

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

W.P.(C).No.29845 of 2004 (C)

PETITIONER(S):-

K.B. MUHAMEDKUTTY, AGED 56, S/O. MOIDEEN MOLLA,
HEADMASTER (RETIRED), A.M.U.P.S., MALAPPURAM, MANJERI,
MALAPPURAM DISTRICT,
RESIDING AT: PRATHEEKSHA, MANGALASSERY,
KARUVAMBRAM P.O., MALAPPURAM-676 123.

BY ADVS.SMT.LATHA PRABHAKARAN
SRI.ELVIN PETER P.J.

RESPONDENT(S):-

1. GOVERNMENT OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DISTRICT EDUCATIONAL OFFICER,
MALAPPURAM DISTRICT.
3. THE ASSISTANT EDUCATIONAL OFFICER,
MANJERI, MALAPPURAM DISTRICT.
4. THE MANAGER, A.M.U.P. SCHOOL,
MULLAMPARA, MALAPPURAM DISTRICT.

R1 TO R3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.
R4 BY ADV. SRI.P.C.SASIDHARAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

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|---------|---|
| EXT.P1 | TRUE COPY OF THE JUDGMENT IN O.P.NO.1401/2000
DATED 19.6.2000 OF THE HON'BLE HIGH COURT OF KERALA. |
| EXT.P2 | TRUE COPY OF THE ORDER NO.B1/1457/99 DATED 3/3/2001
ISSUED BY THE 2ND RESPONDENT. |
| EXT.P3 | TRUE COPY OF THE ORDER DATED 1.1.20034 IN CRIMINAL
APPEAL 117/1999 OF SESSIONS COURT, MANJERI. |
| EXT.P4 | TRUE COPY OF JUDGMENT DATED 14.7.2003 IN
O.P.NO.12071/2001 OF THIS HON'BLE COURT. |
| EXT.P5 | TRUE COPY OF ORDER NO.B1/457/99 DATED 29.10.2003
ISSUED BY THE 2ND RESPONDENT. |
| EXT.P6 | TRUE COPY OF THE ORDER DATED 27.11.2003 ISSUED BY
THE 4TH RESPONDENT. |
| EXT.P7 | TRUE COPY OF THE JUDGMENT ISSUED BY THIS HON'BLE
COURT IN W.P.(C).5008/2004 DATED 11.2.2004. |
| EXT.P8 | TRUE COPY OF ORDER NO.G.O.(Rt) NO.1555/04/G.EDN.
DATED 20.4.2004 ISSUED BY THE 1ST RESPONDENT. |
| EXT.P9 | TRUE COPY OF THE ORDER DATED NIL., ISSUED TO THE
PETITIOENR BY THE 4TH RESPONDENT. |
| EXT.P10 | TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.15819/2004
ISSUED BY THIS HON'BLE COURT DATED 11.8.2004. |
| EXT.P11 | TRUE COPY OF ORDER DATED 12.09.2004 ISSUED BY
THE 4TH RESPONDENT TO PETITIONER. |
| EXT.P12 | TRUE COPY OF ORDER DATED 28TH SEPTEMBER, 2004
ISSUED BY THE 4TH RESPONDENT TO PETITIONER. |
| EXT.P13 | TRUE COPY OF ORDER DATED 28TH SEPTEMBER, 2004
ISSUED BY THE 4TH RESPONDENT TO PETITIONER. |
| EXT.P14 | TRUE COPY OF G.O.(P) NO.26/98/P&ARD DT.27.8.98. |
| EXT.P15 | TRUE COPY OF G.O.(P) NO.28/2003/P&ARD DATED 18.9.2003. |

EXT.P16 TRUE COPY OF THE JUDGMENT IN O.P.36511/1998 ISSUED
BY THIS HON'BLE COURT DATED 20.08.2004.

EXT.P17 TRUE COPY OF THE JUDGMENT DATED 9.11.2005
IN R.P.NO.232/2005 ISSUED BY THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS:-

EXT.R4(a) TRUE COPY OF THE COMMUNICATION ISSUED BY THE
4TH RESPONDENT MANAGER INTIMATING THE CORRECTION IN
THE ORDER IMPOSING PUNISHMENT AGAINST THE PETITIONER
VIDE COVERING LETTER DATED 4.10.2004.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.29845 of 2004-C

Dated this the 15th day of October, 2015

JUDGMENT

The petitioner challenges Exhibit P9 order of punishment imposed, as also the orders at Exhibits P11, P12 and P13, which directed the periods spent on suspension, to be considered as Leave Without Allowance [for brevity “LWA”]. The petitioner contends that the entire exercise of imposing punishment was done without any notice to him and he was served with Exhibit P9 order three days after his retirement. The petitioner is said to have been retired on 31.05.2004. Exhibit P9 order is sent by post after retirement of the petitioner, which is evidenced at Exhibit P18 and the communication is received on 03.06.2004. Obviously the communication is despatched after retirement, since the address shown is “Headmaster [Retired]”.

2. I have heard learned counsel for the petitioner and the learned Government Pleader and perused the records produced by the Government.

3. The facts are to be stated in detail. On 06.03.1995, the petitioner, who was the Headmaster of the respondent-school, was suspended for reason of a crime having been registered as C.C.No.254 of 1995 before the Judicial First Class Magistrate, Manjeri. The suspension was challenged and it is indicated from the records that an order dated 22.06.1998 was passed by the Government, wherein the petitioner was directed to be reinstated [page 12 of the enquiry files]. The same was challenged by the petitioner in O.P.No.12816 of 1998, where the order dated 22.06.1998 was set aside and the issue directed to be re-considered. Again, the Government ordered reinstatement by order dated 06.01.1999 [page 17 of the enquiry files]. The said order was also challenged by the Manager in O.P.No.2695 of 1999, wherein an interim stay was granted on 08.02.1999. While so, the petitioner was found guilty in the criminal case by the Magistrate's Court and he was convicted. On that basis, the petitioner was dismissed from service by order dated 17.11.1999.

4. The petitioner filed an Original Petition, numbered as O.P.1401 of 2000, alleging that the dismissal was without prior sanction. However, the said contention would not be sustainable,

since Rule 77A of Chapter XIV-A of Kerala Education Rules, 1959 [for brevity "KER"], a *non-obstante* provision, specifically empowers the appointing authority to take a decision without following the procedure prescribed under Rule 75, if the employee is convicted in a criminal case. In any event, O.P.No.1401 of 2000 was disposed of by directing the petitioner's representation to be considered. Again by order dated 27.09.2000 the petitioner was directed to be reinstated, which is said to have been deferred by a subsequent order dated 03.03.2001 [Exhibit P2] noticing the fact that the petitioner was convicted in a criminal case and the pendency of the Criminal Appeal.

5. The Criminal Appeal, filed as CrI.A.No.117 of 1999, was disposed of by Exhibit P3 judgment, which indicates that the acquittal of the petitioner was by way of composition of the offence. An Original Petition [O.P.No.12071 of 2001] filed against Exhibit P2 order was disposed of by Exhibit P4 dated 14.07.2003, wherein there was a direction to consider the claim of reinstatement of the petitioner. At the same time, another Original Petition filed by the Manager, O.P.No.28698 of 2000, was disposed of directing the District Educational Officer [for brevity

“DEO”] to finalise the disciplinary proceedings which were kept in abeyance. By Exhibit P5, the petitioner was directed to be reinstated and the same was done by Exhibit P6 dated 27.11.2003. In Exhibit P5, the petitioner's leave was directed to be treated as eligible leave. The petitioner filed a revision against Exhibit P5 before the Government and approached this Court to expedite the same, which was directed by Exhibit P7. The Government, by Exhibit P8 order, not only rejected the claim of the petitioner, but also said that the petitioner's leave cannot be treated as “eligible leave” and it can only be treated as “LWA”. The Government could not have done so in an appeal filed by the petitioner. But the fact remains that both Exhibits P5 and P8 could not have been passed, since the consideration as to how the suspension period is to be treated; had to wait till the finalisation of the disciplinary proceedings.

6. After reinstatement of the petitioner, it is the contention of the petitioner that he was not issued with any notice of enquiry and there was absolutely no proceedings taken against him as against the offences in which he was acquitted in the criminal case by the Sessions Court in an appeal. To consider this

aspect, one has to look at the enquiry file produced by the Government.

7. A charge sheet dated 06.03.1995 was issued by the Manager, wherein 8 [eight] charges were alleged; two of which were with respect to the criminal offence alleged against the petitioner. An enquiry is also seen to have been conducted, where the petitioner participated. The enquiry report dated 16.10.1995 was prior to the petitioner being found guilty by the Criminal Court. The Enquiry Officer did not deal with the two specific charges, which were related to the criminal offence alleged against the petitioner. The Enquiry Officer found him guilty of the other charges. Since there was a criminal offence charged against the petitioner and the matter was pending before the criminal Court, the petitioner was continued on suspension. Nothing hence was done on the basis of the Enquiry Report.

8. As was noticed above, though there was an order of reinstatement by the Government, in the writ petition filed by the Manager there was a stay of such order and while the said writ petition was pending, the petitioner was convicted by the Magistrate's Court and, thus, dismissed from service on

17.11.1999. Hence, again there was no reason to make any order pursuant to the Enquiry Report. In the Criminal Appeal, the petitioner was acquitted on 01.01.2003. In such circumstance, there could have been no direction for reinstatement in the meanwhile. After the judgment in the Criminal Appeal, the petitioner was reinstated with effect from 27.11.2003 after the pending litigations on that count were disposed of. The petitioner was to retire on 31.05.2004. The proceedings taken for finalisation of disciplinary action was specifically on the direction in O.P.No.28698 of 2000 and the direction of the Assistant Educational Officer [for brevity "AEO"] was dated 17.05.2004 [page 73 of the enquiry files].

9. A perusal of the files would indicate that the petitioner was issued with a notice dated 18.05.2004, which he acknowledged on 22.05.2004. The notice and acknowledgment card, are at page 78 of the files. It is then that the petitioner has been issued with the punishment order, true, after the retirement. But the delay in imposing the punishment was only since there was a criminal case pending, which eventually ended in acquittal of the petitioner. It is also to be emphasised that there was no

honourable acquittal and the conviction was overturned, only because the petitioner compounded the offence. As was noticed earlier, the suspension from 06.03.1995 was only on account of the criminal case registered against the petitioner as C.C.No.254 of 1995. While the proceedings were continuing in the criminal Court, the petitioner remained under suspension. The petitioner eventually was convicted by the Magistrate's Court and hence, dismissed on 17.11.1999. Hence, no fault could be found, for having kept the petitioner under suspension in the intervening period.

10. From 17.11.1999 to 01.01.2003, the petitioner was out of service, since the dismissal order was effected on the basis of the conviction entered. The acquittal, as was noticed above, was not a honourable one and only on composition. The petitioner was reinstated on 27.11.2003. The petitioner was not proceeded afresh on the charges with respect to the criminal offence alleged. The Manager merely concluded the enquiry proceedings on the basis of the enquiry report, with respect to the other charges alleged in the show cause notice. The Manager imposed a punishment of withholding of increments for six months and

permitted the suspension period to be treated as LWA. The petitioner's contention that no enquiry was conducted after reinstatement is not tenable, since the enquiry was already over and the petitioner duly participated. No orders were passed therein due to the intervening suspension and subsequent dismissal. On reinstatement what was required was only an explanation called for, as against the enquiry report; which was done.

11. In the circumstances noticed above and the fact that the petitioner was under suspension for valid reasons, this Court is not inclined to interfere with the impugned orders. The petitioner seeks that at least the period may be treated as eligible leave. But, however, considering the fact that the petitioner was convicted in a criminal proceeding and was acquitted in appeal on the basis of composition, this Court is not inclined to grant the said relief also.

Writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]