

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 25308 of 2010 (K)

PETITIONER:

**M. RAVINDRAN NAIR,
(RETIRED SECTION OFFICER (F.C & D),
UNIVERSITY OF KERALA, "ROHINI",,
MACHEL.P.O, MALAYINKIL, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.K.P.CHANDRASEKHAR
SRI.LUIZ GODWIN D'COUTH**

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM, PIN-695001.
REPRESENTED BY THE REGISTRAR.**
- 3. THE REGISTRAR,
UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM-695001.**
- 4. K.MOHANDAS (ENQUIRY OFFICER),
JOINT REGISTRAR (FINANCE),
UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM-695001.**

R1 BY GOVT. PLEADER, SRI. P.V.ELIAS.

R2-R3 BY ADV. SRI.BECHU KURIAN THOMAS, SC, UTY. OF KERALA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONER'S EXHIBITS

- EXT- P1- TRUE COPY OF THE LETTER DATED 09-11-1998 FROM THE 3RD RESPONDENT.
- EXT- P2- TRUE COPY OF THE REPLY LETTER DATED 17-11-1998.
- EXT- P3- TRUE COPY OF THE MEMO DATED 26-11-1998.
- EXT- P4- TRUE COPY OF THE REPLY TO THE MEMO DATED 03-12-1998 FROM THE PETITIONER.
- EXT- P5- TRUE COPY OF THE NON-LIABILITY CERTIFICATE DATED 05-12-1998.
- EXT- P6- TRUE COPY OF THE PENSION SANCTIONING ORDER DATED 15-02-1999 OF THE 3RD RESPONDENT.
- EXT- P7- TRUE COPY OF THE REVISED PENSION SANCTIONING ORDER DATED 07-09-1999 PURSUANT TO PAY REVISION.
- EXT- P8- TRUE COPY OF THE MEMO DATED 08-12-1999.
- EXT- P9- TRUE COPY OF THE ALLEGED CHARGES DATED 08-12-1999.
- EXT- P10- TRUE COPY OF THE MEMO DATED 07-04-2000 FIXING THE LIABILITY.
- EXT- P11- TRUE COPY OF THE JUDGMENT DATED 22-11-2004 OF THE HON'BLE HIGH COURT IN OP No.18911/2000.
- EXT- P12- TRUE COPY OF THE JUDGMENT DATED 07-07-2009 IN WA No.1329/2005..
- EXT- P13- TRUE COPY OF THE OBJECTION DATED 13-08-2009 SUBMITTED TO THE 3RD RESPONDENT.
- EXT- P14- TRUE COPY OF THE LETTER DATED 06-03-2010 FROM THE 3RD RESPONDENT.
- EXT- P15- TRUE COPY OF THE REVIEW PETITION DATED 15-03-2010 SUBMITTED BEFORE THE 3RD RESPONDENT.
- EXT- P16- TRUE COPY OF THE LETTER DATED 07-06-2010 FROM THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 25308 OF 2010-K

DATED THIS THE 4th DAY OF MARCH, 2015.

J U D G M E N T

The petitioner retired from service of the 2nd respondent University as Section Officer, with effect from 30-04-1998. After his retirement Ext.P5 liability certificate was issued fixing liability against the petitioner to the tune of Rs.6,954/-, towards house building advance availed and a sum of Rs.72,672/- towards sale proceeds of priced application forms found deficit during the audit. By virtue of Ext.P5 it was ordered that sum of Rs.6,954/- has to be recovered from the DCRG due to the petitioner and payment of the balance amount of DCRG was directed to be withheld until final settlement of the liability reported through the audit. Before issuing Ext.P5 'liability certificate' the petitioner was issued with Ext.P3 memo directing him to remit an amount of Rs.72,672/- towards the cash shortage pointed out in the audit. It is revealed that based on Ext.P3 memo an enquiry was proceeded against the petitioner and

Ext.P8 memo was issued by the Enquiry Officer furnishing the extract of the audit objection and calling upon the petitioner to submit written statement of defence if any. Subsequently Ext.P9 Memo of Charges was framed against the petitioner and on the basis of the report of enquiry the 3rd respondent had issued Ext.P10 letter directing the petitioner to remit an amount of Rs.72,672/- along with interest, finding that the petitioner is fully responsible for the loss of the said amount with respect to sale proceeds of priced application forms. The petitioner had challenged Exts.P5, P7 and P10 in a writ petition filed before this court, as O.P. No.18911/2000. This court found that the enquiry was ordered after fixing liability as per Ext.P5 and that the copy of the enquiry report was not furnished to the petitioner. Hence it is found that the procedure adopted by the University in fixing the liability is violative of the principles of natural justice and the procedure contemplated under the Kerala Civil Service (Classification, Control & Appeal) Rules has not been complied with. A learned Judge of this court in Ext.P11 judgment had

quashed Exts.P5, P7 & P10, making it clear that the petitioner is bound to remit the other amount of Rs.6,954/- mentioned in Ext.P4. The 2nd respondent University had taken up the matter in appeal before the Division Bench. Writ Appeal No.1329/2005 filed by the University was disposed of through Ext.P12 judgment. The Division Bench observed that, the liability against the petitioner for the purpose of recovery from DCRG can be fixed under Note-II of Rule 3 of Part III K.S.R, by following the procedure prescribed therein. Finding that the copy of the enquiry report was not served on the petitioner, it was directed to treat Ext.P10 as a notice and the petitioner was directed to offer his objections if any, to the findings contained in the enquiry report. The 3rd respondent herein was directed to pass fresh orders in the matter on fixing liability if any against him only after affording an opportunity of personal hearing. Consequent to Ext.P12 judgment in the writ appeal the petitioner had submitted Ext.P13 explanations before the 3rd respondent. It is evident that elaborate contentions were raised with respect to non-sustainability of the enquiry

report, both on the factual aspects as well as by pointing out the irregularities in the procedure adopted with respect to the enquiry conducted. It is evident that the 3rd respondent had conducted a personal hearing based on Ext.P13 explanations. But he had issued Ext.P14 letter to the petitioner on the following terms;

"On the basis of the hearing conducted on 23-11-2009 in accordance with the judgment referred to above it has been ordered that the request of Shri. M. Ravindran Nair to absolve him of the liability need not be agreed to and he be directed to remit the amount of Rs.72,672/- (Rupees Seventy Two Thousand Six Hundred and Seventy Two only) with interest @10% per annum to the Kerala University Fund within 15 days.

Accordingly you are directed to remit the amount of Rs.72,672/- (Rupees Seventy Two Thousand Six Hundred and Seventy Two only) with interest @10% per annum to Kerala University Fund within 15 days from the date of receipt of this communication.

If you have any objection in this regard the same may also be communicated to the Registrar within 15 days from the date of receipt of this communication."

In view of direction contained in Ext.P14 the petitioner again submitted Ext.P15 objection to the 3rd respondent. In Ext.P15 the petitioner requested the 3rd respondent to reconsider his decision communicated in Ext.P14 letter and to absolve him from the liability. But the 3rd respondent had issued Ext.P16 letter intimating that the Vice-Chancellor had ordered not to agree with the request for reconsideration of the earlier decision and therefore directed the petitioner to remit the amount with interest immediately. It is aggrieved by Exts.P14 & P16 that this writ petition is filed. Inter alia, the petitioner is seeking directions to release the amount of DCRG withheld along with interest.

2. Heard; learned counsel appearing for the petitioner and learned Standing counsel appearing for the respondents. It is evident that the Division Bench in Ext.P12 judgment had clarified that, recovery from DCRG can be effected with respect to any liability fixed against an employee, without there conducted any departmental or judicial proceedings. But only after giving the employee

concerned with a reasonable opportunity to explain, as contemplated under Note II Rule 3 of Part III K.S.R. It is categorically found that the recovery ordered earlier was vitiated to the extent that the report of enquiry was not furnished to the petitioner and that the petitioner was not given an opportunity to explain with respect to the findings contained therein. Hence it was specifically directed that Ext.P10 should be considered only as a show cause notice. Specific opportunity was directed to be provided to the petitioner to submit his explanations against the findings in the enquiry report. The 3rd respondent was directed to consider such explanation and to take an appropriate decision. Evidently the petitioner had submitted Ext.P13, detailed explanations, raising contentions against sustainability of the allegations as well as contentions pertaining to the illegal and improper conduct of the enquiry. But it is pertinent to note that the 3rd respondent has not gone into the merits of any of such contentions. Neither Ext.P14 nor Ext.P16 letters would reflect that the 3rd respondent had made any advertence to the explanations

submitted by the petitioner. None of the contentions were not seen considered. But on the other hand, a cryptic finding was communicated to the effect that, it was ordered that the request of the petitioner to absolve from the liability need not be agreed upon. In Ext.P16 the 3rd respondent had intimated that the Vice-Chancellor had ordered not to agree with the request of the petitioner. This court is of the firm opinion that there is total failure on the part of the 3rd respondent to comply with the directions contained Ext.P12 judgment. The authority vested with power to fix liability and to recover the same from the DCRG of the petitioner is the 2nd respondent. If any recovery has to be effected the same can be done only by recourse to the procedure contemplated under Note II Rule 3 of Part III K.S.R. The said authority should act independently, based on the materials and taking note of the contentions raised by the employee concerned. Specific remittance of the matter by this court was for consideration of the explanations/contentions of the petitioner. But it seems that the Registrar had taken a view that nothing could be

considered in view of the orders passed by the Vice-Chancellor. Such a decision cannot be sustained as legal and valid. Further, such a decision is in clear violation of the directions contained in Ext.P12 judgment.

3. Under the above mentioned circumstances, this court is of the considered opinion that Exts.P14 & P16 cannot be sustained as legal and valid. Therefore this writ petition is allowed and Exts.P14 & P16 are hereby quashed. The 3rd respondent is directed to finalise the matter afresh in accordance with the directions contained in Ext.P12 judgment and taking note of the observations contained herein above, after affording a fresh opportunity of personal hearing to the petitioner. A final decision in the matter shall be taken at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM
JUDGE

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True copy

P.A. to Judge