

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 30570 of 2015 (U)

PETITIONER(S):

**THE MANAGER, MAYYANAD HIGHER SECONDARY SCHOOL
MAYYANAD P.O., KOLLAM DISTRICT, PIN - 691 303.**

**BY ADVS.SRI.P.K.SURESH KUMAR (SR.)
SMT.M.R.SREELATHA**

RESPONDENT(S):

- 1. THE DISTRICT EDUCATIONAL OFFICER, KOLLAM
DISTRICT EDUCATION OFFICE, KOLLAM, PIN - 691 001.**
 - 2. THE DEPUTY DIRECTOR OF EDUCATION
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM
PIN - 691 001.**
 - 3. THE DIRECTOR OF PUBLIC INSTRUCTION
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM, PIN - 695 001.**
 - 4. STATE OF KERALA
REPRESENTED BY THE SECRETARY
GENERAL EDUCATIONDEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
 - 5. SUNIL DUTT .S.
SAI ALAKA, KNR-31A, KOOTTIKKADA P.O.KOLLAM DISTRICT
PIN - 691 020.**
- ADDL. R6 THE ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTIONS
(VIGILANCE), OFFICE OF THE DIRECTOR OF PUBLIC
INSTRUCTION, THIRUVANANTHAPURAM - 695 001.
(ADDL. R6 IS SUO MOTU IMPEADED AS PER ORDER DTD. 04.11.2015)**
- R5 BY ADV. SRI.B.MOHANLAL
R BY GOVERNMENT PLEADER SMT. M.J. RAJASREE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-11-2015, ALONG WITH WPC. 31315/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE PRELIMINARY INVESTIGATION PROCEEDINGS CONDUCTED BY THE 1ST RESPONDENT AND DATED 6.9.2011**
- EXT.P-2: TRUE COPY OF THE COMMUNICATION DATED 17.11.2011 ISSUED BY THE PETITIONER ADDRESSED TO THE 2ND RESPONDENT**
- EXT.P-3: TRUE COPY OF THE COMMUNICATION DATED 17.11.2011 ISSUED BY THE PETITIONER ADDRESSED TO THE 1ST RESPONDENT**
- EXT.P-4: TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 25.2.2012**
- EXT.P-5: TRUE COPY OF REVISION DATED 28.3.2012 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT**
- EXT.P-6: TRUE COPY OF THE JUDGEMENT OF THIS HONOURABLE COURT DATED 10.4.2012 IN WPC NO.8936 OF 2012.**
- EXT.P-7: TRUE COPY OF G.O(RT) NO.3267/2012/G. EDN. DATED 10.7.2012 ISSUED BY THE 4TH RESPONDENT**
- EXT.P-8: TRUE COPY OF THE ENQUIRY REPORT ALONG WITH THE COVERING LETTER DATED 20.9.2012 OF THE 1ST RESPONDENT**
- EXT.P-9: TRUE COPY OF THE REPRESENTATION DATED 15.10.2012 SUBMITTED BY THE PETITIONER BEFORE THE 4TH, 3RD AND 1ST RESPONDENT**
- EXT.P-10: TRUE COPY OF THE COMMUNICATION DATED 6.10.2012 FROM THE 2ND RESPONDENT TO THE PETITIONER**
- EXT.P-11: TRUE COPY OF THE JUDGEMENT IN WPC NO.26266 OF 2012 DATED 21.7.2014 PASSED BY THIS HON'BLE COURT.**
- EXT.P-12: TRUE COPY OF G.O(RT) NO.4002/2015/G.EDN. DATED 14.9.2015 ISSUED BY GOVERNMENT OF KERALA, GENERAL EDUCATION (A) DEPARTMENT.**
- EXT.P13 COPY OF MEMORANDUM OF CHARGES ISSUED TO THE 5TH RESPONDENT DTD. 26.8.11**

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EXT.P14 COPY OF ORDER DTD. 18.6.12 ISSUED BY THE CHILD WELFARE COMMITTEE, CONSTITUTED UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000.

EXT.P15 COPY OF FIR NO.1224/2012 OF ERAVIPURAM POLICE STATION.

RESPONDENT(S)' EXHIBITS

EXT/R5(A) COPY OF THE COMMUNICATION DTD. 12.10.15 ISSUED BY THE PETITIONER TO THIS RESPONDENT.

EXT.R5(B) COPY OF THE ORDER NO.B6-14103/11 DATED 8.10.15 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.R5(C) COPY OF THE ORDER NO.B5-8401/11 DTD. 9.10.15 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.R5(D) COPY OF THE ORDER DTD. 24.7.13 IN W.P.(C) NO.16171/2013 OF THIS HON'BLE COURT.

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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Dated this the 4th day of November, 2015

J U D G M E N T

The writ petitions are filed by the Manager of an aided school and a teacher, against whom disciplinary proceedings has been initiated. The documents and the parties are referred to from W.P.(C) No. 30570 of 2015.

2. The petitioner is the Manager of an aided school in which the 5th respondent is a High School Assistant, who has continuous service from 01.01.1991. Based on certain allegations, the nature of which need not be gone into at this stage; the Manager suspended the petitioner and issued a charge memo both on 26.08.2011. By Ext.P1, the District Educational Officer, Kollam extended the period of suspension beyond 15 days.

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3. The petitioner filed an appeal to the Deputy Director of Education, against the order at Ext.P1, which was allowed by Ext.P4, in which the Teacher was directed to be reinstated in service. In fact the order at Ext.P4 indicates that the Appellate Authority found that the suspension had been continued beyond 6 years and the disciplinary enquiry had not been finalised till then. Herein it is to be noticed that the enquiry has to be conducted by the educational authorities and any delay caused is not due to the Manager and that alone cannot be a reason for ordering reinstatement.

4. Be that as it may, the Manager filed a revision from the above order at Ext.P5 and also approached this Court for expeditious consideration of the same. This Court by Ext.P6 directed that the revision will be considered within a time frame and also directed the order of reinstatement to be kept in abeyance till then. There was also a direction to file a stay

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application before the revisional authority. The judgment was passed on 10.04.2012 and the revision was concluded by Ext.P7 dated 10.07.2012. By Ext.P7, the District Educational Officer, Kollam was directed to complete the detailed enquiry on the basis of the report of the Manager within a period of two months after giving notice to all parties. The order of reinstatement was kept in abeyance for a period of two months, till the detailed enquiry is completed.

5. The D.E.O is said to have made Ext.P8 report and dissatisfied with the same, the Manager approached the Government with an application seen at Ext.P9. The learned counsel for the petitioner contends that there is no specific provision in the Kerala Education Rules, which enables the Manager to approach the Government against the enquiry report.

6. A Division Bench of this Court in **Cherian v. Anna**

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S Varghese [1987 (1) KLT 301] has upheld the right to file a revision before the Government against an enquiry report, if the Manager is not satisfied with the findings, thereat. This is noticing the deviation from the general law applicable to civil servants where the disciplinary authority could differ from the findings of the Enquiry Officer. The legislative intent, as revealed from K.E.R was found to be, to ensure "a reasonable and impartial enquiry" (sic). The task of such enquiry having been entrusted to the designated educational authority, higher to the Manager; the Manager was held to be bound by the findings of the Enquiry Officer. On that reasoning it was also held that the enquiry report will be an order which can be challenged in revision under Chapter XIV A of the K.E.R.

7. Further, it is to be noticed that after filing Ext.P9, the Manager had approached this Court again with a writ petition, seeking consideration of the revision, in which by

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Ext.P11, it was directed that Ext.P9 would be considered as a revision and again the order of reinstatement was kept in abeyance. The revision went in favour of the Manager, insofar as setting aside the enquiry report and directing the Additional Director of Public Instructions (Vigilance), the additional 6th respondent herein to conduct a de novo enquiry. The Manager is concerned with the directions in Ext.P12, which directed reinstatement of the 5th respondent and the observations made by the Government directing recovery of the salary due to the petitioner under Rule 7 of Chapter III of K.E.R. The Teacher by the other writ petition in W.P.(C) No. 31315 of 2015, seeks implementation of Ext.P12 order.

8. From the recital of facts as herein above, it is definite that this Court need not to look into the allegations or into the aspect of the enquiry, which has been initiated by the Manager, since, it would not be proper to pre-empt the Enquiry

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Officer now appointed to conduct a de novo enquiry. The only question would be as to whether the directions in Ext.P12; over and above the de novo enquiry ordered, is proper or not. The directions are extracted hereunder:

Though the action of the Manager for having acted in defiance to the directions of the authorised officers and the Government in the matter and prolonging the reinstatement of the affected teacher attracts invocation of action against him under Rule 7 of Chapter III of K.E.R the same is viewed with much displeasure for the time being. As there is no ground for retaining the affected Teacher under suspension further, the Manager of H.S. Mayyanad is directed to reinstate him in service after revoking the suspension, lest the Departmental Authorities shall deem that the Teacher has been reinstated in service and they will pursue action to disburse his pay and allowances as provided under Rule 67(8) of Chapter XIV A K.E.R, subject to recovery of the same from the Manger, under intimation to the Government. The District Educational Officer, Kollam and the Deputy Director of Education Kollam scrupulously over see the implementation of the above directions in a time bound manner under intimation to Government then and there. The judgment of the Hon'ble High Court of Kerala in W.P.(C) No.26266/2012 dated 21/07/2014 is complied with as above.

9. At the out set, it is to be noticed that from the facts as disclosed above, there is no attempt on the part of the

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Manager to act in defiance of the directions of the educational authority. At every stage, the Manger had approached the statutory authorities and there was an order which kept the order of reinstatement in abeyance. The finding that there is no ground for retaining the affected Teacher under suspension also cannot be countenanced, since there is a de novo enquiry ordered. Looking at the charges levelled at Ext.P3, prima faice this Court is of the opinion that, there can be no reinstatement at this stage when the enquiry is pending. As was noticed above, the delay in enquiry was not on account of the Manager, but on account of the delay on the part of the educational authorities. The consequential direction for recovery under Rule 7 of Chapter III K.E.R also cannot be sustained especially since, the revision considered by the Government, was filed by the Manger.

10. In such circumstance, it is only proper that the enquiry be completed and the suspension be continued till then.

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Though sufficient directions are available in Ext.P12, as to the conclusion of the enquiry, considering the fact that the writ petition has been pending here for quite some time even beyond that stipulated in Ext.P12, there shall be a direction to the Additional Director of Public Instructions (Vigilance), the additional 6th respondent herein to conduct the enquiry and conclude it expeditiously. The Manger shall produce a certified copy of this judgment in the office of the Additional Director of Public Instructions (Vigilance), on or before 16.11.2015 and also receive acknowledgment for the same. The Additional Director of Public Instructions (Vigilance) shall immediately post the enquiry and expedite it, so as to prepare a report within six weeks from 16.11.2015. It is made clear that the observations made in this judgment are only in the nature of prima faice observations and the further proceedings shall be untrammelled by the observations herein. In the circumstance of Ext.P12

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having not set aside Ext.P8 enquiry report; on the basis of the de novo enquiry ordered, it is declared that Ext.P8 is of no consequence.

In the result, W.P.(C) No. 30570 of 2015 is allowed with the above observations. W.P.(C) No.31315 of 2015 would stand dismissed. Parties to suffer their respective costs.

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

SB/04/11/2015

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P.A to Judge.