

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 29TH DAY OF JULY 2019 / 7TH SRAVANA, 1941

WP(C).No.14707 of 2019

PETITIONER/S:

MAHESWARI AMMA.T
AGED 57 YEARS
W/O. (LATE) SASIDHARAN THAMPI, AISWARYA HOUSE, KUTTAMPEROOR
P.O., MANNAR, ALAPPUZHA DISTRICT-689 623

BY ADVS.
SRI.C.A.RAJEEV
SRI.A.KRISHNAN

RESPONDENT/S:

- 1 THE KUTTAMPEROOR KSHEEROLPADAKA CO-OPERATIVE SOCIETY,
NO.A 185 (P) APCOS, KUTTAMPEROOR P.O., MANNAR, ALAPPUZHA
DISTRICT-689 623, REPRESENTED BY ITS HONOURARY SECRETARY
- 2 THE PRESIDENT,
THE KUTTAMPEROOR KSHEEROLPADAKA CO-OPERATIVE SOCIETY, NO.A
185 (P) APCOS, KUTTAMPEROOR P.O., MANNAR, ALAPPUZHA DISTRICT-
689 623,
- 3 THE DEPUTY DIRECTOR,OFFICE OF THE DEPUTY DIRECTOR DIARY
DEVELOP
OFFICE OF THE DEPUTY DIRECTOR DIARY DEVELOPMENT DEPARTMENT,
CIVIL STATION,ALAPPUZHA-688 001
- 4 THE STATE OF KERALA,
REPRESENTED BY SECRETARY, AGRICULTURAL DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001

BY ADVS.

SRI.T.R.HARIKUMAR-SC
SRI.ARJUN RAGHAVAN

OTHER PRESENT:

SMT.C.S.SHEEJA-SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.07.2019, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner says that, while she was working as the Secretary of the 1st respondent - Society, she was dismissed from service on the allegation that a criminal case had been registered against her for misappropriation and such other.

2. According to the petitioner, she was subsequently exonerated of all charges by a competent Criminal Court and therefore, became entitled to be reinstated in service; and that she consequently, approached the Deputy Director, Dairy Development Department, the functional Joint Registrar with respect to the 1st respondent - Society, who issued Ext.P4 order, directing the Society to reinstate her in service. The petitioner seeks that Ext.P4 be directed to be implemented.

3. Sri.T.R.Harikumar, learned standing counsel appearing for the 1st respondent - Society, in response to the afore submissions made by Sri.A.Krishnan, learned counsel for the petitioner, submits that contrary to the allegations of the petitioner and the statements in Ext.P4, the petitioner was not dismissed merely on the basis of a criminal case having been registered against her but that she was found guilty in a

disciplinary enquiry, in which she did not co-operate or participate and that all notices issued to her at the relevant time had been returned with the endorsement 'refused'. He says that since the disciplinary action ended in findings against her, she was dismissed from service validly. He therefore, prays that this writ petition be dismissed and that Ext.P4 be not directed to be implemented.

4. I have considered Ext.P4, which is the order sought to be implemented by the petitioner in this writ petition and I notice that the Deputy Director, has ordered the Society to reinstate the petitioner merely because the criminal case against her has ended in acquittal.

5. However; it is now well settled that even when a criminal case ends in acquittal against an employer, he/she will not obtain automatic right to be reinstated and that such claim will also depend upon the worth of the disciplinary action and the findings therein. However, in this case, admittedly, the disciplinary action has not been challenged because the petitioner says that she was not aware of it till the counter pleadings in this writ petition were filed by the 1st respondent – Society.

6. Be that as it may, the fact remains that there is a concluded disciplinary action and that the Society had finalized the same as early as in the year 2006. True, the petitioner says that she was not aware of such proceedings and that she did not receive any notice; while the Society maintains that all such notices were returned by her unserved. I am also aware of the contentions of Sri.T.R.Harikumar, that acquittal in favour of the petitioner by the Criminal Court has not been done on merit but only because she was found entitled to the benefit of doubt.

7. I am resultantly, of the view that it will not be proper for this Court to order this writ petition in the manner as has been prayed for by the petitioner, since I am unable to affirm the competence of the Deputy Director to have issued an order like Ext.P4, which perhaps he did only because he was not aware of the disciplinary action against her.

8. In such circumstances, I asked Sri.T.R.Harikumar, learned standing counsel for the 1st respondent - Society, whether they would be agreeable to afford an opportunity to the petitioner of being heard, so that the punishment imposed against her can be revisited or reconsidered, enabling her to

at least obtain her reitral benefits.

9. Sri.T.R.Harikumar, in answer, submitted that there is no impediment in considering the petitioner's request for retiral benefits, but adds that a statutory appeal may not be now possible on account of the lapse of more than thirteen years after the disciplinary action has been finalized.

10. Taking note of the afore submissions, I deem it appropriate to allow an opportunity of being heard to the petitioner by the Committee of the 1st respondent - Society, so that they can consider if any latitude or lenitude can be shown to her, particularly on account of the fact that the criminal case against her has ended in acquittal. This is more so because, the Committee will also be in a position to decide and evaluate the petitioner's contention that she was not aware of the disciplinary action, though the endorsements available on the records of the Society would show that she has refused all processes.

11. In order to obtain an expeditious compliance, I direct the petitioner to mark appearance before the Committee of the Society at 11.00 AM on 14.08.2019, on which date, the petitioner will be entitled to make a

representation against her punishment and the Committee will hear her and take a final decision on it, including whether she can be given at least the retiral benefits consequent to her attaining the age of superannuation as of now. The resultant order shall be issued by the Committee, as expeditiously as is possible, but not later than one month after the afore date.

I am not considering the merits of Ext.P4 at this time, since, as I have already indicated above, I cannot find competence for the Deputy Director, to have issued that order though I am aware that he did so, solely because the criminal case against the petitioner has ended in her favour. I do not propose to say anything further on this issue now and I leave it open, to be agitated in future, if it is so necessary, after the afore exercise.

This writ petition is thus ordered.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE REPLY TO THE MEMO OF CHARGES DATED 09.01.2006, SUBMITTED BY PETITIONER BEFORE THE THEN CHAIRMAN OF ADMINISTRATIVE COMMITTEE OF 1ST RESPONDENT
- EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 28.03.2019 OF H'BLE JFCM COURT-I, CHENGANNUR IN C.C.NO.3280/13
- EXHIBIT P3 TRUE COPY OF THE REPRESENTATION DATED 10.05.2019 FILED BY PETITIONER BEFORE THE 2ND RESPONDENT
- EXHIBIT P3 A TRUE COPY OF THE REPRESENTATION DATED 10.05.2019 FILED BY PETITIONER BEFORE THE DIRECTOR, DAIRY DEVELOPMENT
- EXHIBIT P4 TRUE COPY OF THE DIRECTION DATED 20.05.2019 ISSUED BY THE 3RD RESPONDENT
- EXHIBIT P5 TRUE COPY OF NOTIFICATION DATED 21.03.2006 ISSUED BY GOVERNMENT
- EXHIBIT P6 TRUE COPY OF THE NOTICE OF MEETING
- EXHIBIT P7 TRUE COPY OF THE FINDING DATED 22.01.2008 OF THE STATE PUBLIC INFORMATION OFFICER

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R2 (a) A TRUE COPY OF THE MEMO OF CHARGES ISSUED TO THE PETITIONER DATED 22-12-2005.
- EXHIBIT R2 (b) A TRUE COPY OF THE ENQUIRY REPORT DATED 28-02-2006.
- EXHIBIT R2 (c) A TRUE COPY OF THE AWARD DATED 27-11-2006 IN ARC NO.1/2006.
- EXHIBIT R2 (d) A TRUE COPY OF THE ENVELOP DATED 25-01-2006, SHOWING THAT THE PETITIONER REFUSED TO ACCEPT THE REGISTERED NOTICE.
- EXHIBIT R2 (e) A TRUE COPY OF THE ENVELOP DATED 04-02-2006, SHOWING THAT THE PETITIONER REFUSED TO ACCEPT THE REGISTERED NOTICE.
- EXHIBIT R2 (f) A TRUE COPY OF THE ENVELOP DATED 28-03-2006, SHOWING THAT THE PETITIONER REFUSED TO ACCEPT THE REGISTERED NOTICE.

- EXHIBIT R2 (g) A TRUE COPY OF THE ENVELOP DATED 30-05-2006, SHOWING THAT THE PETITIONER REFUSED TO ACCEPT THE REGISTERED NOTICE.
- EXHIBIT R2 (h) A TRUE COPY OF THE RESOLUTION OF THE SUB-COMMITTEE DATED 06-06-2006, DISMISSING THE PETITIONER FROM SERVICE ALONG WITH COVERING LETTER DATED 07-06-2006.
- EXHIBIT R2 (i) A TRUE COPY OF THE ENVELOP DATED 17-06-2006, SHOWING THAT THE PETITIONER REFUSED TO ACCEPT THE REGISTERED NOTICE CONTAINING EXT-R2 (h) .