

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

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

WP(C).No. 27899 of 2004 (U)

PETITIONER(S) :

**SUKUMARA PANICKER T.K.,
(RETIRED CLERK, K.M.H.S. VELLOOR), GOKULAM, VELLOOR,
MAVELLOOR P.O, VAIKOM TALUK, KOTTAYAM DISTRICT.**

BY ADV. SRI.K.GOPALAKRISHNA KURUP

RESPONDENT(S) :

- 1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION (N)
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM.**
- 4. THE DISTRICT EDUCATION OFFICER,
KOTTAYAM.**
- 5. THE MANAGER, K.M.H.S. VELLOOR,
MEVELLOOR P.O., VAIKOM.**

**R1 TO R4 BY GOVERNMENT PLEADER SRI.SOJAN JAMES
R5 BY ADV. SRI.S.RADHAKRISHNAN**

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

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE LETTER DATED 17.10.1997 OF THE MANAGER.

EXHIBIT P2: TRUE COPY OF THE REPORT NO.B5/9155/97 DATED 28.11.1997.

EXHIBIT P3: TRUE COPY OF THE MEMO DATED 03.01.1997 ISSUED BY
THE MANAGER.

EXHIBIT P4: TRUE COPY OF THE LETTER DATED 16.11.1997 BY THE MANAGER
TO THE PETITIONER.

EXHIBIT P5: TRUE COPY OF THE ORDER DATED 19.11.1997 ISSUED BY
THE MANAGER TO THE PETITIONER.

EXHIBIT P6: TRUE COPY OF THE LETTER DATED 11.09.1998 FROM
THE DEPUTY DIRECTOR OF EDUCATION TO THE MANAGER.

EXHIBIT P7: TRUE COPY OF THE LETTER DATED 06.04.1999 ISSUED BY
THE DEPUTY DIRECTOR OF EDUCATION TO THE MANAGER.

EXHIBIT P8: TRUE COPY OF THE MEMO SERVED ON THE PETITIONER
DATED 27.04.1999.

EXHIBIT P9: TRUE COPY OF THE PROCEEDINGS OF THE MANAGER
DATED 14.07.1999.

EXHIBIT P10: TRUE COPY OF THE ORDER PASSED BY THE DIRECTOR OF
PUBLIC INSTRUCTIONS DATED 01.06.2000.

EXHIBIT P11: TRUE COPY OF THE ORDER DATED 30.06.2004 PASSED BY
THE 1ST RESPONDENT.

EXHIBIT P12: TRUE COPY OF THE ORDER DATED 26.03.2001 OF
THE HEADMASTER, K.M.H.S., VELLOOR.

EXHIBIT P13: TRUE COPY OF THE LETTER DATED 18.09.2001 OF
THE ACCOUNTANT GENERAL, KERALA, THIRUVANANTHAPURAM
TO THE DEPUTY DIRECTOR OF EDUCATION, KOTTAYAM.

EXHIBIT P14: TRUE COPY OF THE LIABILITY CERTIFICATE DATED 02.11.2001
ISSUED BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 27899 of 2004

Dated this the 8th day of October, 2015

J U D G M E N T

The petitioner was working as a Clerk in the KMHS Mevelloor, an aided school. He demitted his office on 31.01.2001. While in service, disciplinary proceedings were initiated against him; and he was placed under suspension from 03.11.1997; and the proceedings were completed only on 14.07.1999 when final order was passed. The petitioner was reinstated in service on 04.05.1999. While passing final orders, one annual increment of the petitioner was barred with cumulative effect as punishment. In the same order, it was directed that the period of suspension shall be treated as eligible leave. The petitioner challenged the said order dated 14.07.1999 in appeal and revision, which were dismissed confirming the same. Meanwhile, the petitioner demitted his office on 31.01.2001. While converting the suspension

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period, the petitioner was granted 475 days of leave without allowances; and an amount of ₹54,494/- was recovered from his DCRG as subsistence allowance paid in excess of the leave salary admissible to the petitioner. The petitioner alleges that the revision filed by the petitioner against the order dated 14.07.1999 was dismissed only on 30.06.2004. It is with this background, the petitioner has come up before this Court.

2. In the counter affidavit filed by the 4th respondent, it is contended as follows;

The petitioner was suspended from service after conducting a preliminary enquiry by the District Educational Officer on charges of misappropriation of scholarship amount due to SC/ST students. It is contended that the petitioner has never complained before the departmental authorities that the keeping of his suspension beyond 15 days was without sanction from the department. Also, the Director of Public Instructions and the Government confirmed the punishment awarded to him as well as treating of his period of suspension as eligible leave. Also, the Deputy Director (Edn.), Kottayam

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has twice directed the Manager to complete the disciplinary proceedings, which would show that the review contemplated under the provisions of Kerala Educational Rule was done; it is contended. According to them, in view of the gravity of the charges proved and the nature of punishment awarded to the petitioner, the decision to treat the period of suspension as eligible leave is only in accordance with the rules.

It is further contended that on enquiry, the charges levelled against the petitioner were proved and he was awarded a major penalty and his period of suspension was regularized by granting eligible leave. Therefore, according to them, the petitioner is not entitled to payment of full salary in accordance with the rules in Kerala Educational Rules. The petitioner has not taken any objection either before the Director of Public Instructions or before the Government that there was violation of procedure in awarding punishment to him. Hence, they have taken the stand that as the punishment awarded to him has been confirmed and the period of suspension has been regularized by granting eligible leave, the order to recover the excess subsistence

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allowance paid to him from his DCRG is only in accordance with rules.

It is further contended that the petitioner was reinstated in service immediately on completion of disciplinary procedures. According to them, since the period of suspension was treated as eligible leave, the amount of excess subsistence allowance paid to him is recoverable under Note 3 of Sub Rule 9 of Rule 56B Part I Kerala Service Rules and the order to recover the excess amount paid as subsistence allowance is only in tune with Note 3 of Sub Rule 9 of Rule 56B KSR. The petitioner, who had misappropriated Government money that also the scholarship amount due to poor SC/ST students, does not deserve any sympathy; according to them. The petitioner was suspended from service only after a preliminary enquiry. The charges framed against him were proved and he was awarded with punishment of barring his annual increment with cumulative effect. When a punishment is awarded, he is entitled to get his period of suspension treated only in accordance with rules. The Director of Public Instruction and the Government confirmed the punishment awarded to the petitioner.

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Considering the gravity of charges proved against him, the punishment is only proportionate.

3. I have heard the learned senior counsel for the petitioner and the learned senior Government Pleader in the matter.

4. Rule 91 of Chapter XIV A of the Kerala Education Rules states that when a teacher, who has been dismissed, removed, retired compulsorily or suspended, is reinstated in service or would have been reinstated, but, for his retirement on superannuation while under suspension, rules for the time being in force relating to Government servants in the matter shall apply mutatis mutandis. Therefore, Rule 56 B of Chapter VII Part 1 of Kerala Service Rule is applicable to the case of the petitioner. Rule 56 B reads as under;

(1) When an officer who has been suspended is re-instated or would have been so reinstated but for his retirement on superannuation while under suspension, or has retired from service on superannuation before the conclusion of the disciplinary proceedings against him the authority

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competent to order reinstatement shall consider and make a specific order. (a) regarding the pay and allowances to be paid to the officer or the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and (b) whether or not the said period shall be treated as a period spent on duty. (2) Notwithstanding anything contained in rule 55 where an officer under suspension dies before the disciplinary, or court proceedings instituted against him are concluded the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid. (3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the officer shall subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended. Provided that where such authority is of the opinion that the termination of the proceedings instituted against the officer had been

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delayed owing to reason directly attributable to the officer, it may after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the officer shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine. (4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes. (5) In cases other than those falling under sub-rules (2) and (3) the officer shall subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the officer of the quantum proposed and after considering the representation, if any, submitted by him in the connection within such period as may be specified in the notice. (6) Where suspension is revoked pending finalization of the disciplinary or court proceedings, any order passed under sub-rule (i) before the conclusion of the proceedings, against the officer shall be reviewed on its own motion

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after conclusion of the proceedings, by the authority mentioned in sub-rule (i) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be. (7) In case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose: * Provided that if the officer so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the officer. (Note 1:) The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -

(a) leave without allowances in excess of three months in the case of temporary officer, and

(b) leave of any kind in excess of five years in the case of permanent officer.

(Note 2:) The leave of any kind due and admissible referred to in the proviso shall include commuted leave also).

(8) The payment of allowances under sub-rule(2), sub-rule (3) or sub-rule(5) shall be subject to all other conditions

under which such allowances are admissible.

(9) The amount (not being the whole) of such pay and allowances determined under the proviso to sub-rule(3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 55.

Note 1:- The amount of subsistence allowance already drawn should be adjusted against the pay and allowances or proportion of them granted under 2 (rules 56, 56A or 56B) or leave salary which may be granted 3 (to the officer).

4 (Note 2:- The orders of revocation of suspension or of reinstatement after dismissal, removal or compulsory retirement from service, take effect from the date of the order and the intervening period, i.e., the period from the date of order to the date of joining duty shall be regularized by granting joining time and/or leave due and admissible to the officer concerned. However, cases where there is an abnormal time-lag between the date of such order and the date on which the officer concerned reports for duty shall be decided by Government, on merits).

1 (Note: xx x x)

2 (Note 3:- When a period of suspension is ordered to be converted into leave, the amount of subsistence allowance and compensatory allowances already received in excess of the leave salary and allowances admissible on such conversion, shall be refunded).

5. It is true that as per proviso to Sub Rule 3, when the authority is of the opinion that the termination of the proceedings instituted against the officer had been delayed owing to reasons directly attributable to the officer, he may, after giving him an opportunity to make his representation and after considering representation if any submitted by him, direct for the reasons to be recorded in writing that the officer shall be paid for the period of such delay only such amount (not being the whole of such pay and allowances as may be determined him). The learned senior counsel for the petitioner would argue that in the case of the petitioner, the completion of the proceedings against the petitioner was not delayed owing to any reason, which could be attributable to the petitioner.

6. The learned senior counsel for the petitioner also invited my attention to Sub Rule 7, which states that only if the officer so desires, the authority may order the period of suspension shall be converted as leave of any kind due and admissible to the officer. It is evident from Exts.P9 & P12 orders that the petitioner was not desirous of treating the period of suspension as leave. Therefore, it was pointed out that the decision to convert the period of suspension as eligible leave is against the provisions of law and also the decision to recover the subsistence allowance received is also against the provisions of law. I see valid force in the said submission.

7. There is yet another reason also to sustain the challenge against the impugned order. Though the petitioner, who was initially suspended for a period of 15 days, was ordered to be under suspension even after that 15 days, it was without previous sanction from the DEO. The respondents have no case that previous sanction of DEO has been obtained by the Manager for keeping the

petitioner under suspension beyond the initial 15 days. Therefore, continued suspension of the petitioner beyond 15 days is also illegal. Had the suspension been confined to first 15 days, the same would have been adjusted against eligible leave as the petitioner was having leave to his credit for such a set off. However, when it was found that there was no sufficient leave to the petitioner's credit to adjust the entire period of suspension, the Government, by the impugned order, has resorted to the method of converting the period of suspension as eligible leave and ordered recovery of the amount paid as subsistence allowance during the period in excess of leave salary.

8. From Ext.P7, it is clear that the termination of the proceedings against the petitioner was delayed only because of reasons attributable to the Manager. In spite of the directions issued by the Deputy Director, proceedings were not completed and final orders were not issued. It is also relevant to note that specific

directions were issued by the Deputy Director to the Manager to reinstate the petitioner in service pending completion of the disciplinary proceedings. Therefore, this Court is of the view that the impugned order calls for an interference. Though the petitioner has challenged Note 3 to Rule 9 of Rule 56B of Part (I) Kerala Service Rules, the petitioner was not serious regarding the same at the time of hearing.

Therefore, on a consideration of the entire materials now placed on record, the writ petition is disposed of quashing Exts.P9, P10, P11, P12 & P14 and directing the respondents to pay the petitioner the amount of ₹54,494/- (Rupees fifty four thousand four hundred and ninety four only) recovered from his DCRG as the amount of subsistence allowance received in excess of leave salary admissible to the petitioner as per Ext.P14 within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

A.V. RAMAKRISHNA PILLAI, JUDGE

bka/-