

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 16315 of 2015 (L)

PETITIONER(S):

**SREE NARAYANA EDUCATIONAL AGENCY
THODUPUZHA,
MANAGED BY SREE NARAYANA DHARMA PARIPALANA YOGAM (SNDP)
THODUPUZHA UNION, REPRESENTED BY ITS MANAGER
S.PRAVEEN AGED 40 YEARS, S/O.SIVAN, PREETHI BHAVAN
ANAKOODU, THODUPUZHA-685 584.**

**BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES**

RESPONDENT(S):

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- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
 - 2. DIRECTOR OF PUBLIC INSTRUCTIONS,
DIRECTORATE OF PUBLIC INSTRUCTIONS, POOJAPURA
THIRUVANANTHAPURAM-695 032.**
 - 3. ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTIONS,
DIRECTORATE OF PUBLIC INSTRUCTIONS, POOJAPURA
THIRUVANANTHAPURAM-695 032.**
 - 4. DISTRICT EDUCATIONAL OFFICER,
DISTRICT EDUCATION OFFICE, THODUPUZHA
IDUKKI DISTRICT-685 584.**
 - 5. MINI GANGADHARAN
D/O.GANGADHARAN, MODACKAL HOUSE
AIRAPURAM KARA AND VILLAGE, KUNNATHUNADU TALUK, HSA
SN HIGH SCHOOL, NANKI CITY, KANJIKUZH
IDUKKI DISTRICT-685 581, UNDER SUSPENSION.**

R5 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY

R5 BY ADV. SMT.N.SANTHA

R5 BY ADV. SRI.K.A.BALAN

R5 BY ADV. SRI.SAJU JOHN

R5 BY ADV. SRI.V.VARGHESE

R5 BY ADV. SRI.PETER JOSE CHRISTO

R5 BY ADV. SRI.S.A.ANAND

R BY GOVERNMENT PLEADER SMT.LOWSY.A.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF PETITION DATED 25-2-2015.

EXT.P2 : TRUE COPY OF PROCEEDINGS NO.50/2015 DATED 4-3-2015

EXT.P3 : TRUE COPY OF CHARGE MEMO DATED 4-3-2015.

EXT.P4 : TRUE COPY OF THE LETTER DATED 4-3-2015.

EXT.P4(A) : TRUE COPY OF THE STATEMENT DATED 12-3-2015.

EXT.P5 : TRUE COPY OF THE ORDER NO.B5/1836/15/KDIS DATED 13-3-2015.

**EXT.P6 : TRUE COPY OF THE REPLY TO EXT P3 DATED 5-3-2015 RECEIVED ON
16-3-2015.**

**EXT.P7 : TRUE COPY OF THE ENQUIRY NOTICE NO.VI/27941/2014/DPI DATED 6-4-
2015 ALONG WITH REPRESENTATION AND ENDORSEMENT.**

EXT.P8 : TRUE COPY OF THE REPLY DATED 17-4-2015 WITHOUT ENCLOSURES.

**EXT.P9 : TRUE COPY OF PETITION SUBMITTED BY THE OTHER TEACHERS IN
THE SCHOOL**

EXT.P10 : TRUE COPY OF THE ORDER NO.B5/1836/15/ DATED 20-5-2015

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.16315 OF 2015 (L)

Dated this the 2nd day of July, 2015

J U D G M E N T

The petitioner in the writ petition is an educational agency that runs the S.N. High School, Nanki City, Idukki District. The 5th respondent was appointed as an HSA (NS) in the said School. It is stated in the writ petition that, pursuant to complaints received against the 5th respondent, a preliminary investigation was done by the educational agency and thereafter, Ext.P2 suspension notice dated 4.3.2015 was served on the 5th respondent. This was followed by Ext.P3 charge memo of the same date. Exts.P2 and P3 suspension order and charge memo were immediately forwarded to the 4th respondent District Educational Officer. By Ext.P5 order dated 13.3.2015, the 4th respondent ratified Exts.P2 and P3 and extended the suspension period in respect of the 5th respondent beyond the period of 15 days. It is the case of the petitioner in the writ petition that, while the 5th respondent did not challenge any of these proceedings, at the instance of the 5th respondent's mother, the Minister for Education issued directions to the 2nd respondent, based

on which the 2nd respondent issued Ext.P7 enquiry notice to the parties. This was followed by Ext.P10 order dated 20.5.2015 passed by the 4th respondent, cancelling his earlier order Ext.P5 dated 13.3.2015 and directing a reinstatement of the 5th respondent in service. In the writ petition, Ext.P10 order of the 4th respondent is impugned inter alia on the ground that the said order was passed under dictation and therefore, could not be legally sustained. It is also pointed out that, inasmuch as the 5th respondent had not challenged Exts.P2, P3 and P5 in any proceedings under the Kerala Education Rules, the suo motu power of review, even if available, could not have been exercised in the instant case.

2. A counter affidavit has been filed on behalf of the 5th respondent, wherein, Ext.P10 order is sought to be justified on the basis of the power available for review under Rule 67 (8A) of Chapter XIVA of the KER. It is pointed out that inasmuch as there is a review power not only for the authority passing the order under review, but also any other Higher authority, the 2nd respondent was justified, even independently, in issuing directions to the 4th respondent for reviewing the earlier order of the 4th respondent.

3. I have heard the learned counsel for the petitioner, learned Standing counsel for the 5th respondent as also the learned Government Pleader for the official respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that Ext.P10 order passed by the 4th respondent effectively cancels his earlier order Ext.P5, dated 13.3.2015. No doubt, the 4th respondent has a power of review of his own orders by virtue of the provisions of Rule 67 (8A) of Chapter XIVA of the KER. An exercise of a review power by the authority that passed the order must, however, be for reasons that occur to the person who passed the original order. In that sense, therefore, if the 4th respondent had any material that indicated that his earlier order Ext.P5 required to be reviewed, then it would have been open to the 4th respondent to independently review the said order. A perusal of Ext.P10 order passed by the 4th respondent indicates, however, that the review of Ext.P5 order was done solely on account of the instructions that were issued to him by the 2nd respondent. It is seen that the 2nd respondent himself, being a higher

authority, who was also vested with the power of review, acted on instructions received from the Minister. Thus, this is a case where both the parties, the 4th respondent as well as the 2nd respondent, who were vested with the power of review of Ext.P5 order, exercised the said power on the instructions of another, who had no role to play in the decision to be arrived at by them. This cannot be seen as a valid exercise of a power of review since, when an authority acts under dictation, there is no independent consideration, much less an application of mind, by the authority for the purposes of exercise of the power of review. I therefore find that Ext.P10 order of the 4th respondent cannot be legally sustained. I quash Ext.P10 order, leaving it open to the 5th respondent to pursue any legal remedy against Ext.P5 order as she may deem fit.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp