

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 4360 of 2013 (T)

PETITIONER(S):

1. M.K.MOHANKUMAR,
HIGH SCHOOL ASSISTANT
CHAMAKAD VELAPPAN MUTHUVELAN HIGH SCHOOL, VANDAZHI
PALAKKAD DISTRICT.

2. D.SANTHOSH KUMAR
UPPER PRIMARY SCHOOL ASSISTANT
CHAMAKAD VELAPPAN MUTHUVELAN HIGH SCHOOL, VANDAZHI
PALAKKAD DISTRICT.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-678 001.

3. THE DEPUTY DIRECTOR OF EDUCATION
PALAKKAD-678 001.

4. THE DISTRICT EDUCATION OFFICER
PALAKKAD-678 001.

5. MANAGER
CHAMAKAD VELAPPAN MUTHUVELAN HIGH SCHOOL, VANDAZHI
PALAKKAD-678 706.

R5 BY ADV. SRI.JACOB SEBASTIAN
R BY GOVERNMENT PLEADER SRI RAFAEEK.V.K

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1: TRUE COPY OF THE SUSPENSION ORDER DT.09.07.2007 ISSUED BY THE MANAGER.

EXT.P2: TRUE COPY OF THE ORDER ISSUED BY THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD DATED 20.07.2007.

EXT.P3: TRUE COPY OF SHOW CAUSE NOTICE DATED 29.01.2008 ISSUED BY THE MANAGER.

EXT.P4: TRUE COPY OF LETTER ISSUED BY THE 2ND PETITIONER TO THE MANAGER.

EXT.P5: TRUE COPY OF LETTER DT.29.04.2008 ISSUED BY THE MANAGER TO THE DISTRICT EDUCATIONAL OFFICER.

EXT.P6: TRUE COPY OF NOTICE OF ENQUIRY DATED 29.06.2009.

EXT.P7: TRUE COPY OF ENQURY NOTICE DT.23.07.2009.

EXT.P8: TRUE COPY OF NOTICE DT.6.4.2010 ISSUED BY THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD.

EXT.P9: TRUE COPY OF NOTICE DATED 01.06.2010.

EXT.P10: TRUE COPY OF ORDER OF THE MANAGER DT.7.2.2011.

EXT.P11: TRUE COPY OF ORDER PLACING THE 1ST PETITIONER ON SUSPENSION ON 15.07.2002.

EXT.P12: TRUE COPY OF LETTER DATED 22.5.2003 ISSUED BY THE DISTRICT EDUCATIONAL OFFICER.

EXT.P13: TRUE COPY OF REPRESENTATION DT.18.5.2006 FILED BY THE 1ST PETITIONER WITH THE DISTRICT EDUCATIONAL OFFICER.

EXT.P14: TRUE COPY OF JUDGMENT DT.9.1.2012 IN WPC.NO.8261/2011.

EXT.P15: TRUE COPY OF THE ORDER ISSUED BY THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD DT.10.04.2012.

EXT.P16: TRUE COPY OF PETITION FILED BY THE 2ND PETITIONER WITH THE GOVERNMENT.

EXT.P17: TRUE COPY OF ARGUMENT NOTE SUBMITTED BY THE PETITIONER IN THE HEARING HELD BY THE 1ST RESPONDENT ON 19.10.2012.

EXT.P18: TRUE COPY OF THE ADDITIONAL ARGUMENT WITH THE GOVERNMENT CIRCULAR.

EXT.P19: TRUE COPY OF THE GOVERNMENT ORDER, G.O(Rt) NO.6220/12 DT.31.12.2012.

EXT.P20: TRUE COPY OF THE G.O.NO.65/94/Fin DATED 26.11.1994.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.4360 of 2013-T

Dated this the 10th day of August, 2015

JUDGMENT

The petitioners-two aided School teachers- were placed under suspension as per Ext.P1 order of the Manager on 09.07.2007. They were reinstated as per Ext.P10 order dated 7.2.2011. Even though memo of charges Ext.P3 was issued on 29.01.2008 and an enquiry officer - District Educational Officer, Palakkad was appointed, and order of their re-instatement was stated to be issued without prejudice to the disciplinary action, now it is stated that the proceedings culminated in Ext.P10 order itself. It is seen that there is no enquiry report, as contemplated in the provisions contained in Chapter XIVA of Kerala Education Rules, 1958 ('KER' for short).

2. The reason stated for placing the petitioners under suspension was that a flash news appeared in the Asianet channel regarding the involvement of the petitioners as middlemen in procuring admission in Arts and Professional Colleges and accepting commission from both sides, ie. from the students as well as the colleges. The District Educational Officer, Palakkad, permitted extension of suspension beyond 15 days, by Ext P2 order, with a direction to finalise the disciplinary proceedings at the earliest. Even

though this order was issued on 20.07.2007, a show cause notice with proposal to take disciplinary action, is seen issued as per Ext.P3 on 29.01.2008, which the petitioners, in their reply Ext.P4, say that they received only on 25.02.2008, while requesting for the relevant records relating to the enquiry. Thereafter as per letter dated 29.04.2008, the Manager addressed the D.E.O, Palakkad requesting for necessary arrangement for conducting a formal enquiry by an officer not below the rank of an Assistant Educational Officer. Accordingly the D.E.O, Palakkad, was appointed as the enquiry officer and he gave his first notice on 29.06.2009 fixing the date of enquiry on 10.07.2009. Ext.P7 would show that the sitting of the enquiry was fixed on 4.8.2009 and thereafter on 21.04.2010, as evident from Ext.P8, and thereafter on 15.06.2010, as evident from Ext.P9. It is the case of the petitioners that the enquiry was being adjourned at the request of the manager, which stands uncontroverted by the manager in the counter affidavit.

3. The petitioners submit that without conducting any further proceedings in the enquiry they were reinstated as per Ext.P10 order dated 07.02.2011 pending disciplinary action. At that stage, they approached this Court in W.P(c) No.8261 of 2011. Seeing that the petitioners were not granted the service benefits and the enquiry was prolonged and it was evident from the counter affidavit

filed by the parties that the D.E.O had not furnished the enquiry report and the Manager had not finalised the disciplinary action, this Court by Ext.P14 judgment dated 09.01.2012, directed the D.E.O to hear the parties and to take appropriate decision in the matter, within a period of one month from the date of receipt of a copy of this judgment. Thereafter, the D.E.O passed Ext.P5 order, after hearing the petitioners as well as the Manager. In the case of the 1st petitioner, there was an earlier period of suspension as per Ext.P11 order dated 15.07.2002, consequent to registration of a criminal case before the Judicial First Class Magistrate Court, Alappuzha and he was later reinstated as per Ext.P12 order dated 22.05.2003. The period he was kept under suspension based on these orders was also not regularised. In Ext.P14 judgment, this Court had considered the above aspect also. By Ext.P15 order, the D.E.O regularised the period of suspension of the 1st petitioner from 15.07.2002 to 19.10.2005 and in respect of both the petitioners from 09.07.2007 to 21.02.2011 as eligible leave, under Chapter XIVA of Rule 67 of K.E.R. The D.E.O stated that the Manager wanted to pardon the petitioners, seeing that the teachers were under suspension for more than 3 ½ years, awarding them a minor punishment of censure and the DEO regularised the period of suspension as eligible leave.

4. Aggrieved by the order passed by the D.E.O, the

petitioners approached the Government in Revision Petitions and the Government by Ext.P19 order, after hearing the petitioners and the Manager, upheld the order of the D.E.O. It was stated therein that the petitioners were placed under suspension on the basis of a news report telecast by the Asianet channel on 08.07.2007 and the D.E.O had granted permission to continue them under suspension beyond 15 days. It was found that it would be difficult to obtain recordal evidence to establish the charges, if committed, at this distance of time. The Government took note of the D.E.O's report in which it was stated that there was no material evidence to prove the charges against the petitioners to the effect that they were acting as commission agents. However, since it was found that the D.E.O had not stated that the petitioners had not worked as agents and he has not exonerated the petitioners from the charges levelled against them, the Government found that the order passed by the D.E.O was correct. Moreover, it was found that the D.E.O had issued orders based on the direction of this Court, regularising the period of suspension and hence it was found that there was no infirmity in the impugned order.

5. The learned counsel for the petitioners submits that the order passed by the D.E.O as well as the Government are unsustainable. It is alleged that the petitioners were kept under

prolonged suspension unnecessarily on the basis of frivolous charges and they are entitled to full pay and allowances for the entire period and the same has to be treated as duty for all purposes. It is also stated that there is no provision for granting pardon, on finalisation of disciplinary proceedings, under the K.E.R. It is also pointed out that the Manager was getting the enquiry adjourned unnecessarily.

6. On the other hand, the learned counsel appearing for the 5th respondent submits that Manager has retained the petitioners under suspension as authorised by the statutory authorities. The petitioners have complained that the period of suspension was never reviewed despite the statutory provision for a review, if suspension is prolonged over six months. But it is the case of the Manager that the petitioners were not aggrieved by suspension, as can be seen from the fact that they never made a request for such a review and it was only after the order of reinstatement that they chose to approach this Court against the orders in the disciplinary action. It is also stated that since the Manager had taken action on the basis of the flash news telecast in a media, he was unable to collect any evidence and hence he had to seek adjournment.

7. According to the educational authorities, there was no delay at their instance; enquiry officer was provided immediately on the request of the Manager and the enquiry was being conducted.

8. However, what is seen from Exts.P15 and P19 is that neither the D.E.O nor the Government have gone into the question as to whether suspension was necessary in the case of the petitioners and whether the petitioners were retained under suspension on frivolous charges and whether the suspension was wholly unjustified. The petitioners have got a case that there was no reason for placing them under suspension; their suspension was on frivolous charges and there is absolutely no material either for issuing a memo of charges or to place them or retain them under suspension. The Manager had to stop the further proceedings in the matter in the absence of any evidence.

9. It is relevant to note that in case the teachers were placed under suspension unnecessarily on frivolous charges, the Manager can be proceeded against under Chapter III Rule 7 of K.E.R, according to which, suspension of teachers framing cooked up and/or frivolous charges, depriving such incumbents of their salary for which they would have been entitled to, had they been reinstated by the Manager in compliance of the orders issued by the officer concerned, causing monetary loss to the teachers/Government, the loss sustained by the teachers/Government shall be recoverable from

the Manager under the provisions of the Revenue Recovery Act including when the teachers are suspended framing cooked up and/or frivolous charges, as provided in clause © thereof, Rule 7 (5) provides that after effecting such recovery the amount of loss sustained by the teacher concerned shall be paid to him if not already paid.

10. In this case the incident happened on 09.07.2007. The reinstatement is ordered only on 07.02.2011, after more than 3½ years of the suspension and ultimately the Manager expressed his desire to close the proceedings awarding a minor punishment of censure at a time when he was convinced that there was no evidence for the allegations. In the meantime none of the parties chose either to review suspension or to seek review of suspension.

11. It is as usual the Manager is taking his defence saying that it is on account of the permission granted by the statutory authority that the petitioners were placed under suspension and that review has to be made by the statutory authorities. But the payment of salary and other allowances are being made from the Government Exchequer. The Government after considering the question, as to whether there was any actual reason for placing

the petitioners under suspension and whether there was any material for retaining the petitioners under suspension, in case arrives at a finding that the suspension itself was in the absence of any material or on frivolous charges, it shall take appropriate action to see that the loss being caused to the teachers/Government Exchequer is compensated by appropriate proceedings by recovery of the same from the Manager.

12. Under the above circumstances, this Writ Petition is disposed of quashing Exts.P15 and P19 orders and directing the Government to pass fresh orders on the above question in the light of the observations made above, within a period of 3 months from the date of receipt of a copy of this judgment, after hearing the petitioners as well as the Manager and the statutory authorities.

Sd/-
(P.V.ASHA, JUDGE)

rtr/