

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 17909 of 2012 (K)

PETITIONER(S):

**MINI SAMSON,
(HEADMISTRESS (UNDER SUSPENSION), SSMUP SCHOOL,
POOZHANAD), ALLIEDS, TC NO.26/2012 TRA-A21,
TUTOR'S LANE STATUE ROAD,
THIRUVANANTHAPURAM - 695 001.**

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

RESPONDENT(S):

**1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.**

**2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM - 695 014.**

**3. THE ASSISTANT EDUCATIONAL OFFICER,
KATTAKKADA, PIN - 695 572.**

**4. THE MANAGER,
S.S.M.U.P.SCHOOL, POOZHANAD,
THIRUVANANTHAPURAM DISTRICT, PIN - 695 125.**

*** ADDITIONAL R5 IMPLEADED**

**5. R.AJIKUMAR ,
S/O.S.RAGHAVAN NAIR, AGED 46 YEARS,
UPPER PRIMARY SCHOOL ASSISTANT (UPSA),
S.S.M.U.P.SCHOOL, POOZHANAD, TRIVANDRUM,
RESIDING AT AJI BHAVAN, VELLARADA, VELLARADA P.O.,
TRIVANDRUM -695 505.**

*** ADDL. R5 IS IMPLEADED AS PER ORDER DATED 14/09/2012 IN
IA NO.12214/2012.**

**R5 BY ADVS. SRI.S.MOHAMMED AL RAFI
SRI.V.AMBUJAKSHAN NAIR
R1 TO R3 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 17909 of 2012 (K)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1. TRUE COPY OF ORDER NO.D.DIS/C/3800/09 DATED 18/8/2009 OF THE 3RD RESPONDENT.
- EXHIBIT P2. TRUE COPY OF VISITING REPORT MADE BY THE VERIFICATION OFFICER SHOWING THE STUDENTS STRENGTH OF THE SCHOOL.
- EXHIBIT P3. TRUE COPY OF ORDER NO.C/6175/2010/D.DIS DATED 25/2/2010 OF THE 3RD RESPONDENT.
- EXHIBIT P4. TRUE COPY OF ORDER NO.D.DIS/C/6175/2010 DATED 25/2/2010 ISSUED OF THE 3RD RESPONDENT.
- EXHIBIT P5. TRUE COPY OF THE LETTER NO.C/908/2011 DATED 11/3/2011 OF THE 3RD RESPONDENT TO THE PETITIONER.
- EXHIBIT P6. TRUE COPY OF THE REVISION PETITION DATED 11/4/2011 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P7. TRUE COPY OF THE ORDER NO.F1/38855/11/DPI/KDIS DATED 3/10/2011 OF THE 2ND RESPONDENT.
- EXHIBIT P8. TRUE COPY OF THE REVISION PETITION DATED 9/12/2011 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P9. TRUE COPY OF THE G.O.(RT) NO.2342/12/GE DATED 21/5/2012.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.M.SHAFIQUE, J.

W.P.(C) No.17909 of 2012

Dated this the 15th day of January, 2015

JUDGMENT

The petitioner is working as Headmistress of S.S.M. U.P. School, Poozhanad. The petitioner challenges Exts.P3 to P5, P7 and P9 to the extent that certain liability had been fixed on the petitioner alleging that the petitioner was responsible for making bogus admissions in the school in the matter relating to preparation of staff fixation order. The liability fixed in terms of Ext.P5 was Rs.1,14,855/-. Though the petitioner had challenged the above matters before the appellate/revisional authorities, the same came to be confirmed and accordingly, this writ petition has been filed.

2. Counter affidavit has been filed by the 3rd Respondent, supporting the stand taken by the educational authorities and the Government in this regard. According to them, they are entitled to recover the amount from the headmistress of the school.

3. The learned counsel for the petitioner has relied upon the judgment of this Court in '**Vasudevan Namboodiri v. State of Kerala**' [1997 (2) KLT 529] to contend that there is no statutory provision enabling the Government to fix the liability on the headmistress. This court, in the aforesaid judgment, observed that the only provision available under the Kerala Education Rules is Rule 65 of Chapter XIV A and sub-rule (4) of Rule 7 of Chapter III, which concerns the contingencies under which loss can be recovered from the Manager.

4. This Court held that as far as the Headmaster is concerned, Rule 65 of Chapter XIV A of K.E.R enables disciplinary action to be taken against the Headmaster, which also stipulates that penalty can be imposed on the Headmaster, which includes recovery from pay of whole or part of any pecuniary loss caused to the State Government by negligence or breach of orders. Paragraph 9 of the aforesaid judgment reads as under:

“9. Now, I have to consider whether this power is available to the authorities under any other provisions of the Act. So far as the Headmaster is

concerned, R. 65 of Chap. XIV A, KER enables disciplinary action to be taken against the Headmaster. The same rule stipulates the penalty that can be imposed on the Headmaster. This includes recovery from pay of the whole or part of any pecuniary loss caused to the State Government by negligence or breach of orders. Thus, if in a disciplinary proceeding it is found that it was due to the negligence or breach of the Headmaster that the original order of staff strength was fixed by the D.E.O. then any such loss can be recovered from the Headmaster in such a proceedings. This strengthens the view I have taken earlier. So far as the Manager is concerned, even though there are many provisions under the K.E.R compelling the Manager to obey the directions of the Government and also the consequences in cases of disobedience, no provision has been brought to my notice which enables the Government to recover the loss from the Manager suffered by it on account of the wrong staff fixation. The only relevant rule is sub-r. (4) of R.7 of Chap. III. It mentions the contingencies when the loss occasioned by the Government can be recovered, which are as follows:

“(4) In the case of a Manager who commits serious irregularities causing monetary loss to teachers/Government, the loss sustained by

teachers/Government shall be recoverable from the Manager under the provisions of the Revenue Recovery Act for the time being in force as if it is an arrear of public revenue due on land, in the following cases, namely-

(a) Denial of appointment to a qualified thrown out teacher who has a rightful claim for re-appointment by virtue of his/her holding the post earlier under R.51A Chapter XIV A.

(b) Denial of promotion to a teacher to any higher grade of pay under Rr. 43, 43B or 43C as the case may be, of Chap. XIV A, for denial of promotion to the senior-most rightful claimant to the post of Headmaster under Rr. 44 or 45 or 45A, as the case may be, of Chap. 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 as per rules in time.

(c) Suspension of teachers, framing cooked up and/or frivolous charges, keeping them out of service beyond fifteen days disobeying the orders of re-instatement of such incumbents passed by the Deputy Director (Education) or by the Educational Officer concerned, as the case may be, after a preliminary investigation into the grounds of suspension under sub-r. (8) of R.67, Chap. XIV A, depriving such incumbents of their salary for which they would have been entitled to had they been reinstated by the Manager in compliance of the orders issued by the officer concerned.

(d) Making of irregular appointments and getting them approved by the Educational Officers concerned by furnishing false information/declaration by the Managers regarding the claimants, under R.51A, Chap. XIV A.”

Thus, no other circumstances are prescribed in the Rules, enabling the Government to recover the loss suffered by the Government.”

5. It is contended that no such disciplinary action had been taken against the headmistress before passing the impugned orders.

6. Learned counsel for the petitioner also brought to my notice judgment dated 25.06.2009 of a Division Bench of this Court in Writ Appeal No.1288 of 2007, wherein, this Court held at paragraph 2 as under:

“2. No provision has been brought to our notice, which enables the DPI while passing an order in the nature of Ext.P2 to order recovery from the Headmistress, the loss suffered by sanction of additional class divisions, given based on bogus admissions of students. It may be permissible to recover loss from the Headmistress as part of the disciplinary proceedings. So, no recovery shall be made from the appellant solely based on Ext.P2. We clarify this legal position and dispose of the Writ Appeal. If, in the disciplinary action, any recovery is

ordered, the appellant will be free to resist it raising all the contentions available to her under law.”

7. Having regard to the aforesaid law as held by this Court, it is evident that in the absence of initiating any disciplinary action against the headmistress, it is not open for the Government or the educational authority to fix liability on the petitioner.

Under such circumstances, this writ petition is allowed and the impugned orders Exts.P3 to P5, P7 and P9 are quashed to the extent it imposes liability on the petitioner.

Sd/-
A.M.SHAFIQUE,
JUDGE

//true copy//

P.S. To Judge

St/-