

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).NO. 18759 OF 2015 (T)

PETITIONER:

MINIMOL M
HIGH SCHOOL ASSISTANT-MALAYALAM
KIZHAKKE PALATT SANKARA MENON MEMORIAL VOCATIONAL HIGHER
SECONDARY SCHOOL
VARODE, OTTAPALAM, PALALAKKAD DISTRICT.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENTS:

1. THE MANAGER, KIZHAKKE PALATT SANKARA MENON MEMORIAL
VOCATIONAL HIGHER SECONDARY SCHOOL
VARODE, OTTAPALAM, PALAKKAD DISTRICT-679101.

2. THE DISTRICT EDUCATIONAL OFFICER
OTTAPALAM, PALAKKAD-679101.

3. DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-695014.

4. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.

R1 BY ADV. SRI.V.A.MUHAMMED

R1 BY ADV. SRI.M.SAJJAD

BY GOVERNMENT PLEADER SRI.T.R.RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 18759 OF 2015 (T)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1- TRUE COPY OF THE JUDGMENT IN WPC 25135/11.

EXHIBIT P2- TRUE COPY OF THE JUDGMENT IN WPC 3354/12.

EXHIBIT P3- TRUE COPY OF THE GOVERNMENT ORDER, G.O.(RT)4944/12/G.EDN
DATED 12-10-2012.

EXHIBIT P4- TRUE COPY OF THE SUSPENSION ORDER ISSUED BY THE MANAGER TO
THE PETITIONER.

EXHIBIT P5- TRUE COPY OF THE MEMO OF CHARGES ALONG WITH THE STATEMENT
OF ALLEGATIONS DATED 3-10-2012.

EXHIBIT P6- TRUE COPY OF THE ADDITIONAL MEMO OF CHARGES ALONG WITH A
STATEMENT OF ALLEGATIONS.

EXHIBIT P7- TRUE COPY OF THE ENQUIRY REPORT 10-1-2013.

EXHIBIT P8- TRUE COPY OF ORDER DATED 21-01-2013 ISSUED BY THE MANAGER.

EXHIBIT P9- TRUE COPY OF THE CAUSE NOTICE DATED 21-01-2013 ISSUED BY
THE MANAGER.

EXHIBIT P10- TRUE COPY OF REPLY TO EXHIBIT P9 FILED BY THE PETITIONER.

EXHIBIT P11- TRUE COPY OF GOVERNMENT ORDER TO KEEP IN ABEYANCE EXHIBIT
P3.

EXHIBIT P12- TRUE COPY OF THE ORDER OF THE DIVISION BENCH IN W.A.NO.
579/2013.

EXHIBIT P13- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER DATED 4-8-2014.

EXHIBIT TP14- TRUE COPY OF THE LETTER ISSUED BY THE D.P.I. DATED 7-10-
2014.

EXHIBIT P15- TRUE COPY OF THE COMMUNICATION FORWARDED BY THE PETITIONER
DATED 30-10-2014.

EXHIBIT P16- TRUE COPY OF THE COMMUNICATION ISSUED BY THE D.P.I. DATED
20-11-2014.

EXHIBIT P17- TRUE COPY OF THE REQUEST MADE BEFORE THE D.P.I. DATED 30-
3-2015.

EXT.P18: A COPY OF THE ABOVE GOVERNMENT ORDER GO(RT) NO.293/14/GEN/EDN.

DATED 23.07.2014

EXT.P19: A COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 18.09.2014

RESPONDENT(S) ' EXHIBITS

EXT.R1(A) TRUE COPY OF THE CIRCULAR NO.15/02/FIN DATED 13.03.2002 OF THE GOVERNMENT

EXT.R1(B): TRUE COPY OF THE CIRCULAR NO.22194/J3/13/G.EDN DATED 22.06.2013 OF THE GOVERNMENT

EXT.R1(C): TRUE COPY OF THE REQUEST OF THE MANAGER TO THE DIRECTOR OF PUBLIC INSTRUCTION DATED 20.05.2015

EXT.R1(D): TRUE COPY OF THE LETTER ADDRESSED TO THE DEPUTY DIRECTOR BY THE MANAGER

/TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.18759 of 2015

.....
Dated this the 29th day of July, 2015

J U D G M E N T

The petitioner was working as H.S.A (Malayalam) at the 1st respondent School with effect from 11.07.2003. The appointment of the petitioner was duly approved by the education authority. The petitioner while working as an H.S.A preferred an application for leave without allowance to join her spouse abroad. While the Manager did not forward the application in time to the sanctioning authority namely, the Government, the petitioner approached this Court through a writ petition and pursuant to Ext.P2 judgment that directed the Manager to forward the application to the Government to take a decision, Ext.P3 order dated 12.10.2012 was passed granting the petitioner leave without allowance up to 31.03.2016. The facts in the writ petition would reveal that in the meanwhile, by Ext.P4 order dated 07.09.2012, the petitioner was placed under suspension for making false allegations against the Headmaster, the Manager and other teachers of the School. Ext.P5 memo of charges and statement of allegations dated 03.10.2012 was also served on the petitioner. Thereafter, an additional memo of charges and statement of allegations were also served on the petitioner. In an enquiry that

was conducted thereafter by the District Educational Officer, Ext.P7 enquiry report dated 10.01.2013 was drawn up, which found that, although there was insubordination on the part of the petitioner, the the said insubordination was not of such a grave nature as to warrant a removal of the petitioner from service. The District Educational Officer accordingly directed a reinstatement of the petitioner and further directed the Manager to complete the disciplinary proceedings against the petitioner within a period of two months. By Ext.P8 order dated 21.01.2013, the Manager reinstated the petitioner in service. Thus the petitioner was under suspension effectively from 07.09.2012 to 21.01.2013. On the same day namely 21.01.2013, the Manager was also served Ext.P9 show cause notice on the petitioner proposing a punishment of removal from service. The petitioner preferred Ext.P10 reply to the said show cause notice issued by the Manager. In the meanwhile, taking note of the disciplinary proceedings that were initiated against the petitioner, the Government by Ext.P11 order, cancelled the leave that was sanctioned in favour of the petitioner by Ext.P3 order. This order of the Government (Ext.P11) was challenged by the petitioner in W.P.(C).No.5424 of 2013 where, by an interim order, this Court permitted the petitioner to proceed on leave on the basis of Ext.P3 Government Order. Although the

Manager challenged the said interim order through W.A.No.579 of 2013, the same was dismissed by Ext.P12 judgment dated 08.04.2013. It would appear that, the petitioner proceeded on leave pursuant to the interim order of this Court but did not stay the entire period up to 31.03.2016. She returned to the country by 2014 and immediately thereafter preferred Ext.P13 application dated 04.08.2014 for rejoining duty. The said application was made before the 3rd respondent since the Manager of the School was not permitting her to rejoin duty. By Exts.P14 and P16 communications dated 07.10.2014 and 20.11.2014 respectively, the 3rd respondent refused to entertain the request of the petitioner for cancelling the unavailed portion of her leave stating that, the unavailed portion of the leave could be cancelled only if an application for the same was made duly accompanied by a joining report of the Headmaster of the School as also an order of the Manager that permitted her to rejoin the School. It is finding herself in a situation where the Manager of the School was not permitting her to rejoin the School, while at the same time, the educational authorities were not willing to consider an application for cancellation of the unavailed portion of leave without first obtaining a joining report from the School, that the petitioner has approached this Court through the present writ petition seeking a

direction to the 3rd and 4th respondents to cancel the unavailed portion of the leave that was sanctioned as per Ext.P3 order, and to permit her to rejoin the School. By an interim order dated 01.07.2015, this Court directed the Manager to provisionally permit the petitioner to rejoin the School as H.S.A (Malayalam) pending disposal of the writ petition.

2. A counter affidavit has been filed on behalf of the 1st respondent, along with the petition for vacating the interim order passed by this Court on 01.07.2015. In the counter affidavit, the stand of the respondents is that, although the petitioner had submitted a request for rejoining the School, before the 3rd respondent, as a matter of fact, she did not report to the School for the purpose of rejoining. Reliance is also placed by the respondent on Ext.R1(a) and R1(b) Circulars issued by the Government, which mandate that a prior permission of the Government, who is the leave sanctioning authority in the instant case, is a necessary precondition for the petitioner to apply for rejoining the School, and thereafter, cancelling the unavailed portion of the leave. It is the stand of the respondents that the reporting of the petitioner for rejoining the School, without first approaching the Government, is an action that is

premature, and hence, the petitioner ought to be relegated to the Government for obtaining a letter cancelling the unavailed portion of the leave.

3. I have heard the learned counsel for the petitioner, the learned counsel for the 1st respondent and the learned Government Pleader for the official respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar and taking note of the provisions of the Kerala Service Rules with regard to sanction of leave in connection with joining one's spouse abroad, as enumerated in Appendix XII C of Part I Kerala Service Rules, where it is indicated that the leave sanctioning authority in the case of the petitioner is the Government, it would follow that a cancellation of the leave prior to the date of expiry of the leave originally sanctioned would also have to be done by the sanctioning authority namely, the Government. The issue in the instant case, however, is whether the cancellation of the unavailed portion of leave must necessarily precede the act of the petitioner rejoining the School. On a consideration of the factual circumstances in the instant case, I am of the view that, if the

petitioner is permitted to rejoin the School, and an application for cancellation of the unavailed portion of leave by the petitioner is then considered by the sanctioning authority namely the Government, the said procedure would not prejudice the interest of any other person and would be in accordance with the spirit of the Kerala Service Rules. That apart, if the petitioner rejoins the School and obtains a joining report from the Headmaster of the school, there will be a clarity with regard to the unavailed portion of the leave which has to be cancelled, when the application for the same is presented before the Government. In otherwords, there will be no uncertainty with regard to the date on which the petitioner rejoined the School for the purposes of cancelling the unavailed portion of leave. That apart, it is also a fact that, the petitioner proceeded on leave, based on an interim order passed by this Court in W.P.(C).No.5424 of 2013 at a time when she was facing disciplinary proceedings that were initiated against her by the respondent Manager. On rejoining duty, the respondent would have to examine the aspect of how the suspension period would be treated for the purposes of the disciplinary proceedings initiated against her. Necessarily, the respondent would have to complete the disciplinary proceedings initiated against the petitioner within a time frame and it is only at that stage, the aspect

of regularisation of the period of suspension can be considered. Taking into account the overall factual situation in the instant case, I dispose the writ petition with the following directions:

- i. The 1st respondent shall permit the petitioner to rejoin duty forthwith and at any rate within three days from today.
- ii. Immediate on the petitioner rejoining duty at the School, the 1st respondent shall forward the petitioner's application for cancellation of the unavailed portion of the leave, that was sanctioned to her by Ext.P3 order, together with the joining report of the Headmaster of the School, to the 4th respondent. The 1st respondent may also forward his comments along with the application forwarded to the 4th respondent.
- iii. The 4th respondent shall immediately on receipt of the petitioner's application proceed to consider the same and pass appropriate orders thereon within a period of two months thereafter.
- iv. The 1st respondent shall complete the disciplinary proceedings initiated against the

petitioner by Ext.P9 show cause notice dated 21.01.2013 within a period of two months from the date of receipt of a copy of this judgment. While passing final orders in the disciplinary proceedings, the 1st respondent shall also deal with the treatment to be accorded to the period of suspension namely between 07.09.2012 and 21.01.2013.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

