

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 12058 of 2013 (F)

PETITIONER:

KISHORE.V.G. AGED 33 YEARS
C.R.C. CO-ORDINATOR, BRC RANNI, PAZHAVANGADI P.O.
RANNI, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

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

2. DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-695 001.

3. DEPUTY DIRECTOR OF EDUCATION
PATHANAMTHITTA-689 001.

4. DISTRICT EDUCATIONAL OFFICER
PATHANAMTHITTA-689 645.

5. MANAGER
HIGH SCHOOL, RANNI, PERINAD P.O.
PATHANAMTHITTA-691 601.

6. HEADMISTRESS
HIGH SCHOOL, RANNI, PERINAD P.O.
PATHANAMTHITTA-691 601.

7. BLOCK PROJECT OFFICER
BLOCK RESOURCE CENTRE (SSA), RANNI
PATHANAMTHITTA DISTRICT.

R1-R4 BY SRI.RAFEEL V.K., GOVERNMENT PLEADER
R5 BY ADV. SRI.N.K.SUBRAMANIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C) .No. 12058 of 2013 (F)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE APPOINTMENT ORDER DTD.19.8.2005 PERTAINING TO THE PETITIONER.

P2 : COPY OF THE APPOINTMENT ORDER DTD.5.6.2006.

P3 : COPY OF THE STAFF FIXATION ORDER ISSUED BY THE 4TH RESPONDENT.

P4 : COPY OF THE LETTER DTD.29.3.2010.

P5 : COPY OF THE APPEAL DTD.23.4.2010 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

P6 : COPY OF THE ORDER NO.SC(1)/21434/2010/DPI/DI.DIS. DTD.29.6.2010.

P7 : COPY OF THE REVISION PETITION DTD.16.8.2010 SUBMITTED BY THE PETITIONER.

P8 : COPY OF THE JUDGMENT DTD.8.9.2010 IN WPC NO.27877/2010.

P9 : COPY OF GO(RT)NO.1213/11/G.EDN., DTD.26.3.2011.

P10: COPY F THE LETTER DT.8.2.2012 ISSUED BY R4.

P11: COPY OF THE JUDGMENT DTD.25.6.2009 IN WA NO.1288/2007.

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.,

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W.P.(C) No.12058 of 2013
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Dated this the 11th day of June, 2015

JUDGMENT

The petitioner is challenging Ext.P10 order, by which the District Educational Officer has addressed the Block Project Officer, Block Resource Centre (S.S.A), Ranni to recover a sum of ₹1,42,297/- from the salary of the petitioner in 36 equal instalments. The order of the District Educational Officer refers to a circular No.34025/J2/12/G.Edn. dated 21.6.2012. The facts leading to the impugned order is as follows.

2. The petitioner was working as Upper Primary School Assistant (UPSA for short) from 19.8.2005 onwards in High School, Ranni, which is an aided school. For the period from 5.6.2006 onwards he was in continuous service against a sanctioned post. As per the staff fixation for the year 2008-09, issued by the District Educational Officer, there was a post of UPSA for accommodating the petitioner. But a higher level verification was conducted in the school, which found that there was bogus admissions and hence the staff fixation also was liable

to be modified. Therefore Ext.P3 staff fixation order was sought to be revised after notice to the Manager, concerned teachers and Headmistress. BY Ext.P4 proceedings, the Director of Public Instructions, Thiruvananthapuram directed the teachers in the School, Manager as well as the Headmistress to submit representations, if any, against the proposal to reduce one post of UPSA and one post of High School Assistant (HSA for short) in the school with effect from 15.7.2009 for the year 2009-10. In the proceedings, it was stated that the Super Check Cell attached to the Director of Public Instruction conducted an inspection on 18.8.2009 and physically verified the strength of pupils, when it was found that the strength was insufficient for maintaining the class divisions and posts already sanctioned by the District Educational Officer as per the staff fixation order issued on 14.8.2009. A lot of absentees were found and the genuineness of the absentees were verified on 8.2.2010 that is subsequent to the first visit on 18.8.2009. Based on these verifications, the Super Check Cell found that the School authorities adopted unfair means to boost up the strength of pupils for getting desired number of divisions and posts resulted in a staff fixation order by

fraud and misappropriation of facts. After detailing the particulars of the absentees, it was found that the admissible divisions for 2009-10 for the School was only 17 as against the sanctioned strength found by the District Educational Officer as 19. It was further found that apart from one post of UPSA and one post of HSA (Core Subject), one post of HSA (Malayalam), one post of L.G.Hindi Teacher and one post of Full Time Menial were liable to be abolished. It was further found that the Headmistress of the School is responsible for the bogus admissions and hence the loss sustained to the Government by way of payment of salary to the teachers worked against the regular posts has to be recovered from her. As against the aforesaid findings, the Director of Public Instruction called for explanation from all affected parties.

3. The petitioner, who was a UPSA, liable to be thrown out on account of the proposed abolition of post, submitted Ext.P5 representation requesting not to abolish his post and stating that the verification of strength on the first day of inspection was correct.

4. Thereafter the Director of Public Instruction issued Ext.P6

order on 29.6.2010 abolishing among other posts, one post of UPSA, on account of which the petitioner was ousted. In the last paragraph of the order, it was stated that the Headmistress of the School is responsible for admission of pupils, supervision of subordinates and maintenance of records etc. The bogus admissions made by her have resulted in wrong fixation of staff and caused a drain from the Government exchequer by way of payment of salary to the teachers in irregular posts. It was, therefore, stated that the loss sustained to the Government, by way of payment of salary to the teachers, who worked against the irregular posts is to be recovered from the Headmistress of the School. The Deputy Director of Education, Pathanamthitta and District Educational Officer, Pathanamthitta were directed to realize the said amount from the Headmistress after observing the usual formalities. As against the order-Ext.P6, the petitioner had approached the Government in Ext.P7 along with other teachers who also filed independent petitions. Thereafter the petitioner had approached this Court by filing W.P.(C) No.27877 of 2010. In the aforesaid writ petition, by judgment dated 8.9.2010, this Court directed the Government to pass orders on

the representation within three months, after hearing the petitioner. Thereafter the Government issued Ext.P9 order on 26.3.2011, rejecting the revision petition. Ext.P10 order was issued thereafter by the District Educational Officer, directing the Block Project Officer to recover the sum of ₹1,42,297/- from the petitioner. The amount directed to be recovered appears to be the salary drawn by the petitioner for the period from 16.7.2009 to 1.6.2010.

5. The petitioner has filed this writ petition complaining the action of the District Educational Officer saying that he has actually worked in the post until final orders were issued by the Director of Public Instructions as per Ext.P6 on 29.6.2010. Therefore, any action for the recovery of the amount from his salary is not permissible. Moreover, according to him, it is the Headmistress who caused to remit the amount, especially when the show cause notice Ext.P4 as well as the order Ext.P6 directs the educational authorities to recover the amount from the Headmistress. According to the petitioner, the teacher cannot be penalized for the defaults committed by the Headmistress or the Manager and there is no provision to recover any amount from

the teacher who has bonafide worked in the school. At any rate, he submits that recovery of salary even before the inspection was conducted is illegal.

6. The 4th respondent has filed a counter affidavit, according to which the petitioner was a teacher benefited by the bogus admission in the school and the Super Check Cell found that the student strength was not sufficient for accommodating all the teachers who were continuing in the school. The petitioner was liable to be ousted and there was in fact no post for him to continue with effect from 15.7.2009, as there were no sufficient number of students in the school.

7. After explaining the findings of the Super Check Cell and the order passed abolishing the excess divisions and posts, it is stated in the counter affidavit that as per circular No.34025/J2/12/G.Edn. dated 21.6.2012, the Government have clarified that teachers who were appointed and given approval, drawn salary and then subsequently thrown out by super check cell due to detection of bogus admission of pupil will be included in the list of retrenched teachers and the amount disbursed to the teachers by way of salary shall be recovered from their

salaries in 36 equal instalments after getting re-appointment in the educational department.

8. I heard the learned counsel appearing for the petitioner as well as the learned Government Pleader.

9. The learned counsel for the petitioner, relying on the judgments of this Court-Exts.P8 &P11, wherein this Court was considering the proceedings for recovery against the Headmistress, contended that, recovery can be effected only by way of disciplinary proceedings. Similarly in the judgment reported in ***Vasudevan Namboodiri Vs. State of Kerala*** [1997 KHC 409 =1997 (2) KLT 529] also, this Court held that the pecuniary loss caused to the State Government by negligence or breach of orders can be sought to be recovered only after resorting to disciplinary proceedings, as contemplated in Rule 65 of Chapter XIVA of the Kerala Education Rules. Further the learned counsel for the petitioner relied on the judgment of the Apex Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer)*** [2015 (4) SCC 334], in support of his contention, argued that the petitioner is a teacher of UP School belonging to Class-III post and going by the judgment of the

Apex Court, proceedings for recovery from the pay of such persons cannot be resorted to. Moreover, in the case of the petitioner, he has already worked in the post. The inspection was conducted only on 18.8.2009. Necessity for abolition of the post was found only on 29.3.2010 and final orders after the inspection by super check cell and hearing, were issued in June 2010. Till that time, the petitioner had been working and the students were benefited by his service. Hence no recovery can be resorted to. He also relies on Article 303 B of the Kerala Financial Code, according to which recovery can be resorted to only in case where malafides are found. In this case there is no malafides as far as the petitioner is concerned and he is in no way responsible for the bogus admissions, if any found by the educational authorities.

10. The impugned proceedings of recovery are seen initiated on the basis of a circular issued by the Government. It is on the basis of the circular that the petitioner has been given appointment as Cluster Co-ordinator-CRC Co-ordinator. But for the Government Order, the petitioner himself remained outside without job. On account of this order the petitioner is working as

well as drawing salary. Part of the very same circular provides for recovery of salary in instalments. While the petitioner is enjoying the benefit of one part of the order, he cannot be heard to contend that the other part of the order cannot be acted upon. The petitioner has not chosen to challenge the said circular.

11. In the judgments of this Court, Exts.P8 and P11, this Court has arrived at a conclusion that the proceedings for recovery has to be resorted to by way of disciplinary proceedings alone, taking the fact that no other provisions was pointed out before the Court.

12. In the present case, the impugned order Ext.P10 refers that proceedings for recovery is initiated on the basis of Ext.P6 proceedings. Therefore I do not find anything wrong in effecting such recovery.

13. However, it is seen that the inspection by the super check cell was conducted on 18.8.2009 based on which a show cause notice was issued and the final orders were issued in March 2010 and June 2010. The contention of the petitioner is that petitioner cannot be denied salary, at least till the date on which the verification was made and therefore be entitled to

salary for the period up to 18.8.2009. But the super check cell was only conducting a re-verification.

14. As far as the recovery ordered from the salary drawn is concerned, it cannot be said that there is any illegality, especially in view of the circular issued by the Government, which is not under challenge before this Court.

15. The recovery is directed to be made from the salary of petitioner in 36 instalments. In view of the fact that the petitioner is working only as a Cluster Co-ordinator as in the case of class III, I direct that recovery shall be effected by way of 72 instalments.

With the above modification to the impugned order, the Writ Petition stands dismissed.

Sd/-
P.V.ASHA,
JUDGE.

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