

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

RPNo. 976 of 2014 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 20210/2014 DATED 09-10-2014)

REVIEW PETITIONER/PETITIONER:

**P. MADHAVAN, AGED 49 YEARS,
HEADMASTER, ELAYAVOOR CENTRAL L.P. SCHOOL,
S/O.V.V.KUNHIRAMAN NAMBIAR, RESIDING AT ELAYAVOOR,
P.O MUNDAYAD, KANNUR DISTRICT.**

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENT(S)/RESPONDENTS :

- 1. ASSISTANT EDUCATIONAL OFFICER,
KANNUR NORTH -670 003.**
- 2. DEPUTY DIRECTOR OF EDUCATION,
KANNUR- 670 006**
- 3. DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM -695 001.**
- 4. MANAGER,
VARAM UP SCHOOL & ELAYAVOOR CENTRAL L P SCHOOL,
RESIDING AT MATATHIL HOUSE, CHOWA P.O.,
KANNUR DISTRICT- 670 006**
- 5. STATE OF KERALA,
REP. BY SECRETARY TO THE GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -695 001.**

**R1 TO R3,R5 BY GOVERNMENT PLEADER SMT.C.K.SHERIN
R4 BY ADV.SRI.K.MOHANAKANNAN**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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DAMA SESHADRI NAIDU, J.

R.P. No. 976 of 2014

Dated this the 20th day of January, 2015

ORDER

This Court disposed of W.P. (C) No. 20210/2014, through a judgment dated 09.10.2014, issuing the following relief:

"In the facts and circumstances, Exhibit 11 passed by the fifth additional respondent is set aside; further the consequential order passed in Ext.P11(a) is also set aside, with a direction to the 4th respondent to allow the petitioner to function as the Headmaster. It is, however, made clear that, if any disciplinary proceedings have been initiated and pending, or yet to be initiated, the reinstatement of the petitioner shall be subject to the outcome of those proceedings. The petitioner, under these circumstances, shall be paid salary and allowances from the 16th day of his original suspension, for he is deemed to have been functioning as the Headmaster from the said date."

2. Since a direction is given to the respondent authorities to pay the salary and allowances to the petitioner from the 16th day of his original suspension taking into account his deemed reinstatement, the petitioner has filed the present review petition contending that there is an error apparent in the face of the record in the light of Rule 67 (8) of Chapter XIV A of Kerala Education Rules and also the observation by me in paragraph 30 of the judgment.

3. In fact, in paragraph 30 of the judgment, I have observed that on the expiry of fifteenth day, especially in the face of Exhibit P3, it is deemed, for all practical purposes, that the petitioner stood reinstated.

4. Further, sub rule 8 of Rule 67 mandates that if, on the investigation carried out by the Assistant Educational Officer, he is satisfied that there was no valid ground for the suspension, he may direct the Manager to reinstate a teacher with effect from the date of suspension and thereupon the teacher shall forthwith be reinstated by the Manager. The provision further reads that if the teacher is not actually reinstated, the teacher shall be deemed to have been on duty and that it shall be open to the Department to disburse

the pay and allowances to the teacher *as if he were not suspended* and recover the amount so disbursed from the Manager.

5. Reading sub rule 8 of Rule 67 of Chapter XIV A of KER together with my observations in paragraph 30 of the judgment, it is evident that the direction ought to have been to the effect that the petitioner shall be paid salary from the very date of his suspension rather than from the sixteenth day when the Assistant Educational Officer refused to extend the period of suspension. To that extent I am of the view that there is an error apparent in the face of the record which is required to be corrected *ex debito justitiae*.

6. At any rate, the learned counsel for the fourth respondent Manager has strenuously opposed the contentions of the petitioner. He has submitted that the fourth respondent has already filed W.A.No. 1717/2014 which was admitted by a learned Division Bench of this Court on 21.11.2014. According to the learned counsel for the fourth respondent, it is inadvisable to entertain any review petition when a comprehensive appeal is pending against the very judgment.

7. Appealing as the submission of the learned counsel for the fourth respondent in the first blush, on deeper scrutiny it does not stand to reason. Though the writ appeal is said to have been admitted, the judgment under review has not been suspended. Before there is any adjudication on merits undertaken by the learned Division Bench, if it is brought to the notice of the Judge who has passed the impugned judgment that there is an error apparent in the face of the record, it is incumbent that the necessary corrective steps shall be taken in that regard so that, if advised, the aggrieved one can as well place before the learned Division Bench the result of the review petition through necessary interlocutory proceedings. Thus, in my considered view, pendency of appeal cannot be a hindrance for considering review application.

8. In the facts and circumstances, the operative portion of the judgment in paragraph 40 stands modified to the effect that the petitioner, under these circumstances, shall be paid salary and allowances from the date of his actual suspension, for he is deemed to have been functioning as the Headmaster as if he had never been suspended.

9. The learned counsel for the petitioner has also brought to my notice that there is an inadvertent error in paragraph 40 wherein Exhibit P11(a) was described as the consequential order instead of Exhibit R4(m). The learned counsel for the fourth respondent has also agreed that the consequential order is actually Exhibit R4(m) rather than Exhibit P11(a). Under those circumstances, paragraph 40 stands modified by way of substitution of Exhibit P11(a) in the place of Exhibit R4(m).

Accordingly, this review petition is allowed. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-