

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 766 of 2012 (U)

PETITIONER :

**BALAKRISHNAN M., AGED 47 YEARS,
S/O.T.T.UNNI (LATE), U.P.S.A, S.R.U.P SCHOOL,
KUNISSERY, PALAKKAD.**

BY ADV. SRI.U.BALAGANGADHARAN

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY,
GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM- 695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM -695 001.**
- 3. THE ASSISTANT EDUCATIONAL OFFICER,
ALATHUR, PALAKKAD -678 681.**
- 4. THE MANAGER, SEETHA RAM UPPER PRIMARY SCHOOL,
KUNISSERY, PALAKKAD-678 681.**
- 5. THE HEADMASTER, SEETHA RAM UPPER PRIMARY SCHOOL,
KUNISSERY, PALAKKAD- 678 681.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI
R4 & R5 BY ADVS. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SMT.RASHMI RAVINDRAN
SMT.D.S.THUSHARA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-03-2015 , THE COURT ON 26-05-2015 DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S) EXHIBITS

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| EXT.P1 | PHOTOSTAT COPY OF THE ORDER DT. 27.01.2000 OF 4TH RESPONDENT. |
| EXT.P2 | PHOTOSTAT COPY OF THE ORDER OF THE 3RD RESPONDENT DT. 09.02.2000. |
| EXT.P3 | PHOTOSTAT COPY OF THE GO.RT 3010/2000/GE DT. 25.09.2000 |
| EXT.P3(A) | PHOTOSTAT COPY OF THE PROCEEDINGS DT. 21.10.2000 OF 4TH RESPONDENT. |
| EXT.P4 | PHOTOSTAT COPY OF THE PROCEEDINGS DT. 20.09.2003 OF THE 3RD RESPONDENT. |
| EXT.P5 | PHOTOSTAT COPY OF THE PROCEEDINGS DT. 27.01.2004 OF THE 3RD RESPONDENT. |
| EXT.P6 | PHOTOSTAT COPY OF THE ENDT NO.415/2000/AEO DT. 02-09-2006 THE 3RD RESPONDENT. |
| EXT.P7 | PHOTOSTAT COPY OF G.O(RT) NO.2375/2008 G.EDN. DT. 27.05.2008 |
| EXT.P8 | PHOTOSTAT COPY OF THE ORDER NO.DP/MB/2008 DT. 08.08.2008 ISSUED BY THE 4TH RESPONDENT. |
| EXT.P9 | PHOTOSTAT COPY OF THE JUDGMENT IN WPC.NO. 24283/2007 DT. 08.06.2009. |
| EXT.P10 | PHOTOSTAT COPY OF G.O(RT).NO. 4521/09 G.EDN DT. 30.10.2009 |
| EXT.P11 | PHOTOSTAT COPY OF JUDGMENT IN WPC.NO. 171/2010 DT. 4.8.2011. |
| EXT.P12 | PHOTOSTAT COPY OF GO(RT) 5483/2011/G.EDN DT. 8.12.2011. |

RESPONDENTS' EXHIBITS

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| EXT.R4(A) | TRUE COPY OF THE STATEMENT SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 1ST RESPONDENT. |
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/TRUE COPY/

P.A.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.766 of 2012

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Dated this the 26th day of May, 2015

JUDGMENT

Ext.P12 order by which the Government has reduced the back wages of the petitioner during the period of suspension is under challenge in this writ petition.

2. The petitioner, who was a UPSA working in Sitaram Upper Primary School, Kunissery, Palakkad, was suspended from service w.e.f 27.1.2000 by the 4th respondent manager as per Ext.P1. However, the suspension was not approved by the Assistant Educational Officer (AEO) as evident from Ext.P2. The petitioner alleges that though the 4th respondent attempted to stay the operation of Ext.P2, the attempt failed and the petitioner had to be re-instated 24.10.2000 as directed in Ext.P3.

3. The petitioner points out that as the suspension of the petitioner was never approved by any authority, it is illegal not to

treat the period as on duty on the ground of legal fiction of deemed reinstatement under Section 67(8) of Chapter XIVA of KER and he is entitled to the back wages.

4. In the counter affidavit filed by the 4th respondent, it was contended as follows:

The petitioner was proceeded against by initiating disciplinary proceedings, since there were repeated instances of disobedience, non-co-operation, dereliction of duty, irresponsible attitude, insubordination, indiscipline and rebellious nature. According to him, the proceedings initiated against the petitioner attained finality and ultimately, the Manager ordered that the period from 27.1.2000 to 23.10.2000 would be regularised as eligible leave as per the relevant rules stating that he was under suspension on valid grounds. Initially, the Government has passed an order and it was challenged by the petitioner by way of writ petition and this Court has directed the Government to consider Ext.P9 revision after

hearing both parties within a time frame. Thereafter a hearing was conducted by the Government and the 5th respondent has submitted a detailed statement stating various aspects before the 4th respondent. It was submitted that the petitioner was found guilty and was imposed a penalty of censure as provided under Rule 6(1) of Chapter XIVA of KER as per Government order dated 27.5.2008.

5. Arguments have been heard.

6. Disciplinary proceedings were initiated against the petitioner by the 4th respondent on the allegation of disobedience, non-cooperation, dereliction of duty, irresponsible attitude, insubordination, indiscipline and rebellious nature etc. Though initially he was placed under suspension from 27.1.2000 by the 4th respondent, he had to be reinstated with effect from 24.10.2000. The petitioner alleges that in the enquiry conducted by the DPI, he was not found guilty. However, on the basis of some passing observations, the 4th respondent withheld three increments.

7. The AEO as per Ext.P4 order dated 20.9.2003 declined to sanction the same and the manager was directed to re-examine the issue with reference to the findings of the enquiry report and finalised the action. The manager thereafter submitted a revised proposal to withheld one increment without cumulative effect. That also was rejected by Ext.P5 proceedings. The manager took the matter in revision before the Government. As per Ext.P5 revisional order, the Government imposed a penalty of censure. Thereafter, the 4th respondent manager treated the period of suspension as eligible leave as per Ext.P8.

8. The petitioner fled a revision petition before the Government against Ext.P8 and moved this Court and obtained Ext.P9 judgment to consider the question how the period of suspension have to be treated. The Government as per Ext.P10 upheld the penalty of censure. However, the question of back wages was not decided.

9. The petitioner approached this Court with W.P(C) No.171 of

2010 against Ext.P10 and this Court quashed Ext.P10 directing the Government to consider the question of back wages in the light of Rule 67(8) of Chapter XIVA of KER. The question was reconsidered and ultimately, Ext.P12 was passed refusing back wages on the ground that the punishment of censure was imposed upon the petitioner.

10. Though much was argued against the imposition of punishment of censure, the same cannot be countenanced at this juncture as the imposition of censure as per Ext.P7 has become final and the same has not been challenged by the petitioner previously. When the manager treated the period of suspension as eligible leave as per Ext.P8, he filed a revision before the Government against Ext.P8 and moved this Court and obtained Ext.P9 to consider the question as to how the period of suspension has to be treated.

11. Accordingly, the Government passed Ext.P10 order dated 30.10.2009. This order was challenged in WP(C) No.171 of 2010.

In Ext.P11 judgment also this Court observed that the petitioner's revision was not in respect of Ext.P7 order by which punishment of censure was imposed. His challenge was in respect of Ext.P8 proceedings of the manager treating the period during which he was kept out of duty as eligible leave. As Ext.P10 Government order contained a finding with regard to the challenge against Ext.P8, the Government was directed to reconsider the matter. Therefore, this Court cannot nullify Ext.P7 at this point of time.

12. The petitioner was found guilty and he was imposed with penalty of censure as provided under Rule 6(1) of Chapter XIV KER. As rightly submitted by the learned counsel for the 4th respondent, censure is a formal and public act intended to convey that a person concerned has been guilty of some blame-worthy Act or omissions for which, it has been found necessary to award him a formal punishment for good and sufficient reasons. It is different from a normal warning, admonition or reprimand which are not penalties

recognised by the Kerala Education Rules, 1959. Since the petitioner was found guilty and awarded with a statutorily recognised penalty of censure by the Government itself, he is not entitled to get the period of suspension treated as period on duty. The question of treating the period of suspension as period on duty arises only if it is found that the suspension was wholly unjustifiable.

13. The mere fact that the AEO did not approve the suspension of the petitioner is immaterial as ultimately, the punishment of censure was imposed upon the petitioner which was the culmination of disciplinary proceedings. Therefore, this Court is of the view that the petitioner is not entitled to the reliefs prayed for.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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