

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WA.No. 1411 of 2015 () IN WP(C).20522/2013

AGAINST THE JUDGMENT IN WP(C) 20522/2013 of
HIGH COURT OF KERALA DATED 31.3.2015

APPELLANT(S)/4TH RESPONDENT:

THE MANAGER
KARIMBIL HIGH SCHOOL, KUMBALAPPALLY, PERIYANGANAM P.O.
NEELESWAR, KASARAGOD DISTRICT, PIN 671314.

BY ADVS.SRI.T.R.RAVI
SRI.JAWAHAR JOSE
SRI.V.VINAY MENON
SMT.CISSY MATHEWS
SRI.ARUN AJAY SHANKAR
SRI.P.K.SURESH KUMAR (SR.)

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 TO 3:

1. T.V.USHA
HIGH SCHOOL ASSISTANT, KARIMBIL HIGH SCHOOL
KUMBALAPPALLY, PERIYANGANAM P.O., NEELESWAR
KASARAGOD DISTRICT, PIN 671314.
2. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM, PIN 695001.
3. THE DEPUTY DIRECTOR OF EDUCATION
CIVIL STATION, VIDYANAGAR P.O., KASARAGOD
PIN 671123.
4. THE DISTRICT EDUCATIONAL OFFICER
KANHANGAD, KASARAGOD DISTRICT, PIN 671315.

R1 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
R1 BY ADV. SMT.N.SANTHA
R1 BY ADV. SRI.K.A.BALAN
R1 BY ADV. SRI.PETER JOSE CHRISTO
R1 BY ADV. SRI.S.A.ANAND
BY SRI.VIJU THOMAS, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**ANTONY DOMINIC &
P.V.ASHA, JJ.**

W.A.No.1411 of 2015

Dated this the 8th day of December, 2015.

J U D G M E N T

ASHA, J.

The Manager, Karimbil High School, who is the 4th respondent in the writ petition, has filed this writ appeal being aggrieved by the judgment of the learned Single Judge, by which, the punishment imposed on the Headmistress, of the UP School, as per Ext.P8, was set aside directing her reinstatement as Headmistress along with consequential benefits.

2. Apart from the grounds urged in the Writ Appeal that the inquiry was conducted complying with the principles of natural justice; charges stood proved in the inquiry report and that only a minimum punishment was awarded taking a sympathetic attitude, the learned Counsel for the appellant contended that reversion of petitioner from the post of Headmistress to that of High School Assistant

was not a punishment at all, which required even an inquiry, as she was holding the post only temporarily and reversion ordered on being found unsuitable for the post does not cast any stigma on her.

3. The petitioner was appointed as a Headmistress of the School w.e.f. 1.4.2010. It was alleged that there were various complaints regarding her failure to co-ordinate the teaching and non-teaching staff, parents and pupils, her lack of interest in the developmental activities of the School, irresponsible attitude, etc. Based on such complaints the Manager had issued a show cause notice initially on 24.8.2011, proposing disciplinary action against her. In reply to this she undertook to be more alert and responsible. As soon as that file was closed, complaints were again received about her irresponsible attitude, from the PTA. It is stated that in these circumstances, the Manager placed her under suspension, as per Ext.P1 order on 13.2.2012. By order dated 27.2.2012, the Deputy Director of Education

granted permission to retain her under suspension, beyond 15 days. Ext P2 memo of charge was issued to her, seeking explanation on 7 charges and reminding the petitioner that being a probationer, she was liable to be reverted as UPSA. Petitioner submitted a detailed explanation Ext P3, denying the allegations against her. On 4.3.2012, the Manager revoked her suspension.

4. In Ext.R4(d), charge memo, the charges alleged against the petitioner were to the effect that there was no discipline maintained in the School on account of which the President of P.T.A., the staff, students and public were expressing their concern. It was further alleged that she was on probation in the post of Headmistress, hence special care has been taken to get her probation declared satisfactorily. Gross negligence was attributed on her which led to complaints from parents regarding the late-coming and partiality shown to certain teachers. In answer to the memo of charges, the petitioner submitted Ext.R4(e)

explanation. Thereafter the District Educational Officer conducted an enquiry. He submitted Ext.P5 enquiry report. It was found that the Headmistress was not getting support from the teaching and non teaching staff which affected the smooth functioning of the School. The DEO sought for the assurance of the Headmistress to see that the School was functioning with the co-ordination of all concerned. The inquiry report concluded observing that the Headmistress was not able to get co-operation of the teaching as well as non-teaching staff in the office and therefore the Manager has to convene a meeting of the teachers as well as the Executive Committee of the PTA and non teaching staff of the School, and the complaint as against the Headmistress shall be finalised. The decision taken thereon was directed to be reported to the DEO.

5. However, the Manager issued Ext.P6 show cause notice proposing a punishment of reversion on the ground that the DEO had opined that she failed to get co-operation

of the staff of the School and she expressed her helplessness for the same. Though the petitioner submitted Ext.P7 explanation, by Ext.P8 order the Deputy Director of Education declined permission to impose punishment of reversion, pointing out that the misconduct alleged was not so grave, so as to impose punishment provided under Chapter XIV-A Rule 71 of the Kerala Educational Rules. Thereupon, the Manager approached the Government and the Government by Ext.P10, accorded sanction for imposing the punishment. By Ext P11 she was reverted as HSA. It is at this stage, that the petitioner filed the Writ Petition challenging Ext.P10 as well as Ext.P11 orders.

6. The learned Single Judge found that Ext.P5 memo of charge did not indicate any proven charges against the petitioner and therefore the punishment of reversion could not have been imposed, as pointed out by the DDE. Moreover it was found that the procedure prescribed under Rule 75(8) of chapter XIVA of KER was not followed. There

was no report incorporating the findings on each of the charges along with reasons. In view of the procedural irregularities as well as the nature of allegations levelled against the petitioner when the charges were not proved, the action against her and the punishment imposed on her were found unsustainable. Accordingly, the impugned orders were set aside and the Manager was directed to reinstate the petitioner as Headmistress.

7. When the writ appeal came up for hearing, the learned counsel appearing for the appellant relied on a judgment of the Apex Court in **Union of India and Others Vs. R.S.Dhaba (1969(3)Supreme Court Cases 603)** pointing out that as far as the petitioner in this case is concerned, it was not necessary even to conduct an enquiry against her as she was holding the post of Headmistress only temporarily and no stigma was caused to her. But we find that the petitioner was promoted as Headmistress and reversion of HSA was awarded to her as a punishment, after

placing the petitioner under suspension and subjecting her to an inquiry. Therefore, we are unable to accept the submissions of the learned counsel appearing for the appellant. The learned counsel also relied upon a decision reported in **Union of India and others Vs. P.S.Bhatt (1981(2)SCC 761)** wherein it was held that reversion of a probationer may not attract violation of Article 311(2) of the Constitution of India. The facts and circumstances involved in that case were entirely different than the present case. In this case the issue is with respect to punishment awarded to a Headmistress in an aided School, which is governed by the provisions contained in Chapter XIVA of Kerala Education Rules (KER), 1958.

8. The learned Single Judge has rightly found violation of procedure prescribed under Rule 75(8) of Chapter XIVA KER in conducting the inquiry and awarding punishment. In the above circumstances, we are of the view that the learned Single Judge was right in quashing the impugned

orders and we do not find any reason to interfere with the said judgment.

This writ appeal fails and is dismissed accordingly.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

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P.A. to Judge