

# WWW.LIVELAW.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 22<sup>ND</sup> DAY OF JUNE 2021 / 1ST ASHADHA, 1943

WP (C) NO. 19884 OF 2020

**PETITIONER:**

KRISHNA KUMAR K.R.,  
AGED 42 YEARS  
KRISHNA BHAVAN, BRAHMAMANGALAM P.O., KOTTAYAM SENIOR  
CLERK (DISMISSAL FROM SERVICE) BRAHMAMANGALAM  
GRAMASWARAJ SERVICE C-OPERATIVE BANK LTD.NO.2966,  
BRAHMAMANGALAM P.O., KOTTAYAM

BY ADVS.  
B.S.SWATHI KUMAR  
SMT.ANITHA RAVINDRAN  
SRI.HARISANKAR N UNNI  
SMT.P.S.BHAGYA SURABHI  
SHRI.SARANGADHARAN P.

**RESPONDENTS :**

- 1 BRAHMAMANGALAM GRAMASWARAJ SERVICE CO-OPERATIVE BANK LTD. NO.2966,  
BRAHMAMANGALAM P.O., KOTTAYAM, PIN-686 614, REPRESENTED BY ITS SECRETARY
- 2 THE MANAGING COMMITTEE OF THE BRAHMAMANGALAM GRAMASWARAJ SERVICE C-OPERATIVE BANK LTD.NO.2966,  
BRAHMAMANGALAM P.O., KOTTAYAM, PIN-686 614, REPRESENTED BY ITS PRESIDENT
- 3 THE DISCIPLINARY SUB COMMITTEE OF THE BRAHMAMANGALAM GRAMASWARAJ SERVICE C-OPERATIVE BANK LTD.NO.29  
BRAHMAMANGALAM P.O., KOTTAYAM, PIN-686 614, REPRESENTED BY ITS CHAIRMAN
- 4 V.MANOMOHAN,  
ADVOCATE/INQUIRY OFFICER, BRAHMAMANGALAM GRAMASWARAJ SERVICE C-OPERATIVE BANK LTD.NO.2966, BRAHMAMANGALAM P.O., KOTTAYAM, PIN-686 614

BY ADVS.  
SMT.A.AMRUTHA VIDYADHARAN  
SMT.P.V.REMA

WP(C) NO. 19884 OF 2020 &

WP(C) NO. 6133 OF 2021

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SMT.F.ANCY

**OTHER PRESENT:**

SR.GP BIMAL K NATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
08.04.2021, ALONG WITH WP(C).6133/2021, THE COURT ON 22.06.2021  
DELIVERED THE FOLLOWING:

WP(C) NO. 19884 OF 2020 &

WP(C) NO. 6133 OF 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 22<sup>ND</sup> DAY OF JUNE 2021 / 1ST ASHADHA, 1943

WP(C) NO. 6133 OF 2021

**PETITIONER:**

KRISHNA KUMAR.K.R.,  
AGED 42 YEARS  
KRISHNA BHAVAN, BRAHAMAMANGALAM P.O., KOTTAYAM, SENIOR  
CLERK (DISMISSAL FROM SERVICE) BRAHMAMANGALAM  
GRAMASWARAJ SERVICE CO-OPERATIVE BANK LTD.NO. 2966,  
BRAHMAMANGALAM P.O.,  
KOTTAYAM.

BY ADVS.  
B.S.SWATHI KUMAR  
SMT.ANITHA RAVINDRAN  
SRI.HARISANKAR N UNNI  
SHRI.SARANGADHARAN P.  
SMT.SHUROOKA P.K.

**RESPONDENTS:**

- 1 BRAHMAMANGALAM GRAMASWARAJ SERVICE CO-OPERATIVE BANK LTD.  
NO.2966, BRAHMAMANGALAM P.O.,  
KOTTAYAM, PIN-686614,  
REPRESENTED VT ITS SECRETARY.
- 2 THE MANAGING COMMITTEE OF THE  
BRAHMAMANGALAM GRAMASWARAJ  
SERVICE CO-OPERATIVE BANK LTD, NO.2966, BRAHMAMANGALAM  
P.O., KOTTAYAM, PIN-686614.  
REPRESENTED BY ITS PRESIDENT.
- 3 THE DISCIPLINARY SUB COMMITTEE OF THE  
BRAHMAMANGALA THE COURT ON 22.06.2021 DELIVERED THE  
FOLLOWING:M GRAMASWARAJ  
SERVICE CO-OPERATIVE BANK LTD, NO.2966, BRAHMAMANGALAM

WP(C) NO. 19884 OF 2020 &

WP(C) NO. 6133 OF 2021

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P.O., KOTTAYAM, PIN-686614.  
REPRESENTED BY ITS CHAIRMAN.

**OTHER PRESENT:**

SR.GP K P HARISH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
08.04.2021, ALONG WITH WP(C).19884/2020, THE COURT ON 22.06.2021  
DELIVERED THE FOLLOWING:

**COMMON JUDGMENT**

Common writ petitioner in both the writ petitions was employed as a Senior Clerk in the first respondent Co-operative Bank limited. On 28.03.2019 by Ext.P1 notice, he was placed under suspension by the Secretary of the bank pursuant to a decision of the Managing Committee of the bank on an allegation that he had misappropriated huge amounts from the bank. Subsequently, by Ext.P2 show cause notice dated 16.04.2019 issued by the Chairman of the Disciplinary Sub Committee, he was called upon to reply. By Ext.P3 memo of charges dated 13.05.2019 issued by the Chairman of the Disciplinary Sub Committee, he was asked to reply to the memo of charges. Ext.P4 reply dated 29.05.2019 , he answered the allegation. Thereafter, a Disciplinary Committee was appointed who conducted enquiry and by the Domestic Enquiry Report, he was found guilty. A show cause notice was issued to him dated 11.05.2020 which was replied on 20.05.2020. By Ext.P5 dated 04.06.2020, he was terminated from service of the bank by the Disciplinary Sub Committee.

2. The above was challenged in a statutory appeal. While so, the petitioner challenged his termination on various legal grounds by filing W.P(C).No.19884 of 2020. During the pendency of the above writ petition, statutory appeal was dismissed by Exts.P6

and P7 orders which are challenged in W.P(C).6133 of 2021.

3. The premise on which W.P(C).No.19884 of 2020 is filed is that, he was issued with Ext.P2 show cause notice followed by Ext.P3 memo of charges by the Disciplinary Sub Committee which had no jurisdiction to issue such memo of charges. According to him, by virtue of the provisions of the Statute, Managing Committee alone was competent to issue memo of charges. Yet another contention was that, pursuant to the ex parte domestic enquiry conducted, he was terminated by Ext.P5, again by the Disciplinary Sub Committee and not by the Managing Committee. It was further contended that, a copy of the Domestic Enquiry Report was not furnished to him which violated his right to effectively reply to the findings in the enquiry.

4. An initial objection was set up in the writ petition that the Writ Petition was filed while statutory appeal before the authority was pending. In the light of pendency of that, the above Writ Petition was not maintainable and the statutory authority having seized the issue involved, could not be agitated by a parallel proceeding in W.P(C).19884 of 2020.

5. This was replied by the writ petitioner contending that, he was assailing the termination on a pure question of law as to whether the memo of charges could be issued by the Disciplinary

Sub Committee. Since it was a pure question of law and did not involve any enquiry on factual premise, petitioner is entitled to challenge it in a writ petition, rather than waiting for the result of a long drawn statutory appeal, which, though an alternative remedy, is not an efficacious remedy.

6. The above contention of the writ petitioner is well grounded and since the issue is raised on a strict legal question, I feel that the writ petition is sustainable. Even otherwise, pending the proceedings, the statutory appeal was disposed of which is the subject matter of W.P(C).6133 of 2021. Hence, I find no illegality in considering the question of legal issue raised by the writ petitioner in these writ petitions.

7. Evidently, memo of charges was issued by the Chairman of the Disciplinary Sub Committee. This Court had considered an identical question in W.P(C).22228 of 2019, a copy of the judgment of which is produced as Ext.P6. The question that came up before the learned Single Judge was whether the Disciplinary Sub Committee was competent to issue memo of charges. Answering this, learned Single Judge held that the disciplinary action against the employee of the Co-operative Society was covered by the statutory provisions referable to Rule 198 of the Kerala Co-operative Society Rules 1969. After analyzing the above statutory

provision, it was concluded that the mandate under Rule 198(2) of the Act to take action against an employee is vested with the Managing Committee. The Managing Committee appointed under Sec.20 of the Act is entrusted with the power to manage the affairs of the society. It is the delegate of the general body. Therefore, they can delegate their function only if the byelaws or the statutory provisions confer power of delegation. It was held that, under Sec.27 of the Act, the final authority of the Society was vested with general body of the members. Rule 198(2B) of the Rules clearly points out the nature of the power conferred on the disciplinary committee. This committee is the delegate of the Managing Committee to inquire into the charges against the employees. Ultimately, the Court concluded that the Managing Committee alone has power to issue a charge memo. No power is conferred upon the Managing Committee to confer this power to a Sub Committee which is constituted as a disciplinary committee. The authority of the Sub Committee is limited to conducting an inquiry regarding the charges framed by the Managing Committee as against the employees. In that view of the matter, Managing Committee alone can issue memo of charges to the employee and not the Sub Committee.

8. This decision was followed by another Single Bench of



this Court evidenced by Ext.P7 judgment in WP(C).32805 of 2019 on identical facts. The judgment in WP(C).22228 of 2019 was challenged by the bank in Writ Appeal No.11 of 2020. The Division Bench of this Court confirmed the view of the learned Single Judge by the decision reported in ***Kodenchery Service Co-operative Bank v. Joshy Varghese (2020(4) KLT 129)***. It was held by the Division Bench that the Constitution of the Disciplinary Sub Committee presupposes that a decision has been taken to initiate disciplinary proceedings against an employee or employees in respect of a misconduct and secondly, in pursuance of such decision, a memorandum of charges has been framed and issued.

9. These authoritative pronouncements clearly show that the jurisdiction of issuing memo of charges is vested with the Managing Committee of the Society which cannot further be delegated to a Disciplinary Sub Committee. The Sub Committee is vested with the power only of conducting a domestic enquiry. In the case at hand, it seems that the memo of charges was issued by Ext.P3 and after the conclusion of the enquiry, show cause notice was issued by the Disciplinary Sub Committee which itself issued Ext.P5 termination order. This seems to be without any jurisdiction.

10. In the light of the above conclusion, evidently, the issuance of Ext.P3 memo of charges dated 13.05.2019 by the

Disciplinary Sub Committee is liable to be set aside. Necessarily, all further proceedings pursuant thereto become invalid. Consequently, the termination order is also without any legal backing and has to be set aside. Hence, in the light of the above finding quashing Ext.P3, all further proceedings leading to the termination also stand quashed. Necessarily, this should restore the employee back to the position as on prior to 13.05.2019.

11. Petitioner was suspended pending enquiry by Ext.P1 order dated 28.03.2019. Necessarily, the petitioner will be restored to that position. It seems that, in the detailed counter affidavit along with the counter affidavit, bank has produced Ext.R1(c), by which, the suspension was extended beyond the period of one year from 28.03.2020 by six months till 28.09.2020 or till the completion of enquiry, whichever was found to be earlier. It seems that the enquiry was completed before 28.09.2020. In the light of the present order quashing all further proceedings, the suspension which was subsequent to the date of completion of enquiry by virtue of Ext.R1(c) will stand unauthorized and the petitioner will remain in service as if suspension has come to an end on completion of the domestic enquiry by virtue of Ext.R1(c). He will be entitled as if he was in service thereafter. He was terminated prior to that. Petitioner will be entitled to the subsistence allowance in

accordance with Rules. The entire arrears of subsistence allowance from the date of suspension 28.03.2020 till the date of completion of enquiry, if any, shall be paid to the writ petitioner within a period of one month from the date of this judgment. He shall also be entitled for the salary for the remaining period from the date of conclusion of enquiry since his suspension thereafter was unauthorized.

12. This judgment will not preclude the bank from issuing fresh memo of charges in accordance with law and to proceed against the writ petitioner, if so advised.

In the result, both the writ petitions stand allowed. Ext.P3 stands quashed followed by all subsequent proceedings pursuant to Ext.P3.

Sd/-

**SUNIL THOMAS  
JUDGE**

WP(C) NO. 19884 OF 2020 &

WP(C) NO. 6133 OF 2021

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**APPENDIX OF WP(C) 6133/2021**

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE ORDER DATED 28/03/2019  
ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE NOTICE NO.686/19 DATED  
16.04.2019 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE MEMORANDUM OF CHARGE  
NO.731/19 DATED 13.05.2019 ISSUED BY THE  
ENQUIRY OFFICER OF THE 3RD RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE EXPLANATION FILED BY THE  
PETITIONER BEFORE THE ENQUIRY OFFICER DATED  
29/05/2019.
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 4.6.2019 OF THE  
ENQUIRY OFFICER.
- EXHIBIT P6 TRUE COPY OF THE ORDER NO.1/2021 DATED  
26.09.2020 OF THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE RESOLUTION NO.1 DATED  
26.09.2020 OF THE 1ST RESPONDENT.
- EXHIBIT P8 TRUE COPY OF POSTAL COVER ADDRESSED TO THE  
PETITIONER.
- EXHIBIT P9 TRUE COPY OF THE TRACK CONSIGNMENT PRINT OUT  
OF INDIA POST.

WP(C) NO. 19884 OF 2020 &

WP(C) NO. 6133 OF 2021

**APPENDIX OF WP(C) 19884/2020**

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE ORDER DATED 28.3.2019 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P2 TRUE COPY OF THE NOTICE NO.686/19 DATED 16.4.2019 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE MEMORANDUM OF CHARGE NO.731/19 DATED 13.5.2019 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P4 TRUE COPY OF THE EXPLANATION FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 29.5.2019
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 4.6.2020 OF THE 4TH RESPONDENT
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT IN WPC NO.22228/2019 DATED 21.11.2019
- EXHIBIT P7 TRUE COPY OF THE JUDGMENT IN WPC NO. 32805/2019 DATED 28.5.2020