

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

W.P.(C).No.19927 of 2015 (M)

PETITIONER(S):-

C.M. ABDUL RAHIMAN, AGED 35 YEARS, S/O C. MUHAMMED,
LOWER GRADE ARABIC TEACHER (FULL TIME), (UNDER SUSPENSION),
SNLP SCHOOL, VETTIKATTIRI, P.O. VETTIKATTIRI,
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 EDUCATIONAL DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, THIRUVANANTHAPURAM - 695 014.
3. THE DEPUTY DIRECTOR OF EDUCATION,
THRISSUR AT AYYANTHOLE - 680 003.
4. THE ASSISTANT EDUCATIONAL OFFICER,
WADAKKANCHERRY, THRISSUR DISTRICT - 680 582.
5. MANAGER, SNLP SCHOOL, VETTIKATTIRI,
ATTOOR PO., THRISSUR DISTRICT - 680 583
6. HEADMASTER, SNLP SCHOOL, VETTIKATTIRI,
ATTOOR PO., THRISSUR DISTRICT - 680 583

R1 TO R4 BY GOVERNMENT PLEADER SMT.A.LOWSY.
R5 & R6 BY ADV.SRI.C.D. DILEEP.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-11-2015, ALONG WITH WP(C).20080 OF 2015-H & CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

WP(C).No.19927 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1: TRUE COPY OF THE SUSPENSION ORDER OF THE PETITIONER
DATED 20/11/14.

EXT.P2: TRUE COPY OF THE ORDER OF THE ASSISTANT EDUCATIONAL
OFFICER DATED 1/1/2015.

EXT.P3: TRUE COPY OF THE G.O.(RT)NO.1112/2015/G.EDN DATED 20/3/15.

EXT.P4: TRUE COPY OF THE G.O.(RT)NO.2250/2015/G.EDN DATED 9/6/15.

EXT.P5: TRUE COPY OF THE DECISION REPORTED IN 2008(4) KLT 60
DATED 15/7/2008.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).Nos.19927/2015-M, 20080/2015-H,
21276/2015-H & 21688/2015-I

Dated this the 03rd day of November, 2015

JUDGMENT

Four writ petitions, two filed by the Manager of S.N.L.P. School and two by individual teachers of the said school, relate to the very same incident. The Headmaster of the school is said to have reprimanded a teacher, one Sebin Francis [petitioner in W.P. (C).No.20080 of 2015] for talking on the mobile during the recital of the National Anthem at the morning assembly. The said petitioner along with the petitioner in W.P.(C).No.19927 of 2015 [C.M.Abdul Rahiman] is said to have assaulted the Headmaster in front of the students while he was taking class, for reason of the ill-feeling due to the reprimand made by the Headmaster. The said teachers along with three others is said to have conducted a strike in the school, which led to the suspension of all the five teachers.

2. The Assistant Educational Officer [for brevity "AEO"] refused to continue the suspension beyond 15 days, as provided under Rule 67(8) of Chapter XIV-A of Kerala Education Rules,

1959 [for brevity “KER”]. The other three teachers are said to have been reinstated in service. With respect to the individual petitioners herein, the Manager is said to have taken proceedings before the Government by filing a revision. The revision stood rejected in the case of both the petitioners. The individual petitioners seek implementation of the said orders insofar as reinstating them in service. The writ petitions filed by the Manager, W.P.(C).Nos.21276 of 2015 and 21688 of 2015, challenge the orders issued by the Assistant Educational Officer as also the orders of the Government; refusing to extend the period of suspension as also directing reinstatement.

3. On a reading of the documents referred to in the writ petitions, it is seen that the AEO had conducted an enquiry immediately after the incident. The incident occurred on 12.11.2014 and the inspection was on 13.11.2014, the report of which is found at Exhibit P2. The said enquiry was not an investigation into the grounds of suspension as provided in Rule 67 of Chapter XIV-A KER. The Educational Officer conducted a preliminary enquiry on being intimated of the matter by the Headmaster; report of which is produced as Exhibit P2. It is seen

that the AEO had talked to the teachers as also the Headmaster and the Manager. The registration of a criminal case was also noticed. However, an amicable settlement was attempted by the AEO. It was also directed that the smooth functioning of the school shall not be impaired.

4. Despite this, the individual petitioners were issued with charge memo and after considering their explanation, suspended on 26.11.2014 and 20.12.2014 respectively. The Manager had also intimated the same to the AEO and sought for permission to extend the suspension beyond the initial period of 15 days. The AEO, by the impugned orders in the writ petitions filed by the Manager, refused to extend the suspension and by a separate order directed reinstatement. The Manager filed revision to the Government, which were disposed of by Exhibits P15 and P14 orders, produced in the respective writ petitions filed by the Manager.

5. The AEO, according to the learned counsel for the teachers, has considered the matter after conducting an enquiry into the grounds of suspension and having been satisfied of the circumstances, an order refusing to extend the period of

suspension was passed, as a consequence of which the order directing reinstatement also was issued. By Exhibit P7 in W.P.(C) 21276 of 2015, the AEO approved the suspension for fifteen days; but, however, held that Sebin Francis has to be reinstated on 12.12.2014 itself, since there was no provision under Rule 67 (8) to continue the suspension beyond fifteen days. In the case of Abdul Rehiman also the AEO found that there is no jurisdiction conferred on the AEO to extend the suspension period beyond fifteen days. The said orders were affirmed by the Government.

6. The learned counsel for the teachers would in fact contend that the said finding is based on a 'hearing' and not for reason of lack of jurisdiction. If it was based on a hearing, then the reasoning should have been explicit in the orders. Definitely there is jurisdiction on the Educational Officer to consider whether the period of suspension has to be extended beyond fifteen days, for which purpose it is also contemplated that the Educational Officer would conduct an investigation into the grounds of suspension as per Rule 67 of Chapter XIV-A of KER. The AEO has detailed the incident that led to the charges and has while affirming the suspension for 15 days, ordered by the

management, found that there is no provision under Rule 67(8) of Chapter XIV-A of KER to order suspension beyond 15 days. This is a clear misunderstanding of the provision under Rule 67 and amounts to a failure to exercise the jurisdiction conferred on the AEO under Rule 67(8). Both the orders with respect to each of the teachers, suffer from the above vice. The decision reported in ***Valsala v. Corporate Manager, C.S.I. Schools* [2008 (4) KLT 60]** [Exhibit P5 in W.P.(C).No.19927 of 2015] is of no avail, since herein the AEO has refused to exercise the jurisdiction under Rule 67(8). Therein the declaration was that once jurisdiction has been exercised and a reinstatement ordered, there could be no further extension of suspension by the Manager. Exhibits P7 and P9 in W.P.(C).Nos.21276 of 2015 and 21688 of 2015 have to be set aside on that short ground. The orders of the Government in revision also have to be set aside.

7. However, noticing the fact that almost an year has passed since the orders were passed and the petitioners-teachers had remained out of service all this while, it is only proper that the Manager reinstate them in service. It is left to the Manager to decide whether an enquiry has to be held

against the teachers at this point of time and whether any suspension has to be directed as of now, in which case definitely it would have to have the approval of the AEO. The Manager is directed to inform the AEO before the suspension is made and then the AEO would consider whether the suspension is proper in the facts and circumstances of the case and also pass written orders on the same. The learned counsel for the Manager also submits that the files have been forwarded to the AEO for conducting enquiry, which shall be proceeded with in accordance with law. The enquiry shall be conducted and finalised, at any rate within a period of three months from the date of receipt of a certified copy of this judgment.

W.P.(C).Nos.21276 of 2015 and 21688 of 2015 are, hence, allowed; however, with the above directions. W.P.(C). Nos.19927 of 2015 and 20080 of 2015 are disposed of as indicated above. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]