



2024:KER:92903

O.P. (KAT) No.326 of 2018

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C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

MONDAY, THE 9TH DAY OF DECEMBER 2024 / 18TH AGRAHAYANA,

1946

OP (KAT) NO. 326 OF 2018

AGAINST THE ORDER DATED 20.12.2017 IN OA (EKM)
NO.1088 OF 2015 OF KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS IN OA:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY,
SOCIAL JUSTICE DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE DIRECTOR, DIRECTORATE OF SOCIAL JUSTICE,
VIKAS BHAVAN, 5TH FLOOR, THIRUVANANTHAPURAM- 695
003.

BY ADV GOVERNMENT PLEADER
NISHA BOSE SR GP

RESPONDENT/APPLICANT IN OA:

HARIDASAN N.K., S/O KANDANKUTTY, HEAD
ACCOUNTANT, ICDS PROJECT OFFICE, ATTAPPADY,
AGALY P.O., PALAKKAD - 678 581 (RESIDING AT
NADUKKANDIYIL HOUSE, POOVATHUPARAMBA P.O.,
KOZHIKODE - 673 008)



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BY ADVS.
P.MOHANDAS (ERNAKULAM)
S.VIBHEESHANAN
K.SUDHINKUMAR
S.K.ADHITHYAN
MUHAMMED IBRAHIM ABDUL SAMAD

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME
UP FOR ADMISSION ON 09.12.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**C.R.****J U D G M E N T****A. Muhamed Mustaque, J.**

The short issue in this case is whether the respondent is entitled to full pay and allowances during the period of suspension. The brief facts of this case are as follows:

2. The respondent, while serving as U.D. Clerk, Home for Mentally Deficient Children (HMDC), Kozhikode, was suspended by the proceedings of the Director of Social Justice on 21.11.2013. The suspension was on the ground that the respondent failed to produce the acquittance register and other connected records to the Directorate in order to comply with a direction given by the Kerala Administrative Tribunal. The respondent was served with the memo of charges on 10.03.2014. The enquiry was conducted and thereafter, a minor penalty of censure was imposed on him as per order dated 30.06.2014. This was appealed before the Government by the respondent. The appeal was rejected vide Annexure A6 order dated 27.06.2015. The respondent was reinstated in service on 29.06.2014. In the order passed by the Director of



Social Justice while imposing the minor penalty of censure, it was ordered that the suspension period will be regularised as duty for all purposes and limited his claim to subsistence allowance only.

3. The respondent approached the Kerala Administrative Tribunal challenging this order. The Tribunal ordered that for the period of suspension from 02.12.2013 to 29.06.2014, the respondent is entitled to the release of pay and allowances. This order is questioned in this original petition by the State.

4. Heard the learned Government Pleader and the learned counsel for the respondent – Sri. K. Sudhinkumar.

5. Before considering the issue involved in this case, it is appropriate for us to refer to Rule 56B(3) to (5) of Part I of the Kerala Service Rules, 1956.

"56B xxxxx

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the officer shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended: Provided that where such authority is of the opinion that the termination of the proceedings instituted against the officer had been delayed owing to reasons directly attributable to the officer, it may after giving him an opportunity to make his



representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the officer shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the officer shall subject to the provisions of sub -rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the officer of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice."

6. The competent authority has necessary power to order that the government servant will not be entitled to full pay and allowances during the period of suspension. That means, the authority will have to advert to the circumstances under which he has been suspended. If the authority finds that suspension was wholly unjustified, the officer will be entitled for full pay and allowances.

7. There are two elements which the authority will have to consider; the first one is whether the suspension was justified and the second one is whether the entire period under which the officer was kept under suspension was



necessitated for disciplinary enquiry or not. There may be a situation where the disciplinary authority will have to suspend an employee. But it may not be necessary for keeping him under suspension for further period considering the nature of charge memo to be served on him or the nature of dereliction of duty or misconduct attributed to him. In such cases, the authority will have to reinstate him in service subject to the disciplinary action. Merely because the disciplinary authority has power to order suspension, does not lead to the situation that he should be kept under suspension till the disciplinary proceedings are concluded. That means, the disciplinary authority will have to exercise its discretion as to whether the suspension of an employee should be continued till the disciplinary proceedings are concluded or not. If the disciplinary authority fails to exercise such power, what could be the consequence is the point to be considered by us.

8. We note that the officer was suspended on 02.12.2013 and the memo of charges were served only in the month of 10.03.2014. The nature of allegation would clearly indicate that absolutely there was no scope for keeping him under suspension for the entire period of disciplinary



proceedings. That means, there was no application of mind on the part of the disciplinary authority to keep the officer under suspension. An officer may be required to be kept under suspension if his presence itself in the office would be a threat to the ongoing disciplinary proceedings or many other similar circumstances demand that such officer is required to be kept under suspension till conclusion of the disciplinary enquiry. We are not illustrating the circumstances under which an officer can be kept under suspension till the conclusion of the disciplinary proceedings. What we say is that it is for the disciplinary authority to decide whether such an officer should be kept under suspension for any justifiable reasons till the disciplinary proceedings are concluded. If there are no reasons to keep such officer under suspension till the conclusion of the disciplinary proceedings, then the officer would be entitled to full pay and allowances.

Having gone through the nature of allegations in this matter and taking note of the nature of penalty imposed on the respondent, we find that absolutely there was no necessity for the disciplinary authority to keep the respondent under suspension till the disciplinary proceedings are concluded.



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Further, the nature of allegations also would substantiate that there was no necessity even for the disciplinary authority to suspend him pending enquiry. Anyway, we are of the view that the respondent is entitled to full pay and allowances in this matter as there was no necessity for the disciplinary authority to keep him under suspension till the disciplinary proceedings are concluded. Concurring with the orders of the Tribunal, we dismiss the original petition.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE

PR



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APPENDIX OF OP(KAT) 326/2018

PETITIONER EXHIBITS

Annexure A1	TRUE COPY OF THE ORDER NO.E5-38880/13 DATED 21.11.2013
Annexure A2	TRUE COPY OF THE MEMO OF CHARGES ALONG WITH THE STATEMENT OF ALLEGATIONS GIVEN TO THE APPLICANT BY THE 2ND RESPONDENT DATED 10.03.2014
Annexure A3	TRUE COPY OF THE WRITTEN STATEMENT OF DEFENCE SUBMITTED BY THE APPLICANT DATED 27.03.2014
Annexure A4	TRUE COPY OF THE ORDER NO.E5-38880/13 DATED 30.06.2014 ISSUED BY THE 2ND RESPONDENT.
Annexure A5	TRUE COPY OF THE APPEAL FILED BY THE APPLICANT BEFORE THE FIRST RESPONDENT DATED 23.07.2014.
Annexure A6	TRUE COPY OF THE ORDER G.O(RT) NO. 411/15/SJD DATED 27.06.2015
Annexure A7	TRUE COPY OF THE ORDER NO.E5-38880/13 DATED 05.10.2015
Annexure A8	TRUE COPY OF RELEVANT PAGES OF NOTE FILE FURNISHED TO GOVERNMENT PLEADER KAT 13.11.2013
Annexure R2 (a)	TRUE COPY OF THE ORDER NO.E5-38880/13 DATED 05.10.2015
Annexure R2 (b)	TRUE COPY OF THE ORDER NO.E5-38880/13 DATED 30.06.2014
Annexure R2 (c)	TRUE COPY OF THE ORDER NO. 411/15/SJD DATED 27.06.2015
Annexure R2 (d)	TRUE COPY OF THE ORDER NO.E5-38880/13 DATED 05.10.2015



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EXHIBIT P1	TRUE COPY OF THE O.A. ALONG WITH ANNEXURES
EXHIBIT P2	TRUE COPY OF THE REPLY STATEMENT OF THE 2ND PETITIONER HEREIN
EXHIBIT P3	TRUE COPY OF THE REJOINDER STATEMENT OF THE RESPONDENT HEREIN.
EXHIBIT P4	TRUE COPY OF THE ORDER DATED 20/12/2017 IN OA(E) 1088/2015.