. I therefore quash

Exts.P10, P11 and P22 orders.

6. Before parting, I must also deal with the submission of counsel for the petitioner with regard to the proportionality in the matter of punishment that was imposed on the petitioner. Although the same may not be relevant now, inasmuch as I have quashed the orders passed in connection with the disciplinary proceedings completed against the petitioner, I am of the view that reference must be made to the said contentions on account of the principle involved with regard to interference with matters of punishment in proceedings under Article 226 of the Constitution of India. It is the specific case of the petitioner that, in the enquiry that followed pursuant to the issuance of the charge memo, only three charges were proved against the petitioner, and in the light of the charges that stood proved against the petitioner, the punishment imposed of "reduction in time scale by four stages for one year having the effect of postponing future increments", was grossly illegal. No doubt, counsel for the respondents would vehemently contend that, inasmuch as there was a gross act of indiscipline on the part of the petitioner, notwithstanding the fact that only three of the charges were proved

against the petitioner, the punishment imposed pursuant to the disciplinary proceedings had to reflect the gravity of the charges that were alleged against the petitioner, and an example had to be made of the petitioner's case so that it would serve as a deterrent against misbehavior by teachers of the College in future. In Ext.P22 order, the charges that stood proved against the petitioner are as follows:

(a) having left the office before office hours, on 24.7.2013 at 4.26 p.m., without obtaining prior permission from the Principal in charge;

(b) having refused to accept the show cause notice dated 27.8.2013 sent to her by the Principal in charge through Smt.Chithra.V, Attender, and

(c) having replied to the Principal in charge that she would again leave the office without obtaining prior permission, when the Principal in charge asked her about leaving of the office without obtaining prior permission; as also of having taken false contention that she left office on 24.8.2013 at 4.26 p.m. after obtaining oral permission from the Principal in charge, in her reply to the show cause notice dated 27.8.2013 served on her by the Principal himself.

It is for the said proved acts of misconduct that the respondents, in Ext.P22 order, imposed the punishment of 'reduction in the time scale by four stages for a period of one year having the effect of postponing of future increment'. While this court would not ordinarily interfere

with a punishment imposed by a disciplinary authority in the absence of any valid ground to hold that the proceedings were vitiated, either on account of a non-compliance with the rules of natural justice that caused prejudice to the employee in question, or for any other valid reason, if the punishment imposed is such that it is grossly disproportionate to the misconduct proved against the employee, then this Court would certainly interfere with the punishment so imposed. An interference would be warranted in cases where the punishment imposed is such as would shock the judicial conscience, and would visit the employee with serious prejudice unless the punishment was scaled down appropriately. The court in such cases exercises a merit review over the decision of the disciplinary authority. In the instant case, the allegations that were proved against the petitioner have already been noticed. The punishment imposed, when viewed in the light of the fact that the petitioner was due to retire in March, 2015, after having been reinstated in service in February, 2015, would have reduced, drastically, the pensionary benefits of the petitioner, since the last drawn pay of the petitioner would have been substantially reduced had the imposition of the punishment been sustained. This would have had disastrous

consequences, as far as the petitioner was concerned, because she would then have been deprived of substantial amounts by way of pension and other retirement benefits, which she otherwise stood to get pursuant to long years of service in the organization. In fact, a reading of Ext.P22 order indicates that the respondents themselves were not aware of the probable impact that the imposition of the said punishment would have had on the petitioner, because, in Ext.P22 itself, it is stated that the punishment is imposed after extending sympathy and leniency to the petitioner, and that the punishment was a lesser punishment than what they had initially proposed to impose. This Court is of the view that when the punishment impinges upon the right to livelihood of an employee, who in this case has since retired from the organization, then the same becomes a facet of the Right to Life guaranteed under Article 21 of the Constitution of India, and therefore, a heightened/anxious scrutiny must inform this Court in the exercise of its power of judicial review under Article 226 of the Constitution of India. On an application of the said test also, the punishment imposed on the petitioner would have necessarily to be scaled down.

The upshot of the above discussions is that Ext.P10 order of suspension, Ext.P11 charge memo and Ext.P22 order of punishment stand quashed, and the writ petition is allowed with consequential reliefs to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp