

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C) .No. 3751 of 2010 (T)

PETITIONER(S) :

DR.T.A.GEORGE,
AGED 73 YEARS, MANAGER, ST.MARY'S HIGH SCHOOL,
PATHANAMTHITTA-689 645.

BY ADV. SRI.V.PHILIP MATHEW.

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
GENERAL EDUCATION (A) DEPARTMENT,
KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DEPUTY DIRECTOR OF EDUCATION,
PATHANAMTHITTA, THIRUVALLA.
3. DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA.
4. VALSAMMA SKARIA,
(RETIRED HSA (SOCIAL SCIENCE), ST.MARY'S HIGH SCHOOL,
PATHANAMTHITTA), VALIAVEETIL, THAZHAKKARA P.O.,
MAVELIKKARA-2.

R4 BY ADV. SRI.MVS.NAMBOOTHIRY

R3 BY GOVERNMENT PLEADER SMT.LILLY LESLIE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-09-2015, ALONG WITH WPC. 18087/2012, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1. TRUE COPY OF THE MEMO OF CHARGES NO.MOSM/178/07 DATED 10/12/2007
ISSUED TO THE 4TH RESPONDENT BY THE PETITIONER.
- EXT.P2. TRUE COPY OF THE JUDGMENT DATED 24/12/2007 IN WPC NO.38198/2007.
- EXT.P3 TRUE COPY OF THE COMMON JUDGMENT DATED 5/2/2008 OF THIS
HONOURABLE COURT.
- EXT.P4 TRUE COPY OF THE COMMUNICATION NO.B6/14674/07 DATED 28/7/2008
ISSUED BY THE 3RD RESPONDENT.
- EXT.P5 TRUE COPY OF THE APPOINTMENT ORDER DATED 31/5/2008 APPOINTING THE
4TH RESPONDENT AS TEACHER IN CHARGE.
- EXT.P6 TRUE COPY OF THE ORDER NO.K.DIS B4/261/08 DATED 17/4/2009 ISSUED
BY THE 2ND RESPONDENT.
- EXT.P7 TRUE COPY OF THE OBJECTION DATED 31/7/2008.
- EXT.P8. TRUE COPY OF THE G.O.(RT) NO.4948/2009/G.EDN DATED 25/11/2009
ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

- EXT.R4(A). TRUE COPY OF THE JUDGMENT DATED 16/01/2008 IN WP(C)NO.35759/2007
OF THIS HONOURABLE COURT.

/TRUE COPY/

P.A.TO JUDGE

RVS.

ANU SIVARAMAN, J.

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**W.P.(C).Nos.3751 of 2010 &
18087 of 2012**

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Dated this the 14th day of September, 2015

JUDGMENT

W.P.(C).No.3751 of 2010 has been filed by the manager of an aided school with the following prayers:-

“i) to issue a writ of certiorari or other appropriate writ, order or direction quashing Ext.P8;

ii) to declare that punishment imposed on the fourth respondent is legal and not liable to be interfered with.”

2. It is the case of the petitioner that the 4th respondent, who was a teacher in the petitioner's school, had been guilty of mis-conduct and Ext.P1 memo of charges were issued to her. She was also placed under suspension. Pursuant to Ext.P2 judgment of this Court, the 4th respondent was reinstated in service and by Ext.P3 judgment there is a direction to the D.E.O to complete the enquiry against the 4th respondent.

3. By Ext.P4 communication dated 28.07.2008, the D.E.O informed the petitioner that the delinquent was not co-operating with the enquiry conducted by the educational authorities and

held that the manager is free to proceed with the disciplinary proceedings initiated by him against the teacher. It is submitted that though the 4th respondent was by order dated 31.05.2008 offered an appointment as teacher in charge of the school w.e.f. 02.06.2008 the same was not accepted by her. Thereafter, the manager had completed the disciplinary proceedings by imposing the punishment of barring of promotion by order dated 17.11.2008. Though this was taken up by the petitioner before the D.E.O, the same was not interfered with. Thereafter, the 4th respondent filed a revision petition under Rule 92 Chapter XIVA of the KER before the Government. Ext.P7 is the objection filed by the petitioner to the said revision wherein it is stated that a full copy of the revision petition was not made available to the manager. Ext.P8 was issued by the Government on the 4th respondent's revision, after hearing the petitioner also. The Government found that the 4th respondent had not co-operated with the disciplinary proceedings and this had resulted in the situation at hand. However, in view of the fact that the petitioner had retired from service on 31.03.2009 and her case

deserves a sympathetic consideration, the punishment of barring of promotion for six months imposed by the manager by order dated 17.11.2008 was set aside. The suspension period of the petitioner from 18.12.2007 to 18.01.2008 was directed to be regularised as eligible leave. The DDE, Pathanamthitta was directed to release the pensionary claims and report. This order is challenged by in the writ petition.

4. In W.P.(C) No.18087 of 2012, the 4th respondent in W.P. (C).No.3751 of 2010 is the petitioner. She seeks promotion to the post of head mistress w.e.f. 01.06.2007 in implementation of Ext.P9 order and all consequential benefits. It is the case of the petitioner that she was eligible for appointment as headmistress in a retirement vacancy which arose on 01.06.2007 but was overlooked for promotion as such in favour of one Sally P Mathew who was appointed by the manager, the 4th respondent herein. She had submitted Ext.P1 objection to the manager pointing out that the appointment of Sally P Mathew was not justified. By Ext.P8 judgment, the dispute regarding seniority was directed to be considered by the Government in a revision under Rule 92,

Chapter XIVA KER. Pursuant thereto, all parties including the manager and the teacher who was appointed as headmistress in preference to the petitioner were heard and an order was passed directing that the petitioner be promoted as headmistress w.e.f. 01.06.2007 subject to the finalisation of the disciplinary proceedings initiated against her by the DEO, Pathanamthitta. Since the disciplinary proceedings were finalised by Ext.P13 order which was passed in revision, the petitioner claims that she is entitled to promotion and all attendant benefits.

5. Heard Sri.V.Philip Mathew, learned counsel for the petitioner in W.P.(C).No.3751 of 2010 and Sri.M.V.S.Namboodiri, learned Senior Counsel appearing for the petitioner in W.P.(C). No.18087 of 2012 as well as the learned Government Pleader. It is seen from Ext.P8 order produced in W.P.(C). No.3751 of 2010 that the same was issued after hearing the parties including the teacher and the manager. It is the case of the manager that the full copy of the revision petition was not made available to him before hearing him and that he was seriously prejudiced by the disposal of the revision without providing him a full copy. It is

also argued that the Government has found that the teacher had refused to co-operate with the enquiry and she herself was therefore responsible for the orders passed against her. It is also submitted that though the initial proposal of the manager was to bar promotion for the period of ten months, it was later reduced to barring of promotion for six months.

6. In any view of the matter, since the Government has considered the matter in detail, and has decided to take a lenient view and set side the punishment imposed, I do not deem it fit to interfere with the orders passed in revision at this stage after the retirement of the petitioner on the ground that a full copy of the revision petition had not been made available to the petitioner. Even otherwise, I find that there is no finding of guilt entered against the 4th respondent in disciplinary proceedings by the D.E.O which warranted the imposition of the penalty. After recording that the teacher had not co-operated with the enquiry, the D.E.O did not record a finding on any of the charges framed.

7. In the above view of the matter, Ext.P8 order of the Government challenged in W.P.(C) No.3751 of 2010 is upheld. As

a consequence, since the disciplinary proceedings now stand finalised by Ext.P8 proceedings, Ext.P9 produced along with W.P.(C).No.18087 of 2012 is also to be implemented. However, it is submitted by the learned counsel appearing for the manager that the issue of seniority which was decided by this Court in W.P.(C) No.4145 of 2009 is pending in appeal before the Division Bench. However, no orders of stay have been passed. The implementation of Ext.P9, in the above circumstances, will be subject to the result of the final orders to be issued in the writ appeal which is said to be filed from the judgment dated 18.02.2013 in W.P.(C) No.4145 of 2009.

Therefore, W.P.(C) No.18087 of 2012 is disposed of directing that Ext.P9 shall be implemented subject to final orders to be passed in the writ appeal.

Anu Sivaraman, Judge

sj