IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 19TH DAY OF MAY 2020 / 29TH VAISAKHA, 1942

WA.No.279 OF 2020

AGAINST THE JUDGMENT IN WP(C) 24538/2019(N) OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

MUHAMMED BASHEER,
AGED 48 YEARS,
S/O.ALAVI HAJI, MANAGER, VVM HIGHER SECONDARY SCHOOL,
MARAKKARA, MALAPPURAM DISTRICT-676553

BY ADVS.
SRI.ELVIN PETER P.J.
SRI.K.R.GANESH
SMT.N.R.REESHA
SMT.T.S.LIKHITHA

RESPONDENTS/RESPONDENTS:

1 **HARILAL P.B.,**
HIGH SCHOOL ASSISTANT (H.S.A) VVM HIGH SCHOOL,
MARAKARA, VATTAPARAMBU MALAPPURAM DISTRICT-676504

2 **THE DISTRICT EDUCATIONAL OFFICER,**
TIRUR UP HILL, MALAPPURAM, KERALA-676504

3 **THE DEPUTY DIRECTOR OF EDUCATION,**
AUPS MALAPPURAM, NH 213, DOWN HILL, MAAPPURAM-676505

4 **THE DIRECTOR OF GENERAL EDUCATION,**
GENERAL EDUCATION DEPARTMENT, JAGATHI,
THIRUVANANTHAPURAM-695014

5 THE DEPUTY SECRETARY,
GENERAL EDUCATION (E) DEPARTMENT, JAGATHI,
THIRUVANANTHAPURAM-695014

R1 BY ADV. SRI.P.C.SASIDHARAN

OTHER PRESENT:

SRI. A.J. VARGHESE-SR. G.P.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-03-2020, ALONG WITH WA.432/2020, THE COURT ON 19-05-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 19TH DAY OF MAY 2020 / 29TH VAISAKHA, 1942

WA.No.432 OF 2020

AGAINST THE JUDGMENT IN WP(C) 24811/2019(B) OF HIGH COURT OF KERALA

APPELLANT/4TH RESPONDENT:

THE MANAGER,
VVM HIGHER SECONDARY SCHOOL, MARAKKARA, MALAPPURAM DISTRICT 676 553.

BY ADVS.
SRI.ELVIN PETER P.J.
SMT.N.R.REESHA
SMT.T.S.LIKHITHA
SRI.K.R.GANESH

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 3:

1 HARILAL P.B. HIGH SCHOOL ASSISTANT(H.S.A)
VVM HIGH SCHOOL, MARAKARA, VATTAPARAMBU MALAPPURAM DISTRICT . 676 504.

2 THE STATE OF KERALA,
REPRESENTED BY TS SECRETARY TO GOVERNMENT, GENERAL EDUCTION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM 695 001.

3 THE DIRECTOR OF PUBLIC INSTRUCTIONS,

(NOW THE DIRECTOR OF GENERAL EDUCATION),
THIRUVANANTHAPURAM 695 014.

4 THE DISTRICT EDUCATIONAL OFFICER,
TIRUR UP HILL, MALAPPURAM, KERALA 676 504.

R1 BY ADV. SMT.NASEEMA BEEVI(B/O)
R2-4 BY GOVT.PLEADER SRI.A.J.VARGHESE SENIOR GOVT.PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-03-2020, ALONG WITH WA.279/2020, THE COURT ON 19-05-2020 DELIVERED THE FOLLOWING:

JUDGMENT

[WA.279/2020, WA.432/2020]

Dated this the 19th day of May 2020

Gopinath,J

These two writ appeals arise from the common judgment dated 18.12.2019 of a learned Single Judge of this Court in W.P.(C) No.24811 of 2019 and W.P(C) No.24538 of 2019. W.A.No.432 of 2020 arises from W.P.(C) No.24811 of 2019 and WA No.279 of 2020 arises from W.P.(C) No.24538 of 2019. WA No.432 of 2020 is taken as a lead case and accordingly the exhibits referred to in this judgment are as they appear in Writ Petition(C) No.24811/2019 unless otherwise indicated.

2. The petitioner in W.P.(C) No.24811 of 2019 was working as H.S.A (Malayalam) in the V.V.M

Higher Secondary School, Malappuram. He was suspended from service on 14.4.2018 and thereafter, disciplinary proceedings were initiated against him in the manner provided for under Chapter XIV A of the Kerala Education Rules (KER). After completion of the enquiry the Manager of the school issued Ext.P3 notice dated 5.11.2018 calling upon the petitioner to show cause as to why he should not be dismissed from service. After receipt of explanation from the petitioner, the Manager issued Ext.P4 order dated 17.12.2018 dismissing the petitioner from service, subject to ratification of the Deputy Director of Education, Malappuram. The Deputy Director of Education issued Ext.P5 order dated 19.1.2019 holding that the punishment of dismissal which was proposed and placed before him for ratification is disproportionate to the charges levelled against

the petitioner. The Deputy Director of Education therefore, remitted the matter to the Manager for imposition of any other penalty which is commensurate with the charges levelled and proved against the petitioner. This order of the Deputy Director of Education was subjected to a revision before the Government of Kerala at the instance of the Manager. The Government issued Ext.P6 order on the Revision Petition, considering the entire circumstances of the case. The Government specifically held that the petitioner had not committed any offence warranting the imposition of the penalty of dismissal from service. The Government therefore, directed that the petitioner shall be immediately reinstated in service and further directed that a penalty commensurate with the offence allegedly committed by the petitioner should alone be imposed.

3. The petitioner in W.P.(C) No.24811 of 2019 seeks implementation of Ext. P6 order dated 21.8.2019 while the Manager, who filed the connected W.P.(C) No.24538 of 2019 prayed for setting aside that order. The learned single Judge considered both the Writ Petitions together and allowed W.P.(C) No.24811 of 2019 filed by the teacher in question and dismissed W.P.(C) No.24538 of 2019 filed by the Manager.

4. We have heard Sri.Ganesh.K.R., the learned counsel appearing for the appellant in both the Writ Appeals, Sri.P.C.Sasidharan, the learned counsel appearing for the first respondent in both the appeals and the learned Government Pleader appearing for the official respondents. The crux of the allegation on the basis of which

disciplinary proceedings were initiated against the petitioner in W.P.(C).No.24811 of 2019 is that he shared a face book post fanned communal disharmony. Exts.P1 to P3 in W.P.(C).No.24538 of 2019 are produced to show the post that was shared by the petitioner in W.P.(C) No.24811 of 2019. According to the Manager, the action of the teacher is in violation of the Conduct Rules and in particular Rule 39A of Chapter XIV C of the KER which reads as follows:

> *"No aided school teacher shall engage himself in anti secular activities which tend to create communal disharmony"*

5. The learned counsel for the appellant would contend that the findings of the learned single Judge are not in consonance with law. He would contend *inter alia* that the action of the

first respondent- teacher in sharing the face book post in question was a clear violation of Rule 39A of Chapter XIV C. It is argued that the act of the first respondent teacher resulted in serious objections being raised by prominent personalities in the society and parents of children in the school wanted the Management to take strict action against the first respondent. According to him, the learned single Judge ought to have held the order of the Government was unjustified and that the punishment proposed was proportionate, in the facts and circumstances of the case. According to him, there was absolutely no irregularity in the conduct of the enquiry and each and every procedure contemplated for completion of a domestic enquiry have been complied with before reaching a finding against the petitioner. He therefore, prays that the judgment of the learned

single Judge ought to be set aside and that consequently, the Government Order dated 21.8.2019 must be quashed. On the other hand, the learned counsel appearing for the first respondent would contend that there is absolutely no violation of Rule 39A, Chapter XIV C of the Kerala Education Rules. He would contend that the view taken by the Deputy Director of Education in Ext.P5 and by the Government in Ext.P6 are completely justified in law and must not be interfered with by this Court in any manner. He would also contend that the learned single Judge having refused jurisdiction, considering the totality of the facts and circumstances of the case, this Court should not in an *intra* court appeal under Section 5 of the Kerala High Court Act interfere with the judgment of the learned single Judge. The learned Government Pleader appearing for the official

respondents would also support the view taken by the Government in the order dated 21.8.2019.

6. We have considered the matter in detail. We have also perused Exts.P1 to P3 in W.P.(C) No.24538 of 2019. We are of the considered opinion that the view taken by the Deputy Director of Education in Ext.P5 order dated 19.1.2019 and the view taken by the Government in Ext.P6 order dated 21.8.2019 are completely justified. It is settled law that a punishment imposed after disciplinary enquiry must be commensurate with the gravity of the offense that have alleged to have been committed. In the facts of the present case, the petitioner is alleged to have shared a face book post (Ext.P3 in W.P.(C) No.24538 of 2019) which tends to result or resulted in communal disharmony which was clearly against the mandate of the Conduct Rules contained Rule 39A, Chapter XIV C of

the Kerala Education Rules. We must immediately notice that the delinquent teacher is not alleged to have been regularly in the habit of sharing such posts as in Ext.P3 and it is not alleged that he has herein before been proceeded against or even warned in respect of any similar allegation. It is thus clear that even if one where to assume that the sharing of face book post by the 1st Respondent, who is subject to the Conduct Rules set out in Chapter XIVA, was contrary to those Rules we find it difficult to accept that such conduct would amount to such a grave act in violation of the Rules, which alone would justify the imposition of the penalty of dismissal from service. Without having to go into the reasons

which compelled the learned single Judge take the view that he did, we have no hesitation to hold that punishment proposed through Ext.P3 and confirmed in Ext.P4 (subject to ratification of the Educational Authority) is grossly disproportionate to the charges levelled against the petitioner in W.P.(C) No.24811 of 2019. We therefore, confirm the findings of the learned Single Judge and dismiss both the Writ Appeals. Considering the fact that the petitioner in W.P. (C)No.24811 of 2019 has been under suspension from 14.4.2018 and considering the fact that he has not been reinstated in service till now, We direct the appellant to comply with Ext.P6 order of the Government dated 21.8.2019 in letter in spirit

within two weeks from the date of receipt of a copy of this judgment. The appellants- Manager shall also take steps to draw and disburse salary to the 1st respondent as directed by the Learned Single Judge without delay and not later than one month from the date of receipt of a copy of this Judgment.

The Writ Appeals are accordingly dismissed.

Sd/-

A.M.SHAFFIQUE

JUDGE

Sd/-

GOPINATH P.

JUDGE

pm

APPENDIX OF WA NOS.279 & 432/2020

PETITIONER'S/S EXHIBITS:

ANNEXURE A1	**TRUE COPY OF THE STATEMENT DEPOSED AND SIGNED BY THE 1ST RESPONDENT.**

RESPONDENTS EXHIBITS: NIL