

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 5311 of 2008 (G)

PETITIONER(S):

**MUHAMMD ALI, ASSISTANT TEACHER,
MADAKKALLUR AIDED UPPER PRIMARY SCHOOL, KOZHIKODE.**

BY ADV. SRI.P.I.DAVIS

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, GENERAL EDUCATION DEPARTMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHI, THIRUVANANTHAPURAM.**
- 3. ASSISTANT EDUCATIONAL OFFICER,QUILANDY.**
- 4. THE MANAGER, MADAKKALLUR AIDED UPPER
PRIMARY SCHOOL, KOZHIKODE.**

**R1-R3 BY GOVERNMENT PLEADER SRI.P.M.SANEER
R4 BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 5311 of 2008 (G)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: A TRUE COPY OF THE JUDGMENT DTD.23.7.2004 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, QUILANDY IN CC.NO.512 OF 2001.

EXT.P2: A TRUE COPY OF THE ORDER DTD.20.11.2004 OF THE 4TH RESPONDENT-MANAGER.

EXT.P3: A TRUE COPY OF THE ORDER DTD.24.5.2005 OF THE 3RD RESPONDENT.

EXT.P4: A TRUE COPY OF THE ORDER DTD.30.9.2006 OF THE 2ND RESPONDENT.

EXT.P5: A TRUE COPY OF THE REVISION PETITION FILED BY THE 1ST RESPONDENT.

EXT.P6: A TRUE COPY OF THE G.O.NO.G.O.(RT)NO.146/08/G.EDN DTD.7.1.2008 ISSUED BY THE 1ST RESPONDENT.

EXT.P7: TRUE COPY OF STATEMENT FOR REFIXATION OF PAY IN THE HIGHER SCALE WITH PARTICULARS FILLED UP AND SUBMITTED TO HEAD MASTER OF FOURTH RESPONDENT'S SCHOOL.

EXT.P8: TRUE COPY OF ORDER DTD.20.2.2008 OF THE HEADMASTER.

EXT.P9: TRUE COPY OF LETTER DTD.22.3.2008 OF THIRD RESPONDENT TO THE HEADMASTER.

IA.NO.5445/2008 IN WP(C) 5311/2008

EXT.P7(a): PHOTOCOPY OF THE STATEMENT PREPARED AND SUBMITTED TO THE 3RD RESPONDENT IN RESPECT OF THE REFIXATION OF PAY IN THE HIGHER GRADE.

EXT.P7(b): PHOTOCOPY OF THE STATEMENT PREPARED AND SUBMITTED TO THE 3RD RESPONDENT.

EXT.P8: PHOTOCOPY OF THE ORDER NO.C.1136/2008/L.DIS DTD.22.3.2008.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.M.SHAFFIQUE, J

*** * * * ***

W.P.C.No.5311 of 2008

Dated this the 10th day of December 2015

J U D G M E N T

Petitioner challenges Exts.P2, P3, P4 and P6 orders by which his request for treating the suspension period as 'on duty' for all purposes and for consequential benefits has been rejected by the Manager as well as the educational authorities including the Government.

2. The short facts involved in the writ petition would disclose that the petitioner was suspended from service from 12/01/2001 to 31/10/2004. Suspension was based on a crime being registered against him as Crime No.106/2001. Case was charge sheeted. However, he was acquitted from the charges as per judgment dated 23/07/2004. Petitioner sought for regularisation of his service by treating the suspension period as duty for all purposes along with consequential benefits. However, the Manager, by order dated 20/11/2004 (Ext.P2) treated the period of suspension as leave without allowance. Petitioner preferred a representation before the 3rd respondent, who, by

Ext.P3 order dated 24/02/2005, upheld the decision of the Manager. Petitioner preferred an appeal before the 2nd respondent which was rejected, against which revision was filed before the Government. The Government formed an opinion that suspension period cannot be treated as wholly unjustifiable and it cannot be treated as duty for all purposes in terms of Rule 56B(7) of Part I K.S.R. The orders under challenge were modified to the effect that the suspension period would be treated as duty for all purposes except pay and allowances limiting the pay and allowances to subsistence allowance already paid. Ext.P6 is the said order. Petitioner challenges Ext.P6 order inter alia contending that he is entitled for all monetary benefits relating to the aforesaid period and to that extent Ext.P6 order is illegal and unsustainable.

3. No counter affidavit has been filed on behalf of the respondents.

4. Heard Learned counsel for the petitioner, the learned Government Pleader and the learned counsel appearing for the 4th respondent.

5. Having regard to the above factual circumstances, it is clear that the order of suspension and re-instatement was based on the crime being registered against the petitioner. It is clear that the suspension was in accordance with law and merely for the reason that petitioner has been acquitted from the charges, it does not mean that he is entitled for all consequential and monetary benefits. It is apparent that the petitioner had not worked during the relevant time and he was paid the subsistence allowance.

6. By Ext.P6 order, the Government had formed an opinion that the petitioner is not entitled for the pay and allowances during the period while he was under suspension since suspension period cannot be treated as wholly unjustifiable and it cannot be treated as duty for all purposes in terms of Rule 56B(7) of Part I K.S.R.

7. Learned counsel appearing for the Manager also placed reliance on the judgment of the Supreme Court in **Greater Hyderabad Municipal Corporation [(2011) 8 SCC 155]** wherein the Supreme Court had considered F.R.54-B(3) of the Andhra Pradesh Fundamental Rules and it is held at paragraphs 9 and 10

as under:

“9. The rationale, on which sub-rule (3) of FR 54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent authority is of the opinion that the suspension of the employee was wholly unjustified. This rationale has been explained in clear and lucid language by a three-Judge Bench of this Court in Union of India v. K.V. Jankiraman. At SCC p. 121 in para 26 P.B. Sawant, J., writing the judgment for the Court in the aforesaid case further observed:

“26. ... However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, etc. In such circumstances, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the

intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests."

10. *It will be clear from what this Court has held in Union of India v. K.V. Jankiraman that even in cases where acquittal in the criminal proceedings is on account of non-availability of evidence, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period, and if he does, the extent to which he deserves it. In the aforesaid case, this Court has also held that this power is vested in the competent authority with a view to ensure that discipline in administration is not undermined and public interest is not jeopardised and it is not possible to lay down an inflexible rule that in every case where an employee is exonerated in the*

disciplinary/criminal proceedings he should be entitled to all salary during the period of suspension and the decision has to be taken by the competent authority on the facts and circumstances of each case."

8. The short question to be considered is whether the suspension of the petitioner was justified or not. It is the admitted position that he was suspended from service since he was involved in a crime. Though the case ultimately ended in acquittal without any blemish, still according to the Government, the suspension was justified.

9. Under such circumstances, I do not think that the petitioner is entitled for any relief, as prayed for. However, it is made clear that any increments which fell due during the relevant time shall be taken into consideration for all purposes.

The writ petition is dismissed with the above observation.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr

//True Copy//

PA to Judge