

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

W.P.(C).No.17277 of 2010 (H)

PETITIONER(S):-

MANAGER,
MAHATMA GANDHI MEMORIAL N.S.S. HIGHER SECONDARY SCHOOL,
LAKKATTOOR, KOTTAYAM DISTRICT.

BY ADVS. SRI.ANIL K.NAIR
SRI.B.UNNIKRISHNA KAIMAL.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KEARLA,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM.
3. THE DISTRICT EDUCATIONAL OFFICER,
KOTTAYAM.
4. C.S.NARAYANAN NAIR,
CHAKKIYARUKUZHAYIL HOUSE, LAKKATTOOR, (VIA) PAMPADY,
KOTTAYAM-686 502.

R1 TO R3 BY GOVERNMENT PLEADER SMT.ALWASY.

R4 BY ADVS. SRI.S.P.PARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.S.A.ANAND
SRI.PETER JOSE CHRISTO.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT
 IN O.P.NO.30400/02 DATED 12.3.2008.
- EXT.P2 TRUE COPY OF THE ORDER NO.K.DIS/5178/08
 DATED 2.5.2008 ISSUED BY THE 2ND RESPONDENT.
- EXT.P3 TRUE COPY OF THE REVISION PETITION DATED 24.6.2008
 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P4 TRUE COPY OF THE LETTER NO.B3/2881/08 DATED 22.10.2008
 OF THE 3RD RESPONDENT TO THE PETITIONER.
- EXT.P5 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
 W.P.(C).NO.18416/2009 DATED 4.12.2009.
- EXT.P6 TRUE COPY OF THE HEARING NOTE DATED 16.3.2010
 SUBMITTED BY THE PETITIONER BEFORE THE
 1ST RESPONDENT.
- EXT.P7 TRUE COPY OF THE G.O.(Rt) NO.1623/10/G.EDN.
 DATED 13.4.2010 ISSUED BY THE 1ST RESPONDENT.
- EXT.P8 TRUE COPY OF THE ORDER NO.B4/5172/08
 DATED 12.05.2010 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:-

- EXT.R4(a) TRUE COPY OF ORDER NO.C2/3103/HSE/98 DATED 18.5.1998
 OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION.
- EXT.R4(b) TRUE COPY OF THE JUDGMENT DATED 12.12.2001 IN
 O.P.NO.13364/98-N OF THIS HON'BLE COURT.
- EXT.R4(c) TRUE COPY OF THE ORDER NO.ACD.B4/1864/HSE/2022
 DATED 27.05.2002 OF THE DIRECTOR OF HIGHER SECONDARY
 EDUCATION.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.17277 of 2010-H

Dated this the 08th day of October, 2015

JUDGMENT

The Manager is before this Court seeking a reversal of Exhibit P7 order to the extent that the Manager was found to be personally responsible for the action of keeping the 4th respondent out of service from 01.06.2003 to 16.10.2005 by disobeying the orders of the Educational authorities and the Government. This observation made the Manager/petitioner liable for the salary due to the 4th respondent during the period he was kept out of service. Admittedly the petitioner was paid the entire salary due to the 4th respondent during the pendency of the writ petition. The writ petition is urged on the ground that the Manager could very well recover the amount paid to the 4th respondent from the Government, if the said rider is removed.

2. The facts to be noticed are that the 4th respondent was a Peon in the petitioner's school. The 4th respondent was promoted as a Lab Attender on 19.01.1994, subject to passing Lab Attender's Test, failing which reversion would be the

consequence. Admittedly the 4th respondent did not qualify in the test and he had to be reverted. He also agreed to the reversion; but, however, the Manager continued him in the Lab Attender post. The 4th respondent approached the Educational authorities and he was directed to be reverted, which order was challenged by the petitioner-Manager and a stay obtained from this Court in W.P.(C).No.30400 of 2002. Hence, the 4th respondent was continued as a Lab Attender. The entire controversy arose since on continuance as a Lab Attender, the employee would retire at 55 and if reverted to the post of Peon, he would continue upto 60 years.

3. The consequence of such continuance as Lab Attender, was that, the 4th respondent had to be retired at the age of 55 years. The age of superannuation of the 4th respondent was on 31.05.2003 and he was so superannuated. However, later the writ petition filed by the Manager was dismissed. It was held that the failure to pass the test as provided under the KSR has a necessary consequence of reversion. In such circumstance, the 4th respondent was taken back in employment as Peon. He was superannuated at the age

of 60 years, since he is a beneficiary of Rule 60(b) of Part I KSR. The issue raised was with respect to the salary between 01.06.2003 and 16.10.2005.

4. The petitioner would urge, on the basis of the decision dated 08.08.2014 of a Division Bench of this Court in **W.A.No.989 of 2011 [State of Kerala v. The Manager, AUP Schoo, Guruvayoor]**, that there could be no recovery made under Rule 7(4) of Chapter III of Kerala Education Rules, 1959 [for brevity “KER”] for reason of the same not being a case enumerated thereunder. True, the Division Bench held that, only in the contingencies mentioned thereunder could a recovery be effected. What assumes significance is sub-clause (b) of sub-rule (4), which is extracted hereunder:

“(b) Denial of promotion to a teacher to any higher grade of pay under rules 43, 43B or 43C, as the case may be, of Chapter XIVA, or denial of promotion to the senior-most rightful claimant to the post of Headmaster under rules 44 or 45 or 45A, as the case may be, of Chapter XIV-A, when the post becomes vacant disobeying the directions from the department and/or Government, causing denial of all monetary benefits which he/she would have got had the promotion been effected s per rules in time”.

The intention of providing such a clause is to recover any loss caused to the Government when a teacher has been rightfully denied a claim by the default caused by the Manager; and the Government is liable to make good the loss by the due salary and allowances; on the teacher being conferred with the claim by order of Court or otherwise.

5. Herein, what is to be noticed is that though it is not a promotion, the superannuation of the 4th respondent from the post of Lab Attender could not have been made by the petitioner since the 4th respondent could not have been continued as a Lab Attender without passing the test. Necessarily on the 4th respondent being disqualified in the test, there ought to have been a reversion and in such circumstance, the 4th respondent could have been continued upto the age of 60. The 4th respondent, hence, was denied the monetary benefits of salary between the period on which he was superannuated at the age of 55 and he was reinstated as per the judgment of this Court.

6. The contention that the petitioner had continued the 4th respondent on the basis of the interim order of this Court cannot be countenanced, since it was the petitioner who approached this Court and obtained a stay of the order. The petitioner having taken the risk of continuing the 4th respondent as a Lab Attendant against the provisions of the KSR and having superannuated him at the age of 55, was responsible for the denial of monetary benefits to the 4th respondent during the two year period he was kept out of service when he could have been continued as Peon. In such circumstances, this Court is of the view that there could be no interference caused to the impugned order.

The writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]