

P.M.Ninan and Another Vs. the Manager and Others

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Court : Kerala

Decided On : Aug-19-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : P.M.Ninan and Another

Respondent : The Manager and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR TUESDAY, THE 19TH DAY OF AUGUST 2014 28TH SRAVANA, 1936 WP(C).No. 10327 of 2008 (D) ----- PETITIONER(S): ----- 1. P.M.NINAN, S/O.MATHEW, AGED 55 HEADMASTER, ST.THOMAS HIGH SCHOOL, THOTTACKAD, KOTTAYAM.

2. K.V.JOSEPH, CLERK, ST.THOMAS HIGH SCHOOL, THOTTACKAD, KOTTAYAM. BY ADV. SRI.JOHNSON MANAYANI RESPONDENT(S): ----- 1. THE MANAGER, ST.THOMAS HIGH SCHOOL, THOTTACKAD, KOTTAYAM.

2. THE DISTRICT EDUCATIONAL OFFICER, DEO OFFICE, KOTTAYAM.

3. SECRETARY TO GENERAL EDUCATION, SECRETARIAT, TRIVANDRUM.

4. DIRECTOR OF PUBLIC INSTRUCTIONS, (D.P.I) O/O D.P.I.JAGATHY, TRIVANDRUM.

5. DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS (DD) KOTTAYAM.

6. STATE OF KERALA, REP.BY ITS SECRETARY TO GENERAL EDUCATION, SECRETARIAT, TRIVANDRUM.

7. BIJALYABRAHAM, H.S.A. ST. THOMAS HIGH SCHOOL, THOTTACKAD, KOTTAYAM. R1 & R7 BY ADV. SRI.V.A.MUHAMMED SRI.K.E.HAMZA R2 TO R6 BY GOVERNMENT PLEADER SRI.A.J.JOSE AEDAIDI THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/08/2014, ALONG WITH WP(C).NO.20650/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts WP(C).NO.10327/2008 APPENDIX PETITIONER'S EXHIBITS: P1 COPY OF THE

ORDER

DATED 27/10/2005 OF THE THIRD RESPONDENT. P2 COPY OF THE

ORDER

OF THE FIRST RESPONDENT DATED 24/10/2005 P3 COPY OF THE PETITION FILED BY THE PETITIONERS BEFORE THE MINISTER FOR EDUCATION P4 COPY OF THE

ORDER

DATED 17/7/2006 OF THE THIRD RESPONDENT P5 COPY OF THE

JUDGMENT

IN WP(C).NO.20564 OF 2008 OF THIS HON'BLE COURT. P6 COPY OF THE NOTES OF ARGUMENT FILED BY THE PETITIONERS BEFORE THE THIRD RESPONDENT DATED 10/10/2007 P7 COPY OF THE

ORDER

OF THE THIRD RESPONDENT DATED 16/1/2008. RESPONDENT'S EXHIBITS: NIL /TRUE COPY/ P.A.TO.JUDGE sts A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C)No.10327 of 2008 &
W.P.(C)No.20650 of 2013 Dated this the
19th day of August, 2014

JUDGMENT

Since these two writ petitions involve common issues they are taken up together and disposed by this common judgment.

2. The petitioners in W.P.(C).No.10327 of 2008 are the Headmaster and Clerk of St.Thomas High School, Thottackad, Kottayam. Disciplinary proceedings were initiated against the petitioners in connection with the non-sanctioning of commuted leave applied for by Smt.Bijaly Abraham, HSA (Maths) working in the School, and the said proceedings culminated in Ext.P2 order of the 1st respondent dated 24.10.2005. By the said order, the 1st respondent imposed a punishment, of barring of four annual increments with cumulative effect, against both the petitioners. The period of suspension undergone by them was treated as leave. It would appear that subsequently, based on a recommendation by the Deputy Director of Education to review the punishment imposed on the petitioners, the first respondent modified the punishment by directing barring of three annual increments with cumulative effect and treating the period of suspension as leave. This modified order of the 1st respondent was ratified by the Deputy W.P.(C)No.10327 of 2008 & W.P.(C)No.20650 of 2013 2 Director of Education as well.

3. The petitioners thereafter submitted a review petition to the Government against the order of the 1st respondent. In the said petition, the 3rd respondent passed Ext.P4 order, modifying the punishment imposed on the first petitioner to one of severe warning and treating the period of suspension as duty for all purposes including pay and allowance. This order of the 3rd respondent was challenged at the instance of the 7th respondent before this Court on the ground that the said order was passed without hearing the 7th respondent. This Court by Ext.P5 judgment, therefore, set aside Ext.P4 order and directed the 3rd respondent to take a fresh decision in the matter after hearing the 7th respondent. It is relevant to note that the 7th respondent, was working in the School and it was at her instance

that the complaint against the petitioners was raised before the 1st respondent Manager of the School. In Ext.P4 order, that was passed by the 3rd respondent there was an observation that whatever untoward incidents occurred in the School, which resulted in the suspension of the petitioners, the Manager and Smt.B.A.Bijaly Abraham (the 7th respondent) were also equally responsible. It is probably on account of the said observations, against her, that the 7th W.P.(C)No.10327 of 2008 & W.P.(C)No.20650 of 2013 3 respondent had approached this Court challenging Ext.P4 order. At any rate, pursuant to Ext.P5 judgment of this Court, the 3rd respondent proceeded to hear the matter afresh and passed Ext.P7 order modifying Ext.P4 order, earlier passed by him, and substituting the punishment therein imposed with one of censure and treating the period of suspension as eligible leave. Ext.P7 order, to the extent it modifies the legal effect of the period of suspension, is impugned in the present writ petition by the petitioners.

4. Insofar as the effect of Ext.P7 order was to treat the period of suspension as eligible leave and not as duty for the purposes of pay and allowances due to the 1st petitioner, the petitioner became liable to refund various amounts that had been paid to him pursuant to Ext.P4 order earlier passed by the 3rd respondent. Under these circumstances, therefore, the petitioners, at the time of filing the writ petition, had also sought for a stay of all further proceedings pursuant to Ext.P7 order and this Court had stayed the recovery proceedings pending disposal of the writ petition. Thereafter, during the pendency of the writ petition, the 1st petitioner retired from services on 31.09.2009. When the issue of disbursal of the pensionary benefits came up for consideration, the W.P.(C)No.10327 of 2008 & W.P.(C)No.20650 of 2013 4 Educational Authorities, as also the office of the Indian Audit and Accounts Department under the Accountant Generals Office, refused to disburse the gratuity amount due to the 1st petitioner citing the pendency of this writ petition. The 1st petitioner, therefore, approached this Court through the other writ petition namely W.P.(C).No.20650 of 2013, praying for a direction to the respondents therein to release the gratuity and other pensionary benefits due to the petitioner as expeditiously as possible.

5. A counter affidavit has been filed on behalf of the respondent Education Authorities in W.P.(C).No.10327 of 2008. Therein, Ext.P7 order passed by the 3rd respondent is sought to be justified on the ground that the misconduct, by the petitioners, was sufficiently grave as to warrant the punishment that was eventually imposed on the petitioners by the said order.

6. I have heard Sri.Johnson Manayani, learned counsel appearing on behalf of the petitioners, the learned Government Pleader Sri.A.J.Jose Aedaiodi, appearing on behalf of the respondents 1 to 6 and Sri.V.A.Muhammed, learned counsel appearing on behalf of 7th respondent in W.P.(C).No.10327 of 2008. W.P.(C)No.10327 of 2008 & W.P.(C)No.20650 of 2013 5 7. On a consideration of the submissions by counsel on either sides and the facts and circumstances of the case, I am of the view that Ext.P5 judgment of this Court directing the 3rd respondent to hear the 7th respondent and take a fresh decision in the matter had to be viewed in the back drop of the grievance that was projected by the 7th respondent against Ext.P4 order passed by the 3rd respondent. Ext.P4 order of the 3rd respondent was one that was passed on a review petition filed by the petitioners, against the order of the 1st respondent Manager imposing the punishment on the petitioners. The grievance, if any, against the modification of the punishment imposed on the petitioners, could only have been in the 1st respondent Manager, who imposed the punishment at first instance. The grievance of the 7th respondent, if any, against Ext.P4 order could only have been in relation to the observations therein against the 7th respondent . Ext.P4 order ought therefore to have been seen as impugned only to that extent, at the instance of the 7th respondent. When the 3rd respondent considered the issue afresh pursuant to Ext.P5 judgment, he ought to have confined his examination of Ext.P4 only to the limited issue of whether the observations against the 7th respondent in Ext.P4 were warranted or justified on the facts and circumstances of the case. In Ext P7 order, however, the 3rd respondent, at the instance of the 7th W.P.(C)No.10327 of 2008 & W.P.(C)No.20650 of 2013 6 respondent, and in the absence of any appeal or other proceedings against Ext.P4 order by the 1st respondent Manager, proceeded to modify the punishment imposed therein on the petitioners by the 3rd respondent. This in my opinion was wholly unjustified since the 1st respondent Manager, who was the only person who could be said to be

aggrieved by the punishment imposed Ext.P4 order, had chosen not to impugn the said order before any of the higher authorities. The 7th respondent, who has no role to play in the matter of disciplinary proceedings initiated against a teacher by the Manager, could not have been a person aggrieved by the punishment imposed on the petitioners. In that situation, there was no scope or occasion for the 3rd respondent to modify the punishment imposed against the petitioners in Ext.P4 order, at the instance of the 7th respondent. I, therefore, quash Ext.P7 order to the extent it modifies the punishment imposed against the petitioners under Ext.P4 order. Resultantly, the punishment imposed on the petitioners as in Ext.P4 order shall stand confirmed and the monetary benefits, if any, due to the petitioners shall be worked out on that basis.

8. W.P.(C).No.10327 of 2008 is thus allowed by quashing Ext.P7 order and restoring Ext.P4 order passed by the 3rd respondent and directing respondents 2 to 6 to compute the W.P.(C)No.10327 of 2008 & W.P.(C)No.20650 of 2013 7 monetary benefits due to the petitioners on that basis. W.P.(C).N).20650 of 2013: In the light of my findings in W.P.(C).No.10327 of 2008, this writ petition stands allowed by directing the respondents to disburse the gratuity and pensionary benefits due to the petitioner as per Ext.P1 within a period of two months from the date of receipt of a copy of the judgment. A.K.JAYASANKARAN NAMBIAR
JUDGE mns/

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