

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 32798 of 2014 (Y)

PETITIONER(S) :

**THE MANAGER,
AIDED JUNIO BASIC SCHOOL, NEYYUR,
ANAKARA P.O., THRITHALA, PALAKKAD DISTRICT.**

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT(S) :

- 1. THE ASSISTANT EDUCATIONAL OFFICER,
THRITHALA, PIN- 679 551, PALAKKAD DISTRICT.**
- 2. THE DISTRICT EDUCATIONAL OFFICER,
OTTAPALAM, PALAKKAD DISTRICT- 679 101.**
- 3. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 4. SMT.V.M.MINI,
VALLIKKATTUMELETHIL, P.O.ANGADY, (VIA) KUMARANELLOOR,
PALAKKAD DISTRICT, PIN- 679 552.**

**R1 TO R3 BY SR.GOVERNMENT PLEADER SMT.K.SUNITHA VINOD
R4 BY ADVS. SRI.M.R.ANISON
SMT.K.P.GEETHA MANI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE ORDER DATED 27.06.2013 ISSUED BY THE MANAGER.**
- EXT.P1(A): ENGLISH TRANSLATION OF EXHIBIT P1.**
- EXT.P2: TRUE COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT DATED 06.07.2013.**
- EXT.P3: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 30.10.2013.**
- EXT.P3(A) ENGLISH TRANSLATION OF EXHIBIT P3.**
- EXT.P4: TRUE COPY OF THE COMMUNICATION DATED 06.12.2013 ISSUED BY THE MANAGER.**
- EXT.P4(A): ENGLISH TRANSLATION OF EXHIBIT P4.**
- EXT.P5: TRUE COPY OF THE REPLY FILED BY THE 4TH RESPONDENT DATED 21.12.2013.**
- EXT.P5(A): TRUE COPY OF THE JUDGMENT DATED 05.02.2014 IN W.P.(C).NO.1220/14.**
- EXT.P6: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 12.02.2014.**
- EXT.P7: TRUE COPY OF THE PROCEEDINGS OF THE MANAGER DATED 12.03.2014.**
- EXT.P8: TRUE COPY OF THE JUDGMENT IN W.P(C).NO.8911/14 DATED 04.04.2014.**
- EXT.P9: TRUE COPY OF THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER, DATED 26.06.2014.**
- EXT.P9(A): ENGLISH TRANSLATION OF EXHIBIT P9.**
- EXT.P10: TRUE COPY OF THE GOVERNMENT ORDER G.O(RT) 4014/15/G.EDN DATED 08.10.2014.**
- EXT.P11: TRUE COPY OF THE ORDER OF THE ASSISTANT EDUCATIONAL OFFICER DATED 19.11.2014.**
- EXT.P11(A): ENGLISH TRANSLATION OF EXHIBIT P11.**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R4(A): TRUE COPY OF THE COMPLAINT SUBMITTED BY 4TH RESPONDENT BEFORE THE 1ST RESPONDENT ON 08.11.2012.**
- EXHIBIT R4(B): TRUE COPY OF THE COMPLAINT SUBMITTED BY 4TH RESPONDENT BEFORE THE 1ST RESPONDENT ON 22.12.2012.**
- EXHIBIT R4(C): TRUE COPY OF REQUEST DATED 06.02.2013 SUBMITTED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT.**
- EXHIBIT R4(D): TRUE COPY OF COMPLAINT FILED BY DATED 27.03.2013 BEFORE THE 1ST RESPONDENT.**
- EXHIBIT R4(E): TRUE COPY OF REPORT SUBMITTED ON 27.04.2012 BY THE 4TH RESPONDENT.**
- EXHIBIT R4(F): TRUE COPY OF LETTER DATED 09.05.2013 BY BY THE 1ST RESPONDENT.**
- EXHIBIT R4(G): TRUE COPY OF THE LEAVE APPLICATION SUBMITTED BY THE 4TH RESPONDENT ON 11.06.2013.**
- EXHIBIT R4(H): TRUE COPY OF THE REJECTION LETTER DATED 26.06.2013 BY THE 1ST RESPONDENT.**
- EXHIBIT R4(I): TRUE COPY OF REJECTION LETTER SENT BY THE WRIT PETITIONER DATED 26.07.2013.**
- EXHIBIT R4(J): TRUE COPY OF THE LETTER DATED 19.06.2013 BY THE 4TH RESPONDENT.**
- EXHIBIT R4(K): TRUE COPY OF LETTER DATED 11.07.2013 BY THE 4TH RESPONDENT HANDING OVER CHARGE TO THE 1ST RESPONDENT.**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

~~~~~  
**W.P.(C).No.32798 of 2014**  
~~~~~

Dated this the 23rd day of March, 2015

J U D G M E N T

The petitioner is the Manager of an aided school. The Manager suspended the fourth respondent/Headmistress of the school with from Ext.P1 order dated 27/06/2013. Thereafter, the petitioner made a request to extend the suspension beyond 15 days. This was granted as per Ext.P2 proceedings dated 06/07/2013. Thereafter, the fourth respondent filed an appeal before the District Educational Officer. That appeal was rejected by Ext.P3. The fourth respondent therefore, moved the Government by revision petition. She also approached this Court with W.P.(C). No.1220/2014. This Court by Ext.P5(a) judgment in W.P. (C).No.1220/2014 dated 05/02/2014 directed the Government to consider and pass orders on the revision petition filed by her within three months.

2. In the meanwhile, the disciplinary proceedings initiated against the petitioner have been concluded. Ext.P6 is the report in that regard. Ext.P6 is dated 12/02/2014. The Manager, as per Ext.P7 dated 12/03/2014, decided to proceed with the proposed action of reduction of post under Rule 65 of Chapter XIV A of the Kerala Education Rules and the fourth respondent has been lowered and reinstated as Assistant Teacher from the post of Headmistress. The Manager also ordered that suspension period will be treated as eligible leave. The fourth respondent approached this Court with W.P.(C).No.8911/2014 seeking conclusion of disciplinary proceedings at the earliest. Ext.P8 is the judgment in W.P.(C).No.8911/2014 dated 04/04/2014. Thereafter, based on the direction of this Court in Ext.P8, the District Educational Officer passed an order to reinstate the fourth respondent and, the Manager's proposal to lower the fourth respondent as Assistant Teacher has been found to be an excess punishment.

3. The above order of the District Educational Officer was passed on 26/06/2014. The Government, consequent upon the direction of this Court in W.P.(C). No.1220/2014 passed Ext.P10 order dated 08/10/2014. In Ext.P10 order the Government adverted to suspension as well as the penalty imposed on the fourth respondent. The petitioner challenges this order. Ext.P11 is the consequential order passed by the Assistant Educational Officer based on Ext.P10. The main ground of challenge against Ext.P10 is that by Ext.P5(a) judgment in W.P.(C).No.1220/2014 the Government was only directed to consider the revision petition filed by the fourth respondent in a matter of extension of suspension of the fourth respondent beyond 15 days and the Government overreached its power by entering into certain other findings in relation to the disciplinary proceedings.

4. The learned Senior Counsel appearing for the fourth respondent, defending the action of the Government, submitted that the Government only acted on the reviewing authority relating to suspension as well

as imposing major penalty on the fourth respondent, in public interest.

5. The power of the Government in terms of Rule 92 of Chapter XIV A of KER was exercised based on the direction of this Court in relation to the extension of suspension order. That power, in fact, has become redundant, at the moment the disciplinary proceedings are concluded and the continuation of the extension of suspension does not arise after the conclusion of the disciplinary proceedings. Therefore, in that view of the matter, the Government ought not to have exercised any power in relation to suspension. With regard to interference of the penalty in Ext.P10 imposed on the fourth respondent by the Manager, I am of the view that the Government has no power at the relevant time to exercise the same without there being a challenge either on the side of the petitioner or on the fourth respondent. The jurisdiction essentially exists upon the jurisdictional fact to exercise its power. While exercising jurisdiction, based on the challenge made on

-:5:-

extension of suspension, the Government ought not to have acceded in making a finding on the penalty imposed on the fourth respondent. Ext.P10 is, therefore, liable to be set aside. Accordingly, Ext.P10 is set aside.

6. As matter stands now, the District Educational Officer passed an order to reinstate the fourth respondent and the finding that the punishment imposed on the fourth respondent is excessive, the petitioner is at liberty to challenge the above order before appropriate authority. However, the petitioner shall implement Ext.P9 order forthwith. Reinstatement of the fourth respondent based on Ext.P9 order will be subject to the right of challenge available to the petitioner in accordance with law.

The writ petition is disposed of as above. No costs.

**Sd/-
A.MUHAMED MUSTAQUE, JUDGE**