

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 7TH DAY OF DECEMBER 2017/16TH AGRAHAYANA, 1939

WP(C).No. 23665 of 2017 (G)

PETITIONER(S):

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K.PADMAKUMAR  
S/O. LATE DR.P.KRISHNAN NAIR, AGED 53 YEARS,  
RESIDING AT 11 F, SAMRUDHI THAMPURANS,  
THAMPURANMUKKU,  
TRIVANDRUM - 695 035.

BY ADV. SMT.S.SUJINI

RESPONDENT(S):

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1. STATE OF KERALA  
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY  
HOME & VIGILANCE DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.
  2. THE ADDITIONAL CHIEF SECRETARY,  
INDUSTRIES & COMMERCE DEPARTMENT,  
GOVERNMENT SECRETARIAT, TRIVANDRUM - 695 001.
  3. THE DIRECTOR,  
VIGILANCE & ANTI-CORRUPTION BUREAU,  
NEAR VIKAS BHAVAN,  
TRIVANDRUM - 695 001.
  4. MALABAR CEMENTS LTD.,  
REPRESENTED BY MANAGING DIRECTOR,  
MALABAR CEMENTS LTD., WAYALAR,  
PALAKKAD - 680 699.

R4 BY ADV. SMT.LATHA ANAND, SC, MALABAR CEMENTS LIMITED  
R1-R3 BY SPL.GOVERNMENT PLEADER SRI.A.RAJESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 07-12-2017, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE  
PETITIONER'S CAREER PROFILE.

EXHIBIT P2 SNAPSHOT OF MCL'S GROWTH  
SINCE 2011-12.

EXHIBIT P3 TRUE COPY OF THE NOTES IN  
GOVERNMENT FILE NO. 11014/B1/2015/VIG.IN  
RESPECT OF GOVERNMENT DECISION DATED  
18.01.2016 IN QV/29/2015/PKD RECEIVED  
BASED ON ORDER OF THE CHIEF INFORMATION  
COMMISSIONER.

EXHIBIT P4 TRUE COPY OF THE NOTES IN  
GOVERNMENT FILE NO. 1321/B1/2016/VIG.IN  
RESPECT OF GOVERNMENT DECISION DATED  
06.06.2016 IN QV/47/2014/PKD RECEIVED  
BASED ON ORDER OF THE CHIEF INFORMATION  
COMMISSIONER.

EXHIBIT P5 TRUE COPY OF JUDGMENT IN  
W.P(C)NO. 4932/2016 DATED 08.06.2016.

EXHIBIT P6 TRUE COPY OF THE INTERIM  
ORDER DATED 08.07.2016 IN R.P.560 OF  
2016 IN W.P.(C) 4932/2016.

EXHIBIT P7 TRUE COPY OF THE FIR IN  
VC 14/2016/PKD DATED 09.07.2016.

EXHIBIT P8 TRUE COPY OF THE FIR IN  
VC 15/2016/PKD DATED 10.07.2016.

EXHIBIT P9 TRUE COPY OF THE FIR IN  
VC 16/2016/PKD DATED 10.07.2016.

EXHIBIT P10 TRUE COPY OF THE FIR IN  
VC 17/2016/PKD DATED 10.07.2016.

EXHIBIT P11 TRUE COPY OF CUSTODY  
APPLICATION WITH REFERENCE TO FIR NO. VC  
14/2016/PKD DATED 06.09.2016.

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EXHIBIT P12            TRUE COPY OF THE ORDER  
DATED 27.09.2016 IN W.A. 1513/2016.

EXHIBIT P13            TRUE COPY OF GOVERNMENT  
ORDER DATED 05.09.2016 REMOVING THE  
PETITIONER FROM THE POST OF MANAGING  
DIRECTOR OF THE 4TH RESPONDENT COMPANY.

EXHIBIT P14            TRUE COPY OF G.O.(RT)NO.  
993/2016/ID DATED 21.09.2016 ORDERING  
THE PETITIONER TO ENTER INTO COMPULSORY  
LEAVE.

EXHIBIT P15            TRUE COPY OF THE  
CORRESPONDENCE NO. VC-14/2016/PKD DATED  
12.07.2016 FROM THE PALAKKAD UNIT OF THE  
3RD RESPONDENT ADDRESSED TO THE 3RD  
RESPONDENT.

EXHIBIT P16            TRUE COPY OF THE  
CORRESPONDENCE NO. VC-17/2016/PKD DATED  
12.07.2016 FROM PALAKKAD UNIT OF THE 3RD  
RESPONDENT ADDRESSED TO THE 3RD  
RESPONDENT.

EXHIBIT P17            TRUE COPY OF THE  
GOVERNMENT FILE NO. 322/H1/2016/ID  
PERTAINING TO THE ARREST OF THE  
PETITIONER RECEIVED UNDER RTI ACT.

EXHIBIT P18            TRUE COPY OF THE LETTER  
NO. 9938/B1/16/VIG.DTD:05.12.2016 FROM  
THE 1ST RESPONDENT TO THE 2ND  
RESPONDENT.

EXHIBIT P19            TRUE COPY OF THE LETTER NO.  
1321/B1/16/VIG. OF 17.12.2016 FROM THE 1ST  
RESPONDENT TO THE 2ND RESPONDENT.

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EXHIBIT P20 TRUE COPY OF G.O.(RT)NO. 71/2017/ID DATED 12.01.2017 SUSPENDING THE PETITIONER WITH RETROSPECTIVE EFFECT FROM 05.09.2016 FROM HIS PARENT ORGANIZATION.

EXHIBIT P21 TRUE COPY OF THE JUDGMENT IN W.P.(C) 35579/2016 DATED 27.02.2017.

EXHIBIT P22 TRUE COPY OF THE APPLICATION DATED 16.03.2017 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT FOR REINSTATEMENT IN SERVICE.

EXHIBIT P23 TRUE COPY OF THE DEATH CERTIFICATE OF THE PETITIONER'S MOTHER DATED 17.01.2017.

EXHIBIT P24 TRUE COPY OF MEDICAL RECORDS OF THE PETITIONER DATED 04.12.2016 AND 29.03.2017.

EXT.P25: TRUE COPY OF EXTRACTS OF BOARD MEETING CONSTITUTEDBY THE BAORD OF 4<sup>TH</sup> RESPONDENT COMPANY TO REVIEW MARKETING AND PRICING STRATEGIES OF THE PRICING POLICY AND SUGGESTIONS FOR DRAFTING A NEW POLICY

EXT.P26: TRUE COPY OF OVERALL PROFITABILITY STATEMENT FOR THREE YEARS FROM 2013-16 TO 2015-16 AND SALES IN PALAKKAD, MALAPPURAM AND KOZHIKODE DISTRICTS

EXT. P27: THE BOARD APPROVED REVENUE BUDGET PERMITTING USE OF UP TO 55000 MT OF IMPORTED CLINKER IN THE WALAYARPLANT

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EXT. P29: TRENDS IN COST OF FLY ASH AND SLAG  
IN 50 KG BAG OF CEMENT

EXT.P30: TRUE COPY OF THE STATEMENT ON  
PERFORMANCE OF MANUFACTURING PUBLIC  
SECTOR UNITS

EXT.P31: TRUE COPY OF THE COUNTER AFFIDAVIT  
FILED BY THE 2ND RESPONDENT IN COMPLAINT  
NO. 638/17D OF 2017, BEFORE THE HON'BLE LOK  
AYUKTA

EXT.P32: TRUE COPY OF THE GOVERNMENT  
ORDER NO. GOP9/2017/VIG. DATED 29-3-2017

RESPONDENT(S)' EXHIBITS

ANNEXURE R3 (A): TRUE COPY OF THE  
ORDER OF THIS DIVISION BENCH OF THIS  
HONOURABLE COURT 27-09-2016

/TRUE COPY/

P.S. TO JUDGE

**B. SUDHEENDRA KUMAR, J.**

.....  
**W.P. C. No. 23665 of 2017**  
.....

**Dated this the 7<sup>th</sup> day of December, 2017**

**JUDGMENT**

When this matter has been taken up for hearing, the learned counsel for the petitioner has submitted that the petitioner is not pressing the first prayer in the Writ Petition. However, the petitioner is pressing the 2<sup>nd</sup> prayer, which is extracted hereunder:-

“Issue a writ of mandamus, order or direction, directing the 2<sup>nd</sup> respondent to re-instate the petitioner in service and quash Ext. P20 suspension order”.

2. As per Ext. P20 order, the petitioner was placed under suspension from service with effect from 5-9-2016

under Rule 10 (3) of Kerala Civil Services (Classification, control & Appeal) Rules, 1960 on the reason that the petitioner was detained under custody for more than 48 hours in connection with Crime No. VC/14/2016/PKD. The suspension of the petitioner is not yet revoked. The petitioner submitted Ext. P22 request to re-instate the petitioner in his parent Department revoking the order of suspension. However, the petitioner is still under suspension. The petitioner has been under suspension for more than 15 months.

3. It appears that the investigation is not yet complete. The learned Special Public Prosecutor is not in a position to state as to when the investigation will be complete.

4. Suspension cannot be said to be a punishment. However, prolonged suspension amounts to punishment. In view of the above reason, this Court is of the view that the continued suspension of the petitioner will not be justified in this case. In the said circumstances, the petitioner is entitled to be re-instated in service immediately. For the said reason, the 2<sup>nd</sup> respondent is directed to pass affirmative orders on Ext. P22 as expeditiously as possible, and at any rate, within a period of 20 days from today. The learned Special Public Prosecutor will transmit a copy of this order to the 2<sup>nd</sup> respondent.

This Writ Petition stands disposed of as above.

Investigation in this matter has been pending for the



last nearly two years. Needless to state that the Investigating Agency shall take all endeavour to complete the investigation without much delay as directed by the Division Bench of this Court in Annexure R3 (a) judgment.

**Sd/-B. SUDHEENDRA KUMAR,  
JUDGE.**

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P.S. to Judge

Copy shall be issued today itself