

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

FRIDAY, THE 27TH FEBRUARY 2009 / 8TH PHALGUNA 1930

WP(C).No. 1344 of 2009(I)

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PETITIONER:

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THE MANAGER,A.P.P.M.V.H.S.S,AVANEESWARAM  
KOLLAM.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

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1. THE DEPUTY DIRECTOR OF EDUCATION,  
KOLLAM.
2. SMT.DAISY KUNJUNNI, PRINCIPAL,(UNDER  
SUSPENSION),A.P.P.M.V.H.S.S,AVANEESWARAM,KOLLAM.
3. THE DISTRICT EDUCATIONAL OFFICER,  
PUNALUR.

BY GOVT. PLEADER SMT.T.B.RAMANI  
ADV. SRI.ELVIN PETER P.J. FOR R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 27/02/2009, ALONG WITH WPC NO. 29752 OF 2008 THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN, J.**

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**W.P(C) No.1344 of 2009-I**  
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**Dated this the 27<sup>th</sup> February, 2009.**

**J U D G M E N T**

Heard Shri. George Poonthottam, the learned counsel appearing for the petitioner, Smt.T.B.Remani, the learned Government Pleader appearing for respondents 1 and 3 and Shri.Elvin Peter, the learned counsel appearing for the 2<sup>nd</sup> respondent.

2. The petitioner is the Manager of an aided Higher Secondary School. The 2<sup>nd</sup> respondent is the Principal of the said School. An alleged incident of ragging took place in the School in the first week of August 2007. The incident came to the notice of the Manager who sent a letter dated 19.8.2007 requesting the 2<sup>nd</sup> respondent to conduct an enquiry into the incident and to report back to him. The 2<sup>nd</sup> respondent did not take any action in the matter. The Manager thereupon issued Exhibit P2 memo dated 15.10.2007 to the 2<sup>nd</sup> respondent calling for her explanation for not complying with the direction earlier issued by him on 19.8.2007. The Manager also directed that if the explanation is not received within seven days from the date of Exhibit P2, disciplinary action will be taken under Rule 75 of

Chapter XXIV A of the Kerala Education Rules, hereinafter referred to as the 'KER' for short.

3. On receipt of Exhibit P2 memo, the 2<sup>nd</sup> respondent submitted a reply. The reply was not acceptable to the Manager. The Manager thereupon issued Exhibit P1 order dated 29.10.2007 placing the 2<sup>nd</sup> respondent under suspension with effect from that date. The Manager reported this fact to the Deputy Director of Education, Kollam, who conducted a preliminary enquiry under sub rule (8) of Rule 67 of Chapter XIV A of the KER. Exhibit P4 is the report prepared by the Deputy Director of Education after the preliminary enquiry held in the school on 9.11.2007. The Deputy Director of Education, Kollam thereafter issued Exhibit P3 order dated 12.11.2007 permitting continuance of the suspension beyond 15 days. The Manager was also directed to finalise the disciplinary action against the 2<sup>nd</sup> respondent within the time limit prescribed in Rule 68(9) of Chapter XIV A of the KER.

4. The Manager thereafter issued Exhibit R2(a) memo of charges dated 11.2.2008 to which the 2<sup>nd</sup> respondent submitted a written statement of defence dated 23.3.2008. The Manager considered the written statement of defence and as he was not satisfied with it, he decided to request the Deputy Director of

Education to conduct a formal enquiry in terms of Rule 75 of Chapter XIV A of the KER. The Manager also sent Exhibit P6 letter dated 9.4.2008 to the Deputy Director of Education, Kollam requesting him to conduct a formal enquiry under Rule 75 of Chapter XIV A of the KER and to furnish the report of the enquiry for the purpose of finalising the disciplinary proceedings.

5. The pleadings and the materials on record disclose that there was no progress in the matter. However the Deputy Director of Education, Kollam thereafter issued Exhibit P7 letter dated 29.8.2008 calling upon the Manager to report whether the disciplinary proceedings have been finalised within the time limit. On receipt of Exhibit P7 letter the Manager sent Exhibit P8 reply dated 15.9.2008 wherein he specifically pointed out that further action can be taken only after the formal enquiry is held. The Deputy Director of Education thereafter sent Exhibit R2(j) letter dated 17.11.2008 to the Manager, the 2<sup>nd</sup> respondent and the District Educational Officer informing them that he will be conducting an enquiry in the School at 11.30 AM on 28.11.2008. The Manager was called upon to be present for the enquiry along with the relevant files. On receipt of Exhibit R2 (j) letter, the Manager sent Exhibit P9 reply dated 25.11.2008 wherein he requested that the complainants (former students who had left the

school after completing their studies) may also be asked to participate in the enquiry. The Deputy Director of Education did not hold the enquiry on 28.11.2008. It appears that the enquiry was later held on 12.12.2008 and thereafter, the Deputy Director of Education passed Exhibit P10 order dated 22.12.2008 directing the Manager to reinstate 2<sup>nd</sup> respondent in service. The Deputy Director of Education also ordered that as the term of the Manager (Shri.Padma Girish) has come to an end on 9.11.2008 and a new Manager had not been appointed or approved, the District Educational Officer, Punaloor shall take necessary steps to reinstate the 2<sup>nd</sup> respondent in service and to complete the disciplinary proceedings within the time limit stipulated in the Rules. Exhibit P10 is under challenge in this Writ Petition.

6. The petitioner challenges Exhibit P10 mainly on two grounds. The first ground is that the Deputy Director of Education is not competent to revoke Exhibit P3 and that on the expiry of six months from the date of suspension, the power of review can be exercised only by an officer superior to the officer who granted permission to continue the suspension beyond 15 days. The second ground is that in Exhibit P10, the Deputy Director of Education has pronounced upon the merits of the charges which led to the 2<sup>nd</sup> respondent's suspension. The petitioner also contends that the

direction issued to the District Educational Officer, Punaloor to reinstate the 2<sup>nd</sup> respondent in service is also not tenable for the reason that the District Educational Officer is not the Manager.

7. I have considered the submissions made at the Bar by the learned counsel appearing on either side. The fact that the 2<sup>nd</sup> respondent was placed under suspension on 29.10.2007 and that the Deputy Director of Education had by Exhibit P3 order passed on 12.11.2007 permitted continuance of the suspension beyond 15 days is not disputed. The Deputy Director of Education has not disputed the fact that the Manager had in Exhibit P6 letter sent to him after the memo of charges was issued and the written statement of defence was received from the 2<sup>nd</sup> respondent, requested him to hold a formal enquiry as required under Rule 75 of Chapter XIV A of the KER. Under Rule 75, the enquiry has to be conducted by the Deputy Director of Education or any other officer not below the rank of Assistant Educational Officer authorised by that officer. Exhibit P6 letter was sent way back on 9.4.2008, within six months of the order of suspension. Instead of conducting a formal enquiry, either by himself or through a competent officer, the Deputy Director of Education sent Exhibit P7 letter dated 29.8.2008 enquiring about the progress in the disciplinary action. It was thereafter that he passed Exhibit P10 order.

In Exhibit P10 order the Deputy Director of Education has stated that he conducted an enquiry in the School on 12.12.2008 and heard various persons except the Manager. In Exhibit P10 the Deputy Director of Education has entered a finding that the issues stand resolved with registration of a criminal case against the 2<sup>nd</sup> respondent on 22.4.2008. He has also entered a finding in Exhibit P10 that the case was registered to continue the 2<sup>nd</sup> respondent under suspension. It is on these two grounds that the Deputy Director of Education has in Exhibit P10 directed reinstatement of the 2<sup>nd</sup> respondent in service.

8. Rule 67(8) of Chapter XIV A of the KER stipulates that where the order 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 where the suspension is in respect of Headmaster of a Secondary School or Training School, such report has to be sent to the Deputy Director of Education. Rule 67(8) further stipulates that the Deputy Director of Education shall thereupon make a preliminary investigation into the grounds of suspension and if on such investigation it is found that there are valid grounds for such suspension, permission can be given to the Manager to place the teacher under suspension beyond 15 days. In the instant case, the said preliminary investigation was conducted on 9.11.2007. Exhibit P4

report was prepared on 12.11.2007 and Exhibit P3 order was passed on 12.11.2007 permitting continuance of the 2<sup>nd</sup> respondent under suspension beyond 15 days. In Exhibit P4 report, the Deputy Director of Education has come to the conclusion that the circumstances warrant a detailed enquiry. The Deputy Director of Education had also directed the registration of a police case in relation to the alleged incident of ragging. Exhibit P4 report also refers to various other charges like tampering with the attendance register and the register of transfer certificates. However in Exhibit P10 the Deputy Director of Education has taken the stand that with the restoration of a criminal case against the 2<sup>nd</sup> respondent on 22.12.2008, the issues stand resolved.

9. In my opinion the stand taken by the Deputy Director of Education in Exhibit P10 cannot be sustained. A Division Bench of this Court has in **Sreedharan V. State of Kerala & others (1977 KLT 222)** held that the enquiry contemplated under Rule 67(8) is only a primary investigation and not a detailed enquiry into the charges. It was held that the enquiry contemplated under Rule 67(8) is only to find out whether there is prima facie ground justifying the suspension of the teacher and that a detailed enquiry is to be conducted only at a later stage in accordance with the provision contained in Rule 75. In



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**996** also a similar view was taken. In the instant case the Deputy Director of Education has on such preliminary enquiry found that the 2<sup>nd</sup> respondent's suspension is warranted and that prima facie grounds exist justifying her suspension from service. The Manager thereafter issued a memo of charges and the 2<sup>nd</sup> respondent submitted her written statement of defence. Thereafter in terms of the stipulations in Rule 75 of Chapter XIV A of the KER the Manager requested for a detailed enquiry. Instead of holding such an enquiry, the Deputy Director of Education proceeded to direct reinstatement of the 2<sup>nd</sup> respondent in service by issuing Exhibit P10. The question that arises for consideration is whether Exhibit P10 is sustainable and the direction issued therein is referable to sub rule (8A) of Rule 67 of Chapter XIV A of the KER. Sub rule 8A of Rule 67 reads as follows:

“Notwithstanding anything contained in sub-rule (8) the authority who permitted the suspension beyond 15 days or any higher authority may at any time during the pendency of such suspension review such permission and if such authority is satisfied that the teacher under suspension has to be reinstated in service for reasons to be recorded in writing cancel the permission already ordered under sub-rule (8) and direct the Manager to reinstate the teacher in service. On such order, the Manager shall reinstate the teacher forthwith failing which the provisions in sub-rule (8) will apply in such case.”

10. Shri.George Poonthottam the learned counsel for the petitioner contends that in the instant case the Deputy Director of Education has not exercised the power under Rule 67(8A) and therefore Exhibit P10 is bad. The learned counsel contends that in Exhibit P10 the Deputy Director of Education has not passed an order cancelling the permission granted by him in Exhibit P3, but has only directed reinstatement of the 2<sup>nd</sup> respondent in service and that such an order can be passed only on review by a higher officer under sub rule (9) of Rule 67. Per contra, Shri.Elvin Peter contends that the Deputy Director of Education is competent even on the terms of sub rule (8A) of Rule 67 to pass Exhibit P10.

11. As noticed earlier, Rule 67(8) contemplates only a preliminary investigation and grant of permission to continue the teacher under suspension beyond 15 days. By Exhibit P3 such permission was granted. The question raised is whether the Deputy Director of Education is competent to pass Exhibit P10. Sub rule (8A) of Rule 67 only stipulates that the Deputy Director or a higher authority may for reasons to be recorded in writing, cancel the permission already granted under sub-rule (8). Sub rule 8A does not stipulate that on such an order being passed, the disciplinary proceedings shall come to an end. Therefore, the enquiry under sub

rule (8A) of Rule 67 which leads to cancellation of the permission can only be one to decide whether prima facie grounds exist to justify continuance of the suspension. Sub rule (8A) of Rule 67 enables the officer who granted the permission or any officer superior to the officer who granted the permission to cancel the permission and to order reinstatement of the teacher in service. The said order has to be supported by reasons justifying the cancellation. The power of review in sub rule (9) of Rule 67 is not related to cancellation of the order granting permission to continue the teacher under suspension. Rule 67(9) confers a general power to review the order of suspension. In the instant case the Deputy Director of Education has held that the entire issue stands resolved when a criminal case was registered against the 2<sup>nd</sup> respondent. The Deputy Director has not filed counter affidavit explaining the reason why he did not conduct a formal enquiry or direct any of the subordinates to conduct the formal enquiry. Instead he has passed Exhibit P10 order holding the 2<sup>nd</sup> respondent not guilty of the charges and directed her reinstatement in service. Such a finding could not have been entered in exercise of the power under Rule 67(8A). I therefore hold that the Deputy Director of Education acted in excess of the power coffered on him under sub rule (8A) of Rule 67 of Chapter XIV A of the KER when he passed Exhibit P10.

12. The petitioner is due to retire from service on 31.3.2009. She has been continuing under suspension since 29.10.2007. More than one year and three months have been passed thereafter. Though the Manager had requested the Deputy Director of Education to conduct a formal enquiry way back in April 2008, the Deputy Director of Education did not take any step in that direction. In these circumstances even when interfering with Exhibit P10, I feel that the Director of Public Instruction should look into the matter and consider whether on the materials on record, the 2<sup>nd</sup> respondent should continue under suspension till she retires from service on 31.3.2009.

In the result, the Writ Petition is allowed, Exhibit P10 is quashed and the Director of Public Instruction is directed to hear the petitioner, the 2<sup>nd</sup> respondent and the Deputy Director of Education, Kollam and take a decision in the matter. Since there is no time for the Director of Public Instruction to issue notice to the parties, hear them and pass orders before 31.3.2009, I direct that the Deputy Director of Education, Kollam or his authorised representative, the petitioner and 2<sup>nd</sup> respondent or their authorised representative shall appear before the Director of Public Instruction at 11.00 AM on 7.3.2009. The Deputy Director of Education, Kollam or his authorised representative shall produce all the relevant files and make them available to the Director

of Public Instruction on that day. The Director of Public Instruction shall after hearing the parties take a decision in the matter and pass orders within one week thereafter. I make it clear that I have not expressed any opinion on the rival contentions and that it will be open to the Director of Public Instruction to decide the issue having regard to the contentions of the parties. I further direct that the Director of Public Instruction shall himself hear the matter and pass an order giving reasons in support of his conclusions.

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

**P.N.RAVINDRAN  
JUDGE**

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