

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

W.P.(C).No.3269 of 2009 (L)

PETITIONER(S):-

1. G.SIVARAJAN,
SECRETARY, WADAKKANCHERRY GRAMA PANCHAYATH,
THRISSUR DISTRICT,
RESIDING AT T.C.XI/1001, NNRA 146, NANTHENCODE,
KOWDIAR PO., THIRUVANANTHAPURAM.
2. B.K.KRISHNA KUMAR,
U.D.CLERK, PARASSALA GRAMA PANCHAYATH, PARASSALA,
RESIDING AT "SANTHWANAM", RAILWAY STATION ROAD, INCHIVILAM
PARASSALA PO, THIRUVANANTHAPURAM.
3. HARIKUMAR.R.S.,
U.D.CLERK, OFFICE OF THE LABOUR COMMISSIONER,
THIRUVANANTHAPURAM,
RESIDING AT HARIGEETHAM, NEAR KARAVARAM HIGH SCHOOL,
KALLAMBALAM P.O., THIRUVANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR.

RESPONDENT(S):-

1. KERALA AGRL.WORKERS WELFARE FUND BOARD,
REPRESENTED BY ITS CHAIRMAN, POOTHOL.PO., THRISSUR.
2. CHIEF EXECUTIVE,
KERALA AGRFICULTURAL WORKERS WELFARE FUND BOARD,
POOTHOL PO., THRISSUR.
3. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

R1 & R2 BY STANDING COUNSEL SRI.K.M.SATHYANATHA MENON
R3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

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| EXT.P1 | TRUE COPY OF THE NOTICE NO.D3/4908/07 DATED 22.2.08
ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER. |
| EXT.P2 | TRUE COPY OF THE NOTICE NO.D3/4908/07 DATED 22.2.08
ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER. |
| EXT.P3 | TRUE COPY OF THE NOTICE NO.D3/4908/07 DATED 22.2.08
ISSUED BY THE 2ND RESPONDENT TO THE 3RD PETITIONER. |
| EXT.P4 | TRUE COPY OF THE LETTER NO.A8/278/2007 DATED 25.3.08
FROM THE 1ST PETITIONER TO THE 2ND REPENDENT. |
| EXT.P5 | TRUE COPY OF THE REPLY FILED BY THE 2ND PETITIONER
DATED 26.03.2008 TO THE 2ND RESPONDENT. |
| EXT.P6 | TRUE COPY OF THE REPLY FILED BY THE 3RD PETITIONER
DATED 28.03.2008. |
| EXT.P7 | TRUE COPY OF THE ORDER NO.D3/4908/07(2) DATED
26.5.08 ISSUED TO 1ST PETITIONER. |
| EXT.P8 | TRUE COPY OF THE ORDER NO.D3/4908/07(3) DATED
26.5.08 ISSUED TO 2ND PETITIONER. |
| EXT.P9 | TRUE COPY OF THE ORDER NO.D3/4908/07(5) DATED
26.5.08 ISSUED TO 3RD PETITIONER. |
| EXT.P10 | TRUE COPY OF THE APPEAL FILED BY THE 1ST PETITIONER
DATED 4.8.08 BEFORE THE 1ST RESPONDENT. |
| EXT.P11 | TRUE COPY OF THE APPEAL FILED BY THE 2ND PETITIONER
DATED 12.8.08 BEFORE THE 1ST RESPONDENT. |
| EXT.P12 | TRUE COPY OF THE APPEAL FILED BY THE 3RD PETITIONER
BEFORE THE 1ST RESPONDENT. |
| EXT.P13 | TRUE COPY OF THE ORDER NO.D3/4908/07(2) DATED 29.11.08
TO THE 1ST PETITIONER. |
| EXT.P14 | TRUE COPY OF THE ORDER NO.D3/4908/07(3) DATED 29.11.08
TO THE 2ND PETITIONER. |
| EXT.P15 | TRUE COPY OF THE ORDER NO.D3/4908/07(5) DATED 29.11.08
TO THE 3RD PETITIONER. |

RESPONDENT'S EXHIBITS:-

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- EXT.R2(a) TRUE COPY OF THE INTERNAL AUDIT REPORT OF THE
CHIEF EXECUTIVE.
- EXT.R2(b) TRUE COPY OF THE REPORT SUBMITTED BY THE
ACCOUNTS OFFICER.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.3269 of 2009-L

Dated this the 15th day of September, 2015

JUDGMENT

The petitioners are aggrieved with the order passed at Exhibits P7, P8 and P9 and the fact that an appeal filed has not resulted in an order being communicated.

2. The admitted facts are that, the petitioners 1 to 3, along with another person, was on deputation to the 1st respondent. The 1st petitioner was the Welfare Fund Officer, the 2nd petitioner was the Lower Division Clerk and then promoted as Upper Division Clerk; and the 3rd petitioner was the Lower Division Typist in the Thiruvananthapuram Divisional Office of the 1st respondent-Board. The office was manned by the 3 petitioners and one another person, named Lekha. A section of the Government servants were on strike from 06.02.2002 to 08.03.2002.

3. On a subsequent inspection, it was found that between 06.02.2002 and 08.03.2002 though all the employees in the particular office in which the petitioners worked, had signed the Attendance Register, absolutely no transaction during the

said period had taken place in the said office. The duties of the office included collection of contributions, disbursement of reliefs and enrolment of members in the Welfare Fund. Proceedings were taken and notice was issued, seeking for explanation as to why the salary for the said period shall not be recovered from them. The petitioners submitted explanations, which are produced as Exhibits P4 to P6, in which it was contended that they had been arranging the files during the said period. The learned counsel for the petitioner also would contend that since the public was aware of the strike called, none had come to the office for any transaction.

4. Appeals were filed against the orders passed at Exhibits P7 to P9, which are said to have been considered by the Executive Committee of the Board and rejected by orders dated 30.10.2008. The Board had, pursuant to the said orders, issued Exhibits P13 to P15 seeking recovery of the amounts indicated therein, which was stayed by this Court at the time of admission, vide order dated 30.01.2009.

5. The contention of the petitioners is that, there is no order in the appeals communicated to the petitioners. It is to be

noticed that though the Board and the Government objects to the writ petition on the ground that the appellate order has not been challenged, none has produced the appellate order as such. In any event, in the present scenario of the Right to Information Act, it was incumbent upon the petitioners to have enquired about the appellate order and produced it. Further, at this stage if this Court directs the appeals to be considered afresh, that would be a useless formality. This Court, under Article 226 of the Constitution, could consider the objections of the petitioner.

6. The only objection of the petitioners is that, they were arranging the files in the office of the 1st respondent-Board. The petitioners does not even point to one entry made in the books of the office which could definitely substantiate the contention of the petitioners. Considering the fact that the petitioners were maintaining an office of the Welfare Fund Board, it cannot be believed that none came for any transaction before the said office especially when admittedly only a section of the Government servants were on strike. Further, even if no transactions with the public was occasioned during the period, there would definitely be other work undertaken by the

petitioners, which the petitioners does not plead at all in the objections. The only plea taken is that, they were arranging the files, which cannot be countenanced.

In the light of the above finding, the writ petition would stand dismissed. The impugned orders are upheld. The petitioners would be granted three months time to refund the amounts demanded as per the impugned orders, without interest. Parties are directed to suffer their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]