

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 27205 of 2014 (A)

PETITIONER(S) :

P.V. THOMAS,
LAW OFFICER, COCHIN PORT TRUST, PORT QUARTERS P/4/1
QUARTERS ROAD, HAIT WILLINGDON ISLAND, COCHIN - 682029.

BY ADVS.SRI.SAJAN MANNALI
SRI.M.P.JAYAKUMAR
SMT. S. SHANTI
SMT.V.N.SHASHIKALA

RESPONDENT(S) :

1. COCHIN PORT TRUST,
REPRESENTED BY ITS CHAIRMAN, ADMINISTRATIVE BUILDING,
NORTH END, WILLINGDON ISLAND, KOCHI - 682 0029.

2. THE CHAIRMAN,
COCHIN PORT TRUST, ADMINISTRATIVE BUILDING, NORTH END,
WILLINGTON ISLAND, KOCHI - 682 009.

3. THE DEPUTY CHAIRMAN,
COCHIN PORT TRUST, ADMINISTRATIVE BUILDING, NORTH END,
WILLINGDON ISLAND, KOCHI -682 009.

4. SHRI CYRIL C.GEORGE,
(FORMER SECRETARY, COCHIN PORT TRUST), DEPUTY CHAIRMAN
MORMUGAO PORT TRUST, HEAD LAND, SADA
GOA - 403804.

5. THE INQUIRY OFFICER,
SUPERINTENDING ENGINEER (MECHANICAL)OFFICE OF THE DOCK
MASTER, COCHIN PORT TRUST
NORTH END, WILLINGTON ISLAND, KOCHI - 682 009.

6. THE SECRETARY,
MINISTRY OF SHIPPING, GOVERNMENT OF INDIA, 1
SANSAD MARG, NEW DELHI - 110001.

7. THE CHIEF VIGILANCE COMMISSIONER,
SATARKATA BHAVAN, A - BLOCK, GPO COMPLEX
INA,NEW DELHI - 110023.

R6 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R1,R2,R3 & 5 BY ADV. SRI.V.ABRAHAM MARKOS
R1,R2,R3 & 5 BY ADV. SRI.BINU MATHEW
R1,R2,R3 & 5 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)
R1,R2,R3 & 5 BY ADV. SRI.ABRAHAM JOSEPH MARKOS
R1,R2,R3 & 5 BY ADV. SRI.ISAAC THOMAS
R1,R2,R3 & 5 BY ADV. SRI.NOBY THOMAS CYRIAC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 27205 of 2014 (A)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P-1: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT SUSPENDING THE PETITIONER, DT.21.2.2014, MARKED AS EXT.P1

EXT.P-2: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT GRANTING SUBSISTENCE ALLOWANCE @ 50% TO THE PETITIONER, DT.1.3.2014, MARKED AS EXT.P2

EXT.P-3: TRUE COPY OF THE MEMO OF CHARGES ISSUED BY THE 2ND RESPONDENT, DT.18.3.2014, MARKED AS EXT.P3

EXT.P-4: TRUE COPY OF THE PETITIONER'S REQUEST SEEKING DOCUMENTS AND TIME, DT.29.3.2014, MARKED AS EXT.P4

EXT.P-5: TRUE COPY OF THE 2ND RESPONDENT'S MEMO REJECTING EXT.P4, DT.7.4.2014, MARKED AS EXT.P5

EXT.P-6 TRUE COPY OF THE PETITIONER'S DEFENCE STATEMENT, DT.17.4.2014 MARKED AS EXT.P6

EXT.P-7: TRUE COPY OF THE LETTER FROM THE SR.PS TO THE 2ND RESPONDENT REQUIRING TO BE PRESENT FOR HEARING, DT.5.5.2014, MARKED AS EXT.P7

EXT.P8: TRUE COPY OF THE PETITIONER'S REQUEST, DT.9.5.2014 SEEKING PERMISSION TO ENGAGE AN ADVOCATE, MARKED AS EXT.P8

EXT.P-9: TRUE COPY OF THE 2ND RESPONDENT'S MEMO, DT.31.5.2014 REJECTING EXT.P8, AND ORDERING INQUIRY, MARKED AS EXT.P9

EXT.P-10: TRUE COPY OF THE ORDER APPOINTING THE 5TH RESPONDENT - INQUIRY OFFICER AND THE PRESENTING OFFICER, DT.7.6.2014, MARKED AS EXT.P10

EXT.P-11: TRUE COPY OF THE 5TH RESPONDENT'S LETTER GIVING NOTICE OF THE INQUIRY, DT.17.9.2014, MARKED AS EXT.P11

EXT.P-12: TRUE COPY OF THE PETITIONER'S REQUEST SEEKING PERMISSION TO APPOINT A COUNSEL FOR DEFENCE ASSISTANCE, DT.18.9.2014, MARKED AS EXT.P12

EXT.P-13: TRUE COPY OF THE PETITIONER'S LETTER FILING VAKALATH DT.20.9.2014, MARKED AS EXT.P13

EXT.P-14: TRUE COPY OF THE PETITIONER'S NOTICE OF ILLEGALITY OF INQUIRY AND REQUESTING TO CLOSE INQUIRY, DT.22.9.2014, MARKED AS EXT.P14

EXT.P-15: TRUE COPY OF THE PETITIONER'S LETTER INTIMATING REFUSAL OF THE COLLEAGUES AND REQUESTING PERMISSION TO APPOINT A COUNSEL, DT.23.9.2014, MARKED AS EXT.P15

EXT.P-16: TRUE COPY OF THE PETITIONER'S LETTER DT.1.10.2014, REQUESTING NOT TO HOLD INQUIRY EX PARTE, MARKED AS EXT.P16

EXT.P-17: TRUE COPY OF THE PETITIONER'S LETTER DT.14.10.2014
REQUESTING NOT TO HOLD INQUIRY AND SUBMITTING LIST OF DEFENCE
WITNESSES, MARKED AS EXT.P17

EXT.P-18: TRUE COPY OF THE 5TH RESPONDENT'S LETTER, DT.20.9.2014
REJECTING EXT.P12, MARKED AS EXT.P18

EXT.P-19:TRUE COPY OF THE 5TH RESPONDENT'S LETTER, DT.23.9.2014
REJECTING EXT.P13 AND RETURNING VAKKALATH, MARKED AS EXT.P19

EXT.P-20:TRUE COPY OF THE 5TH RESPONDENT'S LETTER, DT.25.9.2014
REJECTING EXT.P15, MARKED AS EXT.P20

EXT.P-21:TRUE COPY OF THE 5TH RESPONDENT'S LETTER, DT.29.9.2014
INTIMATING OF INQUIRY TO BE HELD EX PARTE, MARKED AS EXT.P-21

EXT.P-22: TRUE COPY OF THE 5TH RESPONDENT'S LETTER, DT.7.10.2014
REQUIRING PETITIONER TO DEFEND CASE WITHOUT DEFENCE ASSISTANT, MARKED
AS EXT.P22

EXT.P-23: TRUE COPY OF THE INQUIRY PROCEEDINGS DT.22.9.2014, MARKED
AS EXT.P23

EXT.P-24: TRUE COPY OF THE INQUIRY PROCEEDINGS DT.26.9.2014, MARKED
AS EXT.P24

EXT.P-25: TRUE COPY OF THE INQUIRY PROCEEDINGS DT.22.9.2014, MARKED
AS EXT.P25

RESPONDENT(S) ' EXHIBITS
-----"

EXT.R1(A): COPY OF PROCEEDINGS NO.P/S/5/2014/S DATED 21/5/2014 OF
THE REVIEW COMMITTEE.

EXT.R2(B): COPY OF PROCEEDINGS NO. P/S/5/2014/S DATED 20/8/2014 OF
THE REVIEW COMMITTEE.

/TRUE COPY/ P.S. TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 27205 OF 2014

Dated this the 24th day of March, 2015

JUDGMENT

The petitioner is working as a Law Officer in the Cochin Port Trust. Challenging the disciplinary proceedings as well as suspension, he approached this Court by filing this writ petition. The petitioner has been suspended from the service on 21/2/2014. Now he is under suspension for more than one year. The statement of article of charges framed against the petitioner is produced as Ext.P3. It is highlighted in Ext.P3 that the petitioner has been suspended in connection with the prosecution of the Civil Appeals before the Hon'ble Supreme Court. It is alleged that the petitioner neglected his duties as an officer to follow up the appeals in cases having significant revenue importance to the Port Trust.

2. It is now admitted that an enquiry is going on and the Superintending Engineer (Mechanical) has been appointed as the enquiry officer as per Ext.P10 to enquire into the charges framed against the petitioner. In this writ petition the

petitioner seeks issuance of direction to the 5th respondent enquiry officer to allow the petitioner to engage a legal practitioner to assist him in the enquiry proceedings ordered against him. The petitioner also challenges Ext.P9 proceedings of the Chairman by which the Chairman ordered to proceed with the charges framed against the petitioner and to conduct departmental enquiry.

3. The petitioner's request for engaging a legal practitioner cannot be allowed in the sense the petitioner being himself is a Law Officer, unless there are specific provisions in the Cochin Port Employees(Conduct) Regulations, the petitioner does not have a right to make a claim to appoint a legal practitioner to assist him. The petitioner further submitted that the enquiry officer being a Subordinate to the Chairman, he may have bias in recording the cross examination and the Chairman being one of the witnesses, he should be permitted to engage a legal counsel. The question of bias does not arise at this stage. The petitioners failed to substantiate with any materials even an apprehended bias. Therefore, the petitioner's request for a direction to the 5th respondent to permit him to engage a legal practitioner fails.

4. As regard the other prayers of the petitioners in this writ petition are concerned, I am of the view that those prayers do not require consideration of this Court at this stage. The petitioner shall cooperate with the disciplinary proceedings.

5. However, the petitioner is under suspension for more than one year. The allegation against the petitioner is in regard to the prosecution of the Civil Appeals before the Supreme Court. It appears from the memorandum of charges that those appeals were filed by the lessees of the Port Trust. It may not be appropriate for this Court at this stage to make any observation regarding the action now initiated by the Port Trust consequent upon the dismissal of the Civil Appeals. Nevertheless, from the nature of the allegations levelled against the petitioner, I am of the view that continuation of the suspension is unjust and unwarranted and it will be against the public interest. There is no other serious allegation against the petitioner other than in connection with the dismissal of the cases by the Supreme Court. In view of that matter and taking note of the fact that the petitioner is under suspension for more than one year, the petitioner shall be reinstated

forthwith.

5. The interim order granted against the disciplinary proceedings stands vacated. The enquiry Officer shall conclude the disciplinary proceedings within three months from the date of receipt of a copy of this judgment.

6. The petitioner is at liberty to pursue any other complaint against the officers in an appropriate manner.

7. All other issues are left open.

The writ petition is disposed of as above. No costs.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/True copy/ PS to Judge.

