



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO.20817 OF 2022

**KERALA AGRICULTURAL
UNIVERSITY & ANR.**

...PETITIONER(S)

VERSUS

**T.P. MURALI @ MURALI THAVARA
PANEN & ANR.**

...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard Shri R. Basant, senior counsel for the petitioner and Shri Gaurav Agrawal, senior counsel for the respondent.
2. Kerala Agricultural University has preferred this Special Leave Petition challenging the judgment and order dated 26.08.2022 passed by the Division Bench of the High Court of Kerala in Writ Appeal No. 298 of 2022, T.P. Murali vs. Kerala Agricultural University. The Division Bench

after setting aside the judgment dated 21.12.2021 passed in Writ Petition (C) No.17803 of 2021, quashed the order dated 30.07.2021 passed by the Vice Chancellor of the university terminating the services of the respondent T.P. Murali.

- 3.** The Division Bench in allowing the writ appeal, though quashed the termination order passed against the respondent but refused to direct for his reinstatement as he had attained the age of superannuation during the pendency of litigation. Thus, it only directed the university to decide and disburse the pensionary benefits to the respondent to which he may be entitled as per the relevant statues and rules.
- 4.** The respondent T.P. Murali had joined the Kerala Agricultural University as Assistant Professor on 24.03.1988. After having worked for about 11 years, he took a long Leave Without Allowance¹ of 20 years from 05.09.1999 to 04.09.2019 in four blocks of five years each to take up employment in Community College, Pennsylvania, USA.

¹ In short 'LWA'

5. The respondent failed to resume his duties on the expiry of the LWA on 04.09.2019 as he was in USA at that time and was allegedly suffering from serious ailments. It is alleged that he had expressed his intention to rejoin duty via e-mail but still did not rejoin, allegedly for reasons of his health and, thereafter, due to intervening COVID-19. He could only return to India by the first Vande Bharat flight in July, 2020 and requested for rejoining but was not allowed, rather he was handed over the Memo of Charge dated 15.07.2020 stating that he had remained on unauthorized absence w.e.f. 05.09.2019 and has thus committed statutory violation leading to misconduct. A formal departmental inquiry was initiated after the reply of the respondent to the show cause notice/charge memo was not found to be satisfactory. The Inquiry Committee of three members vide *Exh.P17* concluded that the respondent violated the LWA conditions by not joining the duty before the completion of 20 years period of LWA. Upon consideration of the above Inquiry Report, the Vice Chancellor vide order dated 30.07.2021 and in exercise of its delegated power as per the resolution of the Executive

Council dated 23.01.2021 allegedly following the procedure prescribed under the rules, terminated the services of the respondent w.e.f. 05.09.2019.

- 6.** The respondent challenged the aforesaid termination order by invoking the writ jurisdiction of the High Court but the said writ petition was dismissed vide judgment and order dated 21.12.2021. The learned Single Judge recorded that the respondent violated the statutory rules by not resuming his duties immediately upon the expiry of leave period. His explanation regarding his illness and intervening COVID-19 was not acceptable, therefore his overstay on leave was not liable to be condoned. The respondent failed to place on record if he had drawn salary for the period of overstay of leave from his employer in USA.
- 7.** The aforesaid judgment and order of the learned Single Judge on writ appeal by the respondent has been set aside by the Division Bench on the ground that the university has not followed the procedure prescribed under the rules for holding the disciplinary inquiry and that the

respondent was genuinely and *bona fide*ly forbidden from resuming his duties in time.

- 8.** We have carefully examined the impugned judgment and order of the Division Bench as well as the other material papers. On the admitted position, respondent had proceeded on a long leave of 20 years from 05.09.1999 to 04.09.2019 and had not resumed his duties immediately on the expiry of the above leave period. The aforesaid leave period was not liable to be extended in any manner under the rules. In a situation like this, the rules provide for the termination of the services of the employee after following the procedure prescribed under the rules.
- 9.** The relevant service rules are the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 and the Kerala Service Rules and its appendix which permits a maximum of 20 years of LWA vide Rule 24A read with Clause 6 of Appendix XIA concerning grant of LWA. The aforesaid Rules further provide that immediately on the expiry of the leave, if the incumbent fails to join, his services shall be terminated after following the procedure

laid down in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960.

10. Rule 15 of the said rules provides for the procedure for imposition of major penalties including termination. It *inter alia* provides that before holding a departmental/regular disciplinary inquiry, the delinquent would be given a show cause notice as to why a departmental inquiry may not be held against him on the charges levelled and it is only after recording of the *prima facie* satisfaction that a departmental inquiry is necessary, the matter could be referred for holding a regular disciplinary inquiry.
11. Rule 24A and Clause 6 of Appendix XIIA of Kerala Service Rules and Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 are reproduced hereinbelow:

“24A. Notwithstanding anything contained in these rules, if an Officer who availed himself of leave without allowances to take up employment abroad or within the country or for joining spouse for a total period of twenty years, whether continuously or in broken periods, does not return to duty immediately on the expiry of the leave, his service shall be terminated after following the procedure laid down in the Kerala Civil Services

(Classification, Control and Appeal) Rules, 1960.”

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“Appendix XI A- RULES FOR THE GRANT OF LEAVE WITHOUT ALLOWANCES FOR TAKING UP EMPLOYMENT ABROAD OR WITHIN INDIA

The following rules shall regulate the grant of leave without allowances to officers for taking up employment abroad or within India. These rules shall not apply in cases of employment in the service of any Public Sector Undertaking, Aided Schools and Private Colleges or self financing Colleges within the State or anybody incorporated or not, which is wholly or substantially owned, controlled or aided by any State Government or the Government of India.

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6. The maximum period of leave that may be sanctioned to an officer during his entire service shall be limited to 20 years and such leave shall not extend beyond twelve months before their date of superannuation. If the officer who has availed himself of the leave without allowances for a total period of 20 years whether continuously or in broken periods, does not return to duty immediately on the expiry of the leave, his service shall be terminated after following the procedure in Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. This condition shall be incorporated in every order sanctioning such leave.”

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“Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960

15. Procedure for imposing major penalties.-

(1) Without prejudice to the provisions of the Public Servants' (Inquiry) Act, 1850 (Central Act XXXVII of 1850), and the Public Servants' (Inquires) Act, 1122 (Act XI of 1122), no order imposing on a Government servant any of the penalties specified in items (v) to (ix) of rule 11 (1) shall be passed except after an inquiry held as far as may be, in the manner hereinafter provided.

(2) (a) Whenever a complaint is received, or on consideration of the report of an investigation, or for other reasons, the disciplinary authority or the appointing authority or any other authority empowered by Government in this behalf is satisfied that there is a prima facie case for taking action against a Government Servant, such authority shall frame definite charge or charges which shall be communicated to the Government servant together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. The accused Government Servant shall be required to submit within a reasonable time to be specified in that behalf a written statement of his defence and also to state whether he desires to be heard in person. The Government servant may on his request be permitted to peruse or take extracts from the records pertaining to the case for the purpose of preparing his written statement; provided that the disciplinary or other authority referred to above may, for reasons to be recorded in writing, refuse him such access, if in its opinion such records are not strictly relevant to the case or it is not desirable in the public interest to allow such access. After the written statement is received or if no such statement is received within the time allowed, the authority referred to above may, if it is satisfied that a formal enquiry should be held into the conduct of the Government servant, forward the record of the case to the authority or officer referred to in clause (b) and order that a formal enquiry may be conducted.”

- 12.** A plain reading of Rule 15(2)(a) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, which is applicable for imposing major penalties specifically lays down that the disciplinary authority or the appointing authority or any other authority, empowered by Government in this behalf before holding a regular disciplinary inquiry, must record its satisfaction that there is a *prima facie* case for taking action against the delinquent employee so as to hold a formal inquiry against him. In other words, the aforesaid rule in explicit terms provides for recording a *prima facie* satisfaction for holding a disciplinary inquiry against any delinquent employee.
- 13.** In the instant case, no material at any stage has been brought on record to establish that any such satisfaction was recorded before appointing an inquiry committee and passing of the order of termination by the Vice Chancellor on the basis of the inquiry report. It is for this reason that the Division Bench has allowed the writ petition after setting aside the order of the learned Single Judge. We do not find any flaw with the reasoning adopted by the

Division Bench and as such do not deem it necessary to interfere with the judgment and order impugned herein.

- 14.** It is a cardinal principle of law that if a statute provides for doing a thing in a particular manner than it should be done in that fashion only and not otherwise. Therefore, recording of satisfaction before holding a departmental inquiry was mandatory.
- 15.** It may be pertinent to mention here that the respondent had expressed his intention to resume his duties on the expiry of the leave period, which he could not do on account of unprecedented circumstances of his bad health and restriction on travel due to COVID-19. The *bona fides* of the respondent in this regard stand fortified by his e-mails and the medical papers on record.
- 16.** In the above facts and circumstances, we do not find any merit in the petition and do not deem it necessary to exercise our discretionary jurisdiction under Article 136 of the Constitution.

17. The Special Leave Petition is accordingly dismissed with observations as above.

..... J.
(PAMIDIGHANTAM SRI NARASIMHA)

..... J.
(PANKAJ MITHAL)

**NEW DELHI;
SEPTEMBER 04, 2024**