

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).NO. 5315 OF 2013 (L)

PETITIONER(S):

**P.V. CHANDRAN, HEADMASTER,
U.B.M.C. A.L.P. SCHOOL, HOSDURG,
KANHANGAD P.O., KASARAGOD-671 315.**

**BY ADVS.SRI.M.SASINDRAN,
SRI.PRADEESH MATHEW.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. DISTRICT EDUCATIONAL OFFICER,
KANHANGAD-671 121, KASARAGOD DISTRICT.**
- 3. ASSISTANT EDUCATIONAL OFFICER,
HOSDURG-671 121, KASARAGOD DISTRICT.**
- 4. THE MANAGER,
U.B.M. CHURCH A.L.P. SCHOOL, HOSDURG-671 121,
KASARAGOD DISTRICT.**

**R1 TO R3 BY GOVT. PLEADER SMT.LOWSY. A.
R4 BY SRI.M.RAMESH CHANDER, SENIOR ADVOCATE.
ADV. SRI.ANEESH JOSEPH.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE SUSPENSION ORDER DATED 11/08/2006 ISSUED BY THE 4TH RESPONDENT.
- EXT.P2 COPY OF THE ORDER NO.841/2010/G.EDN. DATED 23/02/2010 BY THE 1ST RESPONDENT.
- EXT.P3 COPY OF THE DIRECTION DATED 30/03/2010 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
- EXT.P4 COPY OF THE PROCEEDINGS DATED 12/08/2010 REINSTATING THE PETITIONER.
- EXT.P5 COPY OF THE REQUEST DATED 10/12/2010 SUBMITTED BY THE PETITIONER.
- EXT.P6 COPY OF THE INTIMATION DATED 09/05/2011.
- EXT.P7 COPY OF THE LETTER DATED 07/01/2012.
- EXT.P8 COPY OF THE ORDER BY THE 1ST RESPONDENT DATED 20/03/2012.
- EXT.P9 COPY OF THE ORDER DATED 23/04/2012 BY THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.5315 of 2013

Dated this the 10th day of March, 2015

JUDGMENT

The petitioner was suspended from service during 11.8.2006 to 13.7.2010. This suspension period has been regularized by the Government as per Ext.P8 as a duty for all purpose by limiting the pay and allowances during the period for subsistence allowance already drawn. This order is under challenge before this Court.

2. The petitioner submits that the petitioner has been suspended without any valid reason and the Government by Ext.P2 found that the suspension is unjustifiable and in the light of the finding in Ext.P2, the order passed in Ext.P8 limiting his pay only for subsistence allowance is unsustainable.

3. In this matter, counter affidavits have been filed by respondents 1 and 2. It is contended that the first respondent had arrived at the conclusion that, on the whole there was no convincing evidence to prove the allegations against the petitioner beyond doubt and in the light of the appreciation of facts as above, the petitioner is ordered to be reinstated as per Ext.P2. However, it is pointed out that the petitioner failed to approach any higher authority as contemplated under Section 67(9) of Chapter XIV-A of the Kerala Education Rules (KER) for reviewing his suspension. The Government had acted upon the Court direction and issued Ext.P2 order to reinstate the petitioner in service. It is further contended that since there was no complete exoneration in terms of Rule 56 B (3), Part-1 of the Kerala Service Rules, suspension period can be regularized as duty for all purposes including pay and allowances only if the officer is fully exonerated from the

charges made against him and the competent authority is of the opinion that the suspension is wholly unjustified.

4. It is admitted that no penalty has been imposed on the petitioner and the imposition of the penalty has been set aside. The request for imposition of punishment on the petitioner has been rejected by authorities. After finding that there is no tenable evidence against the petitioner to prove any misconduct.

5. The Government found that the suspension is unjustifiable. It is admitted now that no penalty has been imposed on the petitioner. In that circumstance, the only irresistible conclusion that can be made, the petitioner has been fully exonerated from the charges made against him. The question is whether the petitioner has to invoke the review power of the Government in terms of Rule 67(9) of Chapter XIV-A of the KER. In fact, the petitioner has

approached this Court and pursuant to the directions of this Court, the review power has been exercised by the Government. This power referrable under Rule 67(9) of Chapter XIV-A of the KER has to be invoked by the authority when the teachers suspended by the Manager are continuing under suspension beyond the period of six months. It is the bounden duty of the every officer to review the decision of the Manager after the period of six months. It is not a power bestowed upon suspended employee to approach the authority to redress their grievance. This power vested with the authority in a public interest to examine whether the suspension should be continued beyond six months or not. The failure on the part of the authority to invoke the power of review in terms of Rule 69(9) of Chapter XIV-A of the KER, cannot now fasten on the petitioner to deny him the salary and other allowances payable to the petitioner. The failure on

the part of the authorities in exercising the power after six months, necessarily, conclude that the petitioner is entitled for salary and allowances for such period of suspension beyond six months. Therefore, excluding the period of six months, the petitioner shall be paid entire salary and allowances bereft of component of subsistence allowance. Needful shall be done within a period of three months. It is open for the authorities to proceed against the Manager, if so warranted, to recover the amount in accordance with law.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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