

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C).No. 28109 of 2015 (K)

PETITIONER:

**A.P. CHANDRAN AGED 51 YEARS
AMBALAPARAMBIL HOUSE, NEAR N.M.H.S. SCHOOL
THIRUNNAVAYA PO, MALAPPURAM 676 301.**

**BY ADVS.SMT.M.R.SREELATHA
SRI.YJAFAR KHAN**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF SC/ST DEVELOPMENT
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM 695 001.**
 - 2. SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
KALADY, KALADY POST, ERNAKULAM DISTRICT
PIN 683 574, REPRESENTED BY ITS REGISTRAR.**
 - 3. DIRECTOR
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
REGIONAL CENTRE, TIRUR, THAZHETHARA
THIRUNNAVAYA PO, MALAPPURAM DISTRICT, PIN 676 301.**
 - 4. DR.SUDHAMA, DIRECTOR,
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
REGIONAL CENTRE, TIRUR, THAZHETHARA
THIRUNNAVAYA PO, MALAPPURAM DISTRICT, PIN 676 301.**
 - 5. VELAMKANNI
OPPAKANDI HOUSE, NEAR N.M.H.SCHOOL, THIRUNNAVAYA PO
MALAPPURAM DISTRICT, PIN 676 301.**
 - 6. SINDHU
W/O.KRISHNAN, OPPAKANDI HOUSE, NEAR N.M.H. SCHOOL
THIRUNNAVAYA PO, MALAPPURAM DISTRICT PIN 676 301.**
- R2TO R4 BY ADV. SRI.ARUN B.VARGHESE,SC, SREE SANKARACHARYA UTY.
R1 BY GOVERNMENT PLEADER SMT. A. LOWSY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF ORDER OF THE 3RD RESPONDENT APPOINTING THE PETITIONER AS NIGHT WATCHMAN IN THE 2ND RESPONDENT UNIVERSITY AND DATED 30.6.2009**
- P2- TRUE COPY OF ORDER DATED 28.8.2009 ISSUED BY THE 2ND RESPONDENT**
- P3- TRUE COPY OF NOTICE NO.SSUC/RC-TIR/EST/2015(2) DATED 14.5.2015 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER**
- P4- TRUE COPY OF EXPLANATION SUBMITTED BY THE PETITIONER DATED 16.5.2015**
- P5- TRUE COPY OF ORDER NO.AD.B/11539/S.S.U.S/2011 DATED 4.6.2015 ISSUED BY THE 2ND RESPONDENT**
- P6- TRUE COPY OF APPLICATION AND REPLY RECEIVED FROM THE 2ND RESPONDENT UNDER RIGHT TO INFORMATION ACT AND DATED 23.7.2015**
- P7- TRUE COPY OF REPORT DATED 14.5.15 OF THE 4TH RESPONDENT ALONG WITH STATEMENT TAKEN FROM SMT.VELAMKANNI BY SMT.RUGMINI**
- P8- TRUE COPY OF COMPLAINT DATED 20.8.15 SUBMITTED BY THE PETITIONER BEFORE THE COMMISSION FOR SCHEDULED CASTE AND SCHEDULE TRIBES**
- P9- TRUE COPY OF THE REPRESENTATION DATED 19.6.2015 SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE MINISTER FOR TOURISM AND LETTER FORWARDING THE SAME TO THE FIRST RESPONDENT**

RESPONDENT(S)' EXHIBITS

- R2(A) TRUE COPY OF LETTER NO.SSUS/RC-TIR/EST/2015(1) DATED 14.5.2015 INCORPORATING THE COMPLAINT AND THE ENQUIRY SUBMITTED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT**
- R2(B) TRUE COPY OF THE RELEVANT PORTION OF THE REGISTER SHOWING THE ACCEPTANCE OF EXT.P3 NOTICE**
- R2(C) TRUE COPY OF THE LETTER DATED 25.9.2012 SUBMITTED BY THE WRIT PETITIONER BEFORE THE 3RD RESPONDENT**

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 28109 of 2015 (K)

Dated this the 6th day of October, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner has been terminated from services by Ext.P5.

2. The petitioner, admittedly, was a night watchman, who was engaged on daily wage basis. The contention of the petitioner is that he had been continued for more than 6 years, but, however, the University contends that the petitioner's engagement was only for intermittent periods of 89 days.

3. The allegation levelled against the petitioner was with respect to the mis-behaviour towards women and children. The petitioner was issued with a show cause notice, indicated at Ext.P3, wherein a specific complaint was referred to. The petitioner was also asked to explain his conduct, which the petitioner is said to have submitted before the disciplinary authority by Ext.P4.

4. The learned counsel for the University, however, submits that the explanation was not submitted within the time stipulated in Ext.P3. The learned counsel for the University submits that an enquiry was conducted as per Ext.R2(a) and it was in such circumstance that the petitioner was issued a show cause notice and then terminated from service. The enquiry report produced at Ext.P2(a) is, in fact, prior to Ext.P3.

5. Considering the fact that the petitioner was a daily wage worker, in fact, the University could have merely terminated his service on account of his services being unsatisfactory. But however, the University has specifically relied on a complaint alleging misbehaviour and has also referred to the same in Ext.P5.

5. In such circumstance, going by the decision of the Hon'ble Supreme Court in **Union of India v. Mahaveer C. Singhvi - (2010) 8 SCC 220** what has to be considered is whether the instant action of termination was motivated by

the complaint or whether it becomes the foundation itself of the termination. Going by the fact that the allegations were specifically referred to in the termination order, it has to be found that the same is not a mere motive but is the foundation of the termination. In view of the said finding, definitely the procedural irregularity would have to be corrected.

6. The 2nd respondent, the disciplinary authority, would initiate the proceedings from the point at which the defect occurred, being non-participation of the petitioner. Ext.R2(a) enquiry report would be treated as a preliminary enquiry, on the basis of which the charge sheet has been issued. The 2nd respondent shall appoint an Enquiry Officer for conducting disciplinary enquiry and the same shall be expedited and completed at any rate within two months from the date of receipt of the certified copy of this judgment. Ext.P5 is set aside and the University is directed to comply with the directions, but, however, this Court is

not inclined to grant reinstatement in view of the seriousness of the allegations levelled and the fact that the petitioner was working as a daily wage employee. The University would expedite the proceedings and conclude the same at any rate within two months from the date of receipt of the certified copy of this judgment.

Writ Petition is disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE