

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 14821 of 2012 (C)

PETITIONER :

**K.SHAHUL HAMEED,
SON OF KUNJIPOKER HAJI,AGED 40 YEARS,
LAB ASSISTANT (UNDER SUSPENSION),
M.S.M.HIGHER SECONDARY SCHOOL,
KALLINGAPARAMBA (RESIDING AT KOTTAYIL VEEDU,
KURUKA, KALPAKANCHERY, MALAPPURAM-676 551).**

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

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM-695 001**
- 3. THE REGIONAL DEPUTY DIRECTOR
OF HIGHER SECONDARY EDUCATION, CIVIL STATION,
KOZHIKODE-673 020.**
- 4. THE MANAGER,
M.S.M.HIGHER SECONDARY SCHOOL, KALLINGAPARAMBA,
KALPAKANCHERRY, MALAPPURAM DISTRICT-676 551.**
- 5. THE PRINCIPAL,
M.S.M.HIGHER SECONDARY SCHOOL, KALLINGAPARAMBA,
KALPAKANCHERRY, MALAPPURAM DISTRICT-676 551.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI.P.M.JOSEPH
R4 & R5 BY ADVS. SRI.M.R.ANISON
SMT.K.P.GEETHA MANI
SMT.ANNIE JACOB
SMT.P.A.RINUSA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P-1. TRUE COPY OF THE MEMO OF CHARGES ISSUED BY THE MANAGER DATED 03.08.2007.
- EXHIBIT P-2. TRUE COPY OF THE ORDER NO.A1/6594/07 OF THE REGIONAL DEPUTY DIRECTOR DATED 14.08.2007.
- EXHIBIT P-3. TRUE COPY OF THE ORDER NO.ACD.A2/20610/08/HSE DATED 28.03.2008 OF THE DIRECTOR.
- EXHIBIT P-4. TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.8048 OF 2009-A DATED 11.03.2010.
- EXHIBIT P-5. TRUE COPY OF THE LETTER OF THE MANAGER DATED 01.12.2010 ALONG WITH THE PROCEEDINGS.
- EXHIBIT P-6. TRUE COPY OF THE G.O.(RT.)NO.196/2011/G.EDN. DATED 14.01.2011 OF THE GOVERNMENT
- EXHIBIT P-7. TRUE COPY OF THE G.O.(RT.)NO.2048/T1/12/G.EDN. OF THE GOVERNMENT DATED 02.05.2012

RESPONDENTS' EXHIBITS:

- EXHIBIT R4(A). TRUE COPY OF THE G.O.(RT) NO.246/2009/G.EDN DATED 16/01/2009
- EXHIBIT R4(B). TRUE COPY OF THE RELEVANT PAGES OF THE PTA MINUTES DATED 09/08/2007
- EXHIBIT R4(C). TRUE COPY OF THE ADDITIONAL MEMO OF CHARGES AND STATEMENT OF ALLEGATION.
- EXHIBIT R4(D). TRUE COPY OF THE JUDGMENT DATED 28/05/2010 IN W.A.NO.857/2010

/TRUE COPY/

P.A.TO JUDGE

A.M.SHAFIQUE, J

W.P.C.No.14821 of 2012

Dated this the 19th day of November 2015

J U D G M E N T

Petitioner has approached this Court challenging Exts.P5 and P7 by which the Manager of the School had removed him from service, which was later confirmed by the Government.

2. The short facts involved in the writ petition would disclose that the petitioner, while working as Lab Assistant in the 4th respondent School, was placed under suspension on 03/08/2007. He was served with Ext.P1 memo of charges. As per Ext.P2 order passed by the 3rd respondent, the Manager was permitted to continue with the suspension. By Ext.P3, the petitioner was directed to be reinstated in service by the Director of Higher Education. However, the Manager challenged Ext.P3 order of the Director of Higher Education by filing W.P.C.No.8048/2009, which was disposed of by judgment dated 11/03/2010, Ext.P4, permitting the Manager to pass appropriate orders after affording an opportunity to be heard on the punishment to the petitioner. According to the petitioner, thereafter, by Ext.P5 proceedings, he was dismissed from service.

Though he filed an appeal before the Government, Government also confirmed the same as per the order dated 02/05/2012.

3. The main contention urged by the petitioner is that there is non-compliance of Rule 75 of Chapter XIV of the Kerala Educational Rules (hereinafter referred to as 'the KER'). Therefore, the entire proceedings have to be set aside. It is stated that neither any enquiry was conducted in terms with Rule 75 of Chapter XIV of the KER nor any procedure under the Rules have been complied with. Under such circumstances, major penalty of dismissal from service could not have been imposed on the petitioner. It is also contended that if at all disciplinary action was justified, the punishment of removal from service was disproportionate to the proved charges.

4. Counter affidavit has been filed by the 4th respondent Manager inter alia stating that, on serving memo of charges seeking for explanation, petitioner virtually admitted the allegations raised in the memo of charges. The Manager placed the files before the Regional Deputy Director of Higher Secondary Education for an enquiry. Since no enquiry was conducted by the said authority, the Manager approached the Director of Higher

Education, the 2nd respondent. The 2nd respondent, on conducting an enquiry, issued Ext.P3 order dated 28/03/2008. In Ext.P3 order, it was found that the allegations against the petitioner has been proved. However, the Director proceeded to observe that the petitioner shall not, hereafter, create any nuisance which affects the functioning of the school and that he should be given a final warning in the matter. The Manager was directed to re-instate him in service and to treat the suspension period as eligible leave.

5. The Manager challenged the aforesaid order by filing W.P.C.No.8048/2009 and on the basis of Ext.P4 judgment, necessary steps had been taken to issue notice to the delinquent employee and thereafter the punishment had been imposed, which has ultimately been approved by the Government. It is submitted that all necessary steps in terms with Rule 75 had been complied with. It is also submitted that the petitioner was involved in other misconducts on earlier occasions for which punishment had been imposed by withholding increments. However, when the misconducts continued, the Manager was forced to take an action removing him from service. Being a

School, discipline is very important and being a Lab Assistant, the petitioner was bound to carry out his functions, in accordance with the directions issued in that regard and instead of carrying on his routine duties, he had indulged in Satyagraha in front of the School and had also disrupted the meeting of the Parent Teachers Association. It is stated that the punishment imposed on the petitioner is proportionate to the proved charges and therefore there is no illegality in the orders passed.

6. Heard learned counsel for the petitioner as well as the learned counsel appearing for the Management and the learned Government Pleader appearing on behalf of the State.

7. The main question involved in the writ petition is whether there is compliance of Rule 75 of Chapter XIV of the KER. According to the 4th respondent, Ext.P3 is the order of the Deputy Director in terms of Rule 75. As per Rule 75, if the Manager intends to impose major penalties, he shall forward the records of the case with request to the educational authority that a formal enquiry may be conducted in the matter. It is apparent from Ext.P3 that such a request has been made by the Manager. When a request is made by the Manager calling upon the educational

authority to conduct an enquiry, it has to be for the purpose of imposing a major penalty. In terms of Rule 75(3), the delinquent is given an opportunity to put up his defence and verify all necessary records. In the present case, there is a finding that a hearing has been conducted by the Director on 27/05/2010 and he formed an opinion that the allegations raised against the delinquent employee is justified. Further the memo of charges at Ext.P1 also indicates that notice had been given to the petitioner asking him to show cause why disciplinary action should not be taken against him as contemplated under Rule 75 of Chapter XIVA. Therefore, it is clear that the intention of the Manager was to conduct an enquiry for imposing major punishment. Director of Public Instructions, however, having found that the petitioner was guilty of the charges levelled, found it fit to direct the Manager to re-instate him in service by giving a warning. The said order was challenged by the Manager by filing W.P.C.No.8048/2009, in which the petitioner was a party. This Court had directed the Manager to give an opportunity to the petitioner for being heard and to pass appropriate orders. It is also borne out from records that a writ appeal has been filed by the petitioner against the

aforesaid judgment as W.A.No.857/2010, which was dismissed as per the judgment dated 28/05/2010.

8. The facts involved in the writ petition clearly indicates that an enquiry in detail had been conducted by the DPI and Ext.P3 is the report. Though the learned counsel for the petitioner submits that the enquiry was conducted without taking evidence, it is, apparently for the Enquiry Officer, to consider in what manner the enquiry has to be conducted. The only guideline is that principles of natural justice have to be complied with. The learned counsel for the 4th respondent submits that the petitioner has admitted the fact that he had committed the acts complained of. Under such circumstances, there is no reason why a further examination of witnesses and deliberations were required in the matter. Viewed in that angle, I am of the view that there is no justification in contending that there is violation of Rule 75 of Chapter XIV of the KER.

9. The next question is regarding the punishment imposed on the petitioner. It is not in dispute that the Manager is the person who is the disciplinary authority to impose punishment. The Manager has taken a decision to remove the

petitioner from service on account of his misconducts. Being a School managed by the 4th respondent, discipline is of primary importance and if, one of the staff, being part of the school, works in a manner of total indiscipline, it will affect the institution as a whole. The proved charges were conducting 'satyagraha' in front of the school and disrupting the meeting of Parent Teachers Association.

10. Under such circumstances, I do not think that the imposition of punishment of removal from service was disproportionate to the proved charges. Having come to such a finding, I do not think that any error had been committed by the Government in not interfering with the punishment imposed on the petitioner.

There being no merits in the contentions urged in the writ petition, the same is dismissed.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

