

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

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

WP(C).No. 21864 of 2009 (C)

PETITIONER :

**V.B.HEERA LAL,
S/O.V.A.BALARAMAN, AGED 52 YEARS,
MANAGER, V.R. APPU MASTER MEMORIAL HIGH SCHOOL
THAIKKAD SOUTH, BRAHMAKULAM,(VIA0 GURUVAYOOR,
THRISSUR DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.**
- 2. THE DISTRICT EDUCATIONAL OFFICER,
CHAVAKKAD,THRISSUR DISTRICT.**
- 3. SRI.P.C.FRANCIS, PEON, V.R.A.M.M.HIGH SCHOOL
THAIKKAD SOUTH (UNDER SUSPENSION),
PULICKOTTIL MAMMAIPARAMBIL, THAIKKAD,
GURUVAYOOR, THRISSUR DISTRICT.**

**R1 & R2 BY SR GOVERNMENT PLEADER SRI.SOJAN JAMES
R3 BY ADVS. SMT.S.KARTHIKA
SRI.M.S.UNNIKRISHNAN
SRI.M.R.ANISON
SMT.K.P.GEETHA MANI
SMT.K.B.VEENA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-01-2015, ALONG WITH WPC.NO. 24443 OF 2009, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

sts

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE COMPLAINT OF HEADMISTRESS, DATED 15/05/2008**
- P2 COPY OF THE REPLY OF THE 3RD RESPONDENT, DATED 23/05/2008**
- P3 COPY OF THE REMARKS OF THE HEADMISTRESS, DATED 24/05/2008**
- P4 COPY OF THE ORDER NO.4/2008 OF THE MANAGER, DATED 27/05/2008**
- P5 COPY OF THE LETTER OF THE MANAGER TO THE 2ND RESPONDENT, DATED 28/05/2008**
- P6 COPY OF THE MEMO OF THE HEADMISTRESS, DATED 23/02/2008**
- P7 COPY OF THE LETTER OF THE 3RD RESPONDENT, DATED 16/12/2006**
- P8 COPY OF THE LETTER OF THE 3RD RESPONDENT, DATED 04/12/2006**
- P9 COPY OF THE ORDER NO.8/2004 OF THE MANAGER, DATED 10/08/2004**
- P10 COPY OF THE LETTER OF THE HEADMISTRESS, DATED 21/06/2004**
- P11 COPY OF THE NOTICE OF THE MANAGER, DATED 05/06/2004**
- P12 COPY OF THE LETTER OF THE 3RD RESPONDENT, DATED 05/06/2004**
- P13 COPY OF THE LETTER OF THE HEADMISTRESS, DATED 27/01/2005**
- P14 COPY OF THE LETTER OF THE 3RD RESPONDENT, DATED 31/01/2005**
- P15 COPY OF THE LETTER OF THE HEADMISTRESS, DATED 17/01/2005**
- P16 COPY OF THE LETTER OF THE MANAGER, DATED 02/02/2005**
- P17 COPY OF THE ORDER NO.B6/4022/08/L.DIS OF THE DIST. EDUCATIONAL OFFICER, DATED 02/06/2008**
- P18 COPY OF THE ORDER NO.4/2008 OF THE MANAGER, DATED 09/06/2008**
- P19 COPY OF THE MEMO OF CHARGES NO.4/2008, DATED 14/07/2008**
- P20 COPY OF THE STATEMENT OF ALLEGATIONS, DATED 14/07/2008**
- P21 COPY OF THE REPLY OF THE 3RD RESPONDENT, DATED 25/07/2008**

WP(C).NO.21864/2009

- P22 COPY OF THE LETTER OF THE MANAGER TO THE DISTRICT EDUCATIONAL OFFICER, DATED 16/08/2008**
- P23 COPY OF THE ENQUIRY REPORT, DATED 23/10/2008**
- P24 COPY OF THE LETTER NO.4/2008 OF THE MANAGER, DATED 22/11/2008**
- P25 COPY OF THE WRITTEN EXPLANATION OF THE 3RD RESPONDENT, DATED 02/12/2008**
- P26 COPY OF THE LETTER NO.4/2008 OF THE MANAGER, DATED 08/12/2008**
- P27 COPY OF THE ORDER NO.B6-4022/08 OF THE DISTRICT EDUCATIONAL OFFICER, DATED 02/01/2009**
- P28 COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT BY THE MANAGER OF THE SCHOOL, DATED 09/01/2009**
- P29 COPY OF THE STAY PETITION FILED ALONG WITH THE REVISION PETITION DATED 09/01/2009**
- P30 COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C).NO.1814/2009-N DATED 26/02/2009**
- P31 COPY OF THE G.O.(RT).NO.2982/09/G.EDN OF THE GOVERNMENT DATED 17/07/2009**
- P32 COPY OF THE LETTER OF THE DIST. EDL. OFFICER, DATED 24/07/2009**
- P33 COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.A.NO.754/1983, DATED 13/02/1986**
- P34 COPY OF THE DECISION REPORTED IN 2005 (3) S.C.C. 254, DATED 27/09/2004**
- P35 COPY OF THE DECISION REPORTED IN 2006(2) S.C.C. 255, DATED 23/01/2006**
- P36 COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.A.NO.579/2004, DATED 18/03/2004**
- P37 COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN OP.NO.25214/1998-B, DATED 19/01/2006**
- P38 COPY OF THE LETTER OF THE MANAGER, DATED 11/01/1991**
- P39 COPY OF THE LETTER OF SRI.P.C.FRANCIS, PEON, DATED 17/01/1991**
- P40 COPY OF THE LETTER OF P.TA., DATED 25/09/1991**
- P41 COPY OF THE LETTER OF THE HEADMASTER, DATED 27/08/1992**
- P42 COPY OF THE LETTER OF THE HEADMASTER, DATED 01/01/1991**

WP(C).NO.21864/2009

P43 COPY OF THE ORDER NO.15/95 OF THE MANAGER, DATED 12/08/1995

P44 COPY OF THE DEATH CERTIFICATE, DATED 27/02/2007

P45 COPY OF THE LETTER NO.B6-10899/07 OF THE DIST. EDUCATIONAL OFFICER,
DATED 25/03/2009

P45(A) COPY OF THE SOURCE, DATED NIL

P45(B) COPY OF THE TRUST DEED, DATED 27/02/2004

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

C.K.ABDUL REHIM, J

=====

W.P.(C). No.21864 OF 2009

&

W.P.(C). No.24443 OF 2009

=====

Dated this the 15th day of January, 2015

JUDGMENT

Challenge in both the above writ petitions are against the very same order passed by the Government. Hence they were heard together and disposed of through this common judgment. Reference to parties and exhibits contained in this judgment is in the order as it is presented in W.P.(C). No.21864/2009.

2. The petitioner, who is the Manager of an aided High School, had initiated disciplinary action against the 3rd respondent, who was working as peon in the School. He was suspended through Ext.P4 order based on a complaint submitted by the Headmistress containing allegations of financial misappropriation, insubordination to senior authorities in front of other employees, misutilisation of money entrusted for depositing in the Banks, furnishing of false report about the Bank officials, creating bad

impression about the school among the Bank employees etc. The suspension was in contemplation of an enquiry as provided under Rule 75 of Chapter XIV A KER. The period of suspension was permitted to be continued beyond 15 days by virtue of Ext.P17 order passed by the 2nd respondent, in exercise of power vested under Rule 67(8) of Chapter XIV A KER. Ext.P17 was issued based on a preliminary enquiry conducted by the 2nd respondent, on 31.5.2008. It is observed in Ext.P17 that, prima facie it appears that the 3rd respondent had conveniently fabricated certain issues with an ill motive and that he had never tried to deny or defend the allegations levelled against him. Therefore it is found that there exist valid grounds for the suspension. A charge memo and a statement of allegation was served on the 3rd respondent as evidenced from Ext.P9 and Ext.P20, to which the 3rd respondent had submitted Ext.P21 explanation. The Manager requested the 2nd respondent to conduct an enquiry and accordingly an enquiry as contemplated under Rule 75 was conducted. In Ext.P23 report submitted by the

2nd respondent it is stated that oral evidence was recorded from the 3rd respondent, the Manager, Headmistress, Clerk of the school, the peon, and 2 full time menials. All the above said persons, except the 3rd respondent, had supported the allegations. The 3rd respondent had refuted the allegation that had stated to the Headmistress that there was a counterfeit currency among the money entrusted with him for depositing in the Bank. On the other hand, he deposed that what was stated is only that there was a damaged note. He further deposed that he is a person suffering from Hypertension and very often suffers from loss of memory and eye sight and if any default was committed it may be pardoned. The Enquiry Officer found that, considering the evidence collected during the enquiry, charges levelled against the 3rd respondent stands proved. It is also observed that there were various incidents in which allegations are raised against the 3rd respondent for misconduct, dereliction of duty, insubordination and other irregularities.

3. Based on the enquiry report the Manager proposed imposition of punishment to the extent of compulsory retirement against the 3rd respondent. Ext.P24 show cause notice was issued intimating that there exists reasonable cause to impose punishment of dismissal from service. But taking a lenient view, a lessor punishment of compulsory retirement is proposed. The 3rd respondent submitted detailed explanations to the show cause notice, as per Ext.P25. But the Manager found that there is no satisfactory explanation to refrain from imposing the punishment proposed. Therefore it was decided to impose punishment of compulsory retirement on the 3rd respondent, with effect from the date on which he was suspended from the service. The said decision was forwarded for approval of the 2nd respondent, as required under Rule 74 of Chapter XIV A KER. But the 2nd respondent had issued a highly cryptic order as per Ext.P27 declining permission, expressing the view that the punishment proposed is excessive with reference to the gravity of the

charges. The said order reads as follows:–

“Referring to the above, you are informed that the proposed punishment of compulsory retirement from service seems too excessive with reference to the gravity of charges. Hence your request to record permission to impose the above punishment is hereby rejected. The incumbent under suspension should be reinstated in service forthwith and the disciplinary action against him should also be finalised inflicting appropriate punishment”.

4. Aggrieved by Ext.P27 the petitioner preferred a revision before the 1st respondent, invoking powers vested under Rule 92 of Chapter XIV A KER. Since the Revision Petition was kept pending without consideration, petitioner had approached this court in a writ petition. This court in Ext.P13 judgment observed that, question as to whether the punishment of compulsory retirement can be imposed by the Manager having regard to the findings contained in the report of enquiry, is essentially a matter for the departmental authorities to decide. The primary authority has taken a stand that the punishment proposed is closely disproportionate when compared to the charges proved. Therefore the superior authority considering the revision

petition should consider those aspects. The Secretary to the Government, General Education Department was directed to pass orders on the revision petition, after affording opportunity to all the parties concerned, within a time limit of 3 months. It was also directed that, till the State Government takes a decision on the revision petition the suspension of the 3rd respondent, which was continuing based on interim orders, was permitted to be continued in operation.

5. Consequent to the direction issued from this court the 1st respondent had disposed of the revision petition, through Ext.P31. Despite specific directions issued in Ext.P13 judgment to the Secretary, General Education Department, to dispose of the revision petition, the order was seen passed by the Deputy Secretary to the Government, General Education Department. In the said order, after evaluating contentions raised by the parties concerned, the Government observed as follows:–

“The whole issue is a fabricated story
by the third respondent with certain ill

motives. At the time enquiry conducted by the second respondent, he never defended against the allegations leveled against him. He does not have a good track record in service. His misconduct is certainly serious enough to warrant punishment. However, the proposed punishment of compulsory retirement from service on the third respondent is rejected. The petitioner is directed to reinstate the third respondent forthwith and to impose any other major punishment below compulsory retirement. The judgment dated 26.2.2009 in W.P.(C) No.1814/09 is thus complied with."

The Manager is challenging Ext.P31 order in W.P.(C) 21864/2009. The 3rd respondent is also challenging the very same order, in W.P.(C) No.24443/2009, to the extent that the Government have confirmed the findings contained in the enquiry report to the extent that he is guilty of the charges leveled against him.

6. Learned counsel appearing for the 3rd respondent, who is the petitioner in W.P.(C) No.24443/2009, had raised vehement contentions that the allegations raised against him and the findings contained in the enquiry report does not establish any guilt of misappropriation of money belonging to the school. It is also contended that, the

enquiry was not conducted in a proper and legal manner after affording adequate and sufficient opportunity to the delinquent. Further allegation is that the entire proceedings of disciplinary action was ill motivated, because there existed dispute in the managership of the school and that the present Manager had taken a hostile attitude based on an impression that the petitioner is favouring a rival claimant.

7. It is true that there is no clear proof or any findings arrived to the extent that the 3rd respondent had misappropriated any money belonging to the school. Infact, the allegation was that he made an attempt to misappropriate an amount of Rs.500/- by making a false allegation that there was a counterfeit currency among the cash entrusted for deposit in the Bank. The specific charge related to the incident which happened on 14.5.2008 on a prima facie appraisal of Ext.P23 report of enquiry, would reveal that the 2nd respondent had sufficient materials available to arrive at a conclusion that the charges levelled against him stood proved. In this writ petition filed under

the Article 226 challenging Exts.P27 and P31 orders, this court cannot venture upon any re-appreciation of the evidence adduced in the proceedings of enquiry. This is especially because, both the authorities who have passed Exts.P27 and P31 were of the opinion that the charges alleged against the petitioner stood proved. It is pertinent to note that, the 3rd respondent had never challenged the enquiry report or Ext.P27 order passed by the 2nd respondent in this regard. Learned counsel for the 3rd respondent on the other hand submitted that the 3rd respondent can challenge the findings contained in the enquiry report, only when any punishment is imposed. However, in this proceedings, this court cannot re-appreciate or re-evaluate any finding contained in the enquiry report. Such an appraisal is also not needed for arriving at any conclusion as to whether Exts.P27 and P31 are illegal or unsustainable. Therefore the relief sought for in W.P.(C) 24443/2009 to the extent of quashing the memo of charges, enquiry report etc. cannot be considered in this

writ petition. However, it is made clear that rights if any available to the 3rd respondent to challenge those proceedings in appropriate statutory steps against punishment if any imposed, will not be foreclosed by virtue of any observations contained in the impugned orders.

8. In the writ petition filed by the Manager (W.P.(C) No.21864/2009) Exts.P27 and P31 are under challenge mainly contending that both the authorities went highly erred in disapproving the request for imposition of penalty to the extent of compulsory retirement, when they have arrived at a conclusion that the guilt of the delinquent stands established through the enquiry. It is also contended that there is lack of proper application of mind and the findings that the punishment proposed is disproportionate was made without there being any reasoning mentioned. Both the orders are highly cryptic and does not disclose any reasons arriving at the conclusions, is the contention raised.

9. Learned counsel for the petitioner had placed

reliance on various decisions of this court and that of the Apex Court produced as Exts.P33 to P37. In Ext.P33 judgment (in Writ Appeal No.754/1983, dated 13.2.1986) a Division Bench of this court observed that, the public authorities dealing with the question of granting approval for imposition of punishment in educational institutions, are performing a sacret function and should not discharge such obligation in an indifferent, casual or light hearted manner. The court observed that, it is always easy and convenient to show compassion and leniency when one's own personal interests are not involved. Public authorities are trustees and it will amount to breach of trust if public authorities do not discharge their obligations consistent with the trust reposed in them. Reference was made to the decision of the Apex Court in Divisional Controller of K.S.R.T.C v A.T.Mane [(2005) 3 SCC 254]. It is observed that, in the matter of the quantum of punishment, it should be borne in mind that the fact is not the amount of money misappropriated, but on the contrary it is the loss of

confidence which is the primary factor to be taken into consideration. When a person is found guilty of misappropriation, there is nothing wrong in the employer losing confidence or faith in such person and awarding a punishment of dismissal, is the observation.

10. However, counsel on the opposite side pointed out that, on the facts of the case at hand there is no allegation or concluded finding of any misappropriation of any particular amount. Learned counsel for the manager had also placed reliance on other decisions produced by him, in order to contend that the impugned orders are lacking proper application of mind with respect to the fact that the conduct on the part of the 3rd respondent lead to losing of trust and confidence in the management for continuing him under employment and therefore the punishment of compulsory retirement proposed ought to have been approved.

11. Rule 74 of Chapter XIV A KER provides that, a penalty of compulsory retirement can be imposed by the

Manager only with previous sanction of the competent authority. It is held by this court in various decisions that correctness of the findings in the enquiry report is not a question to be considered under Rule 74. On the other hand, the authority has to use its discretion in accordance with the gravity of the charges proved to arrive at a conclusion as to whether the proposed punishment can be approved or not. A subjective element of satisfaction will naturally creep into such considerations. Normally, it will not be proper on the part of this court to interfere with such exercise of discretion, in the exercise of the extra ordinary jurisdiction vested under the Constitution of India, unless an opinion is arrived to the effect that the authority concerned was totally unreasonable or perverse in exercising such discretion. While appreciating the facts of the case at hand based on the above parameters, it is evident that both Exts.P27 or P31 does not reflect anything towards proper exercise of the discretion vested on the authorities. Ext.P27 is totally lacking any discussion about

the issue involved. The 2nd respondent had straight away informed the Manager that the proposed punishment of compulsory retirement is too excessive with reference to the gravity of charges. On what basis such a conclusion was arrived is not discernible from the order. In other words, how the authorities had exercised the discretion in appreciating the proportionality of the punishment, is not reflected in the said order. It seems that in Ext.P31 the revisional authority had also failed in providing any reasoning with respect to the satisfaction arrived. A statutory authority while discharging functions vested on it is supposed to provide reasonings with respect to the conclusions arrived by them, in exercise of power vested by virtue of the statute. Exercise of such power is basically in the nature of quasi-judicial. The parties cannot be put to darkness with respect to the basis and reasonings upon which the conclusions are arrived. The revisional authority had also failed in exercising its powers in a proper and legal manner. Further, this court takes note of the fact that,

despite specific direction contained in Ext.P30 judgment to the Secretary to deal with the revision petition, the impugned order is passed by another authority inferior to the Secretary of the General Education Department. Hence this court is of the opinion that a remand of the matter to the Government for a fresh disposal of the revision petition, taking note of the observations contained herein above, would suffice to meet the ends of justice.

12. Learned counsel appearing for the 3rd respondent made an appeal to this court to direct reinstatement of the 3rd respondent, pending disposal of the matter by the Government. Having considered the fact that this court permitted continuance of suspension till the decision of the revision petition, in Ext.P30 judgment, it is only appropriate to direct the Government to have a fresh disposal of the matter within a time limit and till then to continue the suspension.

13. In the result W.P.(C) No.24443/2009 hereby dismissed subject to the observation contained herein

above, reserving the liberty of the petitioner therein to challenge punishment if any imposed against him on all available grounds.

14. W.P.(C) No.21864/2009 is allowed to the extent of quashing Ext.P31. The Secretary to Government, General Education Department, is directed to dispose of Ext.P28 revision petition afresh, after affording opportunity of personal hearing to the petitioner, the 3rd respondent and educational authorities concerned. The revision petition shall be disposed of at the earliest possible, at any rate within a period of 3 months from the date of receipt of a copy of this judgment. The directions contained in Ext.P30 judgment with respect to continuance of suspension of the 3rd respondent will operate, till the revision petition is disposed of afresh as directed above.

Sd/-
C.K.ABDUL REHIM, JUDGE.

SKV