



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

WP(C) NO.30601 OF 2023

PETITIONER:

SUDEEP K.T.,
AGED 47 YEARS, S/O. C.V. AMBU MASTER,
ENGINEER, DEPARTMENT OF ENGINEERING AND MAINTENANCE,
MALABAR CANCER CENTRE, MOOZHIKKARA (PO), THALASSERY,
KANNUR DISTRICT - 670103, RESIDING AT PRATHEEKSHA,
ONAKUNNU, KARIVELLOOR, KANNUR DISTRICT, PIN - 670521.

BY ADVS.
SMT.NISHA GEORGE
SRI.GEORGE POONTHOTTAM (SR.)
SRI.A.L.NAVANEETH KRISHNAN
SMT.ANN MARIA FRANCIS
SMT.KAVYA VARMA

RESPONDENTS:

- 1 MALABAR CANCER CENTRE
MOOZHIKKARA (P.O.), THALASSERY, KANNUR DISTRICT,
REPRESENTED BY ITS DIRECTOR, PIN - 670103.
- 2 THE DIRECTOR
MALABAR CANCER CENTRE MOOZHIKKARA (P.O.),
THALASSERY, KANNUR DISTRICT, PIN - 670103

BY ADV SHRI.P.SREEKUMAR (SR.)
MS.P.A.HELEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09.03.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**"C.R."****JUDGMENT**

The petitioner, working as an Engineer, holding the post of Head of the Department (Department of Engineering and Maintenance) with the 1st respondent herein, was appointed pursuant to Ext.P1 order dated 23.06.2009. The petitioner took charge with the 1st respondent herein on 11.07.2009. He has been continuing so till 2019, when pursuant to Ext.P3 order dated 19.11.2019 issued by the 2nd respondent, the control of the department headed by him was taken over by the Director of the 1st respondent. Thereafter, a show cause notice at Ext.P4 dated 23.11.2019, initiating disciplinary proceedings, was served on the petitioner, for which Ext.P5 reply dated 04.12.2019 has been submitted by the petitioner. Later, the department, which was being headed by the petitioner, was entrusted to the senior-most supervisor of the department with effect from 02.03.2020, followed with Ext.P9 memo of charges. The petitioner, having submitted Ext.P10 reply dated 24.03.2020, denying the allegations, the 1st respondent



constituted an enquiry leading to Ext.P15 Domestic Enquiry Report dated 29.04.2023. In the meantime, the petitioner was suspended from service for a period of three months, as evidenced by Ext.P11 dated 28.03.2020, and later, pursuant to Ext.P17 dated 11.05.2023, issued by the 2nd respondent herein, the petitioner was dismissed from the service of the 1st respondent. It is seeking to challenge Ext.P17 issued as above, as well as the show cause notice at Ext.P4 and the Domestic Enquiry Report at Ext.P15, that the petitioner has instituted the captioned writ petition. The petitioner has also sought to challenge Ext.P3, by which he was removed from the charge of the department, as noticed earlier, as well as Ext.P11 order of suspension, referred to above.

2. I have heard Smt.Kavya Varma, learned counsel for the petitioner, as well as Sri.P.Sreekumar, learned Senior counsel, instructed by Ms.P.A.Helen, learned counsel for the respondents herein.

3. Sri.P.Sreekumar, learned Senior counsel for the respondents, would contend that the petitioner ought to have



preferred an appeal with reference to the provisions of Rule 81 of Ext.P2 Service Rules, and insofar as the petitioner has not preferred an appeal as above, this writ petition is not maintainable. I have considered the afore preliminary objection raised by the respondents.

4. This Court notices that the petitioner has been removed from service pursuant to the order at Ext.P17. Ultimately, the allegations leading to the suspension from service as well as the final order of dismissal requires to be analysed. In a situation where this Court is coming to a conclusion that the penalty imposed, as above, is “disproportionate” to the charges, in my opinion, the petitioner requires to be permitted to challenge the impugned orders under Article 226 of the Constitution of India, as held by the Apex Court in **Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. And Another [(2007) 4 SCC 669]**. In my opinion, the order at Ext.P17, leading to the dismissal of the petitioner from service, is highly “disproportionate” for the



reasons to be discussed hereafter, and therefore, the petitioner is to be permitted to avail the remedy under Article 226 of the Constitution of India.

5. This Court notices that the proceedings against the petitioner commenced with the office order at Ext.P3. It is worthwhile to refer to the allegations/reasons contained in Ext.P3, which reads as under:-

"Off late it has been noticed by the undersigned that the Engineering & Maintenance Department of Malabar Cancer Centre is not functioning as it is expected to. It is perceived that there has been significant delay in execution of many projects and proper maintenance. As the faith in the functioning of the aforementioned is lost, for the benefit of the staff of the Department and institution. It is proposed to take over the Department of Engineering & Maintenance by the Director himself. Engineer will not be permitted to interfere in any of the works of maintenance and on-going projects till further orders. Shri.Sudeep K.T. will not be invited to attend any of the Administrative Committee meeting of the institution.

This change will be in force w.e.f. 19-11-2019 till further orders are issued in this regard."

(underlining supplied)

The only allegation contained in Ext.P3 is to the effect that the Engineering and Maintenance Department of the 1st respondent



herein, which was being headed by the petitioner, was not functioning "as it is expected to". It is further alleged that there has been considerable delay in the execution of "many projects" and "proper maintenance". However, the order at Ext.P3 is silent as regards the projects which were being delayed, as alleged in Ext.P3. It is on that basis that the petitioner has been removed from the charge of the department referred to above, and administration taken over by the 2nd respondent herein. Subsequently, the show cause notice at Ext.P4 has been issued on 23.11.2019. Herein also, the allegation is essentially the very same one as has been highlighted in Ext.P3. In other words, the allegation was to the effect that there is delay in the implementation of the various projects undertaken by the respondents herein. However, in Ext.P4, for the first time, reference is made regarding the delay in the execution of the "Kerala Infrastructure Investment Fund Board (KIIFB) project," which could have been avoided if the engineering department had provided M/s.BSNL (SPV), with adequate information needed for the work. The afore letter/notice is also silent as to



whether the petitioner was the person responsible for the so-called delay in the execution of the work. Later, the Memo of Charges at Ext.P9 is also issued to the petitioner. Here, the first charge levelled against the petitioner reads as under:-

- "1. That you, Shri.Sudeep K.T. (Engineer), HOD-Department of Engineering & Maintenance, Malabar Cancer Centre (MCC), Moozhikkara (PO), Thalassery, while holding the above post, is understood to have caused significant and inordinate delay in the execution of KIIFB Project, and such delay has been intentionally caused by you and most of the communications in connection with KIIFB with M/s.BSNL, who is the SPV(Special Purpose Vehicle) of the Project, were not properly made by you and such communications are purposefully delayed by you. It is also known that you have instructed the Engineering Staff of MCC not to get involved with KIIFB Project and that the Project in MCC will not happen at all."

A reading of the afore would show that the petitioner is alleged to have caused "significant and inordinate delay in the execution of the KIIFB Project intentionally". Though Ext.P9 makes reference to some "communications in connection with KIIFB with BSNL", the details thereof have not been provided along with the said Memo of Charges. It is on that basis that the



disciplinary proceedings were constituted, and an enquiry authority was appointed. The findings contained in the enquiry report at Ext.P14 have been referred to by Sri.Sreekumar, learned Senior counsel for the 1st respondent, in detail. A reading of Ext.P15 also shows that the allegation against the petitioner is the delay of almost 15 months in the execution of the projects, as noticed earlier. It is on that basis that the impugned order at Ext.P17 has been issued. In the impugned order at Ext.P17, the 2nd respondent herein has arrived at the conclusion that the charges against the petitioner are serious and therefore, the petitioner requires to be mulcted with the maximum punishment. This Court also notices that while passing the order at Ext.P17, the 2nd respondent has also referred to a complaint filed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the 'PoSH Act') by a lady. It is also to be noticed that the order at Ext.P17 informs the petitioner that the punishment imposed as above "is also by taking into consideration a complaint lodged against you by the



lady employee”.

6. Smt.Kavya, learned counsel for the petitioner, has also pointed out that the complainant, who lodged the complaint under the PoSH Act, is none other than the person to whom the charge has been handed over pursuant to Ext.P7. This Court also notices that the Internal Committee’s report at Ext.P19 has been challenged by filing an appeal by the petitioner, which led to Ext.P25 order dated 18.10.2023, by the appellate authority, finding that the enquiry at Ext.P19 has been carried out without following the principles of natural justice and therefore, Ext.P19 requires to be quashed. In the light of the afore, I am of the opinion that the reference made to the complaint lodged by the afore individual, while passing the order at Ext.P17, was without any justification.

7. On the face of the afore findings, this Court notices that, ultimately, the petitioner is being removed from the service, as a case of “maximum punishment”. In my opinion, the question of “proportionality” as regards the punishment imposed, as above, requires to be noticed. Here, as already



found, the allegation against the petitioner is the alleged delay of 15 months in the execution of certain projects. As already noticed, the allegations contained in the Charge Memo were not specific, and the petitioner has also been removed from service, without taking note of the doctrine of proportionality.

8. At this juncture, the judgment of the Apex Court in **Coimbatore District Central Cooperative Bank** (*supra*) requires to be noticed. It has been found by the Apex Court that, if an action taken by the authorities is contrary to law, improper, irrational, or otherwise unreasonable, a court of law can interfere by exercising judicial review, and also by exercising the “doctrine of proportionality”, as under:-

“17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “doctrine of



proportionality”.

18. “Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

19. de Smith states that “proportionality” involves “balancing test” and “necessity test”. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [*Judicial Review of Administrative Action* (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: *Administrative Law* (2005), p. 366.]”

With reference to the principles laid down by the Apex Court as above, there cannot be any dispute that the punishment imposed on the petitioner was disproportionate.

9. In such circumstances, the findings contained in Ext.P17 do not inspire confidence in this Court. Therefore, Ext.P17, to the extent that the petitioner has been dismissed from the service, is *set aside*. The question as regards the



punishment to be imposed on the petitioner has to be reconsidered afresh by the 2nd respondent. In view of the afore, the petitioner's entitlement for subsistence allowance also requires to be considered by the 2nd respondent.

The writ petition is allowed, as above.

Sd/-
HARISANKAR V. MENON
JUDGE

Skk



APPENDIX OF WP(C) NO.30601 OF 2023

PETITIONER'S EXHIBITS:

EXHIBIT-P1	A TRUE COPY OF THE APPOINTMENT ORDER DATED 23.06.2009 FOR THE POST OF ENGINEER ISSUED BY THE 1ST RESPONDENT.
EXHIBIT-P2	A TRUE COPY OF THE GOVERNMENT ORDER BEARING G.O.(MS)NO.4/08/PD DATED 01.03.2008 ALONG WITH MALABAR CANCER CENTRE SOCIETY SERVICE RULES, 2008
EXHIBIT-P3	A TRUE COPY OF THE OFFICE ORDER NO. Q3/AO/19/MCC/ DATED 19.11.2019 ISSUED BY THE 2ND RESPONDENT
EXHIBIT-P4	A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 23.11.2019 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT
EXHIBIT-P5	A TRUE COPY OF THE REPLY TO EXHIBIT-P4 SHOW CAUSE NOTICE, DATED 04.12.2019 SUBMITTED BY THE PETITIONER, ALONG WITH ITS TYPED LEGIBLE COPY,
EXHIBIT-P6	A TRUE COPY OF THE EMAIL COMMUNICATION ISSUED BY THE DIRECTOR OF MCC DATED 06.01.2020 AND ITS REPLY SUBMITTED THROUGH EMAIL
EXHIBIT-P7	A TRUE COPY OF THE PROCEEDINGS OF THE DIRECTOR, MCC BEARING NO.Q3/AO/20/MCC/ DATED 02.03.2020
EXHIBIT-P8	A TRUE COPY OF THE LETTER DATED 06.03.2020 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT
EXHIBIT-P8 (A)	TRUE COPY OF THE PRINTOUT OF THE EMAIL COMMUNICATIONS DATED 13.03.2020 BETWEEN PETITIONER AND THE MCC
EXHIBIT-P9	A TRUE COPY OF THE MEMO OF CHARGES DATED 18.03.2020 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER
EXHIBIT-P10	A TRUE COPY OF THE REPLY TO THE CHARGE MEMO DATED 24.03.2020 SUBMITTED BY THE PETITIONER
EXHIBIT-P11	A TRUE COPY OF THE PROCEEDINGS OF THE DIRECTOR BEARING NO.010/20/MCC/DATED 28.03.2020
EXHIBIT-P12	A TRUE COPY OF THE LETTER NO.179-ADMIN 09/MCC/2020/1739 DATED 25.07.2020 ISSUED BY THE 2ND RESPONDENT
EXHIBIT-P13	A TRUE COPY OF THE RE-JOINDER FILED BY THE PETITIONER DATED 08.03.2021 AGAINST THE REPLICATION FILED BY THE MCC BEFORE THE HON'BLE DOMESTIC ENQUIRY OFFICER, MALABAR CANCER CENTRE, THALASSERY



EXHIBIT-P14	A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE DIRECTOR DATED NIL BEFORE THE HON'BLE DOMESTIC ENQUIRY OFFICER, MALABAR CANCER CENTRE, THALASSERY
EXHIBIT-P15	TRUE COPY OF THE ENQUIRY REPORT DATED 29.04.2023
EXHIBIT-P15 (A)	A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 29.04.2023 ISSUED BY THE 2ND RESPONDENT
EXHIBIT-P16	A TRUE COPY OF THE REPLY TO THE SHOW CAUSE NOTICE DATED 09.05.2023
EXHIBIT-P17	A TRUE COPY OF THE ORDER OF DISMISSAL DATED 11.05.2023
EXHIBIT-P18	TRUE COPY OF THE CHARGE MEMO NO. 484/MISC/22/MCC/3122 DATED 24.12.2022
EXHIBIT-P19	TRUE COPY OF THE ENQUIRY REPORT OF THE COMMITTEE DATED NIL
EXHIBIT-P20	TRUE COPY OF THE JUDGMENT DATED 27.03.2023 IN W.P.(C) NO. 7562/2023 PASSED BY THIS HON'BLE COURT.
EXHIBIT-P21	A TRUE COPY OF THE GOVERNMENT ORDER G.O. (RT) NO. 2848/2022/H&FWD DATED 01.12.2022
EXHIBIT-P22	TRUE COPY OF THE LETTER DATED 4.10.2023 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT
EXHIBIT-P23	TRUE COPY OF THE LETTER NO. 484/MISC/23/MCC DATED 5.10.2023 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
EXHIBIT-P24	TRUE COPY OF THE LIST EVIDENCING THE AMOUNT PAID TO THE PETITIONER AS SUBSISTENCE ALLOWANCE
EXHIBIT-P25	TRUE COPY OF THE ORDER DATED 18.10.2023 IN I.R. NO. 324/2023 PASSED BY THE REGIONAL JOINT LABOUR COMMISSIONER, KOZHIKODE.