

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

W.P.(C).No.30432 of 2009 (Y)

PETITIONER(S):-

K.P. MANOHARAN,
ASSISTANT TEACHER,
IVERKULAM GRAMEENA PADASALA U.P.SCHOOL, IVERKULAM,
MUNDALUR.P.O, KANNUR DISTRICT.

BY ADVS.SRI.N.DHARMADAN (SENIOR ADVOCATE)
SMT.D.P.RENU.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR.
3. THE DISTRICT EDUCATIONAL OFFICER,
KANNUR.
4. THE ASSISTANT EDUCATIONAL OFFICER,
KANNUR SOUTH, KANNUR.
5. THE MANAGER,
IVERKULAM GRAMEENA PADASALA U.P.SCHOOL, IVERKULAM,
MUNDALUR.P.O, KANNUR DISTRICT.

R1 TO R4 BY GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- | | |
|---------|---|
| EXT.P1 | TRUE COPY OF THE NOTICE DATED 7.8.2006 ISSUED BY THE AEO. |
| EXT.P2 | TRUE COPY OF THE EXPLANATION DATED 18.8.2006 SUBMITTED BY THE PETITIONER BEFORE THE AEO. |
| EXT.P3 | TRUE COPY OF THE NOTICE DATED 29.08.2006 ISSUED BY AEO TO THE PETITIONER. |
| EXT.P4 | TRUE COPY OF THE SUBMISSION DATED 9.9.2006 ISSUED BY THE PETITIONER. |
| EXT.P5 | TRUE COPY OF THE STATEMENT DATED 13.9.2006. |
| EXT.P6 | TRUE COPY OF THE MEMO OF CHARGES DATED 3.11.2006. |
| EXT.P7 | TRUE COPY OF THE REPLY DATED 15.12.2006. |
| EXT.P8 | TRUE COPY OF THE ORDER DATED 10.1.2007. |
| EXT.P9 | TRUE COPY OF THE APPEAL DATED 22.2.2007 SUBMITTED BY THE PETITIONER. |
| EXT.P10 | TRUE COPY OF THE REQUEST DATED 28.7.2007 SUBMITTED BY THE PETITIONER. |
| EXT.P11 | TRUE COPY OF THE REQUEST DATED 28.6.2007 SUBMITTED BY THE PETITIONER. |
| EXT.P12 | TRUE COPY OF THE ORDER DATED 11.10.2007 PASSED BY THE DEO, KANNUR. |
| EXT.P13 | TRUE COPY OF THE MEMORANDUM OF REVISION DATED 22.12.2007 SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT. |
| EXT.P14 | TRUE COPY OF THE ORDER DATED 3.6.2009. |
| EXT.P15 | TRUE COPY OF ORDER DATED 27.7.2011 ISSUED BY THE GOVERNMENT. |

RESPONDENT'S EXHIBITS:-

NIL.

vkul/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.30432 of 2009-Y

Dated this the 16th day of September, 2015

JUDGMENT

The petitioner is aggrieved with proceedings taken against the petitioner and the punishment imposed, being withholding of one increment without cumulative effect.

2. The petitioner is said to have been proceeded under Exhibit P1 dated 07.08.2006, by the Assistant Educational Officer [for brevity "AEO"]. The proceedings admittedly were on the basis of a complaint raised by the Headmistress dated 21.07.2006 and the complaint of the Parent Teacher Association [for brevity "PTA"] of even date, indicated as reference Nos.1 and 2 in Exhibit P1. Exhibit P1 would indicate that the AEO had conducted an enquiry in the school and on that day the petitioner was absent. On such enquiry, it is stated in Exhibit P1, that there was reason to *prima facie* believe the allegation of disrespectful behaviour towards the Headmistress and violation of discipline. The petitioner was also directed to give his explanation within fifteen days. The petitioner came with an

explanation at Exhibit P2. Not being satisfied with the same, the petitioner was issued with another notice on 29.08.2006 [Exhibit P3]; pursuant to which a charge-sheet dated 03.11.2006 was also issued to him, as is seen from Exhibit P6.

3. In Exhibit P6 itself it was noticed that since there was no approved Manager, the AEO was invoking the powers under Section 12A of the Kerala Education Act to initiate the said proceedings. In Exhibit P6 it was also indicated that the petitioner, if found guilty, would be imposed a punishment of stoppage of one increment without cumulative effect.

4. The statement of allegations were stated in Exhibit P6 charge-sheet, to which the petitioner replied by Exhibit P7. The petitioner was imposed with the punishment, by Exhibit P8 order dated 10.01.2007. In fact, there is no consideration of the objections in Exhibit P8 order. The AEO narrated the sequence of events with reference to the documents referred in the 1st paragraph and referred to the enquiry conducted as also the conciliation talk convened on 04.10.2006 in the 2nd paragraph. The 3rd paragraph merely referred to the complaint of the Headmistress and the allegations of misconduct of disciplinary

laches and dereliction of duty; but without reference to any particular instance. The objection of the petitioner was also noticed; but again without any reference as to the grounds on which such objections were raised. In the 4th paragraph, the conduct of the petitioner in raising a dispute against the jurisdiction of the AEO was found to be again a serious lapse of discipline and order of punishment, as proposed, was imposed.

5. Exhibit P12 is the appellate order, which also does not consider any of the grounds raised in the appeal; but merely relies on the conduct of the petitioner in having walked out of a mediation attempted at the initiative of the Panchayat President. The said action was said to be unbecoming of a teacher and the appeal was rejected by the District Educational Officer [for brevity "DEO"], affirming the order at Exhibit P8.

6. Exhibit P14 is the revisional order passed by the Government, which again found that the petitioner raised allegations against the Headmistress in the revision and for that reason alone rejected the revision.

7. Exhibits P8, P12 and P14 have not considered the issue in the proper perspective and proceeded on totally

extraneous reasons. It is also pertinent that, the petitioner's contention that both the complaints – one by the Headmistress and the other by the PTA – were not given to the petitioner. The enquiry said to have been conducted on 25.07.2006 is also not with notice to the petitioner. Admittedly, even going by Exhibit P1 notice, the petitioner was not present when the AEO visited the premises. Further, the contention of the petitioner that the charge-sheet at Exhibit P6 pre-judged the issue by speaking on the punishment to be imposed, is supported by a decision of this Court in ***Yamuna v. State of Kerala* [2008 (1) KLT 378]**.

8. On the very same allegations, proceedings were initiated against the petitioner's wife also, who was also a teacher in the 5th respondent-school. The proceedings ended in imposition of a punishment similar to that of the petitioner, which was unsuccessfully challenged in appeal. The order in revision is Exhibit P15, which allowed the case of the revision petitioner therein. In Exhibit P15 it is specifically found that the Headmistress had raised a complaint before the jurisdictional police against the petitioner herein and his wife and the same was withdrawn subsequently on a compromise. It was also

found that it is on the very same allegations a complaint was made before the AEO.

9. A reading of the objection filed by the petitioner also reveals that that the petitioner has raised the very same objections before the authorities, which was not even looked into by any of the authorities. As has been noticed above, the entire exercise was in gross violation of principles of natural justice and the orders passed imposing punishment on the petitioner, is without any application of mind and on the basis of the subjective satisfaction of the authorities as to the conduct of the petitioner. Hence, the writ petition has to be allowed.

In the result, the writ petition would stand allowed. Exhibits P8, P12 and P14 are set aside. The punishment having been overturned, necessary consequence of restoration of increment on the date it is due and payment in accordance with that would ensue. Parties are left to suffer their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]