

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR  
&  
THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

SATURDAY, THE 30TH JANUARY 2010 / 10TH MAGHA 1931

WA.No. 2736 of 2009()

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AGAINST THE JUDGEMENT/ORDER IN WPC.25957/2007 Dated 09/10/2009  
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APPELLANT(S): 4TH RESPONDENT IN THE WP(C)  
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O.J.CICILY, KUNNUMPURATHU VEEDU,  
MURIKKASSERRY.P.O, IDUKKI.

BY ADV. MR.C.K.PRASAD

RESPONDENT(S): PETITIONER & RESPONDENTS 1 TO 3 IN THE WP(C)  
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1. CORPORATE MANAGER,  
CORPORATE MANAGEMENT OF SCHOOLS,  
DIOCESE OF IDUKKI, THADIAMPAD.P.O,  
IDUKKI.
2. STATE OF KERALA, REPRESENTED BY THE  
SECRETARY TO GOVERNMENT,  
GENERAL EDUCATION (N) DEPARTMENT,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION,  
IDUKKI.
4. THE DISTRICT EDUCATIONAL OFFICER,  
THODUPUZHA.

R1 BY ADVS.MR.V.M.KURIAN,  
MR.MATHEW B. KURIAN,  
MR.K.T.THOMAS.  
R2 TO R4 BY GOVT. PLEADER MSMT.R.BINDU

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD  
ON 30/01/2010, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

tss



**“CR”**

**K. BALAKRISHNAN NAIR & P.N.RAVINDRAN, JJ.**

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**W.A. No.2736 of 2009**  
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**Dated this, the 30<sup>th</sup> day of January, 2010**

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

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Balakrishnan Nair, J.

The appellant was the 4<sup>th</sup> respondent in the Writ Petition. The 1<sup>st</sup> respondent herein was the writ petitioner.

2. The brief facts of the case are the following:

The appellant is a Peon working in the school managed by the 1<sup>st</sup> respondent. She was suspended from service by the Manager in contemplation of the disciplinary proceedings on 16.7.2001. There is some dispute between the parties as to whether permission was granted by the Educational Officer, to keep her under suspension beyond 15 days. Since the same is not relevant in this case, it is unnecessary to go into that controversy. She was served with Ext.P19 memo of charges dated 10.8.2001. She submitted her reply, Ext.P20, on 28.8.2001. The Assistant Educational Officer (for short 'AEO') held an enquiry into the charges on 21.8.2001 and

furnished Ext.P6 report dated 11.9.2001 to the Manager, finding the appellant guilty. Based on that enquiry report, the Manager issued Ext.P7 notice dated 4.10.2001, proposing to remove her from service. The appellant submitted Ext.P8 reply. On finding the reply not satisfactory, the Manager removed her from service by Ext.P9 order dated 17.11.2001. It appears that the order was passed without the previous sanction of the District Educational Officer (for short 'DEO'). So, the DEO was moved and the said officer granted sanction to impose a punishment of removal from service on the appellant, by Ext.P10 dated 5.4.2002. Thereafter, the Manager passed a fresh order, Ext.P11 dated 15.4.2002, removing her from service. The appellant challenged Ext.P11 before the Deputy Director of Education, Idukki. The said officer, after hearing both sides, by Ext.P12 affirmed the finding of guilt of the accused, but reduced the punishment to one of barring one increment without cumulative effect. The Manager and the appellant filed Revision Petitions before the Government, challenging Ext.P12. The Government, after hearing both sides, by Ext.P15 order dated 3.8.2007 affirmed Ext.P12.

3. Challenging Exts.P12 and P15, the 1<sup>st</sup> respondent Manager filed the Writ Petition. The learned Single Judge, after hearing both sides, allowed the Writ Petition quashing Exts.P12 and P15. Feeling aggrieved by the said judgment, the appellant has preferred this Writ Appeal.

4. We heard, Sri.C.K.Prasad, learned counsel for the appellant. We also heard the learned counsel for the Manager and the learned Government Pleader, Smt.R.Bindu, for the official respondents. The learned counsel for the appellant brought to our notice that the enquiry was held even before the receipt of her reply to Ext.P19 charges. Further, the enquiry was held without following the procedure prescribed under Rule 75 of Chapter XIVA of the Kerala Education Rules (for short 'KER'). The procedure therein will apply to holding disciplinary enquiry against non-teaching staff also, by virtue of Rule 7 of Chapter XXIVB of the KER. The learned counsel also pointed out that all the charges contained in Ext.P19, except the 5<sup>th</sup> charge, are vague and could not have been the subject-matter of disciplinary action. Even the finding on charge No.5 is not in conformity with the allegations in the

memo of charges. Therefore, the learned counsel for the appellant prayed for reversing the judgment of the learned Single Judge.

5. The learned counsel for the Manager, on the other hand, supported the judgment under appeal. The materials on record would show that the presence of the appellant cannot be tolerated in an educational institution and therefore, she has been rightly removed from service. The learned Government Pleader supported the impugned orders of the Deputy Director and the Government.

6. We considered the rival submissions made at the Bar and perused the materials on record. Rule 75 of Chapter XIVA of the KER provides that before the Manager orders an enquiry into the charges against the delinquent, he should examine the written statement of the incumbent and decide whether it is necessary to order the enquiry. In this case, as per Ext.P19 memo of charges dated 10.8.2001, the appellant was given 15 days time for filing reply from the date of receipt of the memo. She filed Ext.P20 reply on 28.8.2001. But, the

AEO held the enquiry on 21.8.2001. So, it is manifest that even before the receipt of reply, the Manager decided to hold the enquiry, moved the AEO, who in turn readily obliged and held the enquiry on the eleventh day of serving the memo of charges. The decision to hold enquiry, taken even before the receipt of written statement of defence and before the expiry of the time limit fixed for filing the written statement, will vitiate the entire proceedings, as such the decision violates Rule 75(1) of Chapter XIVA of the KER. The Sub-Rule reads as follows:

**“75. Procedure for imposing major penalties:-**

**(1) (a)** Whenever a complaint is received or on intimation from the authorised Officer as per Section 12(A) is recorded or on consideration of the report of investigation or for other reasons the manager is satisfied that there is prima facie case for taking action against the teacher definite charge or charges shall be framed and communicated to him with the statement of allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. The teacher shall be required to submit within

a reasonable time to be specified in that behalf a written statement of his defence and also to state whether he desires to be heard in person. The teacher may on his request be permitted to peruse or take extracts from the records pertaining to the case for the purpose of preparing the written statement; provided the manager may, for reasons to be recorded in writing refuse him such access if in his opinion such records are not strictly relevant to the case or it is not essential in Public interest to allow such access.

After the written statement is received within the time allowed, the manager may if he is satisfied that a formal enquiry should be held into the conduct of the teacher, order that a formal enquiry may be conducted."

7. Going by the above provision, the Manager can order to hold an enquiry only after the receipt of written statement of defence, if it is filed in time and on finding that the explanation of the delinquent is not satisfactory. This Court has quashed the disciplinary action against a bank employee for violation of a similar provision in **E.S.Nambiar v. Union Bank of India** [1991 (2) KLT 354].



8. We are taking the above view, as both sides submitted before us, that Ext.P6 is the enquiry report on the memo of charges. We have some doubt regarding the said aspect because, the subject mentioned in the opening portion of Ext.P6 would show that the enquiry report relates to the suspension of the appellant. Whatever be that, as mentioned earlier, the Manager has taken Ext.P6 as an enquiry report on the memo of charges issued by him to the appellant. We notice that in Ext.P6, the adversary procedure provided in Rule 75 has not been followed. But, on the contrary, inquisitory procedure was followed by the Assistant Educational Officer. That means, the enquiry was held in violation of the principles of natural justice and in violation of the mandate of Rule 75. In view of the above position, Ext.P6 could not have been made the basis for action against the appellant. In Ext.P7, Ext.P6 is referred as the 5<sup>th</sup> paper and in Ext.P11, the said report is referred as 4<sup>th</sup> paper. There is no other enquiry report other than Ext.P6 against the appellant.

9. In view of the above finding, we think, it is unnecessary to go into the other contentions raised by both sides in this Writ Appeal. So, we reverse the judgment of the learned Single Judge and the following directions are issued:-

It is declared that Ext.P6 cannot be treated as an enquiry report into the memo of charges. So, all further proceedings taken, based on it, are declared to be invalid and unenforceable. If the Manager has obtained permission for keeping the appellant under suspension beyond 15 days, she shall be reinstated in service and shall be treated as under suspension all along. The Manager and Headmaster shall take steps to release to her the subsistence allowance due, including arrears thereof, on her reinstatement. It is clarified that she need be paid only the balance subsistence allowance after deducting the amount already paid. If there is no sanction for treating her under suspension beyond 15 days, as claimed by the appellant, she shall be reinstated in service by the 1<sup>st</sup> respondent Manager. In that event, how the period she was out of service shall be treated, will be decided by the Controlling Officer, the Assistant Educational Officer, after hearing the appellant and the Manager. The Manager is given

liberty to decide whether an enquiry should be held into the charges, after considering the reply of the appellant. If it is found that the reply is not satisfactory and further enquiry is necessary, the Manager will be free to move the AEO, to hold a fresh enquiry into the charges against her. In that event, the AEO shall hold the enquiry, in accordance with the procedure prescribed in Rule 75 of the KER . The AEO is directed to inform the Manager, the Headmaster and the appellant, whether he has passed any order permitting to keep the appellant under suspension beyond 15 days. If there is such a proceeding, the AEO shall serve a copy of the same to the appellant immediately on production of a copy of this judgment.

The Writ Appeal is allowed as above.

**(K. BALAKRISHNAN NAIR, JUDGE)**

**(P.N.RAVINDRAN, JUDGE)**

**ps**