

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:

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

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937
WA.No. 1206 of 2014 () IN WP(C).14970/2013

AGAINST THE JUDGMENT IN WP(C) 14970/2013 of HIGH COURT OF KERALA
DATED 19-03-2014

APPELLANTS/PETITIONERS:

1. DR. ASHA K. SADASIVAN,
HOUSE NO.3, PRIYADARSHINI NAGAR,
THODUPUZHA EAST P.O.,
IDUKKI DISTRICT.
2. DR.ASWATHY.T,
KAITHAKAT HOUSE, PANAYAPILLY P.O.,
ERNAKULAM, KOCHI-682 002
3. DR.KAVYA.P.,
SREEPADMAM, SREENIVASAPURAM P.O.,
VARKALA, THIRUVANANTHAPURAM,
PIN 695 145
4. DR.POORNIMA.S,
SOORYA, NEAR VALIYA VALAPPU KAVU,
CIVIL STATION P.O., KANNUR 670002
5. DR.PRIYANKA CHANDRAN,
PURAKKANDIYIL HOUSE, PUNNOL P.O.,
THALASSERY, KANNUR 670 102

BY ADV. SRI.K.S.BHARATHAN

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
CO-OPERATIVE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001
2. ACADEMY OF MEDICAL SCIENCES,
PARIYARAM, KANNUR, PIN-670503,
REPRESENTED BY ITS MANAGING DIRECTOR.
3. PRINCIPAL, ACADEMY OF MEDICAL SCIENCES,
PARIYARAM, KANNUR, PIN 670503
4. DR.ATHULYA SADEESH, JAYASREE,
RAJIV NAGAR, THIRUTHIYAD,
PUTHIYARA, KOZHIKODE, PIN 673004

SRI.SHYSON P.MANGUZHA, GOVERNMENT PLEADER
R2& R3 BY ADV. SRI.P.V.SURENDRANATH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

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

W.A.No.1206 of 2014

Dated this the 7th day of October, 2015

JUDGMENT

Antony Dominic, J.

Some of the unsuccessful petitioners in W.P.(C) No.14970 of 2013 are the appellants. They filed the writ petition seeking to challenge Exts.P10 to P14 and to direct the 2nd respondent to refund the amounts claimed in Exts.P5 to P9. Taking note of the fact that the controversy involved in the disputed factual questions, the learned single Judge declined jurisdiction and left open the appellants to pursue their remedies before an appropriate forum. It is this judgment which is under challenge.

2. We heard the learned counsel for the appellants, the learned Government Pleader for the first respondent and the learned standing counsel for respondents 2 and 3.

3. The appellants were students in the Medical College of respondents 2 and 3 during the period 2003-2004 to 2008-2009. Students including the appellants filed W.P.(C) No.18732 of 2005 complaining of excess collection of fee which resulted in Ext.P1 judgment. That writ petition was disposed of with the following directions:

"In the result, respondents 2 and 3 are directed to either refund the amount collected in excess of Ra.2,16,375/- for the year 2003-2004 and in excess of Rs. 1,13,000/- for the year 2004-2005 onwards to the petitioners or adjust the same against the future tuition fee payable by them. The writ petition Is allowed as above."

4. Challenging the judgment, respondents 2 and 3 herein filed W.A.No.944 of 2007 which was disposed of by Ext.P2 judgment which reads thus:

"Since the counsel represented that the matter is settled out of court, we allow the writ appeal by vacating the impugned judgment of the learned single Judge and by closing the writ petition."

5. According to the appellants the terms of the settlement between the students and the management was that the excess amount would be refunded, as and when the same is demanded, after completion of their course. Contending that in terms of the settlement Rs.5,37,000/- (Rupees Five lakh thirty seven thousand only) was refunded on 7.11.2012 to the fourth respondent, the appellants also demanded refund of the amounts. That claim was ordered to be considered as per Exts.P3 and P4 judgments of this Court. In

compliance with the direction contained in the judgments, Exts.P10 to P14 orders were passed by respondents 2 and 3. In these orders the claim for refund was declined stating thus:

"As per the settlement the students including you adjusted the excess amount towards tuition fee and balance available for the welfare of the institution as well as contributed Rs.1 lakh, as per receipt No. 1354 dated 24.12.2009 in the office. You have completed the course smoothly without any dispute in this regard and now after 3 years of completion of the course you have raised the claim on the ground that the Academy had refunded the excess fee to one Dr.Athulya Satheesh, the petitioner in W.P.(c) No.2814/2012. It is to be stated that you cannot sustain the claim based on the aforesaid remittance/refund to Dr.Athulya Satheesh, which was made by way of omission in noting the judgment of the Division Bench in WA 944/2007 and consequential erroneous assumption that judgment of the learned single judge was in force. It was only a mistake. We are taking action to recover the amount mistakenly/wrongly refunded to Dr. Athulya Satheesh".

6. Similar is the contents of Exts.P11 to P14 also. It was challenging these orders the writ petition was filed and which came to

be rejected as stated above. While the counsel for the appellants reiterated that the settlement between the parties which resulted in Ext.P2 judgment was to refund the excess amount collected by respondents 2 and 3, according to respondents 2 and 3 the terms of the settlement are as stated in Exts.P10 to P14. Though it is true that the respondents were unable to produce the settlement in compliance with the order dated 21.8.2014 passed by this Court, existence of settlement is undisputed and the dispute is only regarding the terms thereof. Therefore as rightly found by the learned single Judge disputed question of facts are involved in this controversy and resolution of such a dispute is not possible in a proceedings under Article 226 of the Constitution of India.

7. The appellants contended that since refund has already been made to the fourth respondent and the appellants being similarly situated, respondents cannot contend otherwise and that they are also entitled to be refunded the amount due. We are unable to accept this contention for the reason that when payment to the fourth respondent is stated to be on account of a mistake, the appellants cannot base a claim on an alleged mistake nor can they claim parity on the basis of such a mistake.

8. It may also be true that respondents 2 and 3 would not have taken action for recovery of the amount allegedly erroneously paid to the fourth respondent. Such inaction again cannot confer any right on the appellants to sustain their claim for refund.

9. We fully agree with the view of the learned single Judge that since controversy involved disputed questions of facts which are incapable of resolution in a proceedings under Article 226 of the Constitution of India, the remedy available to the appellants is not before High Court but elsewhere. The writ appeal fails and accordingly dismissed.

It is made clear that in case the appellants approach the civil court on the basis of the claim in question, they will be entitled to take advantage of section 14 of the Limitation Act for the period during which the writ petition and writ appeal were pending before this Court.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

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