

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 10210 of 2014 (A)

PETITIONER:

ANCY JOSEPH S.V AGED 26 YEARS
D/O.VARGHESE, VARUVILA VEEDU, CHEVIYAM CODE
KATTAKKODE P.O, KATTAKKADA, TRIVANDRUM.

BY ADVS.SRI.T.V.GEORGE
SRI.JIMMY GEORGE (THADATHIL)

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO HIGHER EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
2. UNIVERSITY APPELLATE TRIBUNAL,
REPRESENTED BY ITS SECRETARY
OFFICE OF UNIVERSITY APPELLATE TRIBUNAL, 2ND FLOOR
NEW BUILDING, DISTRICT COURT COMPLEX, VANCHIYOOR P.O
THIRUVANANTHAPURAM-35.
3. UNIVERSITY APPELLATE TRIBUNAL,
2ND FLOOR, NEW BUILDING, DISTRICT COURT COMPLEX
VANCHIYOOR P.O, THIRUVANANTHAPURAM-35.
4. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY
PUBLIC SERVICE COMMISSION OFFICE, PATTOM
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL
BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 10210 of 2014 (A)

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1: TRUE COPY OF ADVICE MEMO DTD 13/3/2013 ISSUED BY THE OFFICE OF KERALA PUBLIC SERVICE COMMISSION, TRIVANDRUM
- EXHIBIT P2: TRUE COPY OF APPOINTMENT ORDER DTD 21/3/2013, ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P3: TRUE COPY OF OFFICE ORDER DTD 25/3/2013 ISSUED BY THE 3RD RESPONDENT
- EXHIBIT P4: TRUE COPY OF SUSPENSION ORDER DTD. 18/4/2013 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P5: TRUE COPY OF APPEAL DTD 21/4/2013 BEFORE THE 1ST RESPONDENT BY THE PETITIONER
- EXHIBIT P6: TRUE COPY OF APPLICATION DTD 28/5/2013 BEFORE THE 3RD RESPONDENT
- EXHIBIT P7: TRUE COPY OF CHARGE MEMO DTD 22/5/2013 BY THE 2ND RESPONDENT
- EXHIBIT P8: TRUE COPY OF REPLY STATEMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- EXHIBIT P9: TRUE COPY OF LETTER DTD 11/6/2013 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P10: TRUE COPY OF LETTER DTD 13/6/2013 ISSUED BY THE PETITIONER
- EXHIBIT P11: TRUE COPY OF RESIGNATION LETTER DTD 13/3/2014 BEFORE THE 2ND RESPONDENT
- EXHIBIT P12: TRUE COPY OF TERMINATION ORDER DTD 25/3/2014 PASSED BY THE 3RD RESPONDENT

RESPONDENT(S)' EXHIBITS

TRUE COPY

P.A.TO JUDGE

SJ

ANU SIVARAMAN, J.

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W.P.(C).No.10210 of 2014

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Dated this the 9th day of October, 2015

JUDGMENT

1.This writ petition is filed challenging Ext.P12 order passed by the third respondent terminating the services of the petitioner, who was appointed as an Office Assistant in the office of the University Appellate Tribunal, Thiruvananthapuram. On the basis of Ext.P1 advise memo issued by the Kerala Public Service Commission, the petitioner was appointed and joined duty on 25.03.2013. She was issued with Ext.P4 order of suspension on the ground of disobedience of orders as well as on the ground that she had given an interview to a news channel on 15.04.2013, thus violating Rule 83 of the Government Servants Conduct Rules, 1960.

2.The petitioner had preferred an appeal against the order of suspension before the Government, but no orders were

passed thereon. Thereafter, it is stated that Ext.P7 memo was issued by the presiding officer of the Tribunal. Though Ext.P8 reply was submitted by the petitioner, she was issued with Ext.P12 order terminating her from service with effect from 18.4.2013. The petitioner submits that in the meanwhile she had obtained appointment under the Kerala State Civil Supplies Corporation Ltd. and had joined duty on 28.5.2013. She had also sought the permission of the third respondent to join duty, it is submitted. It is the contention of the petitioner that Ext.P12 order is passed in violation of the specific provisions of the Rules concerning disciplinary proceedings to be taken against employees of the third respondent. Apart from issuing a charge memo and getting a reply from the petitioner, no enquiry appears to have been conducted before the major penalty of termination of service was imposed on her. It is submitted by the parties before me (Classification, Control and Appeal) Rules are applicable to the petitioner. In the above circumstances, the action of the third respondent in having issued an order of termination of petitioner's services without any enquiry appears to be unwarranted.

3. The second respondent has filed a counter affidavit stating that the petitioner was only a temporary employee and as such the termination of her service is with effect from 18.4.2013 was perfectly in order. It is further stated that disciplinary action was taken against the petitioner by the third respondent and charge memo was issued to her. It is also stated that the petitioner's request to relieve her from the office of the third respondent to take up employment with the Kerala State Civil Supplies Corporation Ltd. was received in the office of the third respondent only on 30.05.2013 but she had joined the office of the Supply Co on 28.05.2013. It is also stated that this action also amounts to a misconduct.

4. Heard Sri.T.V.George, learned counsel appearing for the petitioner and Sri.Noushad Thottathil, learned Government Pleader appearing on behalf of respondents 1 to 3 and Sri.P.C.Sasidharan, learned Standing Counsel appearing for the fourth respondent. It is the admitted case that the petitioner was appointed as a regular employee under the

third respondent. It is also not in dispute that Ext.P12 is an order issued terminating the petitioner's services as a measure of disciplinary action against her. The only procedure adopted by the third respondent for terminating the services of the petitioner appears to be that a memo of charges was issued to her and her explanation was obtained. It is clear that for the imposition of the major penalty of termination from service such a simplified procedure could not have been adopted by the third respondent. The orders issued by Ext.P12 are not orders of discharge of a probationer which could be issued under the Kerala State and Subordinate Service Rules. It is a punitive action of termination of service.

5. On going through the pleadings and the materials on record and hearing the rival contentions raised on either side, I am of the opinion that such an order of termination of service could not have been issued as against the petitioner as if it were a minor penalty under Kerala Civil Services (Classification, Control and Appeal) Rules. For imposition of a major penalty under the Rules, specific procedure has been provided under

Rule 15 thereof. In the above circumstances, Ext.P12 is not sustainable. The same is set aside. The third respondent is directed to take up Ext.P8 reply submitted by the petitioner to Ext.P7 memo and pass orders thereon considering the entire aspects of the case, as stated above. The petitioner is also permitted to make a further representation pursuant to Ext.P7 pointing out the factual aspects as they stand now. The third respondent shall take up Ext.P8 as well as any further representation which the petitioner may submit in this regard and pass orders thereon, in accordance with law within a period of three months from the date of receipt of a copy of the judgment.

The writ petition is ordered accordingly.

Sd/-

Anu Sivaraman, Judge

sj