

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 34268 of 2006 (D)

PETITIONER(S):

**THE MANAGER,
M.L.PRIMARY SCHOOL PALAKKAL, THEVALLAKARA P.O.
KOLLAM DISTRICT, (REP. BY M.SHAHUL HAMEED, MANAGER).**

**BY ADVS.SRI.M.V.THAMBAN
SRI.V.K.SATHYANATHAN**

RESPONDENT(S):

- 1. THE ASST. EDUCATIONAL OFFICER,
CHAVARA, KOLLAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**
- 3. STATE OF KERALA,
REP. BY SECRETARY, DEPT. OF GENERAL EDUCATION
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**

R,R1-3 BY ADV. GOVERNMENT PLEADER SRI. S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 34268 of 2006 (D)

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE JUDGMENT DTD.17.7.96 IN O.P NO, 5782/1992 OF THIS HON'BLE COURT.
- EXT.P2 COPY OF THE LETTER NO. D.6909/1996 DTD.27.1.97 ISSUED BY THE 1ST RESPONDENT.
- EXT.P3 COPY OF THE JUDGMENT DTD.25.3.97 IN OP NO.4175/97 OF THIS HON'BLE COURT.
- EXT.P4 COPY OF THE COMMON JUDGMENT DTD.27.5.03 IN W.A. NO. 1554/97 OF THIS HON'BLE COURT.
- EXT.P5 COPY OF THE LETTER NO. D.5585/03 DTD.25.8.05 ISSUED BY THE 1ST RESPONDENT.
- EXT.P6 COPY OF THE WRITTEN OBJECTIONS DTD. 22.9.05 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P7 COPY OF THE LETTER NO.D.5583/03 DTD.17.11.06 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS:

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

=====

W.P.(C) No.34268 of 2006 - D

=====

Dated this the 8th day of October, 2015

J U D G M E N T

The petitioner is aggrieved with the proceedings initiated by the A.E.O, for recovery of an amount of Rs.1,39,738 as per Exts.P5 and P7. The facts to be noticed are that the petitioner was the Manager of a school by name I.I.U.P School at Naduvilakkara. The petitioner subsequently by assignment dated 04.06.1991, purchased one Palackal Muslim Lower Primary School at Palackal, Thevalakkara. One U.P.S.A , who had claimed under Rule 51A of the K.E.R, in the I.I.U.P School, stated her claim to be appointed to a vacancy arising in the 2nd school, which arose on 20.06.1991.

2. The petitioner refused to consider the claim on the ground that petitioner had made an application under the provisions of the K.E.R for separate management of the 2nd

school. The petitioner was also granted an order dated 02.12.1991 to maintain the management of the schools as separate units. The issue with respect to the U.P.S.A was agitated before this Court and a learned Single Judge found that she is entitled to be appointed on 20.06.1991, since at that point of time, there was no order enabling the treatment of two schools as separate units. The judgment is produced at Ext.P3. There was a direction to grant appointment to the said U.P.S.A and also entitled the Government to take any proceeding for recovery under Rule 7 of Chapter III of K.E.R, if any loss is caused.

3. The petitioner was before the Division Bench with an appeal. While the said writ petition was pending, the petitioner was issued with an order for recovery of Rs.1,76,106/- by the A.E.O. This was also unsuccessfully challenged in a writ petition against which also an appeal was filed. The U.P.S.A was also before this Court with an original petition seeking the arrears of pay. The two writ appeals and the original petition

were considered by common judgment produced at Ext.P4. This Court affirmed the findings of the learned Single Judge that the U.P.S.A is entitled to be appointed on 20.06.1991. With respect to the recovery of loss under Rule 7, it was for the Government to decide if any loss is caused and proceed against the petitioner with notice, was the finding. The proceedings issued for recovery by the A.E.O was set aside. The A.E.O was directed to grant approval to the U.P.S.A and disburse the salary due to the petitioner. The recovery of loss was directed to be made by the Government after issuing notice to the Manager and deciding on whether there was any loss caused to the Government. The issue of loss caused was left open since the Manager had a contention that though another person was appointed to the post, when the Rule 51A claimant was kept away; the appointment was not approved and no salary paid by the Government.

4. The Division Bench hence noticed the submission of the petitioner that during the said period, when the Rule 51A

claim was kept out of service, though there was appointed an alternate hand, the approval was rejected for reason of the non consideration of the claim under Rule 51A. In such circumstance, the contention urged was that no loss can be caused to the Government, since the Government was not liable to pay two salaries for the very same post. However it is to be noticed despite the said contention, the Division Bench did not set aside the loss computed. The Division Bench merely directed the Government to take appropriate steps after directing the A.E.O to finalize the approval and pay the salary due. The Government has to then decide on whether there is any loss caused after issuing notice. Admittedly no notice was issued and again the A.E.O has proceeded with the recovery.

5. The contention before this Court is that no notice could also be issued because Government has not suffered any loss for reason of the teacher, appointed in the post having not been approved in the post and no amounts were paid as salary.

6. The A.E.O at the earlier instance was held to be not conferred with the power to take up proceedings. Exts.P5 and P7 would stand set aside, for that simple reason. The learned Government Pleader explains that the A.E.O has initiated the proceedings on instruction of the Government. However, the Government has to do it itself and not through the A.E.O. The Government if so advised could issue notice and then decide on the loss caused and compute it and only then can proceed for recovery. The Government is left with the liberty, so to do, after giving ample opportunity to the petitioner, who could object and put forward his contentions.

The writ petition would stand allowed setting aside Exts.P5 and P7 with the above reservation.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/ 09/10 /2015

// true copy//

P.A to Judge.