

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 7TH DAY OF JULY 2022 / 16TH ASHADHA, 1944

WA NO. 130 OF 2022

AGAINST THE JUDGMENT IN WP(C) 10366/2021 DTD.02/12/2021 OF HIGH COURT
OF KERALA

APPELLANT/RESPONDENT NO.4:

UNIVERSITY OF CALICUT
CALICUT UNIVERSITY P.O., MALAPPURAM DISTRICT - 673 635
REPRESENTED BY ITS REGISTRAR.

BY ADV SRI.P.C.SASIDHARAN, SC, CALICUT UNIVERSITY

RESPONDENTS/PETITIONER & RESPONDENT NOS.1 TO 3 & 5:

- 1 MOHAMED SAJID T., AGED 39 YEARS
S/O.ABOOBACKER T., 'ECSTASY',
THEKKEDATH HOUSE, KADANNAMANNA P.O., MANKADA,
MALAPPURAM DISTRICT - 679 324.
- 2 THE PRINCIPAL SECRETARY
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 3 ADDITIONAL CHIEF SECRETARY
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 4 SECRETARY
FINANCE DEPARTMENT (EXPENDITURE),
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 5 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.

BY ADVS.GEORGE POONTHOTTAM (SR.)
C.R.SHYAM KUMAR
SMT.V.VINITA, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON 07.07.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.B.SURESH KUMAR & C.S.SUDHA, JJ.

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Dated this the 7th day of July, 2022

J U D G M E N T

C.S.Sudha, J.

In this appeal we are called upon to answer the question whether this court should invoke its extra-ordinary jurisdiction under Article 226 of the Constitution of India in favour of an employee facing accusation of defalcation of money, recall the order of suspension and reinstate him during the pendency of the enquiry. The appellant University takes strong exception to the judgment dated 02/12/2021 in W.P.(C)No.10366/2021. The appellant is the fourth respondent in the writ petition. The petitioner and respondents 1 to 3 and 5 in the writ petition are the respondents herein. The parties and the documents will be referred to as described in the writ petition.

2. The writ petition was filed seeking quashing of Ext.P17 recommendation and report of the third respondent to initiate disciplinary proceeding against the petitioner; to declare the issuance of Ext.P18 suspension order to be legally unsustainable and to quash Ext.P18 order of

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suspension passed against the petitioner on the basis of Ext.P17. By the impugned judgment, the writ petition has been allowed by setting aside Ext.P18 suspension order and the 4th respondent University has been directed to reinstate the petitioner with a condition that he should not tamper with the evidence or try to influence the witnesses in the proceedings, and in case he is found to be indulging so, liberty has been granted to the University to move appropriate application for modification or recalling the order. The prayer for quashing Ext.P17 report has been disallowed. Aggrieved, the fourth respondent University has come up in appeal.

3. Heard Sri.P.C.Sasidharan, the learned Standing Counsel for the appellant; Sri.George Poonthottam, the learned Senior counsel for first respondent and Smt.V. Vinita, the learned Senior Government Pleader for respondents 2 to 5.

4. The fourth respondent University contends that, the petitioner occupying the post of Instrumentation Engineer in the University is facing disciplinary proceedings on the charge of misappropriation of around ₹ 30 lakhs. On the basis of Ext.P17 recommendation and report, the petitioner was placed under suspension as per Ext.P18 order. According to the fourth

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respondent, the petitioner has remedies available under the Calicut University First Statutes, 1977 (the Statute), which ought to have been resorted to and exhausted before rushing to this court invoking its discretionary jurisdiction under Article 226. It is also submitted that the petitioner has been suspended for serious misconduct and hence reinstatement of the petitioner would affect the functioning of the University ; that it would convey a wrong signal to the employees and would affect the morale of the employees as well. Therefore, according to the fourth respondent University, this Court has exceeded its jurisdiction in allowing the writ petition and ordering reinstatement of the petitioner.

5. Per contra, it is submitted on behalf of the petitioner that he alone has been made the scapegoat, when it is actually the members of the Purchase Committee, who are, if at all responsible for the financial loss to the University. Sri.George Poonthottam, the learned Senior Counsel appearing for the 1st respondent took us extensively through the documents produced along with the writ petition with special reference to Ext.P12 audit report and Ext.P17 report recommending disciplinary proceedings to substantiate the argument that the the petitioner had no role at all other than rendering technical

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assistance in the issuance and acceptance of the tender for the work in question. The petitioner is completely innocent and he is the victim of a witch-hunt by the Calicut University Employees' Union, a trade union affiliated to CPI(M), which organization has been indulging in filing complaints one after the other against him, right from the time of his appointment due to political reasons. It is also submitted that even if he had resorted to the remedies available under the Statute, he was certain that he would not have got justice and so he had not resorted to the said remedies. Reference has also been made to Ext.P19 request given by the petitioner for recalling the suspension order. Reference was made to the decisions in **K.Sukhendar Reddy v. State of A.P. [1999 KHC 1281]**; **Vikraman Nair K. v. State of Kerala [2008 (4) KHC 412]** and **Ajay Kumar Choudhary v. Union of India [2015 KHC 4191]** in support of the arguments.

6. As pointed out on behalf of the fourth respondent University, there are several provisions in the Statute which could have been resorted to by the petitioner. Statute 19(1)(a) says that the appointing authority or any authority to which it is subordinate or any other authority empowered by the Syndicate in that behalf may, at any time, place a University employee under

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suspension – where a disciplinary proceeding against him is contemplated or is pending. Statute 19(3)(a) says that an order of suspension made or deemed to have been made under this Statute shall continue to remain in force until it is modified or reviewed by the authority competent to do so. Sub-clause (b) says that where a University employee is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceedings or otherwise, and any other disciplinary proceedings is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the University employee shall continue to be under suspension until the termination of all or any of such proceeding. Statute 20 says that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances under which the order was made. Statute 23 says that an order of suspension made or deemed to have been made under this Statute, may, at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate. Statute 51 deals with appeals against an order of suspension. It says that a

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University employee may appeal against an order of suspension to the authority to which the authority which made or is deemed to have made the order is immediately subordinate. Therefore, alternate remedies were certainly available to the petitioner, which have admittedly not been resorted to by the petitioner. Ext.P19 cannot be considered as a resort to any of the aforesaid remedies because it was given on the very same day on which the order of suspension was served on the petitioner.

7. There are a catena of decisions of the Apex court holding that when alternative remedies are available, without exhausting the same, a writ petition should not be entertained. Some of the decisions are- A Constitution Bench of the Hon'ble Supreme Court, in **Union of India v. T.R.Varma, AIR 1957 SC 882**, held that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. The existence of another remedy does not affect the jurisdiction of the Court to issue a writ, but the existence of an adequate legal remedy is a factor to be taken into consideration in the matter of granting writs and where such remedy is not exhausted, it would be a sound exercise of discretion to refuse to interfere in a

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petition under Article 226 of the Constitution, unless there are good grounds therefor. (See also **G. Veerappa Pillai v. Raman and Raman Ltd., AIR 1952 SC 192; C.A.Ibrahim v. Income Tax Officer, AIR 1961 SC 609 and H.B.Gandhi v. M/s. Gopi Nath and Sons, 1992 Suppl (2) SCC 312; Sheela Devi v. Jaspal Singh, AIR 1999 SC 2859; K.S.Rashid and Son v. Income Tax Investigation Commission, AIR 1954 SC 207; State of U.P. v. Mohammad Nooh, AIR 1958 SC 86; S.T.Mathusami v. K.Natarajan, AIR 1988 SC 616; Secretary, Minor Irrigation and Rural Engineering Service, U. P. v. Sahngoo Ram Arya, AIR 2002 SC 2225; U. P. State Spg. Co. Ltd. v. R.S.Pandey, 2005(8) SCC 264; Uttaranchal Forest Development Corporation v. Jabar Singh, 2007(2) SCC 112).**

8. We also refer to a Single Bench decision of this Court, that is, **Balakrishnan Nair v. State of Kerala: 1996 (1) KLT 14**, wherein this Court placing reliance on two judgments of the Hon'ble Supreme Court, i.e., **U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan, 1993 KHC 1091**, and **State of Orissa v. Bimal Kumar Mohanty, (1994) 4 SCC 126** held that whether an employee should or should not continue in the office during the period of enquiry is a matter to be assessed by the authority concerned and

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ordinarily this Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie case or evidence on record connecting the employee with the misconduct in question. The Department concerned would have acted on the basis of some material which imputed financial irregularities on the part of the employee and felt that he should be kept away from service so as to facilitate an enquiry. The Apex Court in the aforesaid cases has laid down the principles to be kept in mind while keeping an officer under suspension. It has been held that it will not be an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law can be laid down in that behalf. It has further held that suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step-in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind the public interest of the impact of the delinquent's

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continuance in office while facing departmental inquiry or trial of a criminal charge. In other words, it is to prevent the delinquent employee from availing further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent the delinquent officer from scuttling the inquiry or investigation or to win over the witnesses or the delinquent having the opportunity in office to impede the progress of the investigation or inquiry.

9. As discernible from the aforesaid decisions, the power of suspension is a power that is available to the appointing authority, which can be exercised wherever it is necessary to do so. An order of suspension is primarily an administrative order, but it cannot be passed without proper application of mind. It is usually resorted to when the charge against the delinquent employee is serious enough to justify his discontinuance in the post held by him. An order of suspension is usually issued essentially in public interest. In the case of offences of lesser gravity, the delinquent employee can be kept away from the post even by transfer.

10. In the impugned judgment, reference has been made to the

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decision in **Ajay Kumar Choudhary v. Union of India through its Secretary, 2015(7) SCC 291**. According to the learned counsel for the fourth respondent University, the decision is not applicable to the facts of the case on hand because in the cited case, the Hon'ble Supreme Court has only held that the currency of a suspension order should not extend beyond three months if within the said period, the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee and if the Memorandum of Charges/Chargesheet is served, a reasoned order must be passed for extension of the suspension. In the case on hand, Ext.P20 charge is dated 17/11/2020. Ext.P18 suspension order is dated 11/09/2020. Hence the memorandum of charges has been served to the petitioner within the period of three months. Therefore, the decision in **Ajay Kumar Choudhary (Supra)** is not applicable to the facts of the present case.

11. The learned Senior Counsel relying on **Vikraman Nair (Supra)** submitted that this Court while exercising jurisdiction under Art.226 can certainly review and evaluate questions of fact for the limited purpose of ascertaining among other things, whether the authority concerned has reached any unreasonable decision or has abused its powers. There can be no quarrel

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to this proposition. However, this case does not seem to fall under the said category which is evident from a reading of paragraph II of Ext.P20 Memo of Charges and Ext.P21 statement of allegations which describe the role and responsibility of the petitioner in the tender process. We refrain from making any further remarks or comments as to the culpability or otherwise of the petitioner in the light of statements made in the said documents lest it prejudice the officer conducting the enquiry. Suffice it to say that the enquiry initiated will have to be taken to its logical conclusion.

12. Further, as held by the Hon'ble Supreme Court in **Bimal Kumar Mohanty** (*Supra*), ordinarily when there is an accusation of defalcation of monies, the delinquent employee must be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire records in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered.

13. In the instant case, the allegation against the petitioner is that he,

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with the active connivance of the contractor concerned in the matter of a contract relating to local area network, misappropriated an amount of more than ₹30 lakhs. The petitioner is occupying the post of Instrumentation Engineer in the University. It is submitted that there is only one such post in the University. Therefore, it is not possible to transfer him, pending the inquiry. The petitioner is also the Controlling Authority and the Head of the Department of Instrumentation Engineering. In the circumstances, we feel that it would be advisable that the petitioner be kept out of the mischief's range. In case he is exonerated, he would then certainly be entitled to get all the benefits from the date of the order of suspension. When a person like the petitioner who is at the helm of affairs, is alleged to be involved in financial misconduct, the authority has to keep in mind the public interest of the impact of the delinquent's continuance in office while facing departmental inquiry. In the instant case, we are of the view that the fourth respondent was justified in keeping the petitioner under suspension, pending enquiry. Therefore, we do not find any reason to interfere with Ext.P17 recommendation and report or Ext.P18 suspension order in exercise of the extraordinary jurisdiction of this Court under Article 226.

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In the result, the writ appeal is allowed. The impugned judgment is set aside and the writ petition is dismissed. We direct the authority concerned to complete the disciplinary proceedings within a period of two months from the date of receipt of a copy of this judgment. It is made clear that if the authority concerned is unable to complete the enquiry as directed within a period of two months because of any adjournment sought for by the petitioner, the period for completion would stand extended to the extent to which adjournment is sought for and granted. If the enquiry is not completed within the period of two months or such extended period, the petitioner shall stand reinstated. We also make it clear that this order would not prevent the petitioner from pursuing the remedies available to him under the Statute.

Sd/-

P.B. SURESH KUMAR
JUDGE

Sd/-

C.S. SUDHA
JUDGE

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