

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

WP(C).No. 39086 of 2015 (I)

PETITIONER:

**DR.JANARDHANAN, AGED 53 YEARS,
S/O.RAMACHANDRA SHENOY, PRINCIPAL,
DR.PADIAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE,
CHOTTANIKKARA.P.O., ERNAKULAM - 682 312.**

**BY ADVS.SRI.P.C.SASIDHARAN
SRI.K.C.ELDHO
SRI.E.S.ASHRAF**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO THE GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM - 695 001.**
- 2. THE VICE CHANCELLOR,
KERALA UNIVERSITY OF HEALTH SCIENCES,
MEDICAL COLLEGE.P.O., THRISSUR - 680 596.**
- 3. BOARD OF TRUSTEES,
DR.PADIAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE,
CHOTTANIKKARA.P.O., ERNAKULAM, KOCHI - 682 312,
REPRESENTED BY ITS SECRETRY.**
- 4. THE SECRETARY, BOARD OF TRUSTEES,
DR.PADIAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE,
CHOTTANIKKARA.P.O., ERNAKULAM, KOCHI - 682 312.**

**R1 BY GOVERNMENT PLEADER SMT.M.J.RAJASREE
R2 BY ADV. SRI.P.SREEKUMAR,SC
R3 & R4 BY ADV. SMT.R.RANJINI**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : A TRUE COPY OF THE JUDGMENT DATED 10.12.2015 OF THIS HON'BLE COURT IN W.A.NO.754 OF 2015.
- EXT. P2 : A TRUE COPY OF THE MEMO OF CHARGES ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT.
- EXT. P3 : A TRUE COPY OF THE WRITTEN EXPLANATION SUBMITTED BY THE PETITIONER TO EXHIBIT P2 MEMO OF CHARGES.
- EXT. P4 : A TRUE COPY OF THE ENQUIRY REPORT.
- EXT. P5 : A TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER TO EXHIBIT P4 ENQUIRY REPORT.
- EXT. P6 : A TRUE COPY OF THE COMMUNICATION DATED 14.12.2015 ISSUED BY THE 4TH RESPONDENT.
- EXT. P7 : A TRUE COPY OF THE REPRESENTATION/EXPLANATION SUBMITTED BY THE PETITIONER AS AGAINST EXHIBIT P6.
- EXT. P8 : A TRUE COPY OF THE ARTICLES OF AGREEMENT ENTERED INTO BETWEEN THE GOVERNMENT OF KERALA AND THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J.

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W.P.(C) No.39086 of 2015 - I

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Dated this the 23rd day of December, 2015

J U D G M E N T

The petitioner, a Principal, who was proceeded against departmentally is before this Court, challenging Ext.P6, by which the Secretary of the 3rd respondent has issued an order calling for explanation on the findings of the enquiry report, which the learned Counsel for the petitioner asserts, he is not competent to do. Admittedly, the show cause notice was issued, charges were framed, disciplinary enquiry constituted and the enquiry report filed, before the Board of Trustees.

2. It is also an admitted fact that the Board of Trustees is the educational agency and the appointing and disciplinary authority. In such

circumstance, the Secretary of the Board can though issue orders on behalf of the Board, but cannot consider the issue, which has to be considered by the disciplinary authority itself.

3. The learned Counsel for the respondent Board in fact submits that Ext.P6 was issued on behalf of the Board, but there is a discrepancy insofar the Secretary having not noticed specifically that, it is issued on behalf of the Board. In any event, a reading of Ext.P6 shows that the Secretary himself had applied his mind to the findings in the enquiry report. Since that cannot be the case, the Board of Trustees would have to issue a notice on the findings in the enquiry report informing the petitioner about the tentative findings of the Board and call for objections specifically, on the findings entered into on the basis of the enquiry report as declared

in *Managing Director, ECIL v. B.Karunakar [(1993) r SCC 727]*. The Board also would have to grant a personal hearing to the petitioner. Ext.P6 finds the Principal to be guilty of the charges from 01 to 09 and 11 to 13 hence the findings would stand set aside, not on merits but only on the procedural defect of lack of authority for the Secretary and the mandate of natural justice that the disciplinary authority before entering into findings on the report afford an opportunity to the delinquent.

4. In such circumstance, Ext.P6 would stand set aside. The Board shall deliberate on the issue and issue notice to the petitioner on the tentative findings entered into, on the basis of the enquiry report and the petitioner shall be entitled to file his objections also. The Board shall issue notice within one week from the date of

receipt of a certified copy of this judgment and the petitioner shall appear before the Board on the 31st of December 2015 at 11 am along with his objections. He shall be heard on that date or any further date fixed, within one week from that day and orders passed, expeditiously within two weeks from the date of hearing, which shall also to be communicated to the petitioner.

The writ petition would stand disposed of, without entering any finding on merits. Parties are left to suffer their respective costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/23/12/2015

// true copy //

P.A to Judge.