

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

W.P.(C).No.16599 of 2014 (Y)

PETITIONER(S):-

1. THE MANAGER,  
KADAMBUR HIGHER SECONDARY SCHOOL, EDAKKAD,  
KADAMBUR P.O., KANNUR - 670 663.
2. V.GEETHA,  
HEADMISTRESS, KADAMBUR HIGHER SECONDARY SCHOOL,  
EDAKKAD, KADAMBUR P.O., KANNUR - 670 663.
3. LAJITH KUMAR P.K,  
HSA (MATHS), STAFF SECRETARY,  
KADAMBUR HIGHER SECONDARY SCHOOL, EDAKKAD,  
KADAMBUR P.O., KANNUR - 670 663

BY ADV. SRI.GEORGE POONTHOTTAM.

RESPONDENT(S):-

1. THE DEPUTY DIRECTOR OF EDUCATION,  
KANNUR - 670 001.
2. SRI. DINESAN MADATHIL,  
DEPUTY DIRECTOR OF EDUCATION, KANNUR - 670 001.

R1 BY GOVERNMENT PLEADER SMT.A.LOWSY.  
R2 BY ADV. SRI.M.SASINDRAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX**

PETITIONER(S)' EXHIBITS:-  
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- EXT P1- TRUE COPY OF THE NEWS PAPER REPORT DATED 18.06.2014.
- EXT P2- TRUE COPY OF THE COMMUNICATION DT 17.06.2014 GIVEN BY THE CHILD WELFARE COMMITTEE.
- EXT P3- TRUE COPY OF THE COMPLAINT DT. 23.6.2014 GIVEN BY THE 2ND PETITIONER.
- EXT P4- TRUE COPY OF THE PRINTED MATTER GIVEN IN THE PRESS CONFERENCE BY THE MANAGER OF THE SCHOOL.
- EXT P5- TRUE COPY OF THE ORDER NO. B4/11597/2014(1) DATED 26.6.2014 ISSUED BY THE DEPUTY DIRECTOR OF EDUCATION, KANNUR.
- EXT P6- TRUE COPY OF THE ORDER NO. B4-11597/2014(2) DT. 26.6.2014 ISSUED BY THE DEPUTY DIRECTOR OF EDUCATION, KANNUR.
- EXT.P7- TRUE COPY OF THE PROCEEDINGS IN THE COMMITTEE DATED 19.06.2014 OBTAINED UNDER THE RIGHT TO INFORMATION ACT.
- EXT.P8- TRUE COPY OF THE REPLY DATED 16.08.2014 GIVEN BY THE DEPUTY SUPERINTENDENT OF POLICE, KANNUR.
- EXT.P9- TRUE COPY OF THE EXPLANATION GIVEN BY THE HEADMISTRESS ON 19.7.2014.
- EXT.P10- TRUE COPY OF THE EXPLANATION GIVEN BY THE 3RD PETITIONER ON 19.7.2014.
- EXT.P11- TRUE COPY OF THE PROCEEDINGS OF THE MANAGER NBO.KHHSSA.121/2014 DATED 30.07.2014.
- EXT.P12- TRUE COPY OF THE ORDER NO.B4/11597/2014(1) DATED 5.8.2014 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:-  
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NIL.

Vku/-

[ true copy ]

K. Vinod Chandran, J

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W.P.(C).No.16599 of 2014-Y  
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Dated this the 30<sup>th</sup> day of October, 2015

**JUDGMENT**

The petitioners were aggrieved with Exhibits P5 and P6 suspension orders passed against the petitioners 2 and 3.

2. The brief facts to be noticed are that, there was an allegation with respect to harassment of girl students, in the aided school in which the 1<sup>st</sup> petitioner was the Manager, the 2<sup>nd</sup> petitioner was the Headmistress and the 3<sup>rd</sup> petitioner an High School Assistant (Mathematics), who also had the position of Staff Secretary. Based on newspaper reports, the Child Welfare Committee, Kannur initiated proceedings and forwarded a complaint to the jurisdictional District Police Chief. The 2<sup>nd</sup> petitioner filed a detailed explanation before the District Police Chief, as seen from Exhibit P3.

3. Subsequently, the Manager is said to have called for a Press Conference to explain the stand of the school, since the said allegations appeared in the newspapers and the reputation of the school was at stake. The 2<sup>nd</sup> petitioner, who was the Headmistress and the 3<sup>rd</sup> petitioner, who was the Staff Secretary,

were also present when the Manager conducted the Press Conference. On that basis, alleging violation of the provisions of Chapter XIV-C of the Kerala Education Rules, 1959 [for brevity “KER”], the petitioners 2 and 3 were suspended invoking sub-section (2) of Section 12A of the Kerala Education Act, 1958 [for brevity “the Act”].

4. Subsequently, it is indicated that on the instructions of the District Police Chief, Kannur, the Deputy Superintendent of Police conducted a detailed enquiry and found the allegations to be incorrect and also a *mala fide* attempt to malign certain teachers of the school. Without going into the details, suffice it to notice that Exhibit P8 report of the Dy.S.P. indicates that the students whose names appeared in the complaint were examined, who did not reveal any instance of harassment by the teachers. The version of the students was only that the teachers had reprimanded them, for their turnout not being in the proper manner and not as per the dress code. It was also found that certain students referred to was non-existent and at the address of one particular student, a Hindu, noticed in the complaint a Muslim family was residing. Further, the finding in Exhibit P8 was

that the complaints were all in the earlier vernacular alphabets, which are not, now taught to the students.

5. In any event, the complaint seems to have been closed; however, the allegation raised in Exhibits P5 and P6 was under Chapter XIV-C of the KER. Primarily it is to be noticed that Section 12A(1) of the Act empowers the Government or such officer not below the rank of an Educational Officer, to take disciplinary proceedings against any teacher notwithstanding anything contained in Section 11 or Section 12. Sub-section (2) also empowers such officer to suspend a teacher of an aided school when any disciplinary proceedings is proposed to be taken under that sub-section or when such disciplinary proceedings are pending. The proviso, by clause (a), mandates that before exercising the power under sub-section (1), the Government or the authorised officer should intimate the Manager regarding the circumstances requiring disciplinary action and give the Manager a reasonable opportunity to initiate such disciplinary action. Clause (b) of the proviso further enables the Government or the authorised officer to take appropriate disciplinary action against the teacher if the Manager fails to avail of such opportunity.

Essentially on a reading of sub-section (2) of Section 12A, this Court is of the opinion that even a suspension order can only be passed by the Government or authorised officer after sub-clause (a) of the proviso is complied with. This is so, since the power to order suspension is only when proceedings are proposed to be taken under sub-section (1) and when such disciplinary proceedings are pending.

6. The learned Government Pleader, however, would refer to the decision in ***Abdul Jabbar v. Director of Public Instruction* [2011 (2) KLT 831]**, wherein it was found that the power to suspend under sub-section (2) of Section 12A would not be regulated by the proviso. It is also to be noticed that another learned Single Judge in ***Bro.K.T.Joseph v. State of Kerala* [2014 (1) KLT 831]** noticed the aforesaid judgment and found that the power under sub-section (2) of Section 12A is controlled under Section 67(2) of Chapter XIV-A KER and a teacher could be suspended in exercise of the powers only when any disciplinary proceedings had to be taken against him or when such disciplinary proceedings are pending. In the case aforesaid, there was an audit of the accounts relating to “noon meal

feeding”, which was the reason for suspension, which was held to be bad.

7. With due respect, I am unable to accept the proposition in ***Abdul Jabbar*** (*supra*) and would have referred the matter for further consideration by a Division Bench. However, even without looking into the proviso or deciding on the sustainability of Exhibits P5 and P6 on the basis of the proviso, it is to be noticed that there is no charge made under Exhibits P5 and P6; nor is even an incident referred to under Exhibit P5. Though a disciplinary action is proposed, the allegation is that there is a “grave misconduct and insubordination as per relevant rules under Chapter XIV C of Kerala Education Rules” (*sic*). It is not clear as to what were the charges or the proposal for initiation of disciplinary enquiry, was on the basis of which incident. The Deputy Director of Education, who had issued Exhibits P5 and P6, is also said to have issued an intimation to the Manager to take up disciplinary proceedings against petitioners 2 and 3; but by order dated 27.06.2014, subsequent to Exhibits P5 and P6.

8. The Manager found that there is absolutely no ground to initiate proceedings under Rule 75 of Chapter XIV-A

KER, which is permissible, since the initiation of proceeding is only on the satisfaction of the Manager. However, that is not to say that the Educational authorities would be fettered by such satisfaction entered, since Rule 75A would enable the Educational authorities or the Government to initiate proceedings, if sufficient grounds are not available for dropping the proceedings. The DDE has also initiated proceedings under Rule 75A, by Exhibit P12. In Exhibit P12 dated 05.08.2014 also again the complaints of harassment by a group of teachers have been highlighted, which, later to that order, has been found to be baseless on a proper investigation conducted by the jurisdictional police and which is revealed in Exhibit P8.

9. The allegation in Exhibit P12 seems to be that the Headmistress convened a Press Conference at the Press Club, Kannur with a deliberate intention to upset and influence the investigations; and baseless and false allegations were raised against the investigating officers and the Educational authorities. However, none of the specific allegations raised or the content of the Press Conference has been disclosed in Exhibit P12. It is also pertinent that it is the specific case of the petitioners that it was

the 1<sup>st</sup> petitioner who called for the Press Conference and the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners were only persons present at the Press Conference under the directions of the Manager.

10. Again, Exhibit P12 order does not indicate the specific misconduct under Chapter XIV-C of the KER. The learned Government Pleader would refer to Rule 55 of Chapter XIV-C, which deals with broadcast from Radio Station, which, according to this Court, cannot be alleged on the basis of the allegations in Exhibit P12. In such circumstances, this Court is of the opinion that the entire proceedings initiated against the petitioners 2 and 3 under Section 12A are bad. The 2<sup>nd</sup> petitioner is said to have retired from service also. Exhibits P5 and P6 would stand set aside. There would also be no proceedings initiated pursuant to Exhibit P12.

The writ petition would stand allowed. The retirement benefits due to the 2<sup>nd</sup> petitioner shall definitely be paid to her. Parties are left to suffer their respective costs.

**Sd/-**

K.Vinod Chandran  
Judge.

vku/-

[ true copy ]