

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
WEDNESDAY, THE 9TH DAY OF MARCH 2022 / 18TH PHALGUNA, 1943

WP(C) NO. 4244 OF 2022

PETITIONER/S:

APPUTTY C.
AGED 57 YEARS
S/O CHERIYAKKAN
SECRETARY UNDER SUSPENSION OF KUNNAMANGALAM KSHEEERA
VYAVASAYA SAHAKARANA SANGHOM
RESIDING AT CHEENIKKAL VEEDU,
POST PILASSERY, KUNNAMANGALAM,
KOZHIKODE - 673571
KOZHIKODE, PIN - 673571

BY ADVS.
R.SUDHISH
M.MANJU
MERIN THOMAS

RESPONDENT/S:

- 1 DEPUTY DIRECTOR DEPARTMENT OF DAIRY DEVELOPMENT
DEPARTMENT OF DAIRY DEVELOPMENT,
GOVERNMENT OF KERALA,
OFFICE OF THE DEPUTY DIRECTOR,
CIVIL STATION, KOZHIKODE
KOZHIKODE, PIN - 673020
- 2 KUNNAMANGALAM KSHEERA VYAVASAYA SAHAKARANA SANGHOM
POST KUNNAMANGALAM, KOZHIKODE - 673571,
REPRESENTED BY THE SECRETARY
KOZHIKODE, PIN - 673571
- 3 THE PRESIDENT,
KUNNAMANGALAM KSHEERA VYAVASAYA SAHAKARANA SANGHOM
POST KUNNAMANGALAM, KOZHIKODE - 673571, PIN - 673571

BY ADVS.
V.V.SURENDRAN

WP (C) Nos.4244/2022
& 6683/2022

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P.A.HARISH
SMT SURYA BINOY GP, SMT ANIMA M GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09.03.2022, ALONG WITH WP(C).6683/2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
WEDNESDAY, THE 9TH DAY OF MARCH 2022 / 18TH PHALGUNA, 1943

WP (C) NO. 6683 OF 2022

PETITIONER/S:

- 1 THE KUNNAMANGALAM KSHEERA VYAVASAYA SANGHAM LTD. NO. 1859, REPRESENTED BY ITS SECRETARY, VARYTAAK, P.O, KUNNAMANGALAM, KOZHIKODE - 673571.
- 2 THE PRESIDENT
THE KUNNAMANGALAM KSHEERA VYAVASAYA SAHAKARANA SANGHAM LTD, NO. 1859, VARYTAAK, P.O,
KUNNAMANGALAM, KOZHIKODE - 673571.

BY ADVS.
V.V.SURENDRAN
P.A.HARISH

RESPONDENT/S:

- 1 DEPUTY DIRECTOR
OFFICE OF THE DEPUTY DIRECTOR, DAIRY DEVELOPMENT DEPARTMENT, POST CIVIL STATION, KOZHIKODE - 673020.
- 2 THE DAIRY EXTENSION OFFICER
DAIRY DEVELOPMENT DEPARTMENT,
OFFICE OF THE DAIRY EXTENSION OFFICER,
KUNNAMANGALAM BLOCK, MINI CIVIL STATION, POST,
KUNNAMANGALAM, KOZHIKODE - 673571.
- 3 C. APPUTTY,
AGED 57 YEARS

WP (C) Nos.4244/2022
& 6683/2022

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S/O. CHERIYAKKAN,
RESIDING AT CHEENIKKAL HOUSE,
POST PILLASSERI, KUNNAMANGALAM,
KOZHIKODE - 673571.

BY ADVS.
Sudhish
M.MANJU (K/003562/1999)
MERIN THOMAS (K/000292/2022)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09.03.2022, ALONG WITH WP(C).4244/2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Under Rule 198 (6) of the Co-operative Societies Rules, an authority competent to appoint an employee may suspend him pending an enquiry into serious charges against such employee. The provision however places an interdiction that no employer shall keep an employee under suspension for a continuous period of exceeding one year without the prior approval of the Registrar.

2. WP (C) No. 4244 of 2022 is filed by the petitioner, who while working as a Secretary, was suspended from his service on 7.7.2020 pending disciplinary proceedings. Before the expiry of six months, an application seeking to extend the suspension was filed by the Society and by order dated 10.2.2021, the suspension period was extended by six months. The one-year period contemplated under Rule 198(6) expired on 6.7.2021. The Society submitted a request through the Dairy Development Officer to extend the period of suspension by a period of six more months. By Ext.P2 order dated 3.8.2021, the 1st respondent rejected the request and directed the Society to conclude the proceedings within a period of three months from 6.7.2021, the day on which the one year period had expired. In the

said circumstances, the petitioner submitted Ext.P3 request before the 3rd respondent. However, no action was taken. Later, on 8.2.2022, the 1st respondent issued Ext.P4 order cancelling the order of suspension and directions were given to the Society to reinstate the petitioner as Secretary within a week from the date of the order and to report compliance. Complaining of inaction and seeking directions, the petitioner is before this Court seeking the following reliefs:

- “(i) Issue a writ of mandamus or the other appropriate writ, order or direction directing the respondents 2 and 3 to reinstate the petitioner back in Service forthwith.
- (ii) Issue a declaration declaring that the petitioner is entitled for reinstatement after one year from the date of suspension from Service.
- (iii) Issue a writ of mandamus or other appropriate writ, order or direction directing the respondents 2 and 3 to consider Exhibit-P3 within a time frame fixed by this Honourable Court.”

3. W.P.(C) No. 6683/2022 is filed by the Society challenging Ext.P7 order (Ext.P4 order in W.P.(C) No. 4244/2022) by which, the Society was directed by the 1st respondent to cancel the order of suspension and to reinstate the 3rd respondent as Secretary of the Society.

4. The Society contends that the employee was placed under suspension for serious malpractices and a domestic enquiry has been initiated. The employee was placed under suspension on 7.7.2020 and Adv.V.P. Radhakrishnan has been appointed as the Enquiry Officer. Due to COVID, the enquiry could not be conducted with full vigor and the dilatory tactics adopted by the delinquent employee did not help. As the enquiry proceeding could not be completed within a period of one year, Ext.P3 request was submitted before the 3rd respondent along with a copy of the decision of the Board of Directors. No reply was received by the Society. While so, Ext.P4 communication dated 5.1.2022 was received by the Society wherein reference is made to a letter dated 3.8.2021. No such letter was received by the Society. Stating all facts, Ext.P5 communication was sent by the Society to the 1st respondent and later by Ext.P6 communication dated 3.2.2022, the Board of Directors requested the 1st respondent to extend the period of suspension till 31.3.2022 to enable them to complete the disciplinary proceedings. Instead of allowing the request, the request was rejected by Ext.P7 order. This has led the Society to approach this Court seeking the following reliefs:

- “ i] Issue a writ of certiorari or any other appropriate writ order or direction quashing Ext.P7 order of the 1st respondent.
- ii] Issue a writ of mandamus or any other appropriate writ order or direction directing the 1st respondent to extend the suspension of the 3rd respondent till 30.04.2022 or till the period referred to in Ext.P6 resolution.”

5. I have heard Sri. Sudhish, the learned counsel appearing for the employee, Sri. P.A.Harish, the learned counsel appearing for the Society and Smt. Surya Binoy, the learned Government Pleader.

6. From the materials made available, it is apparent that the order of suspension was initially passed on 7.7.2020 for a period of six months. The Enquiry Officer was appointed and later by order dated 10.2.2021, the suspension period was extended by a period of six months. The one year period was expired on 6.7.2021. The records do not reveal that prior approval was obtained from the Registrar concerned. All that is stated before this Court is that Ext.P2 order dated 3.8.2021, produced in W.P.(C) No.4244 of 2022, was not received by the Society. The request made by the Society on 15.6.2021 was considered by the 1st respondent and three months time was granted for concluding the proceedings. The said period expired on 6.10.2021. It was in the said circumstances that Ext.P4

communication dated 5.1.2022 was issued to the Society to report as to whether the Enquiry Proceedings have been concluded. In response, Ext.P5 produced in WP.(C) No.6683/2022 was issued by the Secretary, wherein it is mentioned that the Enquiry Officer was not able to conclude the proceedings because the petitioner in W.P.(C)No.4244 of 2022 filed various applications seeking copies of irrelevant documents. In other words, the only reason stated in Ext.P5 is that the suspension period is to be extended as the Enquiry Proceedings are yet to be completed. I am of the view that it is not the policy of law to keep a person under suspension, merely because the Enquiry Proceedings are not over. There should be materials to suggest that the continued suspension of the employee is necessary for the completion of the disciplinary proceedings.

7. In **Leelamma Augustin M v. Kerala State Co-operative Rubber Marketing Federation Ltd.** [2008(2) KHC 148], this Court had occasion to observe thus:

It is a salutary principle of law that a person should not be kept indefinitely under suspension, particularly when, there is no shred of material on record that the continued suspension of that employee is necessary for the appropriate completion of the disciplinary proceedings. It is also not the principle of law that a person under

suspension should be continued in such status during the entire disciplinary proceedings. While sub-rule (6) of R.198 of the Kerala Cooperative Societies Rules, 1969, for short the "Rules" provides that no employee shall be kept under suspension for a period exceeding six months at a time and that no employee shall be kept under suspension for a continuous period exceeding one year without the prior approval of the Registrar, the power to keep an employee under suspension in terms of that provision is not an authority to continue a person under suspension for the entire periods that is permissible under that provision of law, except in cases where that is required. That is also not enjoined. The power to keep an employee under suspension in terms of R.198(6) has to be understood in such a manner that it stands controlled by the need and necessity that may be, on the facts, situation and circumstances of each case. Otherwise, the exercise of that power, merely by reference to the Rule, would erode justice.

8. All that is stated in Ext.P5 is that the enquiry proceedings are not over and two more months are required for the completion of the same. As no prior approval was obtained by the Society for keeping the employee under suspension for a period exceeding one year, the employee is entitled to a declaration that he is required to be reinstated in service. In that view of the matter, the 1st respondent was well justified in directing the Society to cancel the suspension order and to reinstate him forthwith. In view of the discussion above, the following orders are passed:

a) W. P.(C) No. 4244/2022 will stand allowed. There will be a direction to respondents 2 and 3 to reinstate the petitioner back in service forthwith.

b) W. P.(C) No. 6683/2022 will stand dismissed.

Sd/-

RAJA VIJAYARAGHAVAN V
JUDGE

APPENDIX OF WP (C) 6683/2022

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER OF SUSPENSION ISSUED BY THE 2ND PETITIONER DATED 06.07.2020.
- Exhibit P2 A TRUE COPY OF THE MEMO OF CHARGES DATED 19.10.2020 SERVED ON THE PETITIONER.
- Exhibit P3 A TRUE COPY OF THE COMMUNICATION ISSUED BY THE 1ST PETITIONER DATED 15.06.2021 TO THE RESPONDENTS 1 AND 2 ALONG WITH THE COPY OF THE DECISION OF BOARD OF DIRECTORS IN ITS MEETING HELD ON 10.06.2021.
- Exhibit P4 A TRUE COPY OF THE COMMUNICATION DATED 05.01.2022 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER SOCIETY.
- Exhibit P5 A TRUE COPY OF THE COMMUNICATION DATED 19.01.2022 (WRONGLY SHOWN AS 19.01.2021) SENT BY THE SECRETARY IN CHARGE OF THE SOCIETY TO THE 1ST RESPONDENTS.
- Exhibit P6 A TRUE COPY OF THE COMMUNICATION DATED 03.02.2022 ALONG WITH THE COPY OF THE DECISION OF THE BOARD OF DIRECTORS DATED 24.01.2022.
- Exhibit P7 A TRUE COPY OF THE ORDER DATED 08.02.2022 OF THE 1ST RESPONDENT.

APPENDIX OF WP (C) 4244/2022

PETITIONER EXHIBITS

- Exhibit P1 COPY OF THE NOTICE DATED 6.7.2020 ISSUED BY THE 2ND RESPONDENT SUSPENDING THE PETITIONER FROM SERVICE FROM 7.7.2020
- Exhibit P2 COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 3.8.2021
- Exhibit P3 COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 12.1.2022
- Exhibit P4 COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 08.02.2022

RESPONDENT EXHIBITS

- Exhibit R3(a) TRUE COPY OF THE MEMO OF CHARGE ISSUED TO THE PETITIONER DATED 19/10/2020.
- Exhibit R3(b) TRUE COPY OF THE REPLY DATED 10/12/2020 BY THE PETITIONER TO THE 3RD RESPONDENT.
- Exhibit R3(c) TRUE COPY OF THE COMMUNICATION DATED 05/01/2022 TO THE SOCIETY BY THE 1ST RESPONDENT.
- Exhibit R3(d) TRUE COPY OF THE COMMUNICATION DATED 19/01/2022 (WRONGLY SHOWN AS 19/01/2021) BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.
- Exhibit R3(e) TRUE COPY OF THE RELEVANT EXTRACT OF THE DECISION OF THE BOARD OF DIRECTORS OF THE SOCIETY ALONG WITH THE COVERING LETTER DATED 03/02/2022.