

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 12983 of 2014 (W)

PETITIONER:

**MAJOR DINESH B.T
REGIONAL DIRECTOR, KERALA SOCIAL SECURITY MISSION
IIND FLOOR, SOCIAL WELFARE INSTITUTION COMPLEX
POOJAPPURA, THIRUVANANTHAPURAM 695 012.**

**BY ADVS.SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.S.RAMESH
SRI.NAVEEN.T
SMT.POOJA SURENDRAN**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
SOCIAL JUSTICE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001.**
- 2. KERALA SOCIAL SECURITY MISSION
IIND FLOOR, SOCIAL WELFARE INSTITUTION COMPLEX
POOJAPPURA, THIRUVANANTHAPURAM 695 012
REPRESENTED BY ITS MEMBER SECRETARY/EXECUTIVE DIRECTOR**
- 3. DR.T.P.ASHRAF
EXECUTIVE DIRECTOR, KERALA SOCIAL SECURITY MISSION
IIND FLOOR, SOCIAL WELFARE INSTITUTION COMPLEX
POOJAPPURA, THIRUVANANTHAPURAM 695 012.**

**BY ADVS. SRI. ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH
BY SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
BY GOVERNMENT PLEADER SMT. A. LOWSY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS : -

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| EXT. P1 | - | COPY OF THE ORDER GO DATED 7/1/2011 ISSUED BY THE GOVERNMENT |
| EXT. P2 | - | COPY OF THE AGREEMENT DATED 18/5/2011 EXECUTED BETWEEN THE PETITIONER AND THE 2ND RESPONDENT |
| EXT. P3 | - | COPY OF THE REPRESENTATION DATED 6/1/2014 SENT BY THE PETITIONER TO THE HON'BLE CHIEF MINISTER |
| EXT. P4 | - | COPY OF THE NOTIFICATION PUBLISHED BY THE 2ND RESPONDENT ON 16/11/2013 |
| EXT. P5 | - | COPY OF THE MEDICAL CERTIFICATE DATED 22/11/2013 GIVEN DR.AHALYA SUNDARAM,MEDICAL OFFICER TO THE PETITIONER |
| EXT. P6 | - | COPY OF THE REQUEST FOR LEAVE SENT BY THE PETITIONER TO THE 3RD RESPONDENT BY E-MAIL ON 22/11/2013 AT 9.11 AM |
| EXT. P7 | - | COPY OF THE FITNESS CERTIFICATE DATED 25/11/2013 ISSUED BY DR.AHALYA SUNDARAM,MEDICAL OFFICER TO THE PETITIONER |
| EXT. P8 | - | COPY OF THE SHOW CAUSE NOTICE DATED 26/11/2013 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER |
| EXT. P9 | - | COPY OF THE REPLY DATED 3/12/2013 SENT BY THE PETITIONER TO THE 3RD RESPONDENT |
| EXT. P10 | - | COPY OF THE MEMO DATED 27/12/2013 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER |
| EXT. P11 | - | COPY OF THE REPLY DATED 4/1/2014 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT |
| EXT. P12 | - | COPY OF MEMO OF CHARGES DATED 16/1/2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER |
| EXT. P13 | - | COPY OF THE REPLY DATED 23/1/2014 GIVEN BY THE PETITIONER TO THE 3RD RESPONDENT |
| EXT. P14 | - | COPY OF THE NOTICE NO.481/A1/11/K.S.S.M DATED 11/4/2014 ISSUED BY THE 2ND RESPONDENT |
| EXT. P15 | - | COPY OF THE DECISION OF THE EXECUTIVE COMMITTEE DATED 13/2/2014 |

[CONTD...]

- EXT. P16 - COPY OF THE DECISION OF THE GOVERNING BODY DATED 14/2/2014
- EXT. P17 - COPY OF THE RANKED LIST FOR THE POST OF SOCIAL WORKER/COUNSELOR
- EXT. P18 - COPY OF THE RANKED LIST FOR THE POST OF DOCTOR (AYURVEDA)
- EXT. P19 - THE RELEVANT EXTRACT OF THE INVESTIGATION REPORT SUBMITTED BEFORE THE LOKAYUKTA DATED 16.12.2014
- EXT. P20 - THE COMPLAINT DATED 01.01.2015 SUBMITTED BEFORE THE 3RD RESPONDENT.
- EXT. P21 - COPY OF THE CERTIFICATE DATED 30.01.2012 ISSUED BY DR. ASOK, EXECUTIVE DIRECTOR, KERALA SOCIAL SECURITY MISSION.

RESPONDENTS' EXHIBITS:-

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- EXT. R2(A) - COPY OF THE CONSOLIDATED EXPENDITURE STATEMENTS FOR YEARS 2010-11 TO 2013-14
- EXT. R2(B) - COPY OF LETTER NO.481/A1/11/KSSM DATED 05.03.2014 ISSUED BY THE GOVERNMENT.
- EXT. R2(C) - COPY OF LETTER NO.4259/C2/2014/SJD DATED 13.03.2014 ISSUED BY THE GOVERNMENT.
- EXT. R2(D) - COPY OF ATTENDANCE REGISTER FOR THE MONTH OF JUNE, 2011.
- EXT. R2(E) - COPY OF ATTENDANCE REGISTER FOR THE MONTH OF JULY, 2011.

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.12983 of 2014

Dated this the 7th of September, 2015.

JUDGMENT

The petitioner, the Regional Director of Kerala Social Security Mission, challenges Exts.P14,P15 and P16 orders, by which the petitioner was terminated from service. The petitioner admittedly was appointed as per Ext.P1 sanction, which appointment was on a contract for a term of three years on a consolidated remuneration. Ext.P1 sanction also stipulated that an appropriate agreement would be executed with suitable terms and conditions, which is seen executed at Ext.P2.

2. The petitioner thus was appointed on contract basis for a period of five years from 07.11.2011. The petitioner is said to have performed his duties with distinction and the controversy is said to have arose when the 3rd respondent took charge as the Executive Director. The petitioner is also said to have had

differences of opinion with the 3rd respondent, which is highlighted in Ext.P3, which may not, really, be relevant for the present case.

3. The termination was occasioned primarily due to the petitioner's absence during the interview held as per Ext.P4 on 22.11.2013. The petitioner, along with other officials of the Kerala Social Security Mission, including the 3rd respondent, was a part of an interview committee. The petitioner is said to have been laid up, with acute 'diarrheal disease by reason of food poisoning' on 22.11.2013. The petitioner had informed the 3rd respondent through e-mail addressed to the mail ID of the Kerala Social Security Mission. The petitioner also informed the Administrative Officer of the Mission over telephone, asking him to inform the 3rd respondent about the petitioner's inability to attend the interview.

4. The 3rd respondent took umbrage at the absence of the petitioner in the interview and alleged callousness and indifference on the petitioner. By Ext.P8 show cause notice, the petitioner's absence was projected as a disobedience and it was further alleged that the petitioner's conduct was not proper, since

the petitioner did not inform the 3rd respondent directly about the absence. The petitioner replied vide Ext.P9, pointing out the e-mail sent, as also the telephonic conversation with the Administrative Officer, who is a subordinate Officer working with the 3rd respondent. A copy of the Medical Certificate was also enclosed with the reply. The 3rd respondent was dissatisfied with the reply and explanation. The petitioner's omission in so far as not informing the 3rd respondent about the absence was found to be a deliberate act of non co-operation and was alleged as having hampered the functioning of the Mission; in Ext.P10. Again Ext.P11 reply was given, pursuant to which, a charge memo was issued as per Ext.P12. The charges were replied to by Ext.P13 and by Ext.P14, the petitioner was terminated under Clause 4(b) of Ext.P2 agreement with three months' notice.

5. The learned Senior Counsel appearing for the petitioner would contend that the allegations against the petitioner cannot be sustained as a misconduct and in any event, the termination is not one, which is a discharge simplicitor, but a dismissal on allegations of misconduct; which cannot be sustained for reason of no enquiry having been conducted. The learned Senior Counsel

placed reliance on the following decisions to buttress the contention of the petitioner:

Jagdish Mitter v. The Union of India (AIR [1964] SC 449) [V 5a C 54]

Managing Director, Uttal Pradesh Warehousing Corporation and Another v. Vijay Narayan Vajpayee [(1980) 3 SCC 459]

University of Bihar and Others v. Kamal Deo Thakur and Others [(2005) 9 SCC 278]

State Bank of India and Others v. Palak Modi and Another [(2013) 3 SCC 607]

Balmer Lawrie & Company Limiter and Others v. Partha Sarathi Sen Roy and Others [(2013) 8 SCC 345]

It is also submitted that, Clause 4(b) of Ext.P2 agreement is arbitrary and cannot at all be invoked.

6. The learned counsel appearing for the respondents however would contend that the allegations against the petitioner are serious in nature; of insubordination and disobedience and an enquiry into the same would be a futile exercise, since the absence on the date of interview is an admitted fact. It is also submitted that the 3rd respondent has merely invoked the specific clause in the agreement and had also discharged the petitioner from his contractual employment with notice as provided in the agreement.

7. It may not be necessary for this Court to look into whether Clause 4(b) is unconscionable or not, since, first what is to be looked into, is the procedural irregularity emphasised by the learned Senior Counsel for the petitioner. To this end **Jagdish Mitter** (supra) is relevant. A Constitution Bench of the Hon'ble Supreme Court was considering whether termination of a temporary servant from his employment was a discharge simplicitor or a dismissal. The termination was challenged on the ground of the same being violative of the Rules and for the reason of no enquiry having been held. The contract of appointment specifically provided that the employee could be terminated with one month's notice. There was an enquiry into the conduct of the delinquent employee with respect to a complaint received with respect to handling of a postal article. The termination was by a single sentence order, which found the service of the petitioner as "undesirable to be retained". The Hon'ble Supreme Court found that merely because an enquiry was held into a complaint, that did not, from the records, necessarily lead to a presumption that the termination was on account of such misconduct. It was held that in the case of

temporary service, there could be two modes of termination; one a dismissal in a punitive manner and the other a discharge simpliciter under the terms of the contract. It was held that, an enquiry into the aspect of whether the service of the temporary servant could be continued or not and a discharge on account of a finding against such continuance would not necessarily be a punitive discharge, since it is under the terms of the contract and does not at all cast any aspersion on the service or conduct of the employee. However, if the termination is one casting an aspersion on the service of the employee and on the basis of an alleged misconduct, then that would necessitate a formal departmental enquiry. In the said case, though the enquiry held and findings thereon were found to have no relevance in the termination; the dismissal itself was found to be one casting a stigma on the servant, since the finding was that the delinquent employee's service was "undesirable to be retained".

8. **Vijay Narayan Vajpayee** (supra) was again a case, in which a person, who is an employee, was dismissed pursuant to an enquiry, which did not reach its logical conclusion and violated the principles of natural justice for reason of the delinquent not

being provided an opportunity to cross-examine the witnesses. The employer contended that the Rule providing for an enquiry was not in existence at the time when the employee was proceeded against. Even in such cases, the Hon'ble Supreme Court held that the Court would presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice. It was held so:

"In cases in which there is an element of public employment or service, or support by statute or something in the nature of an office or a status, which is capable of protection, then irrespective of the terminology used, and even though in some inter parties aspects the relationship may be called that of master and servant, there may be essential procedure requirement to be observed on grounds of natural justice."

The other decisions cited by the learned Senior Counsel also referred to the very same issue, where the dismissal was with a stigma on the employee.

10. The order impugned in the above case has to be looked at, in that perspective. Ext.P8 sought for an explanation from the petitioner as to his absence on the date of the interview and the failure to properly communicate his inability to attend interview. Dissatisfied with Ext.P9 explanation, a memo was issued at

Ext.P10. The petitioner showed cause by Ext.P11, which also was refused to be accepted and a specific charge memo was issued by Ext.P12, raising five allegations numbered 1 to 5 in Ext.P12. A reply was filed as per Ext.P13, which resulted in the dismissal by Ext.P14.

11. The notice at Ext.P14, purportedly under Clause 4(b) of Ext.P2 agreement, is said to have been issued after the Executive Committee and Governing Body of the 2nd respondent approved the same, which is evidenced at Exts.P15 and P16. The decisions at Exts.P15 and P16 also, refers to the contract employment of the petitioner and notices Clause 4(b); which clothes the employer with the authority to terminate the service with three months' notice. However, the decision to terminate, was actuated by reason of the lapses in the service and conduct of the petitioner, which are highlighted and which was the basis of the invocation of such power. This definitely casts a stigma on the employee and the same has been done without affording an opportunity by way of a properly conducted disciplinary enquiry. Though the absence is admitted, the petitioner has a specific contention that the same was with reasonable cause and that it

was informed to the respondent organisation. This Court would not further refer to the other allegations, since that would preempt an enquiry, if the organisation is advised so to do.

12. In any event, the termination is found to be not one, which is a discharge simplicitor on the terms of the contract and is one actuated by the allegations of misconduct, which have not been enquired into properly and in accordance with the principles of natural justice. Exts.P14, P15 and P16 would stand set aside. The respondents would be entitled to proceed from the stage of Ext.P13 explanation, if so advised. The petitioner however would be continued in service till a termination is made in accordance with law or till the end of the contractual period, whichever is earlier.

The writ petition is disposed of.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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