

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 13750 of 2010 (P)

PETITIONER(S):

- 1. BHAVANA RAMESH,
UPSA, NHANGATTUR A.U.P.SCHOOL, P.O.NHANGATTIRI
PALAKKAD DISTRICT.**
- 2. NANDINI V.K,
LPSA, -DO- -DO-**
- 3. JYOTHILAKSHMI.P.G,
LPSA, -DO- -DO-**
- 4. GEETHA.C.,
LPSA, -DO- -DO-**
- 5. BEENA.S.K,
LPSA, -DO- -DO-**

**BY ADVS.SRI.P.K.SURESH KUMAR
SRI.SANTHEEP ANKARATH**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF EDUCATION
THIRUVANANTHAPURAM.**
- 2. THE ASSISTANT EDUCATIONAL OFFICER,
THRITHALA, PALAKKAD DISTRICT.**
- 3. MANAGER,
NHANGATTUR A.U.P.SCHOOL, P.O.NHANGATTIRI
PALAKKAD DISTRICT.**

R1&2 BY ADV. GOVERNMENT PLEADER SMT. SUNITHA VINOD

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF APPLICATIONS FOR LEAVE DTD. 27.05.05 SUBMITTED BY THE 1ST PETITIONER.**
- EXT.P2 COPY OF SHOW CAUSE NOTICE NO. D/4495/07 DATED 30.08.07 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONERS.**
- EXT.P3 COPY OF LETTER DTD. 22.09.05 ISSUED BY THE 2ND RESPONDENT.**
- EXT.P4 COPY OF ORDER NO. 58952/B3/06/GE DTD. 10.10.07 ISSUED BY GOVT. OF KERALA, GEN. EDUCATION (B) DEPT.**
- EXT.P5 COPY OF JUDGMENT DTD. 22.7.09 IN WPC NO. 27034/07 PASSED BY THIS HON'BLE COURT.**
- EXT.P6 COPY OF GO(RT) NO.1304/2010/G.EDN. DTD. 22.3.10 ISSUED BY GENERAL EDUCATION (B) DEPT., GOVT. OF KERALA.**
- EXT.P7 COPY OF ENQUIRY REPORT REFERRED IN EXT.P4.**

RESPONDENTS EXHIBITS:

NIL

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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Dated this the 16th day of December, 2015

J U D G M E N T

The five petitioners herein challenge Ext.P6 order passed by the Govt. pursuant to Ext.P5 judgment, rejecting the Leave Without Allowance (L.W.A) sought for by the petitioners. The petitioners were respectively U.P.S.A and L.P.S.A in the 3rd respondent school. They sought for leave for various periods extending over one academic year. The 1st petitioner applied for leave from 27.05.05 to 26.05.06, the 2nd petitioner from 31.05.05 to 30.05.06, the 3rd petitioner from 31.05.05 to 30.05.06, the 4th petitioner from 31.05.05 to 30.05.06 and the 5th petitioner from 31.05.05 to 02.04.06. The applications were forwarded to the Government for sanction with the recommendation of the Headmaster and the Manager.

2. The petitioners, in an earlier writ petition alleged that the Government had not passed any orders thereat and by Ext.P2 dated 30.08.2007, the A.E.O directed the teachers to show

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cause why disciplinary action should not be taken against them for not re-joining duty on 25.09.2005 as directed by him. The petitioners challenged the show cause notice on the ground that the A.E.O could not have attempted such proceedings, when the leave applications were pending consideration before the Government. The writ petition challenging the said proceeding numbered as W.P.(C) No.27034/2007 was pending here with a stay against the show cause notice.

3. On 24.09.2007, there was an interim order in the writ petition directing the 1st respondent to consider and pass orders on the leave applications submitted by the petitioners, within two weeks. The Government passed Ext.P4 order on 10.10.2007, finding that the leave applications were only intended to facilitate the Manager to make appointments for over an academic year, so as to enable claims under Rule 51A of Chapter XIVA of the K.E.R. The interim direction of this Court on 24.09.2007 hence, was complied rejecting the said prayer. The petitioners amended the writ petition and further prosecuted

the issue.

4. The petitioners specifically contended that the order passed on 10.10.2007 referred to an enquiry report of the Director of Public Instructions (DPI), based on which the leave applications were said to have been considered and orders passed. The petitioners contended that the said enquiry was behind the back of the petitioners and they were not participated in any such enquiry. The reliance placed on such a report of the DPI, by the Government was seriously contested. The State countered the contention of the petitioners asserting that the leave applications were all malafide and intended at only occassioning claims under Rule 51A of Chapter XIVA K.E.R. It was also submitted on affidavit that on the basis of the complaint, a vigilance enquiry has been ordered into the matter. The Government order, rejecting the applications of leave and the L.W.A was sought to be sustained as perfectly in order.

5. This Court found that the Government had relied solely on the enquiry report furnished by the DPI while rejecting

the leave applications of the petitioners. It was also found that the respondent State did not have a contention that the proceedings were conducted with notice or after giving an opportunity to the petitioners. Even a copy of the enquiry report was not furnished to the petitioners, was the clear finding. In such circumstance, the order passed by the Government on 10.10.2007 was set aside on the ground that effectively, the order at Ext.P4 found commission of misconduct by the petitioners since the essential findings in the enquiry report was with respect to the medical leave having been availed on false pretensions.

6. It was found that no such findings could have been entered without notice and opportunity to show cause as against the misconducts alleged. A remand was made to the Government and it was directed that the Government shall specifically consider whether the enquiry report of the DPI was after notice and after affording opportunity of being heard to the petitioners and if not whether such a report can be relied upon for the purpose of considering the leave applications by the

petitioners. The order subsequently passed by the Government at Ext.P6, is assailed herein, on similar grounds as was raised earlier, being no notice having been issued before the enquiry was conducted by the DPI.

7. The enquiry report of the DPI was definitely furnished to the petitioners after Ext.P5 judgment and the petitioners were also heard before Ext.P6 order was passed. The conclusion of the enquiry report was extracted by the Government in Ext.P6 order and found that there was no reason why a notice of hearing should have been given to the petitioners at the time of the enquiry by the DPI. It was found that the DPI had conducted an enquiry, in the nature of a preliminary enquiry and that pursuant to the preliminary report show-cause notice has been issued to the petitioners, in which proceeding the petitioners would have the opportunity to represent their side and place their defence. Hence the Government found that there was no necessity of a notice before the report of the DPI.

8. It was also found that the period of absence ie., the period of leave applied for in respect of the teachers can be regularised only after finalisation of the disciplinary action. However considering the applications for leave submitted by the petitioners afresh, the Government found that the enquiry report prima faice found that the allegation of misrepresentation is true and rejected the applications for the L.W.A. The issue as to whether before the enquiry report of the DPI, the petitioners were put to notice, in that context, is no more relevant. Before Ext:P-6 order, admittedly the report of the DPI was supplied to the petitioners and they were all heard

9. One has to immediately consider whether the two issues can be mixed up. The petitioners admittedly applied for L.W.A and proceeded on such leave, without even obtaining sanction and remained so while the applications were pending before the Government. This Court called for the files to better understand the issue, which files are produced herein by a memo. It is to be emphasized that the question of consideration

of applications for leave and the misconduct alleged of misrepresentation are two different issues. The issue of misrepresentation as has been found in Ext.P6, would have to be decided in a proper proceeding initiated for disciplinary action, which will have to be taken to its logical conclusion as provided in the K.E.R. There is absolutely no reason why the issue of consideration of leave applications should be mixed up with that of the issue of misconducts alleged.

10. Even a reading of Ext.P7 enquiry report would indicate that the entire controversy has its genesis, in the management dispute in the respondent school. The Management is said to be vested with a governing body, the President of which governing body is acting as Manager and correspondent of the school. The Manager, who was holding the charge as on the academic year 2005-06 is said to have coerced the five petitioners to take leave. That too beyond a period of one year, so as to facilitate temporary appointments in such leave vacancies and thus create statutory claims for making

appointments to the subsequently arising five vacancies on 31.05.2006, the end of the academic year. The Manager who was in charge is also said to have made five appointments to the leave vacancies.

11. The enquiry report concluded that the attempt by the five teachers to take leave for one academic year was by reason of the issuance of the G.O(P) No.169/04/Gen.Edn. dated 15.06.2004, which restricted Rule 51A claims only to those persons, who were appointed in leave vacancies and having completed one academic year in such temporary appointments. The report also raised serious apprehensions about 5 teachers having been laid sick on the same day and availing leave on medical grounds for the same period.

12. A reading of the files produced would indicate that the A.E.O had directed medical examination of all the teachers by the D.M.O and there were further proceedings pursuant to such medical examination and report. The petitioners' contention is that the petitioners had forwarded

fresh medical certificates after the due date, with fresh leave applications and the same was again pending before the Government.

13. The files would indicate that the applications for leave were made by the petitioners on proximate dates, between 27th and 31st May of 2005. The leave applied for was also for a duration of one year and all the medical certificates indicated non-specific ailments of back pain, rheumatic complaints etc. The A.E.O having directed the petitioners to report for medical examination, the DMO, Indian System of Medicine, Palakkad had examined each of the petitioners. The copies of the reports are also available in the files from pages 187 to 195 of the files. The medical reports, all dated 25.08.2005, clearly indicate that the DMO had advised a further rest of one month and directed that the petitioners could be directed to join duty after the said period.

14. The AEO, Thrithala had also by separate communications dated 22.09.2005 informed the Headmaster

about the said report and directed the Headmaster to direct each of the petitioners to report for duty on 25.09.2005. The copies of the said letters are available in pages 197 to 205 of the files. It was also directed that since then, the leave would be only for 120 days the Headmaster himself could grant the said leave. The Headmaster also issued separate letters to each of the petitioners to report for duty on 25-09-2005, intimating the directions of the A.E.O. The copies of the said letters are available from pages 207 to 215 of the files. The petitioners were directed to join duty with the fitness certificate of the doctor.

15. The petitioners by separate letters available at pages 217 to 225_sought for extension of the leave again with other medical certificates. Here it is to be noticed that though the A.E.O had got the petitioners examined by the D.M.O and had issued directions based on the medical certificates issued by the D.M.O, the petitioners did not produce any further certificate from the D.M.O, but produced those from a private practitioner.

16. The show-cause notice dated 30.08.2007 served

on each of the petitioners and the explanations are also a part of the files. It is to be reiterated that there should be clear distinction insofar as considering the applications for leave and the issue of misconducts alleged. In considering the applications for leave, when the A.E.O referred the petitioners to the DMO Palakkad, who certified that the petitioners could be directed to join duty after one month, then the petitioners had a duty to join duty as directed thereunder. There was no leave applications pending before the Government, on 25-09-2005, insofar as the petitioners' leave as on the date of report of the DMO was not one exceeding 120 days, which could have been sanctioned by the Manager itself by Rule 56, Chapter XIV A of K.E.R read with Rule 64 of Part I K.S.R.

17. The petitioners refused to comply with the orders of the A.E.O and made subsequent applications for leave, without joining duty, again seeking for 190 days leave from 25.09.2005. The medical certificates are also said to be produced, which again is from a private practitioner. In the

context of the petitioners having been examined by the DMO, on specific directions of the AEO, it was incumbent on the petitioners' to have obtained such medical certificates from the DMO itself. The petitioners obviously did not approach the DMO for examination; when the DMO after examining them had categorically directed that they could join duty after one month. The enquiry report of the DIPI was not the sole reason for rejection of the leave applications of the petitioners.

18. In such circumstances, this Court does not find any infirmity insofar as the finding of the Government in Ext.P6, as to the applications for L.W.A being not liable to be allowed. The question of misconduct as has been noticed in Ext.P6 could be proceeded with independently and the question of how the petitioners' period of absence could be treated would depend upon the findings at the enquiry; wherein they could raise all available contentions, against the allegation of false representation and misrepresentation.

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The writ petition would stand dismissed approving the order of the Government insofar as rejecting the leave applications but, however leaving all contentions open with respect to the misconduct alleged against the petitioners to be urged in the proceedings initiated. The writ petition would stand dismissed. No costs. The files shall be returned to the Government.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/18/12/2015

// true copy //

P.A to Judge.