

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 30422 of 2013 (C)

PETITIONER(S) :

**RIBIN.K.A., S/O. K.K.ABDUL RAHIMAN,
PHYSICAL EDUCATION TEACHER, DARUL ULOOM VOCATIONAL
HIGHER SECONDARY AND HIGHER SECONDARY SCHOOL,
VEEKSHANAM ROAD, KOCHI-682 018,
RESIDING AT KANIYAMPARAMBIL HOUSE, NORTH PARAVOOR,
ERNAKULAM DISTRICT-683 513.**

**BY SRI.P.K.SURESH KUMAR (SENIOR ADVOCATE)
ADVS.SRI.SUNIL V.MOHAMMED
SRI.T.U.ZIYAD
SRI.C.S.ABDUL SAMMAD
SRI.NISHIL.P.S.**

RESPONDENT(S) :

- 1. THE STATE OF KERALA,
REP.BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DISTRICT EDUCATIONAL OFFICER,
ERNAKULAM-682 031.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
ERNAKULAM-682 030.**
- 4. THE MANAGER,
DARUL ULOOM VOCATIONAL HIGHER SECONDARY AND HIGHER
SECONDARY SCHOOL, ERNAKULAM-682 018.**
- 5. V.VILASACHANDRAN NAIR,
UNDER SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**

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*** ADDITIONAL R6 IMPEADED**

**6. SRI.ABDU RABB,
MINISTER OF EDUCATION, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**

*** ADDITIONAL R6 IS IMPEADED AS PER ORDER DATED 21.05.2015 IN
I.A.NO.7592 OF 2014.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ
R4 BY SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
ADV. SRI.M.C.GOPI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON 21-05-2015 DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : THE TRUE COPY OF THE ORDER NO.M1/2011 DATED 08.11.2013 OF THE 4TH RESPONDENT.**
- P2 : THE TRUE COPY OF THE PROCEEDINGS DATED 29.11.2011 OF 4TH RESPONDENT ORDERING PETITIONER'S SUSPENSION.**
- P3 : THE TRUE COPY OF THE REPRESENTATION DATED 08.12.2011 SUBMITTED BEFORE THE 4TH RESPONDENT TO REVOKE THE SUSPENSION.**
- P4 : THE TRUE COPY OF THE APPEAL PETITION DATED 10.12.2011 WITH DOCUMENTS SUBMITTED BEFORE THE 2ND RESPONDENT.**
- P5 : THE TRUE COPY OF THE MEMO OF CHARGES AND STATEMENT OF ALLEGATIONS DATED 31.12.2011 ISSUED BY THE 4TH RESPONDENT.**
- P6 : THE TRUE COPY OF THE JUDGMENT DATED 16.01.2012 IN W.P.(C).NO.33894/2011.**
- P7 : THE TRUE COPY OF THE LETTER DATED 16.01.2012 ISSUED BY THE 4TH RESPONDENT.**
- P8 : THE TRUE COPY OF THE SAID PROCEEDINGS NO.M/1/2011 DATED 17.01.2012 ORDERING SUSPENSION OF THE PETITIONER AGAIN FOR THE SAME REASONS.**
- P9 : THE TRUE COPY OF THE PROCEEDINGS DATED 21.01.2012 OF THE 4TH RESPONDENT ALONG WITH THE POSTAL COVER.**
- P10: THE TRUE COPY OF THE HEARING NOTICE DATED 05.03.2012 ISSUED BY 2ND RESPONDENT.**
- P11: THE TRUE COPY OF THE REPRESENTATION DATED 08.03.2012 PREFERRED BEFORE THE 2ND RESPONDENT.**
- P12: THE TRUE COPY OF THE ENQUIRY REPORT DATED 08.03.2012 OF 2ND RESPONDENT.**
- P13: THE TRUE COPY OF THE SHOW CAUSE NOTICE NO.M1/11 DATED 25.05.2012 OF THE 4TH RESPONDENT.**
- P14: THE TRUE COPY OF THE EXPLANATION DATED 18.06.2012 SUBMITTED BEFORE 4TH RESPONDENT.**
- P15: THE TRUE COPY OF THE ORDER DATED 24.09.2012 OF THE 3RD RESPONDENT.**
- P16: THE TRUE COPY OF THE REVISION PETITION DATED 05.11.2012 SUBMITTED BY THE 4TH RESPONDENT.**

- P17: THE TRUE COPY OF THE ORDER NO.M1/11 DATED 07.11.2012 OF REMOVAL FROM SERVICE ISSUED BY THE 4TH RESPONDENT.**
- P18: THE TRUE COPY OF THE INTERIM ORDER DATED 08.04.2013 IN W.P.(C).NO.1856/2012.**
- P19: THE TRUE COPY OF THE ORDER NO.B2/6251/2013 DATED 16.05.2013 PRODUCED BY THE 3RD RESPONDENT.**
- P20: THE TRUE COPY OF THE ORDER DATED 10.06.2013 IN CONTEMPT OF COURT CASE NO.585/2013.**
- P21: THE TRUE COPY OF THE ORDER DATED 17.06.2013 IN CONTEMPT OF COURT CASE NO.585/2013.**
- P22: THE TRUE COPY OF THE ORDER NO.B2/6251/2013 DATED 20.07.2013 OF THE 3RD RESPONDENT.**
- P23: THE TRUE COPY OF THE HEARING NOTE DATED 28.06.2013 WITHOUT DOCUMENTS SUBMITTED BY THE PETITIONER.**
- P24: THE TRUE COPY OF THE REVISION PETITION DATED 24.07.2013 OF THE 4TH RESPONDENT.**
- P25: THE TRUE COPY OF THE ORDER NO.62769/K1/12/G.EDN. DATED 24.07.2013 ISSUED BY THE GOVERNMENT.**
- P26: THE TRUE COPY OF THE COVERING LETTER DATED 02.09.2013 AND THE NOTE FILE PREPARED BY THE 5TH RESPONDENT ALONG WITH THE FORWARDING NOTE.**
- P27: THE TRUE COPY OF THE INTERIM ORDER DATED 09.10.2013 IN W.P.(C).NO.1856/2012.**
- P28: THE TRUE COPY OF THE INSTRUCTION DATED 01.07.2013 ISSUED BY THE OFFICE OF THE HON'BLE MINISTER FOR EDUCATION.**
- P29: THE TRUE COPY OF THE RECOMMENDATION OF THE HON'BLE MINISTER DATED 21.08.2013.**
- P30: THE TRUE COPY OF THE GO(RT)NO.4610/2013/G.EDN. DATED 31.10.2013 ISSUED BY THE GOVERNMENT.**
- P31: THE TRUE COPY OF THE DUTY CERTIFICATE DATED 23.11.2011 ISSUED BY THE COMPETENT AUTHORITY.**
- P32: THE TRUE COPY OF THE DUTY CERTIFICATE DATED 25.11.2011 ISSUED BY THE COMPETENT AUTHORITY.**
- P33: THE TRUE COPY OF THE DUTY CERTIFICATE DATED 30.11.2011 ISSUED BY THE COMPETENT AUTHORITY.**
- P34: THE TRUE COPY OF THE E-MAIL INTIMATION OF DEO, ERNAKULAM DATED 18.11.2011 ADDRESSING TO ALL HMS ON EXT.P31.**

- P35: THE TRUE COPY OF THE INTIMATION DATED 19.11.2011 BY THE CONCERNED AUTHORITY ADDRESSING TO THE PRINCIPAL ON EXTS.P32 EVENT.**
- P36: THE TRUE COPY OF THE INTIMATION DATED 21.11.2011 BY THE CONCERNED AUTHORITY ADDRESSING TO THE PRINCIPAL ON EXTS.P33 EVENT.**
- P37: THE TRUE COPY OF THE ENQUIRY REPORT OF THE GENERAL EDUCATION DEPARTMENT DATED 06.07.2013.**
- P38: THE TRUE COPY OF THE COMPLAINT DATED 24.06.2011 OF THE TEACHERS OF THE LADIES STAFF ROOM.**
- P39: THE TRUE COPY OF THE SCHOOL REPORT FOR THE YEAR 2010-2011 PREPARED BY PRINCIPAL.**
- P40: THE TRUE COPY OF THE TEACHING MANUEL OF THE PETITIONER FOR THE ACADEMIC YEAR 2011-2012 CONTAINING THE COUNTER SIGNATURE OF THE PRINCIPAL.**

RESPONDENT(S)' EXHIBITS

- R4(A): TRUE COPY OF THE ORDER OF THE DEO DATED 14.12.2011.**
- R4(B): TRUE COPY OF THE ORDER OF THE MANAGER DATED 14.12.2011.**
- R4(C): TRUE COPY OF THE ORDER OF THE DEO DATED 31.01.2012.**
- R4(D): TRUE COPY OF THE ORDER OF THE MANAGER DATED 31.01.2012.**
- R4(E): TRUE COPY OF THE LETTER OF THE PETITIONER DATED 06.01.2012.**
- R4(F): TRUE COPY OF THE LETTER OF THE MANGER DATED 09.01.2012.**
- R4(G): TRUE COPY OF THE REQUEST OF THE PETITIONER DATED 12.01.2012.**
- R4(H): TRUE COPY OF THE LETTER OF THE HEADMASTER DATED 12.01.2012.**
- R4(I): TRUE COPY OF THE LETTER OF THE MANAGER DATED 16.01.2012.**
- R4(J): TRUE COPY OF THE LETTER OF THE PRINCIPAL DATED 20.01.2012.**
- R4(K): TRUE COPY OF THE REQUEST OF THE MANAGER DATED 22.02.2012.**
- R4(L): TRUE COPY OF THE RELEVANT PAGES OF THE TEACHERS ATTENDANCE REGISTER AND THE SUBSTITUTE WORK ARRANGEMENT BOOK.**
- R4(M): TRUE COPY OF THE RELEVANT PAGES OF THE TEACHERS ATTENDANCE REGISTER.**
- R4(N): TRUE COPY OF THE COMPLAINTS MADE BY THE TEACHERS AND PRINCIPAL.**

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**R4(O): TRUE COPY OF THE COMPLAINTS MADE BY SRI.BASHEER, THE PRINCIPAL
OF THE SCHOOL.**

R4(P): TRUE COPY OF THE LETTER DATED 10.05.2013 WITH REGISTRATION SLIP.

**R4(Q): TRUE COPY OF THE CIRCULAR AND REGULAR TEACHING NOTES
(RELEVANT PAGE).**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.30422 of 2013

Dated this the 21st day of May, 2015

JUDGMENT

Ext.P1 proceedings dated 8.11.2013 by which the 4th respondent has removed the petitioner from the post of Physical Education Teacher on the basis of Ext.P30 revisional order dated 31.10.2013 is under challenge.

2. The petitioner while working as Physical Education Teacher in DUVHS, Ernakulam under the 4th respondent was placed under suspension on 29.11.2011. The petitioner challenged the same in WPC No.33894/2011. The order of suspension was set aside on the ground that the order of the District Educational Officer permitting the Manager to keep the petitioner under suspension beyond 15 days was issued only after the expiry of 15 days. On the basis of the said order, the petitioner was reinstated in

service on 16.1.2012 and he was again suspended with effect from 17.1.2012. The District Educational Officer conducted a preliminary enquiry and granted permission for extending the period of suspension of the petitioner beyond 15 days. Based on the memo of charges the District Educational Officer conducted an enquiry. As per the enquiry report dated 8.3.2012, it was found by the District Educational Officer that out of 9 charges, charge Nos.5,6,7,8 and 9 were proved. Based on the same, the 4th respondent took the matter of removal of the petitioner from service with effect from 17.1.2012. Though the permission was sought for from the Deputy Director of Education, the same was rejected on the ground that the charges proved were not sufficient to impose major punishment like removal from service. Therefore, the Manager was directed to impose a punishment proportionate to the gravity of the charges as per the enquiry report. The Manager approached the Government with a revision on 5.11.2012. On 7.11.2012, the petitioner was

removed from service subject to the outcome of the revision petition. The petitioner challenged the validity of suspension before this Court. The Deputy Director, Ernakulam was directed to review the petitioner's suspension and pass appropriate orders within one month. Accordingly, suspension period of the petitioner has been extended till a decision is taken by the Government in the revision petition. Hearing was conducted by the 5th respondent. The petitioner alleges that before a decision is taken, the 4th respondent influenced the office of the Education Minister and accordingly, the Private Secretary of the Minister called the file as per Ext.P28 note and ultimately, Ext.P29 decision was taken by the Education Minister on the basis of which Ext.P30 formal orders were issued. It is with this background, the petitioner has come up before this court.

3. In the counter affidavit filed by the 4th respondent as well as the State, they have justified the stand taken by the Government in removing the

petitioner from service.

4. I have heard Mr.P.K.Suresh Kumar, the learned senior counsel for the petitioner, Sri.N.N.Sugunapalan, the learned senior counsel for the 4th respondent as well as the learned Government Pleader in the matter.

5. Though various allegations have been raised against the enquiry and the findings thereon, the petitioner could not substantiate any material irregularity in the enquiry conducted by the DEO. The petitioner was found guilty of charge Nos.5,6, 7, 8 and 9. The proved charges are the following:

1) That the petitioner was frequently misbehaving to the other staff of the schools which has lead to complaints against his behaviour (charge No.5).

2) That the petitioner has threatened some of the staff of the school with dire consequences (charge No.6).

3) That the petitioner has been frequently

misbehaving to the Principal of the school and he was threatened by the petitioner with dire consequences (charge No.7).

4) That the petitioner has been violent to the staff while talking in front of the students and their parents (charge No.8).

5) There had been complaints of willful insubordination and insult to the staff by the petitioner (charge No.9).

6. It is crucial to note that all the alleged proven charges are concerned with the misbehaviour of the petitioner which amounts to insubordination. The Manager approached the Government with the revision against the order of the Department of Education. A hearing was conducted by the 5th respondent. Ext.P26 is the hearing note. Before a decision could be taken by the person who conducted the hearing, the file was called by the office of the Minister as per Ext.P28. According to the learned senior counsel for the petitioner, this would indicate

the influence asserted by the 4th respondent over the Minister. What is stated in Ext.P28 is that File No.62769/K1/2012/G.Edn. regarding representation of Sri.K.A.Rabin, Physical Education Teacher, DUVHSS, Pulleppadi, Ernakulam be arranged to be circulated to the Education Minister at the earliest. Though it was strenuously argued by the learned senior counsel for the 4th respondent that it was on account of the representation submitted by the petitioner that the file has been called for, I am not inclined to accept the same because the petitioner has no case that he has filed any such representation before the Minister. In fact the Manager has filed the revision and it was under the process of culmination, i.e. after the hearing was over as evident from Ext.P26 that the file has been called by the office of the Minister. No one can question the authority of the portfolio of Minister in calling a file and passing orders thereon. Ext.P29 is the copy of the order passed by the Minister. The minutes of the Minister reads as follows:

“Altogether 9 charges were levelled against the delinquent officer and all the charges were reportedly proved in enquiry. The proven charges justifies the decision of the Management. As such the Management may be permitted to proceed action as per the provisions in the KER.”

7. It appears that the Minister while passing Ext.P29 was guided by the notes in the file. It is crucial to note that the person who conducted the hearing has noted in Ext.P26 that as per the rules, the second suspension of the petitioner was invalid and the action of the Deputy Director of Education in reinstating the petitioner in service is sustainable. It is also stated that all the proven allegations are based on misbehaviour and insubordination. It was also observed that the action of the Manager in suspending the teacher again on 17.1.2012 was in gross violation of KER and the proven charges are not sufficient to award a punishment like removal from service. The following were the proposals.

1. The Manager may be given permission to take major punishment against the teacher, Sri.Ribin, as envisaged in KER, other than dismissal or removal.
2. The order of DDE reinstating the petitioner in service may be upheld.

8. It is true that the Minister is not bound by the proposals made by the hearing authority. It is open to the Minister to appreciate the facts and to enter a decision of his own. It is also settled law that it is not mandatory that the person who hears should decide (See ***Sudheer v Susheela*** (2009(4) KLT 29(F.B.) Hearing need not always be personal hearing or hearing by words of mouth. If a representation is filed by a contesting party and a decision is given adverting to the contentions, the decision must be held to be valid. However, it is unfortunate to note that in Ext.P29, none of the contentions raised by the petitioner has been adverted to. However, by a cryptic order, it is stated that 9 charges were levelled against the petitioner and all charges were proved, which is factually incorrect. Out of the 9 charges levelled, only six charges were proved. It is apparent from the face of Ext.P29 that it was passed without application of mind. Therefore, Ext.P30 revisional order and Ext.P1 termination order passed by the 4th

respondent on the basis of the same calls for an interference.

In the result, this writ petition is allowed.

Exts.P1 and P30 are quashed. The matter is remitted back to the first respondent to reconsider the issue once again in the light of what has been stated above and pass formal orders on the revision within a period of three months from the date of receipt of a copy of this judgment.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE