IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 34248 of 2005 (B)

PETITIONER(S):

VASUNDARA DEVI, HEADMISTRESS,
GOVERNMENT HIGH SCHOOL, PALLICKAL, KILIMANOOR
THIRUVANANTHAPURAM.

BY ADVS.SRI.T.H.ABDUL AZEEZ
SRI.T.B.HOOD

RESPONDENT(S):

1. S.REMA DEVI, W/O.PRASANNA RAJAN,
RETD. HEADMISTRESS, GOVERNMENT HIGH SCHOOL, PALLICKAL
THIRUVANANTHAPURAM RESIDING AT, "REMYA", CHATHANPARA
THOTTAKADU P.O.

2. THE ASSISTANT REGISTRAR (AUDIT),
SAHAKARANA SANGHAM REGISTRAR OFFICE, CHIRAYINKIZH
ATTINGAL, THIRUVNANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION,
VALIYASALA, TRIVANDRUM.

4. THE CHIEF SECRETARY, SECRETARIAT,
TRIVANDRUM.

R,R1 BY ADV. SRI.BLAZE K.JOSE
R3-R4 BY ADV. GOVERNMENT PLEADER SRI ABHIJETT LESSLI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 34248/2005

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE COMPLAINT NO:2128/04 BEFORE THE KERALA LOK AYUKTA, THIRUVANANTHAPURAM

EXT.P2: -DO- STATEMENT FILED BEFORE THE LOK AYUKTA BY THE PETITIONER

EXT.P3: -DO- LETTER DT.31.5.2002 SENT BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT

EXT.P4: -DO- LETTER DT.16.2.2004 SENT BY THE 3RD RESPONDENT TO THE PETITIONER

EXT.P5: -DO- DT.26.2.2004 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT

EXT.P6: -DO- 19.4.2004 SENT BY THE 3RD RESPONDENT TO THE JOINT REGISTRAR (AUDIT)

EXT.P7: -DO- REMINDER DT.24.5.2004 SENT BY THE 3RD RESPONDENT TO THE JOINT REGISTRAR (AUDIT)

EXT.P8: -DO- DT.6.9.20004 SENT BY THE 2ND RESPONDENT TO THE PETITIONER

EXT.P9: -DO- DT.10.9.2004 SENT BY THE 2ND RESPONDENT TO THE PETITIONER

EXT.P10: -DO- DT.13.9.2004 SENT BY THE PETITIONER TO THE JOINT REGISTRAR (GENERAL) THROUGH ASST. REGISTRAR (GENERAL)

EXT.P11: -DO- ORDER DT.22.9.2004 OF THE JOINT REGISTRAR (GENERAL)

EXT.P12: -DO- NON-LIABILITY CERTIFICATE OF THE 1ST RESPONDENT TO THE 3RD RESPONDENT

EXT.P13: -DO- COVERING LETTER DT.16.10.2004 SENT BY THE PETITIONER TO THE 3RD RESPONDENT

EXT.P14: -DO- ORDER DT.31.10.2005 OF THE KERALA LOK AYUKTA IN COMPLAINT NO:2128/2004

JJ /TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN, J.

W.P(C) NO:34248 OF 2005

Dated this the 8th April, 2015.

JUDGMENT

The petitioner has filed this writ petition challenging Ext.P14 order of the Lok Ayukta in complaint No:2128/2004. As per Ext.P14, the petitioner has been held liable to pay interest at the rate of 6% per annum from 3.6.2003 to 11.1.2004 on the amount of DCRG payable to the first respondent herein, for having caused delay in the payment thereof by not issuing a non-liability certificate. The contention of the petitioner is that she was not responsible for the delay that was caused and therefore, there is no justification for the order directing her to pay interest to the first respondent.

2. The petitioner had taken charge as the Headmistress of the Government High School, Pallickal in Trivandrum district on 2.6.2003. She had taken charge in the vacancy of Headmistress created by the retirement of the first respondent. The first respondent retired as the Headmistress of the same School on

31.5.2003. The allegation against the petitioner was that, she had deliberately delayed the issue of a Non-Liability Certificate to the first respondent. Consequently, disbursement of her DCRG was delayed.

3. According to the petitioner, the second respondent had by the issue of Ext.P3 letter dated 31.5.2002 directed not to issue a non-liability certificate to one Sri.K. Vasudevan Pillai who had retired on 31.3.2002. There was a co-operative society functioning in the School by name Pallickal Govt. U.P.School Co-operative Society of which, Shri. K.Vasudevan Pillai was the Secretary. As per Ext.P3, the second respondent has informed the Headmistress of the School that the audit of the society had not been conducted for a period of 21 years due to negligence of the secretary. Since the audit was being conducted there was a possibility of Sri.Vasudevan Pillai being imposed with some liability. It was for the purpose of ensuring the recovery of any such liability that may be fixed on Sri.Vasudevan Pillai that the direction not to issue a Non-Liability Certificate was issued. However, the first respondent had issued a Non-Liability Certificate to him. It is mentioned in Ext.P3 that, if a Non-Liability Certificate was issued in contravention of the direction

contained in Ext.P3, the liability of Sri.Vasudevan Pillai would be fixed on the person who issued such certificate. The case of the petitioner is that, it was in view of the above stipulation contained in Ext.P3 that the petitioner had not issued Non-Liability Certificate to the first respondent. Instead, she entered into a correspondence with respondents 2 and 3 seeking directions regarding the manner in which she should proceed in the matter. The said correspondence are produced as Exts.P4 to P5. While so, the petitioner was also informed that an amount of Rs.28,626/- was the liability of Mr.Vasudevan Pillai. The contention of the counsel for the petitioner is that the Lok Ayukta has passed Ext.P14 order without considering any of the contentions raised in Ext.P2 reply submitted by the petitioner to Ext.P1 complaint. Therefore, according to the counsel Ext.P14 is liable to be set aside.

4. A counter affidavit has been filed by the third respondent stating that the petitioner had not been directed by any authority to withhold the issue of a Non-Liability Certificate to the first respondent. The direction in Ext.P3 was only to the effect that, a Non-Liability Certificate should not be issued to Sri.Vasudevan Pillai who was the Secretary of the society. Thereafter, the third

respondent had directed the petitioner to seek for a review of the liability that was fixed, to take into account the dead stock that was available in the society and to refix the liability after giving credit to the same. Accordingly, the liability was reviewed by the second respondent at the instance of the first respondent whereupon, it was found that the actual liability that could be fixed on Sri.Vasudevan Pillai was only Rs.4362.65. It was also found that he had not been paid his honorarium for the period that he had functioned as the Secretary. The case of the third respondent is that, the delay in issuing a Non-Liability Certificate was entirely attributable to the conduct of the petitioner.

5. Heard. The counsel for the petitioner has taken strain to contend that the entire mischief was created by the second respondent who had issued Ext.P3 communication. It is contended that, the responsibility of conducting audit of the society at the appropriate time each year was on the second respondent. Since no audit of the society was conducted for a period of 21 years, it was clear that he was negligent in the performance of his duties. He had no business therefore to issue Ext.P3 and shift his liability on Sri.Vasudevan Pillai. It is mentioned in Ext.P3 that, if a Non-Liability

Certificate was issued in violation of the direction contained in Ext.P3, the liability of Sri.Vasudevan Pillai would be fixed on the person who issues the Certificate. Since the first respondent had issued a Non-Liability Certificate to Vasudevan Pillai the petitioner was under the impression that the said liability was that of the first respondent. It was for the said reason that a Non-Liability Certificate was not issued to the first respondent, it is contended. It is the further case of the petitioner that the first respondent herself was the ex-officio President of the society. Therefore, she also had responsibility to have the audit conducted, each year, which was not done. In view of the above, she also cannot shirk responsibility for not having got the audit conducted. It is further pointed out that Sri.Vasudevan Pillai had no liability after Ext.P9. Therefore, there was no necessity of issuing Ext.P3. In view of the above circumstances, according to the learned counsel there is no justification for penalising the petitioner for the mischief done by the second respondent.

6. The Govt. Pleader who appears for respondents 2 to 4 opposes the contentions of the counsel for the petitioner. It is pointed out that, Ext.P3 has not directed the petitioner not to issue

the Non-Liability Certificate of the first respondent. Ext.P3 concerned only with the liability of Sri.Vasudevan Pillai. Therefore, there was no justification for the petitioner to have delayed the issue of a Non-Liability Certificate to the first respondent on the basis of Ext.P3. Though the first respondent had retired on 31.5.2003 it is pointed out that, the Non-Liability Certificate was issued only on 16.10.2004. The petitioner is the person responsible for the entire delay according to the learned Govt. Pleader.

7. The substance of the contentions put forward by the petitioner is that, she had delayed the issue of a Non Liability Certificate to the first respondent only because of Ext.P3 communication issued by the second respondent. It is not in dispute that, there was no other liability against the first respondent. A reading of Ext.P3 shows that the same relates to the issue of a Non Liability Certificate to one Vasudevan Pillai who was the Secretary of the Pallickal Govt. U.P.School Co-operative Society. What the second respondent has stated in Ext.P3 is that since the audit of the society had not been conducted for a long period of 21 years, there was likelihood of Sri.Vasudevan Pillai who was the

Secretary of the Society of being saddled with liability for any discrepancy that may be detected. In order to ensure that such liability was recovered without any difficulty, it has been ordered in Ext.P3 that a Non Liability Certificate shall not be issued to him. It is also stated therein that if a Non Liability Certificate were issued to him in violation of the direction contained in Ext.P3, the liability of Sri.Vasudevan Pillai would be fastened on the person who issues such Non Liability Certificate. It is worth noticing that Ext.P3 is dated 31.5.2002, long before the petitioner took charge as the Headmistress. She took charge as the Headmistress only on 2.6.2003. Since the first respondent had retired only on 31.5.2003 it is clear that Ext.P3 had been issued to the first respondent. It is stated that, she had issued a Non Liability Certificate to Sri.Vasudevan Pillai on 20.1.2003. Ext.P3 does not contain any direction not to issue a Non Liability Certificate to the person who violates the direction in Ext.P3. Admittedly, though a Non Liability Certificate was issued to Sri.Vasudevan Pillai in violation of Ext.P3 no liability has been fixed on the first respondent at any time. Therefore, there was no reason for withholding the issue of a Non Liability Certificate to the first respondent by the petitioner. It is settled position of law that a liability would have to be quantified and fixed before it could be recovered from an employee. No such liability was admittedly fixed on the first respondent. Therefore, there was no justification for the action of the petitioner in not having issued a Non Liability Certificate to the first respondent.

8. It is also worth noticing that, though initially an amount of Rs.28,626/- was fixed as liability on Sri.Vasudevan Pillai as per Ext.P9, it has been ultimately found that his liability was only an amount of Rs.4362.65. Since no honorarium had been paid to him for functioning as the Secretary, amounts were in fact due to him and not the converse. The above being the factual position there was no justification for the delay in the issue of a Non Liability Certificate to the first respondent.

9. It is not in dispute that it was the responsibility of the petitioner to issue the Non Liability Certificate to the first respondent. Her case is that she had not issued the same only because of the direction contained in Ext.P3. As I have already found there is nothing in Ext.P3 that can justify the conduct of the petitioner in not issuing Non Liability Certificate to the first respondent. The Lok Ayukta has in Ext.P14 taken note of all the

above aspects and has held that the petitioner was liable to pay interest on the amount of DCRG due to the first respondent. The rate of interest awarded is only 6%. I do not find any grounds to interfere with the said direction.

For the foregoing reasons, it is held that there is no infirmity in Ext.P14 justifying an interference with the same. This writ petition fails and is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

jj /True copy/