

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 36215 of 2007 (J)

PETITIONER :

THE AIDED U.P.SCHOOL, PALAKKODE,
KOTHAKURISSI, P.O. CHEUMPATTAKAVU, OTTAPALAM TALUK
REP. BY ITS MANAGER, K.PRASAD
S/O. LATE APPU EZHUTHACHAN KIZHAKKETHIL HOUSE
KOTHAKKURUSSI, CHERUMPATTAKKAVU (PO)
OTTAPALAM, PALAKKAD DISTRICT.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)

RESPONDENTS :

1. THE STATE OF KERALA REPRESENTED BY
THE SECRETARY TO THE GOVERNMENT GENERAL EDUCATION
DEPARTMENT, SECRETAIRAT, TRIVANDRUM.
2. THE DEPUTY DIRECTOR OF EDUCATION
PALAKKAD.
3. THE ASSISTANT EDUCATIONAL OFFICER
OTTAPALAM, PALAKKAD DISTRICT.
4. P.C.SADANANDAN,S/O. CHATHU EZHUTHACHAN,
PEON U.P.SCHOOL, PALAKKODE, KOTHAKURUSSI
(PO) CHERUMPATTAKKAVU, OTTAPALAM
PALAKKAD DISTRICT. RESIDING AT PALISSERY HOUSE
(PO) PANAMANNA OTTAPALAM, PALAKKAD DISTRICT.
5. THE HEADMASTER U.P.SCHOOL, PALAKODE,
KOTHAKURUSSI, (PO) CHERUMPATTAKKAVU, OTTAPALAM
PALAKKAD DISTRICT.

R4 BY ADV. SRI.C.A.CHACKO
R BY SR.GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-04-2015,
ALONG WITH W.P.(C).NO.36307/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE REPORT SUBMITTED BY THE HEADMASTER TO THE PETITIONER DATED 24/8/05

EXT.P2 : COPY OF SHOW CAUSE NOTICE ISSUED TO THE FOURTH RESPONDENT DATED 29/8/05

EXT.P3 : COPY OF THE REPLY SUBMITTED BY THE 4TH RESPONDENT DATED 1/9/05

EXT.P4 : COPY OF THE ORDER PASSED BY THE AEO OTTAPALAM DATED 26/12/05

EXT.P5 : COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 27/12/05

EXT.P6 : COPY OF THE COMMUNICATION DATED 21/6/06 ISSUED BY THE THIRD RESPONDENT TO THE FOURTH RESPONDENT

EXT.P7 : COPY OF THE JUDGMENT IN WP(C)NO.23191/06 DATED 29/8/06

EXT.P8 : COPY OF THE HEARING NOTICE ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER DATED 17/10/06

EXT.P9 : COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT DATED 1/2/07

EXT.P10 : COPY OF THE REVIEW PETITION FILED BY THE PETITIONER DATED 14.3.07

EXT.P11 : COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN WP(C). NO.12162/07 DATED 26.6.07

EXT.P12 : COPY OF THE JUDGMENT PASSED IN WPC.NO.12162/2007 DATED 12/7/07

EXT.P13 : COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT DATED 17/7/07

EXT.P14 : COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 18/8/07

EXT.P15 : COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DATED 12/11/07

EXT.P16 : COPY OF THE COMMUNICATION ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 7.11.08

EXT.P17 : COPY OF THE COMMUNICATION ISSUED BY THE DISTRICT EDUCATION OFFICER, OTTAPPALAM DATED 11/12/08

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) Nos.36215 & 36307 of 2007

Dated this the 7th day of April, 2015

J U D G M E N T

These writ petitions are considered and disposed of together, in view of the fact that, the order that is under challenge is the same in both the cases.

2. The petitioner in W.P.(C).No.36215/2007 is the Manager of an aided Upper Primary School. The 4th respondent is a Peon of the school. The 4th respondent was placed under suspension on 12.12.2005. The allegation against him was that, he had omitted to lock up the office room of the school on 23.08.2005. The suspension was ordered, on the basis of a report submitted by the Headmaster to the petitioner informing him of the incident. On 23.08.2005, the Headmaster was on leave. On the said date, the allegation is that, the 4th respondent had locked up the school, but had omitted to lock the office room of the school. Thereafter, he had handed over the keys at the residence of the Manager, in accordance with the usual practice. The fact that the school office had not been locked was detected in the morning on the next day. The 4th respondent explained that, he had actually locked up the office room, but that, a spare key was available with the Headmaster and that, he was not responsible for any lapse as alleged. His explanation was not accepted and he was placed under suspension.

3. Later on, the 3rd respondent issued Ext.P4 order, after considering the entire issue, revoking the order of suspension and directing the reinstatement of the 4th respondent with effect from the date of the suspension itself. It was found by the 3rd respondent that, the 4th respondent was only a peon of the school. The responsibility of locking up the office room was on the Headmaster and in his absence on the Teacher-in-Charge. It was for the Headmaster to ensure that, the office room was properly locked up before he left the school. Therefore, it was not proper to make the Peon liable for such lapse, in view of the fact that the Headmaster was also responsible to ensure that the room was properly locked.

4. The petitioner challenged Ext.P4 by preferring a revision before the 1st respondent under Rule 92 of Chapter XIV A. The 1st respondent issued an interim order of stay of Ext.P4 order. A copy of the interim order dated 02.02.2006 has been produced as Ext.R4(a) in W.P.(C).No.36307/2007. As per Ext.R4(a), Ext.P4 was kept in abeyance. In view of the above interim order, the 4th respondent was not reinstated.

5. In the above circumstances, the 4th respondent approached this Court by filing W.P.(C).No.23191/2006. The said writ petition was disposed of by this Court directing the 1st respondent to consider a representation that was pending before the said authority. The petitioner was also directed to be heard. Pursuant to the judgment of

this Court, the 1st respondent heard the parties and by Ext.P9 order dated 01.02.2007 found that, the 4th respondent was entitled to be reinstated. Therefore, reinstatement was ordered. Ext.P9 also vacated the interim order that was granted by the Government on the revision petition preferred by the petitioner, evidenced by Ext.R4(a) in W.P.(C). No.36307/2007. Aggrieved by Ext.P9, the petitioner preferred a review petition, Ext.P10 dated 14.03.2007.

6. In the above circumstances, the 4th respondent approached this Court again with W.P.(C).No.12162/2007. The said writ petition was disposed of by this Court by judgment dated 12.07.2007, which has been produced as Ext.P1 in W.P.(C).No.36307/2007. In Ext.P1, this Court found that, the 1st respondent had while issuing Ext.P9 omitted to consider the revision petition filed by the Manager, that was pending. The said procedure was found to be unacceptable. Since the revision petition was not considered, this Court has found in its judgment that Ext.P2 has to be treated as infructuous. Thereafter, the 1st respondent was directed to consider and pass fresh orders after hearing the parties. Ext.P1 is dated 12.07.2007. However, before the judgment of this Court could be produced before the 1st respondent, the said authority is alleged to have considered the revision petition preferred by the petitioner and rejected the same by an order dated 17.07.2007, produced as Ext.P13 in this writ petition. The petitioner thereupon submitted a fresh representation Ext.P14 dated 18.08.2007,

producing a copy of the judgment of this Court. The 1st respondent then considered Ext.P14 and issued Ext.P15 order rejecting the review petition of the petitioner. It is the very same order that is the subject matter of challenge in W.P.(C).No.36307/2007 which is produced in the said writ petition as Ext.P2.

7. Both the petitioners challenge the order on different grounds. According to the Manager of the school, Ext.P15 seeks to recover from him the amount of subsistence allowance that has been directed to be paid to the employee. The said direction, according to the counsel for the Manager, is without any justification. It is pointed out by the learned counsel that, though the AEO had ordered the employee to be taken back the said order had been stayed by the Government in the revision petition that was preferred by the management. The said stay was vacated only by Ext.P9 dated 01.02.2007. Immediately thereafter, the Manager had preferred Ext.P10 review petition. This Court has also held in Ext.P1 produced in W.P.(C).No.36307/2007 that Ext.P9 has to be treated as infructuous. Therefore, according to the learned counsel for the petitioner there was no lapse or disobedience of any order of the authorities by his client as sought to be made out in Ext.P15. He had only conducted himself in accordance with the lawful orders passed by the authorities.

8. According to the learned counsel for the 4th respondent/employee, there was no fault on the part of the employee

who was placed under suspension, without any valid reasons. It was so found by the 3rd respondent. On 26.12.2005 as per the order of the 3rd respondent, the employee had been directed to be reinstated with effect from the date on which he was suspended. The reinstatement of the employee was delayed by the Manager who deliberately pursued proceedings challenging the order for reinstatement. Consequently, the 4th respondent continued to be under suspension in spite of the orders passed in his favour. Ultimately, he was reinstated in service only on 12.12.2007. Therefore, the employee was entitled to all benefits of pay and other allowances for the period from the date on which he was suspended to 12.12.2007. The employee is entitled to the said benefits, in view of the mandate of Sub Rule 8 of Rule 67 Chapter XIV A, KER. The denial of the said benefits to the 4th respondent is according to the counsel, without any justification.

9. The learned counsel for the petitioner/Manager on the other hand counters the above contention by pointing out that, the successive authorities who considered his revision and review petitions have not adverted to or considered his contentions on the merits. It was for the said reason that, he had been invoking the legal remedies available to him. Reliance is placed on the decisions of this Court to contend that, no power was available to the Government under Sub Rule 4 of Rule 7, Chapter III KER to recover the loss from the Manager. Such power is a penal provision that has been construed strictly.

Therefore, it is contended that there is no justification for mulcting the petitioner with the liability to bear the burden of the benefits granted to the 4th respondent under Ext.P15.

10. Heard. The 4th respondent was suspended from service on 12.12.2007 for a period of 15 days on the allegation that, he had omitted to lock the office room of the school on 23.08.2005. The matter was immediately reported to the 3rd respondent as contemplated by Rule 67(8), Chapter XIV A KER. However, the 3rd respondent on investigation has found that, the responsibility to assure that the office room was properly locked was primarily on the Headmaster and not on the Peon of the school. Since the Headmaster was on leave on the particular date, the Teacher-in-Charge of the duties of the Headmaster was the person responsible to have assured that the office room was properly locked. Even assuming that it was the duty of the Peon to lockup the office room, the joint responsibility of the Teacher-in-Charge, who is the custodian of the records of the school, could not be ignored. Therefore, taking action against the Peon and holding him responsible for the omission was held to be unjustified. It was for the said reason that, the 4th respondent was directed to be reinstated in service with effect from the date on which he was suspended. The order passed by the 3rd respondent is Ext.P4. I do not find any infirmity in the reasoning adopted by the 3rd respondent. Therefore, the direction to reinstate the 4th respondent

was issued on proper grounds.

11. Aggrieved by Ext.P4, the petitioner had challenged the same in revision before the Government. It is seen that, the 1st respondent had also granted an interim order of stay. The order of stay has been produced as Ext.R4(a) in W.P.(C).No.36307/2007. The said order is dated 02.02.2006. Ext.R4(a) has kept Ext.P4 in abeyance. Therefore, the petitioner cannot be found fault with for not having implemented Ext.P4 as long as Ext.R4(a) order was in force. A perusal of Ext.P9 shows that, the 1st respondent has vacated the stay as per the said order on 01.02.2007. The explanation of the learned counsel for the petitioner is that, immediately after Ext.P9, the petitioner had moved Ext.P10 review petition against the same on 14.03.2007. It is also pointed out that this Court has in the judgment in W.P.(C). No.12162/2007 held that Ext.P9 has to be treated as infructuous for the reason that, the petitioner's revision had not been considered along with the representations of the 4th respondent while complying with the direction of this Court in an earlier writ petition W.P.(C). No.23191/2006. Though it is true that this Court has held so in the judgment that has been produced as Ext.P1 in W.P.(C).No.36307/2007, that can only relate to the findings of the 1st respondent on the merits of the case. That was considered on the representations of the 4th respondent. What requires notice is that, the interim order granted was specifically vacated as per Ext.P9. It is also worth noticing that, this

Court has not set aside Ext.P9 by its judgment dated 12.07.2007, a copy of which has been produced as Ext.P1 in W.P.(C).No.36307/2007. The reason for not setting aside the order is not difficult to find. The said writ petition was filed by the 4th respondent complaining that the direction contained in Ext.P9 was not being implemented by the petitioner, Manager of the school. It is pertinent to notice that, the petitioner had not challenged Ext.P9 order. On the basis of the above observations, this Court directed the 1st respondent to consider and dispose of the revision petition filed by the petitioner also. However, before the judgment was produced before the 1st respondent, the said authority had passed Ext.P13 order finally disposing of the revision petition filed by the petitioner. Nevertheless, when the petitioner produced the judgment along with Ext.P14 representation, the matter was re-considered and Ext.P15 was issued.

12. It is clear from the above that, Ext.P9 though considered to be infructuous by this Court for the reason that, it was passed on the representations submitted by the 4th respondent at a time when the revision petition filed by the petitioner was still pending, this Court found that, it was wrong on the part of the 1st respondent not to have considered and disposed of the revision petition also, simultaneously. At the same time, the fact remains that Ext.P9 was not set aside by this Court. Therefore, the fact that the interim order granted on 02.02.2006 was vacated on 01.02.2007 by Ext.P9, cannot be disputed.

Since the petitioner had not challenged the said order before this Court, he cannot justify his conduct in not complying with the said order, placing reliance on the observations of this Court in the judgment produced as Ext.P1 in W.P.(C).No.36307/2007. Though the petitioner had preferred a review petition Ext.P10, he was not granted any interim order in the said review petition. Therefore, the proper course for the petitioner was to have complied with Ext.P9 by reinstating the 4th respondent and then to have pursued his statutory remedy. The petitioner did not do so.

13. Sub Rule 8 of Rule 67 reads as follows :

“(8) Where the orders of suspension is made by the manager he shall on the same day report the matter together with reasons for the suspension to the Educational Officer and where the suspension is in respect of Headmaster of Secondary school and Training school such reports shall be sent to the Deputy Director (Education) also in addition to the Educational Officer. The Deputy Director (Education) if the suspension is in respect of Headmaster of a Secondary school or Training School and the Educational Officer in other cases shall thereupon make a preliminary investigation into the grounds of suspension. If on such investigations the authority is satisfied that there was no valid ground for the suspension he may direct the manager to reinstate the teacher with effect from the date of suspension and thereupon the teacher shall forthwith be reinstated by the manager. If the teacher is not actually reinstated the teacher shall be deemed to have been on duty. It shall then be open to the Department to disburse the pay and

allowances to the teacher as if he were not suspended and recover the amount so disbursed from the manager. If on such investigation it is found that there are valid grounds for such suspension, permission may be given to the manager to place the teacher under suspension beyond 15 days if necessary. The authority mentioned above shall pass orders permitting the suspension or otherwise within said 15 days.” (emphasis supplied)

The above provision mandates that where the Educational Officer on investigation is satisfied that there are no valid grounds for the suspension, he may direct the Manager to reinstate the Teacher with effect from the date of suspension. Thereupon, the Teacher shall forthwith be reinstated. If he is not actually reinstated, he shall be deemed to be “on duty”. In this case, the 4th respondent was directed to be reinstated from the date on which he was suspended, by the 3rd respondent on 26.12.2005 as per Ext.P4. However, he was not so reinstated. Therefore, as per the above Rule, he has to be treated as having been “on duty”. However, Ext.P4 order of the 3rd respondent was kept in abeyance by the 1st respondent up to 01.02.2007, the date of Ext.P9, as already found above. But, since the interim order was vacated on the said date, the 4th respondent ought to have been reinstated on 01.02.2007. As already found above, though the petitioner had challenged Ext.P9 by preferring the review petition before the Government, he was not able to obtain any interim order. Therefore, there was no justification for his action in not reinstating the 4th respondent. I notice that, the 4th respondent had been approaching

this Court time and again seeking the relief of reinstatement. The consequence of the action of the petitioner was to keep out the 4th respondent from service without any justification. Therefore, the 4th respondent is entitled to be treated as having been “on duty” from 01.02.2007 to 12.12.2007 on which date he was actually reinstated in service.

14. In view of the fact that, Ext.P4 order of the 3rd respondent directing the 4th respondent to be reinstated had been kept in abeyance by the 1st respondent by issuing an interim order, it cannot be said that the petitioner was guilty of disobeying the directions of the authorities. He had challenged the order of the 3rd respondent invoking the statutory remedy that was available to him. The 1st respondent found that, he had a prima facie case to be urged. It was the said reason that, he was granted an interim order keeping the order under revision, in abeyance. Therefore, the petitioner was justified in not complying with Ext.P4 order up to 01.02.2007. With respect to the period from 01.02.2007 to 12.12.2007, I do not find any justification for the conduct of the management in not reinstating the 4th respondent.

15. Sub Rule 4 of Rule 7, Chapter III KER confers power on the Government to recover from a Manager who disobeys the orders of reinstatement of an employee under suspension, the amount of loss caused due to such disobedience. Rule 7(4) reads as follows :

“(4) In the case of a Manager who commits serious irregularities causing monetary loss to teachers/Government, the loss sustained by teachers/Government shall be recoverable from the Manager under the provisions of the Revenue Recovery Act for the time being in force as if it is an arrear of public revenue due on land, in the following cases namely-

(a) Denial of appointment to a qualified thrown out teacher who has a rightful claim of re-appointment by virtue of his/her holding the post earlier under rule 51A Chapter XIV A.

(b) Denial of promotion to a teacher to any higher grade of pay under rules 43, 43B or 43C, as the case may be, of Chapter XIVA, or denial of promotion to the senior-most rightful claimant to the post of Headmaster under rules 44 or 45 or 45A, as the case may be, of Chapter XIV-A, when the post becomes vacant disobeying the directions from the department and/or Government, causing denial of all monetary benefits which he/she would have got had the promotion been effected as per rules in time.

(c) Suspension of teachers, framing cooked up and/or frivolous charges, keeping them out of service beyond fifteen days disobeying the orders of re-instatement of such incumbents passed by the Deputy Director (Education) or by the Educational officer concerned, as the case may be, after a preliminary investigation into the grounds of suspension under sub-rule(8) of rule 67, Chapter XIV-A, depriving such incumbents of their salary for which they would have been entitled to had they been reinstated by the Manager in compliance of the orders issued by the officer concerned.

(d) Making of irregular appointments and getting them approved by the Educational Officers concerned by furnishing false information declaration by the Managers regarding the claimants, under rule 51A. Chapter XIV A.

Sub Rule 4(c) deals with the reinstatement of a suspended employee. A perusal of Ext.P15 shows that, the 4th respondent has been held eligible only to subsistence allowance. Subsistence allowance is granted only to an employee under suspension. In the present case, the suspension of the petitioner has been found to be unjustified by all the authorities. In such a case, in view of Sub Rule 8 of Rule 67, the petitioner has to be treated as having been “on duty” as already found above. Therefore, the petitioner is entitled to his pay and other allowances on the said basis for the period from 27.12.2005 to 12.12.2007. The question as to whether the conduct of the petitioner justifies recovery of the said amount or any portion thereof from him has not engaged the attention of the 1st respondent in Ext.P15. Ext.P15 has proceeded on the basis that the 4th respondent was entitled to only to subsistence allowance. Therefore, the issue requires to be considered afresh by the 1st respondent. It has been held by a learned Single Judge of this Court in ***K.A.Abdul Hameed v. State of Kerala and Others [2007 KHC 5463]*** that, the power of the Government under Rule 7(4), Chapter III KER is the power to impose a liability on the Manager. Therefore, the said provision has to be construed strictly. Thottathil B. Radhakrishnan, J has after considering

the said provision held as follows :

“Though one would not have to wait for the entire hierarchical measures, to release amounts that may be due to a teacher in terms of R.67(8) of Chapter XIVA KER, the actions taken and the results of such procedure before the superior authorities and before the superior Courts are relevant to decide as to whether the money paid towards pay and allowances to a teacher is to be recovered from the Manager on the ground that he becomes liable for such recovery in terms of R.67(8) of Chapter XIVA KER. The liability that is imposed on the Manager and the recovery that could be made under R.67 (8) of Chapter XIVA KER is recovery of money, that is, deprivation of property, which, in the context, is on the ground that the Manager did not obey the direction of the statutory authority to reinstate a person placed under suspension. The jurisdictional content of such a statutory action is the imposition of a penalty. Therefore, the right of the Government to effect recovery from the Manager under R.67(8) of Chapter XIVA KER has to be construed strictly by treating it as imposition of penalty or akin to that.”

16. In view of the above dictum, the question as to whether the petitioner would have to be made liable for the loss caused to the 1st respondent would have to be considered afresh. Such consideration would have to be in accordance with the dictum laid down by this Court in the decision referred to above. Needless to observe that any such liability could be imposed on the petitioner only after affording an opportunity of being heard to him.

17. The result of the above discussion is that, Ext.P15 in so far as

it has limited the benefit payable to the 4th respondent to subsistence allowance alone and the further direction to recover the said amounts from the petitioner are unsustainable. Ext.P15 to the above extent is liable to be set aside.

Both the writ petitions are accordingly allowed on the following terms :

W.P.(C).No.36307/2007 is allowed. The petitioner shall be entitled to his pay and all allowances treating the period from 12.12.2005 to 02.02.2006 and 01.02.2007 to 12.12.2007 as “having been on duty”. Ext.P15 to the extent it limits the benefits payable to the petitioner to subsistence allowance is set aside. The petitioner shall be entitled to be paid the benefits due to him, in accordance with the above directions, expeditiously.

W.P.(C).No.36215/2007 is allowed to the limited extent of setting aside that portion of Ext.P15 by which the petitioner has been made liable for the benefits directed to be paid to the 4th respondent. The 1st respondent shall consider the liability of the petitioner afresh in accordance with the directions hereinabove and take a decision in the matter after hearing the petitioner also within a period of three months of the date of receipt of a copy of this judgment.

Sd/-

K.SURENDRA MOHAN, JUDGE.