

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 25<sup>TH</sup> DAY OF OCTOBER 2022 / 3RD KARTHIKA, 1944

WA NO. 1473 OF 2022

AGAINST THE ORDER/JUDGMENTWP (C) 22728/2021 OF HIGH COURT OF  
KERALA

APPELLANT/S:

MATHEW JOSEPH  
AGED 45 YEARS  
S/O JOSEPH, GANAPATHYPLAKKAL HOUSE,  
KUPPAYAKODU P.O.,  
KOZHIKKODE DISTRICT , PIN - 673580

BY ADVS.NISHA GEORGE & A.L.NAVANEETH KRISHNAN

RESPONDENT/S:

- 1 1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES  
JAWAHAR SAHAKARANA BHAVAN, DPI JUNCTION,  
THYCAUD P.O., THIRUVANANTHAPURAM, PIN - 695014
- 2 2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES  
KOZHIKODE, PUTHIYARA P.O.,  
KOZHIKKODE DISTRICT., PIN - 673004
- 3 3. THE PUDUPPADI SERVICE CO-OPERATIVE BANK  
LTD.NO.F1830  
PUDUPPADI P.O., KOZHIKODE DISTRICT,  
REPRESENTED BY ITS SECRETARY., PIN - 673586
- 4 THE PRESIDENT  
THE PUDUPPADI SERVICE CO-OPERATIVE BANK  
LTD.NO.F1830,  
PUDUPPADI P.O., KOZHIKODE DISTRICT , PIN - 673586

BY ADV M.SASINDRAN

OTHER PRESENT:

GOVERNMENT PLEADER SRI BIJOY CHANDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
25.10.2022, ALONG WITH WA.1490/2022, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

:2:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 25<sup>TH</sup> DAY OF OCTOBER 2022 / 3RD KARTHIKA, 1944

WA NO. 1490 OF 2022

AGAINST THE ORDER/JUDGMENTWP(C) 22728/2021 OF HIGH COURT OF KERALA

APPELLANT/S:

- 1 THE PUTHUPPADI SERVICE CO-OPERATIVE BANK LTD. F. 1830  
AGED 57 YEARS  
PUTHUPPADI P.O., KOZHIKODE DISTRICT,  
REPRESENTED BY ITS SECRETARY, PIN - 673586
  - 2 THE PRESIDENT  
PUTHUPPADI SERVICE CO-OPERATIVE BANK LTD. F. 1830  
PUTHUPPADI P.O., KOZHIKODE DISTRICT,, PIN - 673586
- BY ADV M.SASINDRAN

RESPONDENT/S:

- 1 MATHEW JOSEPH  
GANAPATHYPLAKKAL HOUSE, KUPPAYAKODE P.O.  
KOZHIKODE DISTRICT,, PIN - 673580
  - 2 THE REGISTRAR OF CO-OPERATIVE SOCIETIES  
JAWAHAR SAHAKARANA BHAVAN, DPI JUNCTION  
THYCAUD P.O., THIRUVANANTHAPURAM, PIN - 695014
  - 3 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES  
KOZHIKODE, PUTHIYARA P.O., KOZHIKODE DISTRICT, PIN -  
673004
- BY ADV GEORGE POONTHOTTAM (SR.)  
SMT. NISHA GEORGE AND A.L. NAVANEETH KRISHNAN  
GOVT. PLEADER SRI. BIJOY CHANDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25.10.2022,  
ALONG WITH WA.1473/2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

:3:

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

**CR**

**A.K.JAYASANKARAN NAMBIAR  
&  
MOHAMMED NIAS C.P., JJ**

.....  
W.A. No. 1473 of 2022 c/w. W.A. No. 1490 of 2022  
.....

Dated this the 25<sup>th</sup> day of October, 2022

**JUDGMENT**

**Mohammed Nias.C.P.,J.**

The above appeals are directed against the judgment of the learned Single Judge in W.P. ( C) No. 22728 of 2021 dated 26-08-2022 .

2. The facts leading to the above appeals are as follows:-

The writ petitioner, the Secretary of the 3<sup>rd</sup> respondent Society applied for leave without allowance from 12-08-2009 to 11-08-2014. Though the writ petitioner had to rejoin duty by 12-08-2014, he could not join as he was unwell and bedridden and sought some more time to rejoin duty which the writ petitioner alleges was granted by the President of the Society. However, the Society

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

issued Ext. P2 show cause notice and Ext. P4 charge-memo dated 12-09-2014 and 18-10-2014 respectively. The 2<sup>nd</sup> respondent, set aside Ext. P4 and all other proceedings. By Ext. P8, the writ petitioner was suspended with effect from 13-4-2015 and Ext. P9, a second charge-memo was issued to the writ petitioner, which after an enquiry, culminated in Ext. P12 order of dismissal. The appeal filed against the dismissal was rejected by the Managing Committee which in turn was challenged before the Co-operative Arbitration Court whereupon by Ext. P14 order, set aside the charge sheet and all disciplinary proceedings against him. Ext. P14 has become final and accepting the same the Society again issued Ext. P15 order of suspension dated 19-08-2021 also with Ext. P16 charge-memo. The Writ Petitioner, on the ground that, the Society having accepted Ext. P14 order of the Arbitration Court, was bound to pay the salary and other benefits from the date of his initial suspension onwards filed the writ petition, challenging Ext. P15 and also for a direction to disburse all monetary benefits due to him from 3-11-2014 and for an expeditious culmination of the enquiry proceedings.

3. The third respondent Society filed a counter affidavit contending that the writ petitioner had an alternate efficacious remedy under Sec. 69 of the Co-operative Societies Act and that by Ext. P14,

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

the matter was remanded for fresh consideration, and therefore, the writ petitioner is not entitled to any reliefs. By the impugned judgment, the learned Single Judge held that by Ext. P14, the entire disciplinary proceedings has been invalidated including the charge memo and, therefore, the Society must hear the writ petitioner and take a decision on the claim for arrears of salary for the period prior to Ext. P14 and that the benefits if found due after such exercise shall be released to the writ petitioner. It is also directed that the Society was to pay the petitioner, the eligible subsistence allowance for placing him under suspension under Ext. P15. The disciplinary proceedings initiated by Ext. P15 was ordered to be completed within an outer limit of four months from the date of receipt of a copy of the judgment.

4. W.A. 1473 of 2022 is filed by the employee, the writ petitioner, being aggrieved by the direction of the Single Judge in not directing the Society to disburse the salary and instead only directing them to consider his claim. Writ Appeal 1490/2022 is filed by the Society contending that the petitioner cannot be given the salary or other benefits, as the charge against him is unauthorised absence. It is also the argument that the question of salary and back wages had to be determined in the enquiry initiated as per Ext. P15 as the earlier orders invalidating the disciplinary proceedings were only on technical

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

grounds.

5. Heard Sri. A.L. Navaneeth Krishnan, the learned counsel for the appellant in Writ Appeal 1473 of 2020 and Sri. M.Sasindran, the learned counsel for the appellant in Writ Appeal No. 1490 of 2022.

6. The learned Counsel Sri. Navaneeth Krishnan argues that the earlier proceedings having been set aside by Ext. P14 and which was accepted by the Society by initiating fresh proceedings as evidenced by Exts. P15 and P16, he was entitled for the salary till Ext. P16 order of suspension and, thereafter, entitled to the subsistence allowance. This according to him, is nothing but the effect of the earlier disciplinary proceedings being invalidated and the charge-memos itself being quashed. It must, therefore, be taken that there were no proceedings against the petitioner till Exts. P15 and P16. The learned counsel also cites the judgment in **Ollur Town Co-operative Society Ltd. No. R 1120 represented its Secretary v. The Kerala Co-operative Tribunal, Represented by its Secretary [W.A. No. 445 of 2020]**.

7. The learned counsel for the appellant in Writ Appeal 1490/2022

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

argues that the direction of the learned Single Judge to consider the claim of salary of the employee is totally illegal. It is the specific charge that he was unauthorisedly absent from 2014 onwards. He further argues that the earlier disciplinary proceedings initiated were set aside on technical grounds and the first order of suspension even now stands and in such a situation, the petitioner cannot be held entitled to any benefits till the culmination of the enquiry wherein the claim for back wages would be considered and not before. He further argues that Ext. P15 and P16 cannot be treated as a fresh proceedings as contended by the employee. The learned counsel cites the judgment in **Managing Director, ECIL, Hyderabad v. B. Karunakar [(1993) 4 SCC 727]**, **Kallakurichi Taluk Coop. Housing Society Ltd. v. M. Maria Soosai and Others (2010 KHC 4356)**, **Rajasthan State Road Transport Corporation v. Phool Chand (Dead Through Lrs. (2018 KHC 6706)**, **Chief Regional Manager, United India Insurance Company Limited v. Siran Uddin Khan (2019 KHC 6650)**, **Anjana Mittal v. Oil and Natural Gas Corporation Limited (2019 KHC 6736)**, **Trichur Co-operative Spinning Mills Ltd. v. Court of Industrial Tribunal, Palakkad and Another (2021 KHC 516)**.

8. The undisputed facts in the above case shows that by Ext.

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

P14 order of the Co-operative Arbitration Court, the entire disciplinary proceedings were invalidated including the charge-memo. As rightly observed by the learned Single Judge, though the Arbitration Court inappropriately used the word “remanded” in Ext. P14, it had invalidated the entire proceedings and given liberty to the management to initiate fresh action, only if necessary. It cannot be understood as if the Arbitration Court had remitted the same disciplinary action for being pursued by the Society, after it had already declared their action invalid.

9. In the light of the above, we are not in a position to accept the argument of the learned counsel for the appellant that the charge-memo and the action taken through Ext. P15 and P16 has been taken as the continuation of the earlier initiated disciplinary action. We are fortified in our view by the judgment of the Division Bench in **W.A. 445 of 2020 (supra)** which following the earlier decision in **Kodencherry Service Co-operative Bank Limited v. Joshy Varghese [2020 (4) KLT 129]** held that when the enquiry itself is invalidated, only a fresh proceedings can be initiated. In the instant case as well, the memo of charges and the further proceedings are found to be invalid. The proceedings initiated under Exts. P15 and P16 can only be seen as fresh proceedings with all resultant consequences. It is also



W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

pertinent to note that even in Ext. P16 charge-memo, the relevant charge is as follows:

“You deliberately absented from duty unauthorisedly on the expiry of long leave with effect from 12-08-2014 until you were suspended from service on 13-04-2015”

It is crystal clear that the bank also treats the period between 12-08-2014 till 13-4-2015 as the period of unauthorised absence. Ext. P15 is issued after a fresh decision following Ext. P14. In such circumstances, we reject the argument of the learned counsel on behalf of the Society that the suspension order passed at the first instance survives even after the charge memo simultaneously issued stands invalidated. A suspension order cannot exist independent of a charge memo, whether issued simultaneously or within a reasonable time thereafter. On the charge memo being set aside by a competent forum, the suspension order that is dependent on it also ceases to have force in law.

10. The argument of the learned counsel for the Society is that the principles laid down in the decision of the Supreme Court in **Managing Director, ECIL, Hyderabad (Supra)**, mandate that once an enquiry is set aside on technical grounds, liberty should be given to start from the point where the illegality occurred. We are afraid that we

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

cannot accept the said argument as well. The said contention may hold good in cases where in a validly constituted enquiry, infractions of law occur and the employer is allowed to start afresh from the stage where the illegality occurred. It cannot apply to the cases where the enquiry itself was by a body who did not have authority to commence disciplinary action. In the instant case, the action was initially taken by an authority who lacked jurisdiction resulting in the charge-memo itself being invalidated and found non-est. As held in **Kodencherry Service Co-operative Bank Limited (supra)**, when once the charge memo is set aside, the position is that there is no memo of charge available for continuation with the disciplinary proceedings. In such circumstances, if the employer proposes to initiate disciplinary proceedings, it is possibly only after framing and serving a fresh charge memo by the competent authority. In the light of the findings above, we hold that the valid disciplinary proceedings commenced only after Exts. P15 and P16 and we declare so. As a consequence, we hold that the employee is entitled to the salary upto the issuance of Exts. P15 and P16.

10. The further argument of the learned counsel for the Society is that the question of backwages has to be considered by the disciplinary authority taking into account various factors, and it

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

happens only after the culmination of the enquiry and, therefore, the direction of the learned Single Judge to consider the payment of salary is illegal. The proposition in the judgments cited by the learned counsel admits of no doubt. However, nothing in those decisions will come to the rescue of the appellant Society. Ordinarily, the question of backwages arises only when the legality of a dismissal order passed by an authority competent to do so is considered. Even in such cases, where the dismissal order is set aside, grant of full backwages is not automatic. As we have held that no enquiry at all existed in the eyes of law till Exts. P15 and P16, it is axiomatic that it is obligatory for the employer to pay the salary to the employee till the issuance of Exts. P15 and P16 except for the period between 12-08-2014 and 13-4-2015, the entitlement of which will depend on the outcome of the enquiry proceedings currently under way. We hold so for the yet another reason. After 2015, it was the employer who prevented the employee from resuming duty by passing orders of suspension which were successfully challenged by the employee. The employer would not have suspended an employee who he did not consider to be under his employment. In such circumstances, the employee must be deemed to be in service without any proceedings against him, till issuance of Exts. P15 and P16.

:12:

W.A. No. 1473 of 2022  
c/w. W.A. No. 1490 of 2022

The judgment impugned, in so far as it refused to direct the Society to pay the salary is illegal and we set aside the same. Accordingly, W.A. No. 1473 of 2022 is partly allowed holding that the employee is entitled to salary till issuance of Exts. P15 and P16 as mentioned above and by directing the Society to disburse the said amounts to the appellant in W.A. No. 1473 of 2022 within an outer time limit of one month from today. The other directions in the judgment are maintained. Writ Appeal 1490 of 2022 filed by the Society lacks merit and the same is hereby dismissed.

**SD/-A.K.JAYASANKARAN NAMBIAR,  
JUDGE**

**SD/-MOHAMMED NIAS C.P.,  
JUDGE**

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