

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 12759 of 2013 (T)

PETITIONER(S):

THE MANAGER, ST. JOHN'S VOCATIONAL HIGHER SECONDARY SCHOOL,
UMMANNOOR, KOTTARAKKARA, KOLLAM DISTRICT.

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENT(S):

- 1.STATE OF KERALA,REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEX
THIRUVANANTHAPURAM-695001.
- 2.THE DIRECTOR, VOCATIONAL HIGHER SECONDARY EDUCATION
DIRECTORATE OF VOCATIONAL HIGHER SECONDARY EDUCATION
THIRUVANANTHAPURAM-695001.
- 3.THE ASSISTANT DIRECTOR,VOCATIONAL HIGHER SECONDARY EDUCATION
OFFICE OF THE ASSISTANT DIRECTOR,REGIONAL OFFICE,
KOLLAM-691001
- 4.PRADEEP G.K., VOCATIONAL INSTRUCTOR IN MLT
ST. JOHN'S VOCATIONAL HIGHER SECONDARY SCHOOL
UMMANNOOR, KOLLAM DISTRICT, PIN-691547
- 5.KOSHY ABRAHAM, LAB TECHNICAL ASSISTANT IN RBKC
ST. JOHN'S VOCATIONAL HIGHER SECONDARY SCHOOL
UMMANNOOR, KOLLAM DISTRICT, PIN-691547
- 6.SAVEEN S.L., LAB TECHNICAL ASSISTANT IN C.A.
ST. JOHN'S VOCATIONAL HIGHER SECONDARY SCHOOL
UMMANNOOR, KOLLAM DISTRICT, PIN-691547
- 7.THOMAS K., PEON,
ST. JOHN'S VOCATIONAL HIGHER SECONDARY SCHOOL
UMMANNOOR, KOLLAM DISTRICT, PIN-691547

R4-R7 BY ADV. SRI.NIDHI BALACHANDRAN

R4-R7 BY ADV. SRI.SABU GEORGE

R1-R3 BY GOVERNMENT PLEADER SRI.SHYSON P. MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- P1:TRUE COPY OF THE COMPLAINT DATED 24.03.2012 SUBMITTED BY THE PRESIDENT, P.T.A.
- P2:TRUE COPY OF THE LETTER DATED 27.03.2012 ALONG WITH SUSPENSION ORDER SENT BY THE PETITIONER TO THE 3RD RESPONDENT.
- P3:TRUE COPY OF THE NOTICE DATED 02.04.2012 ISSUED BY THE 3RD RESPONDENT.
- P4:TRUE COPY OF THE REPORT DATED 10.04.2012 FILED BY THE 3RD RESPONDENT.
- P5:TRUE COPY OF THE ORDER DATED 14.05.2012 ISSUED BY THE SECOND RESPONDENT.
- P6:TRUE COPY OF THE ORDER DATED 24.05.2012 ISSUED BY THE PETITIONER.
- P7:TRUE COPY OF CHARGE MEMO ALONG WITH STATEMENT OF ALLEGATIONS ISSUED TO THE 4TH RESPONDENT.
- P8:TRUE COPY OF CHARGE MEMO ALONG WITH STATEMENT OF ALLEGATIONS ISSUED TO THE 5TH RESPONDENT.
- P9:TRUE COPY OF CHARGE MEMO ALONG WITH STATEMENT OF ALLEGATIONS ISSUED TO THE 6TH RESPONDENT.
- P10:TRUE COPY OF CHARGE MEMO ALONG WITH STATEMENT OF ALLEGATIONS ISSUED TO THE 7TH RESPONDENT.
- P11:TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BY THE 4TH RESPONDENT.
- P12:TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BY THE 5TH RESPONDENT.
- P13:TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BY THE 6TH RESPONDENT.
- P14:TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BY THE 7TH RESPONDENT.
- P15:TRUE COPY OF COVERING LETTER DATED 19.07.2012 SUBMITTED BY PETITIONER TO THE 3RD RESPONDENT.
- P16:TRUE COPY OF THE REVISION PETITION DATED 21.07.2012 SUBMITTED BY RESPONDENTS 4 TO 7 BEFORE THE GOVERNMENT.
- P17:TRUE COPY OF THE JUDGMENT DATED 27.07.2012 IN W.P.(C). NO.17000/2012.
- P18:TRUE COPY OF ORDER DATED 06.09.2012 PASSED BY THE 1ST RESPONDENT.
- P19:TRUE COPY OF THE NOTICE DATED 18.09.2012 ISSUED BY THE 1ST RESPONDENT.
- P20:TRUE COPY OF LETTER DATED 18.9.2012 SUBMITTED BY THE PETITIONER TO

THE 2ND RESPONDENT.

P21:TRUE COPY OF LETTER DATED 18.9.2012 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

P22:TRUE COPY OF LETTER DATED 25.10.2012 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

P23:TRUE COPY OF THE NOTICE DATED 18.02.2013 ISSUED BY THE 2ND RESPONDENT.

P24:TRUE COPY OF THE REPORT DATED NIL SUBMITTED BY DEPUTY DIRECTOR (GENERAL) TO 2ND RESPONDENT.

P25:TRUE COPY OF THE ORDER DATED 09.04.2013 IN W.P.(C).NO.9127/2013.

P26:TRUE COPY OF ORDER DATED 30.04.2013 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:

R4(A):TRUE COPY OF THE LETTER NO.LI/1735/2012 DATED 18.6.2012 OF THE ASSISTANT DIRECTOR, THE 3RD RESPONDENT.

R4(B):TRUE COPY OF THE REPRESENTATION IN RESPECT OF ONE SMT.USHAKUMARI.

R4(C):TRUE COPY OF THE REPRESENTATION IN RESPECT OF ONE SRI.RAVEENDRAN NAIR.

R4(D):TRUE COPY OF THE REPRESENTATION IN RESPECT OF ONE SRI.MANIMOHAN PILLAI.

R4(E):TRUE COPY OF THE REPRESENTATION IN RESPECT OF ONE SRI.SASIDHARAN PILLAI.

R4(F):TRUE COPY OF THE REPRESENTATION IN RESPECT OF ONE SRI.RAMAKRISHNA PILLAI.

R4(G):TRUE COPY OF THE G.O.(MS).NO.31/10/G.EDN. DATED 24.2.2010.

R4(H):TRUE COPY OF THE STAY PETITION DT. 23.7.2012 FILED BY THE PETITIONERS.

R4(I):TRUE COPY OF THE JUDGMENT DT.27.07.2012 IN W.P.(C).NO.17000/2012.

R4(J):TRUE COPY OF THE HEARING NOTE SUBMITTED ON BEHALF OF RESPONDENTS 4 TO 7 BEFORE THE HEARING OFFICER.

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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W.P.(C) No.12759 OF 2013

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Dated this the 9th day of November, 2015

JUDGMENT

Petitioner is the Manager of St.Johns Vocational Higher Secondary School in Kollam District. The fourth respondent is a Vocational Instructor in Medical Lab Technician Course. Respondents 5 and 6 are Lab Technical Assistants and the seventh respondent is a Peon in the said school. Alleging misconduct from the part of respondents 4 to 7 in consuming liquor from a nearby bar and thereafter engaged in a quarrel causing disturbance and unpleasant scenes, they were placed under suspension as per Ext.P2 order dated 27.3.2012 in contemplation of disciplinary proceedings based on Ext.P1 complaint dated 24.3.2012. In tune with the mandates under the Kerala Education Rules (for short 'KER'), a preliminary enquiry was conducted by the third respondent for the purpose of deciding

whether continued suspension of respondents 4 to 7 is required. Ext.P4 is the report submitted to the second respondent pursuant to such enquiry. The second respondent ratified the action of the Manager virtually granting permission to place respondents 4 to 7 under suspension beyond a period of 15 days. Ext.P5 is the order dated 14.5.2012 in that regard. Based on the same, the period of suspension of respondents 4 to 7 was extended for a period of six months or till the completion of enquiry, whichever is earlier. Subsequently, respondents 4 to 7 were served with Exts.P7 to P10 memos of charges along with the statements of allegations respectively. Exts.P11 to P14 are respective written statements filed by respondents 4 to 7 pursuant to the receipt of Exts.P7 to P10. The petitioner forwarded the memos of charges, written statements and other records relating the disciplinary proceedings to the third respondent with a request to conduct a formal enquiry into the allegations and to forward a report to enable him to pass appropriate

order in conclusion of the disciplinary action. Ext.P15 is the request made by the petitioner to the third respondent for that behalf. In the meanwhile, respondents 4 to 7 jointly filed Ext.P16 revision petition before the Government under Rule 92 Chapter XIV A, KER challenging Ext.P6 order of suspension. Along with the revision petition, they filed a petition seeking stay of Ext.P6. Feeling aggrieved by the delay in the matter of its consideration, they approached this Court by filing W.P.(C)No.17000 of 2012. That writ petition was disposed of as per Ext.P17 judgment with a direction to the first respondent to pass appropriate orders on the application for stay filed by respondents 4 to 7. Pursuant to the said direction the first respondent passed Ext.P18 order. Evidently, the prayer of respondents 4 to 7 for staying Ext.P6 was declined by the first respondent. The delay in the matter of consideration of the revision petition constrained respondents 4 to 7 to approach this Court again by filing W.P.(C).No.9127 of 2013. During the pendency of the said

writ petition, the Government took up the revision petition and passed Ext.P26 order. As per the same, the first respondent, invoking the power under Rule 75A of Chapter XIV A, KER revoked the order of suspension and directed the petitioner to reinstate respondents 4 to 7 forthwith. It is aggrieved by the said order that the captioned writ petition has been filed.

2.I have heard the learned counsel for the petitioner, the learned counsel appearing for respondents 4 to 7 and the learned Government Pleader.

3.Taking note of the fact that the revision petition filed jointly by respondents 4 to 7 was disposed of vide Ext.P26, W.P.(C).No.9127 of 2013 was disposed of as per Ext.P25. The learned counsel for the petitioner submitted that a bare perusal of Ext.P26 order would reveal that it was passed under the premise that the enquiry ordered against

respondents 4 to 7 was actually conducted and a report was furnished to the Manager and still the Manager, for oblivious reasons, has not taken steps to finalise the disciplinary action. It is submitted that it is after forming such an opinion that the first respondent passed Ext.P26 order directing the petitioner herein to reinstate respondents 4 to 7. It is submitted by the learned counsel that such an opinion was formed by the Government without properly appreciating the true state of affairs. It is further submitted that Ext.P24 itself would reveal that owing to the non co-operation from the part of respondents 4 to 7 enquiry as part of disciplinary action could not be conducted and needless to say that in such circumstances another report was also filed by the third respondent after conducting an enquiry. The learned counsel further submitted that the enquiry which was completed is nothing but a preliminary enquiry which was conducted by the third respondent for the purpose of deciding the question whether continued suspension of respondents 4 to 7 was required or not. In

short, the precise contention is that after issuance of the memos of charges with the statements of allegations and on receipt of the written statements of defence, though they were forwarded to the third respondent with a request to conduct an enquiry and make available a report to enable the Manager to finalise the disciplinary proceedings no enquiry was conducted and no report was submitted. In such circumstances, the learned counsel submitted that since the very foundation of Ext.P26 order is the opinion that the petitioner has been purposefully delaying the finalisation of the disciplinary proceedings which is absolutely not true to facts, Ext.P26 order invites interference. Per contra, the learned counsel for respondents 4 to 7 contended that though it is a fact that no enquiry was conducted into the charges framed against respondents 4 to 7 there is absolutely no justification for attributing non co-operation on respondents 4 to 7 for the said delay. In other words, according to the learned counsel, for the delay on the part of the third respondent in conducting enquiry,

respondents cannot be found fault with. Be that as it may, it is a fact that despite the issuance of memos of charges with statements of allegations viz., Exts.P7 to P10 and submission of Ext.P11 to P14, written statements of defence by respondents 4 to 7, the third respondent has not so far conducted an enquiry as contemplated under the provisions of Chapter XIV-A, Rule 75 of the KER. When that be the position, there will be no justification for the first respondent to make aspersion on the petitioner for non-finalisation of the disciplinary proceedings. Though the Manager is the disciplinary authority, the power to conduct enquiry and to submit a report vests with the departmental authorities. In such circumstances, if a report is not made available to the disciplinary authority, viz., the Manager, by the concerned departmental authority after conducting enquiry against the delinquent teacher it is understandable as to how the disciplinary authority could be blamed for the delay in the matter of finalisation of the disciplinary proceedings against respondents 4 to 7.

Obviously, the manager could finalise the disciplinary action only after obtaining a report from the departmental authority. In this case, admittedly, the third respondent is the enquiry authority. Ext.P24 itself would reveal that he could not commence or complete the enquiry. But at the same time, it is a fact that though respondents 4 to 7 were placed under suspension as per Ext.P2 with effect from 27.3.2013 they are still under suspension. The nature of memos of charges indicate that a long drawn enquiry is not at all required and the enquiry can be completed without much delay. In such circumstances, I am of the view that the writ petition can be disposed of as hereunder:-

The third respondent, the enquiry authority, is directed to complete the enquiry against respondents 4 to 7 based on Exts.P7 to P10 memos of charges strictly in tune with the provisions under the KER with proper opportunities to respondents 4 to 7 as also to the

petitioner. After conducting such enquiry, a final report in the matter shall be forwarded to the petitioner, the disciplinary authority, within two weeks from the conclusion of the enquiry. The whole exercise shall be done by the third respondent within 45 days from the date of receipt of a copy of this judgment. Respondents 4 to 7 and the petitioner shall co-operate with the third respondent for conducting enquiry and completing the same within the aforesaid time limit. On receipt of the enquiry report, the petitioner who is the disciplinary authority as regards respondents 4 to 7, shall finalise the disciplinary action in accordance with the provisions under KER. In the event of a situation compelling the petitioner to issue show cause notice to respondents 4 to 7, it shall be done within a period of two weeks from the date of receipt of a copy of the enquiry report. On receipt of the same, respondents 4 to 7 shall show cause within a period of one week. In such eventuality, the petitioner shall pass final orders within a further period of three weeks from the date of receipt of the

explanation from respondents 4 to 7, in accordance with law. If there occurs any delay from the part of the petitioner to pass final orders in the matter where he is constrained to impose penalty on the respondents within a period of one week from the expiry of three weeks' time given in that regard, he shall issue orders forthwith reinstating respondents 4 to 7 subject to the outcome of disciplinary action. To enable the petitioner and the third respondent to comply such directions, Ext.P26 is set aside.

The writ petition stands allowed as above.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010