

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 12058 of 2008 (I)

PETITIONER(S):

**C.M.PHILIP, S/O.ITTIMANI, AGED 56 YEARS,
HEADMASTER (RETIRED), M.P.M. HIGH SCHOOL,
CHUNKATHARA, (RESIDING AT CHIRAPALATHINKAL, AMAYANNOOR,
KOTTAYAM - 686 075.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENT(S):

- 1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM DISTRICT.**
- 3. THE CORPORATE MANAGER,
CATHOLICATE & M.D.SCHOOL, DEVALOKAM,
KOTTAYAM DISTRICT.**

R1 & R2 BY GOVERNMENT PLEADER SMT.RINNY STEPHAN CHAMAPARAMBIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: TRUE COPY OF THE PRESS RELEASE (MALAYALA MANORAMA).
- EXT.P2: TRUE COPY OF THE ORDER NO.B2/7411/2007 OF THE DY. DIRECTOR OF EDN.
- EXT.P3: TRUE COPY OF THE NOTICE NO.A7/7435/07 OF THE DY.DIRECTOR OF EDN.
- EXT.P4: TRUE COPY OF THE EXPLANATION OF THE PETITIONER.
- EXT.P5: TRUE COPY OF THE ENQUIRY REPORT.
- EXT.P6: TRUE COPY OF THE LETTER NO.B2/7411/07 OF THE DY.DIRECTOR OF EDN.
- EXT.P7: TRUE COPY OF THE CHARGE MEMO OF THE MANAGER.
- EXT.P8: TRUE COPY OF THE COMMUNICATION NO.H.15249/2007 OF THE MANAGER.
- EXT.P9: TRUE COPY OF THE NOTICE NO.B1/7411/07 OF THE DY.DIRECTOR OF EDN.
- EXT.P10: TRUE COPY OF THE LETTER NO.B2/7411/07 OF THE DY.DIRECTOR OF EDN.
- EXT.P11: TRUE COPY OF THE ORDER NO.B2/7411/07 OF THE DY.DIRECTOR OF EDN.
- EXT.P12: TRUE COPY OF THE NEWS PAPER REPORT (MANGALAM).
- EXT.P12(a): TRUE COPY OF THE NEWS PAPER REPORT (MLAYALA MANORAM).
- EXT.P12(b): TRUE COPY OF THE NEWS PAPER REPORT (CHANDRIKA).
- EXT.P13: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
WP(C) NO.15004/2007 J.
- EXT.P14: TRUE COPY OF THE ARGUMENT NOTES.
- EXT.P15: TRUE COPY OF THE LETTER NO.9372/A2/08/G1.EDN. OF THE GOVERNMENT
ALONG WITH THE HEARING NOTE.
- EXT.P16: TRUE COPY OF THE G.O.(RT.) NO.285/08/G.EDN. OF THE GOVERNMENT.
- EXT.P17: TRUE COPY OF THE CIRCULAR NO.2/96/G.EDN OF THE GOVERNMENT.
- EXT.P18: TRUE COPY OF THE GRATUITY PAYMENT ORDER.
- EXT.P19: TRUE COPY OF THE INTIMATION OF THE ACCOUNTANT GENERAL.
- EXT.P20: TRUE COPY OF THE LETTER OF THE DISTRICT TREASURY OFFICER.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 12058 of 2008

Dated this the 26th day of May, 2015

JUDGMENT

The petitioner retired as a Head Master from the MPM High School, Chunkathara with effect from 31.05.1987. The facts in the writ petition would disclose that while the petitioner was working as a Head Master, he was appointed as the Chief Superintendent for the SSLC exam in March, 2007. It is the case of the petitioner that owing to heavy work, he had entrusted another HSA, Sri. Alex Mathew, with the supervision of the annual exams for Standards V to XI in the School. As per the exam timetable published by the educational authority, the Basic Maths and Basic Science exams were scheduled to be held on 28th and 29th of March, 2007. The petitioner, however, came across a news paper report, which indicated that the educational authorities had announced that the holding of the examinations should be advanced to 6th and 7th of March, 2007. Acting on the basis of the said news paper report, the petitioner caused the question papers to be released to the students on 6th and 7th of March, 2007. It would appear that there was no formal instruction from the educational department with regard to the conduct of those exams on those days and it is the stand of the department that the examinations referred above, were to be held as scheduled on 28th and 29th of March, 2007. In

connection with the lapse occasioned by the petitioner, the petitioner was proceeded against and by Ext.P2 order dated 13.03.2007, he was placed under suspension for deviating from the exam timetable notified by the department. Although the petitioner preferred a written explanation (Ext.P4) before the Deputy Director of Education, the 2nd respondent herein, based on Ext.P5 enquiry report to the 2nd respondent, a direction was issued to the Manager to conduct a formal enquiry. Thereafter, the Manager, finalised the disciplinary proceedings against the petitioner by Ext.P8 order giving the petitioner a warning. By Ext.P9 order however, the 2nd respondent found that there was an additional expense of Rs.64,026/-, that was incurred by the Government, in connection with printing of fresh question papers pursuant to the publishing of the question papers on an earlier date by the petitioner. It was found that the said amount had to be recovered from the petitioner. The petitioner was therefore, put on notice of the aforesaid proposal of the 2nd respondent and, after considering the reply of the petitioner, by Ext.P11 order dated 21.05.2007 the 2nd respondent approved the punishment awarded by the management and ordered the reinstatement of the petitioner subject to the condition that an amount of Rs.64,026/-

would be recovered from the pensionary benefits due to the petitioner. Although the petitioner preferred a revision before the 1st respondent, the same came to be rejected by Ext.P16 order dated 14.01.2008, whereby the 1st respondent upheld the direction of the 2nd respondent to recover the amount of Rs.64,026/- from the pensionary benefits of the petitioner. Exts.P11 and P16 are impugned in the present writ petition. It is also relevant to note that by an interim order dated 13.07.2009, the undisputed pensionary benefits, that were due to the petitioner were directed to be released to the petitioner and it is not in dispute that the petitioner has received the said amount from the respondents. In the writ petition, the prayer of the petitioner is essentially for release of the amount of Rs.64,026/-, that has been withheld from the pensionary benefits payable to the petitioner, consequent to Exts.P11 and P16 orders of the respondents.

2. A counter affidavit has been filed on behalf of the 1st respondent, wherein the sequence of events leading to Exts.P11 and P16 orders have been reiterated. In particular, it is pointed out that as per the provisions of Rule 72 of Chapter XIV A of KER, the respondents can recover any pecuniary loss caused to the

Government by the petitioner from him. The counter affidavit refers to Ext.P13 judgment, wherein it is stated that the petitioner was served with a show cause notice in connection with the recovery of the amount of Rs.64,026/- from him and that the order of the 2nd respondent was passed only after hearing the petitioner. The stand of the respondents in the counter affidavit is that, inasmuch as the petitioner never disputed that he had published the question papers pursuant to the news item that appeared in the news paper, it was not a case, that warranted a detailed enquiry, inasmuch as the petitioner had accepted the act, which was found in question by the department. It is pointed out that, at any rate a fair procedure was followed and the petitioner was issued a notice and his reply considered before taking a decision to recover the amounts actually spent by the Government in connection with printing of fresh question papers and that no further amounts have been demanded from the petitioner other than the actual expenses incurred by the Government in connection with the printing of fresh question papers. It is pointed out that, inasmuch as the excess expenditure by the Government to necessitate on account of the negligent act of the petitioner, there was no justification to interfere with the directions in

Exts.P11 and P16 orders.

3. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that this is a case where the petitioner does not dispute that he had, acting on the basis of a news item that was published in the news paper, published the question papers to the students in Standard VI on 6th and 7th of March, 2007, whereas, as per the exam timetable approved by the department, the examinations were scheduled on 28th and 29th of March, 2007. The above act of the petitioner resulted in the publishing of the question paper before the date of the exam and consequently the education department was constrained to print fresh question papers in connection with the aforesaid exams for the students of Standard VI. What has been directed to be recovered from the petitioner is only the actual expenditure that was incurred by Government in connection with the printing of the question papers. Before directing the recovery

of the said amounts from the petitioner, the petitioner was put on notice of the proposal of the department and his explanations sought for and considered. I therefore, find that the respondents have pursued a fair procedure before fastening the liability on the petitioner. No doubt the petitioner would contend that the procedure that was followed, was not in strict conformity with the provisions of the KER. Be that as it may, I find that, inasmuch as the petitioner does not dispute the commission/omission that led to the loss suffered by the Government, the mere fact that the procedure adopted was irregular, cannot be of any assistance to the petitioner, more so when, it is not established that on account of the aforesaid lapse, there was any prejudice caused to the petitioner. Resultantly, I see no interference with Exts.P11 and P16 orders of the respondents. The writ petition, therefore fails and is accordingly dismissed.

Counsel for the petitioner would point out that the amount of Rs.64,026/- is arrived at by mistake as would be evidenced from Ext.P9 order of the respondents. It is seen that the total amount that is to be recovered from the petitioner is only Rs.63,756/-. Taking into consideration, the said contention of counsel for the

petitioner, I direct the respondents to verify this aspect and withhold only such amounts, as were directed to be recovered in Ext.P9, from the petitioner and if there is any balance amount to be disbursed to the petitioner, the same shall be disbursed immediately, at any rate within a period of one month from the date of receipt of a copy of this judgment. Save for this direction regarding the mistake in calculation, if any, the writ petition in its challenge against Exts.P11 and P16 orders, is otherwise dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE