

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).No. 7496 of 2004 (P)

PETITIONER(S):

**V.V.ABRAHAM, S/O.VARGHESE, UPPER
PRIMARY SCHOOL ASSISTANT, (TERMINATED FROM TTTM
VOCATION HIGHER SECODNARY SCHOOL, VADASSERIKKARA)
RESIDING AT GRACE HILL, KEEKOZHUR, P.O.RANNI
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.M.V.THAMBAN

RESPONDENT(S):

- 1. THE MANAGER, TTTM VOCATIONAL HIGHER
SECONDARY SCHOOL, VADASSERIKKARA
PATHANAMTHITTA DISTRICT.**
- 2. THE DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA.**
- 3. DEPUTY DIRECTOR (EDUCATION),
PATHANAMTHITTA, AT THIRUVALLA.**
- 4. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.**
- 5. STATE OF KERALA, REP. BY THE SECRETARY
TO THE GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

**R, BY ADV. GOVERNMENT PLEADER
R,ADDL.R6 BY ADV. SRI.V.SETHUNATH
R,R1 BY ADV. SRI.PHILIP M.VARUGHESE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS

EXT.P1	COPY OF GO(RT) NO.4199/81/G.EDN. DTD. 22.12.81.
EXT.P2	COPY OF APPLICATION DTD.29.12.86 SUBMITTED BY THE PETITIONERS
EXT.P3	COPY OF POSATL RECEIPT ISSUED BY THE DIRECTORATE OF POSTS, KINGDOM OF SAUDI ARABIA
EXT.P3(A)	TRUE ENGLISH TRANSLATION OF EXT S.P3 POSTAL RECEIPT
EXT.P4	COPY OF POSTAL RECEIPT DTD. 21.9.95 ISSUED BY THE DIRECTORATE OF POSTS, KINGDOM OF SAUDI ARABIA.
EXT.P4(A)	TRUE ENGLISH TRANSLATION OF EXT.P4 POSTAL RECEIPT
EXT.P5	COPY OF APPLICATION DATED 10.8.99 SUBMITTED TO THE MANAGER.
EXT.P6	COPY OF REPRESENTATION DTD. 10.8.99 SUBMITTED OT THE 2ND RESPONDENT.
EXT.P7	COPY OF REPRESENTAION DTD.10.8.99 SUBMITTED TO THE 3RD RESPONDENT.
EXT.P8	COPY OF REPRESENTAITON DTD. 5.2.00 SUBMITTED TO THE GOVT.
EXT.P9	COPY OF REPRESENTAION DTD. 19.11.01 SUBMITTED TO THE GOVT.
EXT.P10	COPY OF REPRESENTATION DTD. 9.2.02 SUBMITTED TO THE HONOURABLE MINISTER FOR EDUCATION.
EXT.P11	COPY OF LETTER NO.15660/L2/02/G.EDN. DTD.31.10.03 FROM THE GOVT.
EXT.P12	COPY OF SHOW CAUSE NOTICE DTD. 14.1.04 ISSUED TO PETITIONER.
EXT.P13	COPY OF REPLY DTD. 22.1.04 SUBMITTED BY PETITIONER.
EXT.P14	COPY OF ORDER NO. 17/04 DTD. 27/1/04 ISSUED BY 1ST RESPONDENT.
EXT.P15	COPY OF REVISION PETITION DTD. 18.2.04 FILED BY THE PETITIONER BEFORE THE GOVT.

RESPONDENTS EXHIBITS: NIL

// TRUE COPY //

P.A TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.7496 of 2004 - P

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Dated this the 13th day of October, 2015

J U D G M E N T

The petitioner is aggrieved with the termination of his employment as per Ext.P14. The petitioner was initially appointed as U.P.SA on 03.06.1975 in the 1st respondent's school. The petitioner continued till 29.12.1981, when he proceeded on Leave Without Allowance (L.W.A) as sanctioned by Ext.P1. Ext.P1 sanctioned leave for 5 years between 29.12.1981 to 28.12.1986. Admittedly the petitioner did not join duty after the leave had expired. The petitioner is said to have filed Ext.P2 application for extension of leave, which obviously had not been sanctioned.

2. The petitioner also claims that the petitioner had sent several leave applications thereafter. At the out set, it is to be noticed that the mere sending of the leave applications would not enable the petitioner to establish a legal right to be

continued. The petitioner admittedly applied for a sanction and in the absence of a sanction within a reasonable time, the petitioner ought to have joined. The fact remains that the petitioner remained abroad after the expiry of the leave sanctioned up to 29.12.1986 and long there after on 10.08.1999, by Ext.P5 he sought the permission of the Manager to rejoin duty. The Manager did not permit such rejoining of duty. The petitioner continued making representations and eventually by Ext.P11, the Government directed proceedings to be taken against the petitioner for service lapse. The Manager immediately issued a show cause notice as indicated at Ext.P12, to which the petitioner replied by Ext.P13. The Manager terminated the petitioner on a consideration of the objections alone by Ext.P14.

3. The learned Counsel for the petitioner would submit that the Manager ought to have conducted the proceedings as contemplated in Rule 75 Chapter XIVA of the Kerala Education Rules. The learned Counsel also relies on the

decisions of this Court reported in **Rani P. John v. Corporate Management of the Teresian Carmelite Sisters of Ernakulam and others [2007 (4) KHC 101]** and **Shiny T. Juster v. Corporate Manager Office of the Corporate Manager and Others [2013 KHC 2775]** to contend that a formal enquiry is contemplated as per Rule 75 of K.E.R and even in cases where the enquiry was conducted violating the principles of natural justice, this Court has held the punishment imposed to be vitiated.

4. Rule 75 of K.E.R prescribes an elaborate procedure by which the delinquent has to be directed to show cause and then on the basis of the written statement filed, the Manager has to arrive at a decision whether a formal enquiry is required or not. A formal enquiry also has to be carried out by the educational authority, in which enquiry, the principles of natural justice definitely had to be complied with. On the basis of the findings in the enquiry report, the Manager could definitely decide upon the punishment to be imposed, but however the same also could be imposed only with prior sanction from the

educational authorities. Evidently, the above procedure under Rule 75 of the K.E.R has not been resorted to by the Manager. The Manager merely called for an explanation and terminated the petitioner's service. Ext.P14 definitely has to be set aside and I do so.

5. The petitioner is said to be above the age of superannuation and there is no question of any restoration of employment. The facts also persuade this Court to decline the grant of any salary for the period, in which he had not worked. The Government cannot be mulcted with such liability and a claim against the Manager cannot be urged in a writ petition. However, the claim raised by the learned Counsel for the petitioner is that he is entitled to pension considering his service from 03.06.1975 and reckoning the L.W.A also as qualifying service. The same would have to be considered by the Government. This Court would not make any observations on the same.

6. In such circumstance, there shall be a direction to

the Government to consider the case of the petitioner and decide on whether the petitioner's service as U.P.S.A from 03.06.1975 could be reckoned for pension. The same shall be considered on the petitioner submitting a representation along with a certified copy of this judgment. The representation shall be considered within a period of three months from the date of submission, after affording an opportunity of hearing. It is made clear that this Court has not made any observations on the reckoning of the qualifying service, which the Government would be entitled to consider in accordance with law.

The writ petition would stand disposed of with the above observations.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/13/10 /2015

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P.A to Judge.