

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

W.P.(C).No.21799 of 2014 (Y)

PETITIONER(S):-

THE MANAGER,
A.U.P. SCHOOL, PILASSERY, KUNNAMANGALAM P.O.,
KOZHIKODE 673 571

BY ADVS.SRI.P.NANDAKUMAR
SRI.S.VIJAYAN
SRI.M.RAHUL
SMT.SREEJA VIJAYAN.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.
2. THE DISTRICT EDUCATIONAL OFFICER,
THAMARASSERY, KOZHIKODE - 673 573.
3. THE ASSISTANT EDUCATIONAL OFFICER, KUNNAMANGALAM,
KOZHIKODE - 673 571.
4. M. P. SAJEEV KUMAR,
UPASRAMOM HOUSE, MANASSERY P.O, MUKKAM (VIA),
KOZHIKODE - 673 602
5. K. SABITHA,
THUSHARAM, PALATH P.O, KAKKODI (VIA),
KOZHIKODE 673 611.

R1 TO R3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.
R4 BY ADV. SRI.T.G.RAJENDRAN
R5 BY ADVS. SRI.V.A.MUHAMMED
SRI.M.SAJJAD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF SUSPENSION ORDER DATED 15-11-2011 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE REPORT OF THE 3RD RESPONDENT DATED 21-11-2011.
- EXHIBIT P3 TRUE COPY OF THE CHARGE MEMO AND STATEMENT OF ALLEGATIONS ISSUED AGAINST THE 4TH RESPONDENT DATED 31-12-2011.
- EXHIBIT P4 TRUE COPY OF THE CHARGE MEMO AND STATEMENT OF ALLEGATIONS ISSUED AGAINST THE 5TH RESPONDENT DATED 31-12-2011.
- EXHIBIT P5 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 4TH RESPONDENT DATED 17-1-2012.
- EXHIBIT P6 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 5TH RESPONDENT DATED 17-1-2012.
- EXHIBIT P7 TRUE COPY OF THE PROCEEDINGS OF THE PETITIONER DATED 10-2-2012 AGAINST THE 4TH RESPONDENT.
- EXHIBIT P8 TRUE COPY OF PROCEEDINGS OF THE PETITIONER DATED 10-02-2012 AGAINST THE 5TH RESPONEDENT.
- EXHIBIT P9 TRUE COPY OF THE REQUEST OF THE PETITIONER TO THE 3RD RESPONDENT DATED 10-02-2012.
- EXHIBIT P10 TRUE COPY OF THE ENQUIRY REPORT DATED 25-4-2012 OF THE 3RD RESPONDENT.
- EXHIBIT P11 TRUE COPY OF LETTER DATED 25-4-2012 OF THE 3RD RESPONDENT.
- EXHIBIT P12 TRUE COPY OF SHOW CAUSE NOTICE DATED 1-6-2012 ISSUED TO THE 4TH RESPONDENT.
- EXHIBIT P13 TRUE COPY OF SHOW CAUSE NOTICE DATED 1-6-2012 ISSUED TO THE 5TH RESPONDENT.
- EXHIBIT P14 TRUE COPY OF EXPLANATION SUBMITTED BY THE 4TH RESPONDENT DATED 20-06-2012.
- EXHIBIT P15 TRUE COPY OF EXPLANATION SUBMITTED BY THE 5TH RESPONDENT DATED 18-06-2012.

EXHIBIT P16 TRUE COPY OF THE PROCEEDINGS OF THE PETITIONER
DATED 8-8-2012 AGAINST THE 4TH RESPONDENT.

EXHIBIT P17 TRUE COPY OF THE PROCEEDINGS OF THE PETITIONER
DATED 8-8-2012 AGAINST THE 5TH RESPONDENT.

EXHIBIT P18 TRUE COPY OF LETTER DATED 8-8-2012 OF THE PETITIONER TO
THE 2ND RESPONDENT.

EXHIBIT P19 TRUE COPY OF LETTER DATED 8-8-2012 OF THE PETITIONER TO
THE 2ND RESPONDENT.

EXHIBIT P20 TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT
DATED 7-11-2012.

EXHIBIT P21 TRUE COPY OF REVISION PETITION DATED 22-12-2012
SUBMITTED BY THE PETITIONER BEFORE THE
1ST RESPONDENT.

EXHIBIT P22 TRUE COPY OF JUDGMENT DATED 9-1-2013 IN WPC NO 30656/12.

EXHIBIT P23 TRUE COPY OF THE DECISION OF THE PTADATED 15-11-2011.

EXHIBIT P24 TRUE COPY OF THE PETITION DATED 14-11-2011 OF THE HEAD
MASTER OF THE SCHOOL.

EXHIBIT P25 TRUE COPY OF THE LETTER DATED 14-2-2014 OF THE
3RD RESPONDENT.

EXHIBIT P26 TRUE COPY OF LETTER DATED 24-3-2014 SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT.

EXHIBIT P27 TRUE COPY OF REPLY DATED 24-4-2014 ISSUED BY THE
3RD RESPONDENT.

EXHIBIT P28 TRUE COPY OF LETTER DATED 29-05-2014 ISSUED BY DPI.

EXHIBIT P29 TRUE COPY OF LETTER DATED 12-07-2014 SUBMITTED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P30 TRUE COPY OF ORDER DATED 31-7-2014 ISSUED BY THE
1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

EXHIBIT R5(a) TRUE COPY OF THE EXPLANATION SUBMITTED BEFORE
THE MANAGER BY THE 5TH RESPONDENT.

- EXHIBIT R5(b) TRUE COPY OF THE APPEAL FILED BEFORE THE DISTRICT EDUCATIONAL OFFICER DATED 8.8.2012.
- EXHIBIT R5(c) TRUE COPY OF THE G.O.(P) NO.199/2011/G.EDN. DATED 01.10.2011 OF THE GOVERNMENT.
- EXHIBIT R5(d) TRUE COPY OF THE CIRCULAR NO.31904/J2/12/G.EDN. DATED 6.6.2012 OF THE GOVERNMENT.
- EXHIBIT R5(e) TRUE COPY OF THE APPEAL FILED BEFORE THE DISTRICT EDUCATIONAL OFFICER DATED 22.8.2012.
- EXHIBIT R5(f) TRUE COPY OF THE ORDER NO.B2/8497/2011 DATED 7.11.2012 OF THE DISTRICT EDL. OFFICER.
- EXHIBIT R5(g) TRUE COPY OF THE LETTER OF SRI.SUNNY THOMAS DATED 10.4.2013.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.21799 of 2014-Y

Dated this the 27th day of October, 2015

JUDGMENT

The petitioner, Manager of a school, is aggrieved with Exhibits P20 and P30 orders passed. Without going into the crux of the allegations raised against respondents 4 and 5, who are teachers of the aided school in which the petitioner is the Manager, the writ petition can be disposed off on the legal ground raised herein.

2. Charge-sheets are said to have been issued for misconduct against respondents 4 and 5. An enquiry is also said to have been conducted. Pursuant to the enquiry, the Manager is said to have issued a proposal for punishment of removal from service of both the respondents 4 and 5, by a second show cause notice. As mandated under Rule 74 of Chapter XIV-A of Kerala Education Rules, 1959 [for brevity “KER”], the Manager also approached the District Educational Officer [for brevity “DEO”] seeking approval of the punishment proposed. The DEO found that the punishment proposed is disproportionate on a reference to the gravity of the offences alleged and directed the

Manager, specifically, to impose punishment under sub-rule (1) or (2) of Rule 65 of Chapter XIV-A KER. The Manager contends that the said order is unsustainable for reason of the DEO not being competent to propose an alternate punishment. He could either reject or approve the punishment and in the event of rejection, the Manager could make an alternate proposal. So much is clear as has been declared by a Division Bench of this Court, in the decision reported in ***Muhammed v. Secretary to Government*** [2003 (2) KLT SN 26 (Case No.34)].

3. Aggrieved by Exhibit P20, the petitioner, Manager, was before the Government. The Government, however, in Exhibit P30 order went one step ahead and directed reinstatement of respondents 4 and 5 and also directed initiation of fresh enquiry proceedings, which again was beyond the ambit of the power to be exercised by the Government under Rule 92 of Chapter XIV-A and was beyond the scope of the revision filed by the Manager. In a revision filed by the Manager against the alternate punishment proposal by the DEO, the Government directed reinstatement, which again would be vitiated going by the dictum of the afore-cited decision.

4. As of now, it is submitted that the 4th respondent has retired from service and the 5th respondent is kept out on retrenchment. The learned counsel appearing for the 5th respondent would contest the contention of retrenchment and would assert that there is a post available, where she could be accommodated. Be that as it may, there could be no reinstatement ordered in the writ petition filed by the Manager against the order of the Government in revision.

5. Exhibit P30 having been found to be vitiated, has to be set aside. Exhibit P20, insofar as the alternate punishment proposed, cannot be sustained. Hence, the proposal for a specific punishment under sub-rules (1) or (2) of Rule 65 of Chapter XIV-A KER would stand deleted. Exhibit P20 would be treated as an order of rejection of the proposal for punishment of removal from service. In such circumstance, the Manager would be entitled to take further proceedings in accordance with law and in accordance with the provisions of the KER. It is also made clear that this Court has not looked into the findings in the enquiry or the finding of guilt entered into by the Manager. Nor the merits of the case have been gone into. The 5th respondent has a contention

that she was not participated in the enquiry at all and hence the charges against her cannot be sustained. The contentions of the 4th and 5th respondents would be left open to be raised and dealt with if any punishment is imposed on re-consideration. The Manager would be entitled to take proceedings as provided under the KER, which shall be taken within a reasonable time, at any rate, within one month from the date of receipt of a certified copy of this judgment, if so advised.

The writ petition is disposed of as above. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]