

Abdul Vari C.V vs Corporate Manager

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Court : Kerala

Decided On : Feb-13-2024

Judge : Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : WP(C)/34279/2023

Appellant : Abdul Vari C.V

Respondent : Corporate Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.
TUESDAY, THE 13TH DAY OF FEBRUARY 2024 / 24TH MAGHA, 1945
WP(C) NO. 34279 OF 2023 PETITIONER: ABDUL VARI C.V
[*CORRECTED] AGED 45 YEARS, SENIOR CLERK, MES HSS
IRUMPILIYAM UNDER ORDERS OF TRANSFER TO MES HSS
MAMPADU, RESIDING AT CHUNDAL VEETIL, BARIC NIVAS,
PONNANI SOUTH, MALAPPURAM, PIN - 679586 [*THE ADDRESS OF
THE PETITIONER IS CORRECTED AS PER

ORDER DATED 17/10/2023 IN I.A. NO.1/2023]

BY ADVS. T.T.MUHAMOOD RIYA MERIN BENCYKUTTY NIKHILA.P NAZEER
HUZAIN.H GOKUL R.NAIR RESPONDENTS:

1 CORPORATE MANAGER MES SCHOOLS, MES FATHIMA GAFOOR
MEMORIAL WOMEN'S COLLEGE CAMPUS, IMA HALL ROAD,
NADAKKAVU P.O., CALICUT, PIN - 673021 2 DISTRICT
EDUCATIONAL OFFICER OFFICE OF THE DISTRICT EDUCATIONAL
OFFICER, NEAR MINI CIVIL STATION, TIRUR, PIN - 676101 3
ADDL.R3: HAMEED, CLERK, MES HSS, IRUMPILIYAM - 676552. (IS
IMPLEADED AS PER ORDER DATED 01/11/2023 IN IA 2/2023 OF
WP(C)) BY ADVS. M.A.VAHEEDA BABU BABU KARUKAPADATH(B-
13) P.U.VINOD KUMAR(K/647/2002) ARYA
RAGHUNATH(K/000474/2018) T.M.MUHAMMED
MUSTHAQ(K/000261/2018) VAISAKHI V.(K/860/2013) AJWIN P
LALSON(K/001394/2018) KARUKAPADATH WAZIM
BABU(MAH/8319/2019) P.LAKSHMI(K/001868/2021) AYSHA
E.M.(K/001130/2022) SHIFANA KAISE(K/001171/2023) DENNIS
BIJU(K/002709/2023) STIYA SIVAN SRI.PREMCHAND R.NAIR, SR.GP
THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION

ON 13.02.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: ..2..

MOHAMMED NIAS C.P., J.

----- W.P.(C) No. 34279 of 2023 ----- Dated this the
13th day of February, 2024

JUDGMENT

The petitioner entered service in the aided schools under the management of the first respondent and had worked in various schools under the management. By Ext.P1, the petitioner was transferred from a school in Ponnani to a school in Irumpiliyam by proceedings dated from Irumpiliyam, where he started working

from 30/05/2023 under Ext.P1 order to Mampad Higher Secondary School, which the petitioner states to be about 85 km apart, purportedly invoking power under Rule 10(4) of Chapter XIVA of KER on the ground that certain complaints were raised against the petitioner. The main contention of the writ petitioner is that the transfer order under Rule 10(4) of Chapter XIVA of KER could have been passed only after conducting an enquiry by the management, giving the fullest opportunity to the teacher to rebut the allegations raised against him. Learned counsel for the petitioner relies on the judgment of this Court in 2023 (7) KHC 489 (DB) [Corporate ..3.. Manager vs. Beena Hilkushi S.R.].

2. The management has filed a counter stating that a complaint

was received from a teacher that when she approached the petitioner for clarification of some doubts relating to her appointment, the petitioner had given incorrect information misrepresenting that she was continuing in a post that was not sanctioned and the same caused mental agony to her. The counter also states that there was another complaint against the petitioner that he was misusing the computer kept in the school office and doing work for a computer institution functioning under him at his native place, Ponnani. Though the petitioner was served with two communications containing the above allegations, the petitioner had filed replies totally denying the charges raised against him. In spite of the denial of the charges, no enquiry was conducted before passing Ext.P2

order of transfer. Learned counsel for the petitioner submits that he has

yet to complete one year after the transfer pursuant to Ext.P1 when a second transfer was passed as per Ext.P2.

3. This Court, on admission, passed an order that if no

substitute had joined in the place of the petitioner, he shall be allowed to continue in the current station for a period of two weeks. The ..4.. management, as well as the Government, filed counter affidavits stating that another person had already taken charge on 16/10/2023 before this Court passed the interim order.

4. As held by the Division Bench of this Court in the decision

reported above, if a transfer is effected with reference to sub-rule (4) of Rule 10 of Chapter XIVA of KER, the same results in civil consequences stigmatising a staff and therefore, it demands compliance of principles of natural justice by initiating an enquiry and giving fullest opportunity to rebut the allegations raised. Going by the records of the case, no such enquiry has been conducted.

5. Under such circumstances, I am inclined to allow the writ

petition. Ext.P2 will stand quashed. There will be a direction to the first respondent to permit the petitioner to work at MES HSS, Irumpiliyam where he was working as per Ext.P1. Further decisions of the management will be subject to the enquiry, if any, to be conducted as stipulated under sub-rule (4) of Rule 10 of Chapter XIVA of KER. The petitioner also seeks permission to treat the period during which he could not join despite the interim orders of this court as eligible leave. In the

facts of the case, there will be a direction to the respondents to regularize

..5.. the said period as eligible leave to which the petitioner is entitled. The salary of the petitioner for the month of October shall also be disbursed within a period of one month from the date of receipt of a copy of this

judgment.

The writ petition is allowed as above. Sd/- MOHAMMED NIAS C.P. JUDGE APA
..6.. APPENDIX OF WP(C) 34279/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE ORDER NO. HS/147/2023 DATED 30.05.2023 ISSUED BY THE CORPORATE MANAGER, MES SCHOOLS Exhibit P2 TRUE COPY OF ORDER NO. HS/2079/2023 ISSUED BY THE 1ST RESPONDENT Exhibit P3 TRUE COPY OF THE MEDICAL CERTIFICATE DATED 11-10-2023 ISSUED BY THE JUNIOR CONSULTANT, GOVERNMENT TALUK HOSPITAL, PONNANI Exhibit P4 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER ON 10-10-2023 Exhibit P5 TRUE COPY OF THE ORDER NO. HS2079/2023 DATED ---

10-2023 Exhibit P6 TRUE COPY OF THE REPLY DATED 06-10-2023
SUBMITTED BY THE PETITIONER TO THE HM IN THE MATTER Exhibit P7
TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER
BEFORE THE HM ON 06-10-2023 RESPONDENT EXHIBITS EXHIBIT R1(a)
TRUE COPY OF THE REQUEST DATED 07/10/2023 RECEIVED FROM THE
HEAD MASTER OF MES HSS IRIMBILIYAM.

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