

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 16030 of 2010 (C)

PETITIONER:

**SICILIAMMA JOSEPH AGED 51 YEARS,
W/O. THOMAS RAJAN, HEADMISTRESS, NARAYANA VIDYALAYAM
A.U.P.SCHOOL, THENKARA(RE-NAMED AS UNITY A.U.P.
SCHOOL) MANNARKKAD, PALAKKAD DISTRICT).**

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

RESPONDENTS:

- 1. THE STATE OF KERALA, REP. BY THE
SECRETARY TO GOVERNMENT GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, TRIVANDRUM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.**
- 3. THE ASSISTANT EDUCATIONAL OFFICER,
MANNARKKAD, PALAKKAD DISTRICT.**
- 4. THE MANAGER,NARAYANA VIDYALAYAM
A.U.P.SCHOOL, THENKARA, MANNARKKAD
PALAKKAD DISTRICT.**

R1 -R 3 BY GOVERNMENT PLEADER SRI. S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF THE ORDER NO.SC-88/06-07/KKD OF THE 2ND RESPONDENT
- P2 : TRUE COPY OF THE DECISION REPORTED IN 1996(2) KLT 864
- P3 : TRUE COPY OF THE DECISION REPORTED IN 2004 (2) KLT 1051
- P4 : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC 8162/2009-M
- P5 : TRUE COPY OF THE ORDER NO.RA (1)/67927/90/L.DIS DPI OF THE 2ND RESPONDENT
- P6 : TRUE COPY OF THE G.O. (RT) NO.4664/09/G.EDN OF THE GOVERNMENT
- P7 : TRUE COPY OF THE G.O.(RT) NO.1884/09/G.EDN OF -DO-
- P8 : TRUE COPY OF THE REPRESENTATION OF THE PETITIONER
- P9 : TRUE COPY OF THE ORDER NO.C/1459/07 OF THE ASST. EDL. OFFICER
- P10 : TRUE COPY OF THE ORDER NO.C/4225/2009 OF -DO-
- P11 : TRUE COPY OF THE ORDER IN W.P.(C) 23520/2006
- P12 : TRUE COPY OF THE ORDER IN W.P.(C) NO.27659/2006
- P13 : TRUE COPY OF THE ORDER IN W.P.(C) NO. 17739/2006
- P14 : TRUE COPY OF THE ORDER IN W.P.(C) NO.23541/2009-K
- P15 : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.A. NO.1288/2007
- P16 : TRUE COPY OF THE GRATUITY PAYMENT ORDER DATED 21.08.2014

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 16030 of 2010 (C)

Dated this the 7th day of September, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that liability has been cast on the petitioner for recovery of an amount, for reason of Staff Fixation for the year 2006-2007 having been revised.

2. The petitioner was the Headmistress of the School of the 4th respondent during 2006-2007. As per the student strength submitted by the Headmistress of the School, Staff Fixation Order was issued by the Assistant Educational Officer allowing 37 divisions under Rule 16 of Chapter XXIII of the Kerala Education Rules, 1959 (for brevity 'K.E.R.'). A 'Super Check Cell' visit was conducted on 9.10.2006, 20.2.2007 and, on the specific directions of the Director, again on 9.1.2008. Based on the inspection report the Director invoked the provisions of Rule 12 E (3) and Rule 16 of Chapter XXIII of K.E.R. to pass Ext.P1 order. Ext.P1

order elaborately considered the report of the Super Check Cell, which found bogus admissions; reflected in the attendance registers. The allegations resulted in the division fall to the extent of one division each in Stds. I and II. The Order at Ext.P1 caused the reduction of one division each in Stds. I and II for the year 2006-2007 and directed that further action; to fix the liability and recover the amount from the Headmistress, would be taken up.

3. The petitioner challenges Ext.P1 order, as having not been issued in the course of the year; relying on Exts.P2 to P4 judgments. Rule 15 of Chapter XXIII of K.E.R. is pointed out to contend that the revision of Staff Fixation can only be made in the course of the academic year. The petitioner also, based on Ext.P15 judgment, contends that there can be no liability fixed on the Headmistress with respect to the revision of Staff Fixation without a proper disciplinary enquiry being conducted. The alternate contentions of the petitioner are with respect to the

petitioner having filed an application before the Deputy Director for accommodating the two excess teachers, retrenched for reason of division fall, in the leave vacancies available in the said academic year as also the consideration of protection on the basis of 1:40 ratio for the said year.

4. Exts.P2 to P4 judgments were with respect to Rule 15 of Chapter XXIII of K.E.R. Rule 15 speaks of Educational Officers being satisfied for valid and sufficient reasons that the fixation of staff strength was obtained by bogus admission or attendance or by fraud or by misrepresentation. Such revision of staff fixation orders by the Education Officers, as is specifically provided in Rule 15, has to be re-fixed at any time during the course of the year. However, the same may not apply to the present proceedings, since the present proceeding is under Rule 16 and Rule 12E. As per Rule 16, the Government has constituted a Super Check Cell and the Super Check Cell (Malabar Region) Kozhikode had made a surprise visit in

the School on 09.10.2006. On verification of the attendance and the pupils physically present, there is reported, a shortage of attendance, which the Head Mistress tried to explain as due to break down of school bus, special day for Muslims and spread of viral fever. The attendance on the particular day is specifically noticed at Ext.P1. The Super Check Cell found the explanation of the Headmistress to be not satisfactory and found on verification of the records that the School authorities had retained pupils in the rolls irregularly for getting fixation benefits, the details of which were also extracted in Ext.P1.

5. A further visit of the Super Check Cell on 20.02.2007 found that the pupils shown in the attendance register on the previous visit and found to be bogus, were not present on the said day also. Such students in the rolls, who were marked as 'present' in the attendance register, were found to be absent on both the days of the inspection. The explanation of the Headmistress again was engine

trouble of the school bus.

6. On 23.8.2007 the Director of Public Instruction (DPI) gave a hearing to the Headmistress and the affected teachers of the school as also the Manager. The Super Check Cell officials of Kozhikode were also present at the time of hearing. The DPI again directed a visit to be made to the school and the Super Check Cell visited the school on 9.1.2008. A verification of the records of the school, with the report submitted by the Super Check Cell, found that there were 1582 students on the rolls of the School during 2006-2007, out of which 327 were shown as absentees on the first day of visit, of which 191 names were identified as bogus admissions by the Super Check Cell. It was also noticed that after the first visit of the Cell, 40 students were removed from the rolls. On the third visit on 9.1.2008, 86 students who were earlier shown as bogus admissions were found to be genuine and the objection regarding that was dropped. However, the balance students absent earlier also

and found in the rolls were found to be bogus admissions. It was in such circumstance that there was a division fall ordered, each in Stds. I and II and two posts of primary teachers was directed to be abolished for the year 2006-2007. The Director, based on the report; as per Rule 12E, passed Ext.P1 order in the academic year 2007-2008. But, however, the rigour of Rule 15 not being applicable, there can be no defect found on the Staff Fixation being re-fixed by the Deputy Director, invoking the powers under Section 12 E (3) of Chapter XXIII of K.E.R..

7. With respect to the alternate contentions of the petitioner, the accommodation in the leave vacancies as also the protection to be considered including 1:40 ratio, the same cannot be a solution to efface the allegation of bogus admissions. With respect to the leave vacancies, admittedly, no appointments were made and the two teachers, who continued in the academic year, were shown as regular teachers, whose pay and allowances were the

liability of the Government. In such circumstance, the subsequent representation made before the Deputy Director is of no consequence in deciding the division fall and the issue of the liability being attempted to be recovered from the Headmistress. With respect to the protection including 1:40 ratio, that also would not militate against the recovery proceedings since it only could enure to the benefit of the two teachers who were found to be excess as per the revised Staff Fixation Order. The petitioner moved the Deputy Director by a separate application at Ext.P8 to consider the 1:40 ratio and also accommodation in the leave vacancies. Based on the above finding, the prayers made by the petitioner before the Deputy Director cannot be countenanced nor can it absolve the liability, if any, for having procured a staff fixation based on bogus admissions.

8. The further contention of the petitioner is that no liability could be fixed without a disciplinary proceeding being initiated against the petitioner and that since no

recovery proceedings have been initiated and the petitioner having already retired on 31.05.2014, no proceedings now can be taken against the petitioner. It is to be noticed that Ext.P1 order does not fix the liability as such on the petitioner, the Headmistress. Ext.P1 only directed that further action to fix the liability and recover the amount from the Headmistress may be taken. Ext.P1 is dated 22.1.2008. Admittedly, a revision was filed by the petitioner which was rejected by Ext.P7 on 18.5.2009. No proceedings were taken at any time as directed in Ext.P1 for fixation of liability. The learned Government Pleader would contend that the same was not deliberate and the Department's hands were tied by reason of the stay order passed in the above writ petition; during the pendency of which the petitioner superannuated.

9. The above writ petition has been filed against Exts.P1 and P9. This Court, by an interim order, on 25.05.2010 stayed all further proceedings pursuant to

“Ext.P9 for the purpose of recovering the liability fixed against the petitioner”(sic). Despite Ext.P1 order having been passed on 22.1.2008, admittedly no proceedings were taken to conduct any disciplinary enquiry against the petitioner. Ext.P9, without any disciplinary proceedings, attempted to recover the entire liability on the basis of a statement which was directed to be made, showing the pay and allowances of the two retrenched teachers. Though, the recovery at Ext.P9 was stayed, there was nothing prohibiting the Government from initiating a disciplinary proceeding against the petitioner.

10. There exists a clear distinction between fixation of liability and recovery of amounts. What was directed in Ext.P1 was initiation of proceedings for fixation of liability; pursuant to which alone recovery could be made. Having initiated no disciplinary proceedings, for fixation of liability; Ext.P9 straight away attempted recovery. That definitely could not have been done and recovery as per Ext.P9 alone

was stayed. Even in the teeth of stay of Ext.P9, the Department could have proceeded with the steps for fixation of liability. The petitioner was allowed to retire without any proceedings being initiated against her. There was no stay of Ext.P1 order issued in the above writ petition. The disciplinary proceedings having not been initiated against the petitioner, the Headmistress, when she was in service and she having retired from service in 2014, no proceeding now could be issued under Rule 3 Part III of K.S.R.

11. Since no disciplinary enquiry has been initiated against the petitioner before retirement, the Writ Petition would stand allowed declaring that the petitioner cannot be proceeded with for recovery of liability after her retirement. Ext.P9 would stand set aside. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE