

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).NO. 26329 OF 2013 (M)

PETITIONER(S)/PETITIONER:

THE MANAGER,
SNUP SCHOOL, NALLAMADANCHALLA, VILAYODI.P.O.
CHITTUR, PALAKKAD.

BY ADVS.SRI.KRB.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY
GENERAL EDUCATION DEPARTMENT
THIRUVANANTHAPURAM - 695 001.

2. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD - 678 001.

3. THE ASSISTANT EDUCATIONAL OFFICER,
CHITTUR, PALAKKAD - 678 101.

4. SRI.P.C.RAMAKRISHNAN,
HEADMASTER (DISMISSED), SNUP SCHOOL, NALLAMADANCHALLA
VILAYODI P.O., CHITTUR, PALAKKAD
RESIDING AT KALATHIPURA, VILAYODI P.O., CHITTUR
PALAKKAD - 678 103.

R4 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R4 BY ADV. SRI.M.C.GOPI
R4 BY ADV. SRI.S.VISHNU (ARIKKATTIL)
R1-R3 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE ORDER DATED 16.12.2009 ISSUED BY THE
MANAGER, SNUP SCHOOL, NALLAMADANCHALLA.

EXHIBIT P2. TRUE COPY OF THE G.O(RT)NO.4120/2010/GE DATED 20.09.2010
ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P3. TRUE COPY OF THE LETTER NO.NM(I)72553/2010/DPI DATED
29.10.2010 OF SHRI.G.SAMSON, DEPUTY DIRECTOR OF EDUCATION (QIP)
DIRECTORATE OF PUBLIC INSTRUCTIONS TO THE PETITIONER.

EXHIBIT P3(A). TRUE COPY OF THE INQUIRY REPORT.

EXHIBIT P4. TRUE COPY OF THE SHOW CAUSE NOTICE DATED 22.11.2010 ISSUED
BY THE PETITIONER TO THE 4TH RESPONDENT.

EXHIBIT P5. TRUE COPY OF THE INTERIM ORDER DATED 03.12.2010 OF THIS
HON'BLE COURT IN WP(C)NO.30352 OF 2010(T).

EXHIBIT P6. TRUE COPY OF THE JUDGMENT DATED 31.01.2012 OF THIS HON'BLE
COURT IN WP(C)NO.38523/10.

EXHIBIT P7. TRUE COPY OF THE G.O(RT)NO.2147/2012/G.EDN DATED 10.05.2012
ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P8. TRUE COPY OF THE REVIEW PETITION DATED 29.05.2012 FILED BY
THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P9. TRUE COPY OF THE ORDER DATED 08.08.2012 OF THIS HON'BLE
COURT IN WP(C)NO.18735 OF 2012.

EXHIBIT P10. TRUE COPY OF THE JUDGMENT DATED 16.07.2012 OF THE JUDICIAL
FIRST CLASS MAGISTRATE, CHITTUR IN C.C.NO.58/04.

EXHIBIT P11. TRUE COPY OF THE ORDER NO.A.101/2012 DATED 17.07.2012
ISSUED BY THE PETITIONER.

EXHIBIT P12. TRUE COPY OF THE LETTER NO.44911/B3/2012/G.EDN DATED
01.08.2012 OF THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P13. TRUE COPY OF THE JUDGMENT DATED 08.01.2013 OF THIS HON'BLE
COURT WP(C)NO.14515 OF 2012.

EXHIBIT P14. TRUE COPY OF THE G.O(RT)NO.4108/2013/G.EDN DATED
04.10.2013 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT (S) ' EXHIBITS

EXT.R4 (A) : TRUE COPY OF THE PROCEEDINGS DATED 03.01.2006 ISSUED BY THE GOVERNMENT OF KERALA

EXT.R4 (B) : TRUE COPY OF THE REPORT DATED 28.01.2013 BY DY.SP., VIGILANCE, PALAKKAD.

EXT.R4 (C) : TRUE COPY OF THE RECOMMENDATION OF THE DIRECTOR, VIGILANCE & ANTI-CORRUPTION BUREAU DATED 08.01.2013

EXT.R4 (D) TRUE COPY OF THE LETTER DATED 15.02.2013 FROM THE PRINCIPAL SECRETARY, VIGILANCE TO PRINCIPAL SECRETARY, GENERAL EDUCATION DEPARTMENT

EXT.R4 (E) : TRUE COPY OF THE LETTER DATED 11.03.2013 FROM SECRETARY, GENERAL EDUCATION DEPARTMENT TO DEPUTY DIRECTOR OF EDUCATION, PALAKKAD (IN NAME COVER)

EXT.R4 (F) : TRUE COPY OF THE LETTER DATED 19.03.2013 OF THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD

EXT.R4 (G) : TRUE COPY OF THE FIR DATED 20.03.2013

EXT.R4 (H) TRUE COPY OF THE MEMO OF CHARGES WITH THE STATEMENT OF ALLEGATION DATED 23.10.2013

EXT.R4 (I) : TRUE COPY OF THE CHARGE MEMO DATED 3.5.2014 IS ISSUED TO P.SOBHANA THE TEACHER-IN-CHARGE BY THE GOVERNMENT

EXT.R4 (J) : TRUE COPY OF THE CHARGE MEMO DATED 3.5.2014 IS ISSUED TO M.AMBUJA ASST.TEACHER BY THE GOVERNMENT

EXT.R4 (K) : TRUE COPY OF THE CHARGE MEMO DATED 3.5.2014 IS ISSUED TO R. RADHA, THE ASST.TEACHER BY THE GOVERNMENT

EXT.R4 (L) : TRUE COPY OF THE LETTER 22.05.2014 TO THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD

EXT.R4 (M) : TRUE COPY OF THE JUDGMENT DATED 13.07.2012 IN C.C.NO.57/2004 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT, CHITTUR

EXT R4 (N) : TRUE COPY OF THE JUDGEMENT IN CRL.APPEAL NO.283/2012 DATED 13.03.2014 ON THE FILE OF THE SESSIONS COURT, PALAKKAD.

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.26329 of 2013

.....
Dated this the 25th day of June, 2015

J U D G M E N T

The petitioner is the owner and Manager of the S.N.U.P. School and was approved as such with effect from 19.04.2010. The 4th respondent was the Headmaster of the School at that time and it is stated that he was facing disciplinary proceedings that was initiated against him by the former Manager. By Ext.P1 order dated 15.12.2009, the former Manager had placed the 4th respondent under suspension. The period of suspension was extended by a further period beyond 15 days by a specific permission granted by the 3rd respondent. The 4th respondent, thereafter, approached the 1st respondent who, by an order, directed the 2nd respondent to conduct an enquiry and submit a report. The 2nd respondent, acting on the directions of the 1st respondent drew up a report dated 18.02.2010 wherein there were findings against the 4th respondent based on which the 2nd respondent suggested that a higher level enquiry be conducted. Thereafter, a memo of charges dated 18.2.2010 was served on the 4th respondent. After considering the reply of the 4th respondent and finding it be not satisfactory. The records were

forwarded by the Manager to the 3rd respondent for conducting the enquiry that was contemplated under Rule 75 of Chapter XXIV A of KER. The 3rd respondent did not, however, conduct any enquiry and this led the 4th respondent to approach the 1st respondent with a prayer for reinstatement. By an order dated 09.02.2010, the 1st respondent passed an order directing the Manager to reinstate the 4th respondent. Aggrieved by the said order, the petitioner Manager preferred W.P.(C).No.5072 of 2010. The 4th respondent through another W.P.(C).No.37422 of 2009, challenged the suspension order that was passed against him by the Manager. In the meanwhile, the 1st respondent, by an order dated 16.06.2010, cancelled the earlier order dated 09.02.2010 that was impugned by the petitioner in W.P. (C).No.5072 of 2010. Under those circumstances, both the aforesaid writ petitions were disposed by this Court with a direction to the 1st respondent to hear the parties and pass fresh orders.

2. Ext.P2 order dated 20.09.2010, is the order passed by the 1st respondent consequent to the directions of this Court. By the said order, the 1st respondent directed a detailed enquiry to be conducted against the 4th respondent, and that, the report of the enquiry was to be submitted to the petitioner within a month. It was also directed

that the petitioner Manager should finalize the disciplinary action within two months thereafter. There was a caveat that, if the Manager failed to complete the proceedings within two months, the 4th respondent was to be reinstated in service. While the petitioner challenged this last condition through W.P.(C).No.38523 of 2010, this condition was later cancelled by the 1st respondent itself. By Ext.P3(a) enquiry report dated 29.10.2010, the enquiry officer found that all the charges, that were framed against the 4th respondent, except two charges, stood proved. Acting on the said report, the petitioner proposed a punishment of removal from service. Ext.P4 show cause notice was therefore issued to the 4th respondent. The said show cause notice was, however, challenged by the 4th respondent through W.P.(C).No.30352 of 2010 before this Court. By Ext.P6 judgment dated 31.01.2012, that was rendered in W.P.(C).No.30352 of 2010 and W.P.(C).No.38523 of 2010, this Court directed the 1st respondent to take a decision on the petitions submitted by the 4th respondent for setting aside the enquiry report within a period of three months. It was made clear in the said judgment that the suspension of the 4th respondent would continue in the meanwhile. Thereafter, by Ext.P7 order dated 10.05.2012, the 1st respondent passed an order holding that the enquiry that was conducted was not in accordance with the

procedure under Rule 75 of Chapter XXIV A of KER inasmuch as the 4th respondent was not given a hearing. The 1st respondent, therefore, proceeded to set aside the enquiry report. He also directed the petitioner to reinstate the 4th respondent forthwith. There was also a direction given to the Deputy Director of Education to conduct a detailed enquiry and submit a report to the petitioner after which the petitioner was to proceed with the disciplinary proceedings in accordance with Rule 75 of Chapter XXIV A of KER. Aggrieved by Ext.P7 order of the 1st respondent, the petitioner filed a review petition. He also filed W.P.(C).No.18735 of 2012 challenging Ext.P7 order. The 4th respondent too filed W.P.(C).No.14515 of 2012, seeking a direction for implementing Ext.P7 order of the 1st respondent. While the said writ petitions were pending, by Ext.P10 judgment dated 16.07.2012 of the Judicial First Class Magistrate Court, Chittur, the 4th respondent was convicted of various offences and was also imposed with a fine. Acting on Ext.P1 judgment, the petitioner by Ext.P11 order dated 17.07.2012, removed the 4th respondent from service in accordance with Rule 75 of Chapter XXIV A of KER. Against the said order of removal from service, the 4th respondent once again approached the 1st respondent, By Ext.P12 order dated 01.08.2012, the 1st respondent directed the petitioner to keep Ext.P11 order in

abeyance. This order of the 1st respondent was challenged by the petitioner in W.P.(C).No.18735 of 2012 where, by Ext.P9 order, the petitioner obtained a stay of operation of Ext.P12 order of the 1st respondent. Both the Writ petitions (W.P.(C).No.14515 of 2012 and W.P.(C).No.18735 of 2012) were heard by this Court, and by Ext.P13 judgment dated 08.01.2013, this Court, disposed the said writ petitions with a direction to the 1st respondent to pass orders on the revision petition filed by the 4th respondent challenging Ext.P11 order dated 17.07.2012 that removed him from service, as also on the review petition, that was preferred by the petitioner challenging Ext.P7 order dated 10.05.2012 of the 1st respondent to the extent it directed reinstatement of the 4th respondent. It was made clear in the said judgment that, the status quo as obtained on that date was to be maintained, and the issue of reinstatement of the 4th respondent was to be decided on the basis of a decision to be taken by the 1st respondent. It is thereafter and pursuant to the directions of this Court, Ext.P13 judgment, that the 1st respondent proceeded to pass Ext.P14 order dated 04.10.2013, which directed a reinstatement of the 4th respondent in service. Ext.P14 order of the 1st respondent is impugned in the present writ petition.

3. The main ground of challenge against Ext.P14 order in the present writ petition is that, notwithstanding a specific direction in Ext.P13 judgment, that the 1st respondent was to pass orders on both, the revision petition preferred by the 4th respondent as also in the review petition preferred by the petitioner, in Ext.P14 order passed by the 1st respondent, there is no reference whatsoever to the contents of the review petition that was preferred by the petitioner, and further, the petitioner was not afforded an opportunity of hearing prior to the passing of Ext.P14 order. Although, counter affidavits have been filed by respondents 1, 2 and 3 wherein they reiterate the stand taken by the 1st respondent in Ext.P14 order, there is no mention of a consideration of the review petition preferred by the petitioner, while passing Ext.P14 order. In the counter affidavit of the 4th respondent, the 4th respondent has produced as Ext.R4(n), the judgment of the Sessions Court in Criminal Appeal No.283 of 2012, whereby the 4th respondent was acquitted of all the charges against him. It is the contention of the 4th respondent that, on account of the finding of the criminal court, the very basis of the order of removal from services has gone, and therefore, he is entitled to an automatic reinstatement in service.

4. I have heard the learned counsel for the petitioner and the learned Senior counsel counsel for the 4th respondent and the learned Government Pleader for the official respondents.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P14 order passed by the 1st respondent, there is no consideration of the averments of the petitioner in the review petition filed against Ext.P7 order dated 10.15.2012 of the 1st respondent, which directed a reinstatement of the 4th respondent. Inasmuch as in Ext.P13 judgment of this Court, there was a specific direction to the 1st respondent to consider and pass orders on both, the revision petition filed by the 4th respondent and the review petition filed by the petitioner, it was incumbent upon the 1st respondent to comply with the directions of this Court strictly by advertng to all the material that was directed to be considered. Inasmuch as, I do not see this exercise having been done by the 1st respondent, while passing Ext.P14 order, I am of the view that the said order cannot be legally sustained. Accordingly, I quash Ext.P14 order and direct the 1st respondent to consider and pass fresh orders on the revision petition filed by the 4th respondent against Ext.P11 order dated 17.07.2012 of the Manager that removed

the 4th respondent from service, as also on the review petition preferred by the petitioner against Ext.P7 order dated 10.05.2012 wherein the 1st respondent had directed the petitioner to reinstate the 4th respondent in service. The 1st respondent shall pass orders in the matter after hearing the petitioner and the 4th respondent, within a period of six weeks from the date of receipt of a copy of a this judgment. Taking note of the fact that, the 4th respondent is now out of service, and is seeking a reinstatement in service, the 1st respondent shall strictly adhere to the time limit specified in this judgment.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns