

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C).No. 22180 of 2005 (M)

PETITIONER:

**ALL C.S.I. SCHOOLS IN MALABAR AND
WAYANAD, KOZHIKODE 673 001
REPRESENTED BY ITS CORPROATE MANAGER
REV.FR.PAUL DAVID THOTTATHIL.**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.C.P.SIVADASAN NAIR**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION
KANNUR.**
- 3. MORIES JAISON.A. 14/784, KODUR PARAMBA,
PUTHIYARA, KOZHIKODE 4.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
THALASSERY.**

BY GOVERNMENT PLEADER SRI. S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :-

- | | | |
|---------|---|---|
| EXT.P1 | - | COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 22.03.1995. |
| EXT.P2 | - | COPY OF THE MEMO OF CHARGES AND STATEMENT OF ALLEGATIONS SERVED UPON THE 3RD RESPONDENT. |
| EXT.P3 | - | COPY OF THE EXPLANATION DATED 24.03.1995 SUBMITTED BY THE 3RD RESPONDENT TO THE STATEMENT OF ALLEGATIONS. |
| EXT.P4 | - | COPY OF THE PROCEEDING OF THE PETITIONER DATED 06.04.1995. |
| EXT.P5 | - | COPY OF THE JUDGMENT OF THIS COURT DATED 17.10.2000 IN O.P. NO.4337/95. |
| EXT.P6 | - | COPY OF THE LETTER DATED 22.03.2011 SENT BY THE 2ND RESPONDENT. |
| EXT.P7 | - | COPY OF THE NOTE DATED 27.04.2001 SUBMITTED BY THE PETITIONER. |
| EXT.P8 | - | COPY OF THE PROCEEDING NO.B4/25868/00 DATED 18.06.2001 OF THE 2ND RESPONDENT. |
| EXT.P9 | - | COPY OF THE REVISION DATED 18.12.2002 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. |
| EXT.P10 | - | COPY OF THE JUDGMENT DATED 06.02.2004 IN WP(C) NO.4483/04 OF THIS COURT. |
| EXT.P11 | - | COPY OF THE ARGUMENT NOTE DATED 12.07.2005 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. |
| EXT.P12 | - | COPY OF G.O.(RT) NO.3470/05/G.EDN. DATED 15.07.2005 ISSUED BY THE 1ST RESPONDENT. |
| EXT.P13 | - | COPY OF THE PROCEEDING BEARING NO.D.R-267/02-03/EDN. DATED 05.11.2007 ISSUED BY THE TAHSILDAR [RR] KOZHIKODE. |
| EXT.P14 | - | COPY OF THE PROCEEDING BEARING NO.D.R-267/02-03/EDN. DATED 06.11.2007 ISSUED BY THE TAHSILDAR [RR] KOZHIKODE. |

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.22180 of 2005-M

Dated this the 2nd day of December, 2015.

JUDGMENT

The challenge raised in the above writ petition was against Ext.P12 order passed by the Government ordering recovery of salary paid to the 3rd respondent under Rule 7 Chapter III of Kerala Education Rules,1959 (for brevity 'KER') as directed in the judgment dated 17.10.2000 in O.P. No.4337 of 1995. The 3rd respondent was appointed as a Full Time Menial (Watchman) at the BEMP High School, Thalassery on 14.10.1991, which aided School is under the petitioner Corporate Management.

2. The 3rd respondent joined duty on 15.10.1991 and it is stated that he was highly irregular in attending School and performing his duties. The 3rd respondent was suspended on 07.10.1992 and charge-sheeted as per Ext.P2 dated 11.03.1995. The 3rd respondent submitted

Ext.P3 objection, which on being found to be unsatisfactory, the Manager decided to terminate him, as per Ext.P4. Immediately it is to be noticed that no disciplinary enquiry was conducted and the dismissal was without following the procedure under Rule 75 Chapter XIVA of KER.

3. The termination was challenged by the 3rd respondent in O.P. No.4337 of 1995. Ext.P4 order of termination was dated 06.04.1995 and this Court found that despite the pendency of the said writ petition for five years before this Court, no Counter Affidavit was filed and hence the writ petition was allowed, directing the 1st respondent Manager, the petitioner herein, to forward the appointment order afresh for approval to the District Educational Officer. It was also specifically directed that, if such direction to the 1st respondent (Manager) was not complied with and the appointment order not forwarded, the DEO shall deal with Ext.P1 as the appointment order and consider its approval. It was also directed that the Deputy Director

of Education shall take appropriate steps against the Manager for the financial loss caused. Ext.P8 is the order to recover the loss from the Manager and Ext.P12 is a consequential order made on a review filed by the Management. The review has been rejected by Ext.P12.

4. A reading of Ext.P12 would indicate that the Manager's only contention was that Ext.P4 order of dismissal was not challenged as provided in the KER. True, there are alternate remedies available under the KER to challenge the order of dismissal. However, the 3rd respondent had chosen to avail the remedy under Article 226, presumably by reason of the gross procedural illegality in the dismissal order, which did not comply with Rule 75 Chapter XIVA KER. The challenge raised before this Court also concluded by Ext.P5 judgment, allowing the same. Ext.P5 is dated 17.10.2000. The Management has not taken any steps to file an appeal or a review from the aforesaid judgment. The Management rested contend, with an assertion that Ext.P5 was an *exparte* order. That cannot absolve the

liability of the Management from complying with the directions in Ext.P5. The Management was aware of the judgment and did nothing. The mere fact that the judgment was *ex-parte*, would not render it *non est* in the eye of law. In such circumstance, this Court does not find any infirmity in Ext.P-8 which was an action in accordance with Ext.P5 judgment. The learned Government Pleader submits that the amounts though recovered from the Management, the same has not been disbursed to the 3rd respondent. It is unfortunate. In such circumstances, there will be a direction to disburse the amount recovered from the Manager to the 3rd respondent immediately and expeditiously at any rate within two months from the date of receipt of the certified copy of the judgment.

The writ petition would stand dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

sp/09/12/15