

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 26977 of 2012 (V)

PETITIONER :

**JOSEPH CHACKO,
LAST GRADE STAFF, ST. DOMINIC'S COLLEGE, PARATHODE.P.O.,
KANJIRAPPALLY, RESIDING AT KAIPPANPLACKAL HOUSE,
NEAR BISHOP'S HOUSE, KANJIRAPPALLY.P.O.,
KOTTAYAM DISTRICT, PIN-686 507.**

BY ADV. SRI.BIJU MARTIN

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
KOTTAYAM-686 001.**
- 4. THE MANAGER,
ST.DOMINIC'S COLLEGE, KANJIRAPPALLY, PARATHODE.P.O.,
PIN-686 512.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMPARAMBIL
R4 BY ADVS. SRI.BABY ISSAC ILLICKAL
SRI.ISAAC KURUVILLA ILLIKAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-07-2015, ALONG WITH WPC.NO. 35171 OF 2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

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WP(C).NO.26977/2012

APPENDIX

PETITIONER(S) EXHIBITS

- P1- TRUE COPY OF THE JUDGMENT IN W.P[C]NO.7389/2012 DATED 23.03.2012.
- P2- TRUE COPY OF THE REPRESENTATION DATED 04.04.2012 TO THE 3RD RESPONDENT.
- P3- TRUE COPY OF THE ORDER NO.A2-2175/2010 DATED 06.07.2012 ISSUED BY THE 3RD RESPONDENT.
- P4- TRUE COPY OF THE JUDGMENT IN W.P[C]NO.17884/2012 DATED 08.08.2012.
- P5- TRUE COPY OF THE REPRESENTATION DATED 01.09.2012 TO THE 4TH RESPONDENT.
- P6- TRUE COPY OF THE REPRESENTATION DATED 29.09.2012 TO THE 3RD RESPONDENT.
- P7- TRUE COPY OF THE ACKNOWLEDGEMENT CARD DATED 17.10.2012.
- P8- TRUE COPY OF THE ORDER F/2/8131/2010/KO.VE.V.A. DATED 21/10/2011
- P9- TRUE COPY OF THE DEPOSITION OF THE MW2 DATED 11/09/2009

RESPONDENTS' EXHIBITS

- R3(A) COPY OF THE REVISED ORDER VIDE A2/2175/2010 DATED 6/11/2012
- R4(A) COPY OF THE MEMO OF CHARGES ISSUED TO THE PETITIONER DATED 31/7/2009
- R4(B) COPY OF THE ENQUIRY REPORT DATED 20/10/2009
- R4(C) COPY OF THE REPLY OF THE PETITIONER DATED 31/10/2009
- R4(D) COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 5/11/2009
- R4(E) COPY OF THE LETTER OF THE 4TH RESPONDENT TO THE PETITIONER DATED 23/4/2010
- R4(F) COPY OF THE LETTER OF THE 4TH RESPONDENT TO THE PETITIONER DATED 16/8/2010
- R4(G) COPY OF THE REPLY OF THE PETITIONER DATED 18/8/2010

WP(C).NO.26977/2012

**R4(H) COPY OF THE REPLY OF THE 4TH RESPONDENT BEFORE THE 3RD
RESPONDENT DATED 23/5/2012**

**R4(I) COPY OF THE APPEAL FILED BY THE 4TH RESPONDENT BEFORE THE
DIRECTOR OF COLLEGIATE EDUCATION DATED 16/8/2012**

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.26977 of 2012

&

W.P.(C).No.35171 of 2014
.....

Dated this the 16th day of July, 2015

J U D G M E N T

Since the issue involved in both these writ petitions is the same they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to the facts and the exhibits is from W.P.(C).No26977 of 2012.

2. The petitioner is a Last Grade Servant in St.Dominic's College, Kanjirappally. By an order dated 31.07.2009, the petitioner was placed under suspension. Thereafter, on the petitioner preferring a representation before the management against the suspension order, the management considered the same and, after finding it be unsatisfactory, served a charge memo on the petitioner and proceeded to hold a disciplinary enquiry against the petitioner. Still later, on getting the enquiry report from the Enquiry Officer, a show cause notice was issued to the petitioner to which the petitioner submitted a detailed reply. The 4th respondent Manager then withdrew the suspension order with a direction that the suspension period was to be treated as eligible leave. There was no mention,

however, in the said order, of the regularisation, if any, of the period of unauthorised absence in connection with which the petitioner was proceeded against by the respondent management. The petitioner therefore submitted a representation before the 3rd respondent which, although not initially considered, was subsequently considered by the 3rd respondent pursuant to Ext.P1 judgment dated 23.03.2012 in W.P. (C).No.7389 of 2012. Pursuant to the directions of this Court in the aforesaid judgment, the 3rd respondent proceeded to pass Ext.P3 order dated 06.07.2012 directing the suspension period between 01.08.2009 and 04.11.2009, as also the days of unauthorised absence, to be regularised by sanctioning the leave that was applied for by the petitioner. By Ext.P3 order, the 3rd respondent also directed that all consequential benefits were to be paid to the petitioner. Although, the 4th respondent Manager challenged Ext.P3 order before this Court through W.P.(C).No.17884 of 2012, the said writ petition was subsequently withdrawn as noticed in Ext.P4 judgment dated 08.08.2012. It is significant to note that, at the time of withdrawing the writ petition, the right of the 4th respondent Manager to approach this Court through a fresh writ petition, was not reserved in the said judgment. As there was a delay in implementing

Ext.P3 order of the 3rd respondent, the petitioner, through Exts.P5 and P6 representations, sought for an implementation of the said order. When the said representations also did not yield any result, the petitioner filed the present writ petition - W.P.(C).No.26977 of 2012.

3. In a counter affidavit filed by the 3rd respondent in the said writ petition, the 3rd respondent refers to Ext.R3(a) order dated 06.11.2012 passed by the 3rd respondent consequent to the directions of the 2nd respondent in an appeal that was stated to have been preferred by the 4th respondent Manager against Ext.P3 order. It is stated that in the said order dated 06.11.2012, the 3rd respondent regularised the suspension period by sanctioning the eligible leave but went on to hold that no salary could be paid to the petitioner for the days of unauthorised absence. By the said order, the petitioner was directed to apply for leave even in respect of those days of which there was unauthorised absence. It is evident from the averments in the counter affidavit that, by Ext.R3(a) order of the 3rd respondent, the 3rd respondent had reviewed his own earlier order namely Ext.P3. In the counter affidavit filed by the 4th respondent, it is pointed out that, Ext.P3 order passed by the 3rd respondent was in fact passed by an

officer different from the one who heard the matter and in that sense Ext.P3 order itself was vitiated by a non-compliance with the rules of natural justice, and hence, the petitioner could not seek an implementation of the said order in proceedings under Article 226 of the Constitution of India.

4. W.P.(C).No.35171 of 2014 is filed by the petitioner in W.P.(C).No.26977 of 2012 pursuant to his noticing, through the counter affidavit of the 3rd respondent filed in W.P.(C).No.26977 of 2012, that Ext.R3(a) order dated 06.11.2012 had subsequently been passed by the 3rd respondent, cancelling the earlier order dated 06.07.2012. In this writ petition, Ext.R3(a) order dated 06.11.2012 is produced as Ext.P7 and impugned. The specific case of the petitioner in these writ petitions is that after withdrawing W.P.(C).No.17884 of 2012 unconditionally, it was not open to the 4th respondent manager to prefer a challenge against Ext.P3 order in any other forum.

5. I have heard the learned counsel for the petitioner in both the writ petitions, the learned Standing counsel for the Manager of the College in both the writ petitions and also the Government Pleader for

the official respondents in both the writ petitions.

6. 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 challenge of the petitioner in W.P.(C).No.35171 of 2014 against Ext.P7 order must necessarily succeed. Ext.P3 order in W.P.(C).No.26977 of 2012, that was passed by the 3rd respondent therein, is one against which there is no statutory appeal provided under the University Act and Rules. In that sense therefore, it was open to the 4th respondent Manager to have impugned the said order in proceedings before this Court under Article 226 of the Constitution of India. As a matter of fact, the 4th respondent Manager did challenge Ext.P3 order before this Court through W.P.(C).No.17884 of 2012. However, by Ext.P4 judgment, the said writ petition was withdrawn unconditionally and without reserving any right to challenge Ext.P3 order subsequently. It is thereafter that Ext.P7 order in W.P.(C).No.35171 of 2014 (Ext.R3(a) order in W.P.(C).No.26977 of 2012) came to be passed by the 3rd respondent. I find force in the contention of the petitioners that Ext.P7 order is one that is vitiated by an error of jurisdiction. Firstly, the said order is seen passed by

the 3rd respondent based on a direction issued by the 2nd respondent who is the superior officer. If Ext.P7 order is seen as an order that reviews Ext.P3 order passed by the same authority, then the order is necessarily vitiated on account of the fact that the 3rd respondent does not have a power of review that is conferred on him under the statute, which would enable him to review orders already passed by him. Secondly, it is also necessary to keep in mind that Ext.P7 order would at any rate be vitiated by the fact that the said order was passed by the 3rd respondent under dictation from the 2nd respondent. Thus if Ext.P7 order is seen as one that is passed by the 3rd respondent in exercise of a power of review, the said order would have to be quashed on account of being vitiated by the aforesaid two defects. If on the other hand, Ext.P7 order is to be taken as one that was passed by the 3rd respondent, on behalf of the 2nd respondent, who is the superior officer, then the said order would still be vitiated on account of the fact that the 2nd respondent is not clothed with an appellate power to sit in appeal over Ext.P3 order passed by the 3rd respondent. In the absence of a right of appeal, against an order in the nature of Ext.P3, it was not open to the 4th respondent Manager to prefer an appeal before the 2nd respondent against Ext.P3 order of the 3rd

respondent or for the 2nd respondent to have entertained such an appeal. Thus in any view of the matter, Ext.P7 order in W.P.(C). No.35171 of 2014 (Ext.R3 (a) in W.P.(C).No.26977 of 2012) cannot be legally sustained.

Resultantly, I quash the said order and allow W.P.(C).No.35171 of 2014 as also W.P.(C).No.26977 of 2012 of 2012 by directing the respondents to implement the directions in Ext.P3 order dated 06.07.2012 of the 3rd respondent, in its application to the petitioner, within a period of one month from the date of receipt of a copy of this judgment.

The writ petitions are both allowed as above.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

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