

E.Thankam vs E.Balagopal

E.Thankam vs E.Balagopal

SooperKanoon Citation : sooperkanoon.com/1336116

Court : Kerala

Decided On : May-26-2023

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : CO/44/2006

Appellant : E.Thankam

Respondent : E.Balagopal

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
FRIDAY, THE 26TH DAY OF MAY 2023 / 5TH JYAISHTA, 1945 AS NO.
470 OF 2000 AGAINST THE JUDGMENT IN OS 1406/1995 OF I
ADDITIONAL SUB COURT, THRISSUR ----- APPELLANT/1ST
DEFENDANT: E.BALAGOPAL, PREVIOUS MANAGER, C.N.N.G.H
SCHOOL, CHERPU, P.O.CHERPU, TRICHUR DISTRICT. BY ADVS.
SRI.N.SUBRAMANIAM SRI.M.S.NARAYANAN RESPONDENTS 1 TO
3/PLAINTIFFS 1, 2, 3: 1 E.THANKAM D/O.MALATHI VARASSIAR,
EDAKKUNNI WARRIAM,P.O.PAZHAVIL, PAZHAVIL VILLAGE,
TRICHUR TALUK AND DISTRICT. 2 SANGEETHA, D/O.E.THANKAM,
EDAKUNNI WARRIAM, P.O.PUZHAVIL, PUZHAVIL VILLAGE,

TRICHUR TALUK AND DISTRICT. 3 SIVADASAN, S/O.E.THANKAM, EDAKUNNI WARRIAM, P.O.PUZHAVIL, PUZHAVIL VILLAGE, TRICHUR TALUK AND DISTRICT. RESPONDENTS 4 TO 7/DEFENDANTS 2 TO 5 4 K.NARAYANAN, P.A. TO DISTRICT EDUCATIONAL OFFICER, THRISSUR, NOW WORKING AS ADMINISTRATIVE ASSISTANT TO DEPUTY DIRECTOR OF EDUCATION, PALGHAT. 5 THE DISTRICT EDUCATIONAL OFFICER, THRISSUR, THRISSUR-20. 6 THE DEPUTY DIRECTOR OF EDUCATION, AYYANTHOLE, THRISSUR-3. AS NO. 470 OF 2000 -2- 7 THE STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM. BY ADVS. SRI.V.A.MUHAMMED SRI.K.A.MANZOOR ALI SRI.PHILIP T.VARGHESE SRI.THOMAS T.VARGHESE THIS APPEAL SUIT HAVING COME UP FOR HEARING ON 26.05.2023, ALONG WITH CO.44/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
FRIDAY, THE 26TH DAY OF MAY 2023 / 5TH JYAISHTA, 1945 CO NO.
44 OF 2006 AGAINST THE JUDGMENT IN OS 1406/1995 OF I
ADDITIONAL SUB COURT, THRISSUR ----- CROSS
OBJECTORS/RESPONDENTS 1 TO 3/PLAINTIFFS

1 E.THANKAM, D/O MALATHI VARASSIAR, EDAKUNNI WARRIAM, P.O.PUZHAVIL, PUZHAVIL VILLAGE, TRICHUR TALUK AND DISTRICT. 2 SANGEETHA, D/O.E.THNAKAM, EDAKUNNI WARRIAM, P.O.PUZHAVIL, PUZHAVIL VILLAGE, TRICHUR TALUK AND DISTRICT. 3 SIVADASAN, S/O.E.THANKAM EDAKUNNI WARRIAM, P.O.PUZHAVIL, PUZHAVIL VILLAGE, TRICHUR TALUK AND DISTRICT. BY ADVS. SRI.PHILIP T.VARGHESE SMT.ACHU SUBHA ABRAHAM SRI.THOMAS T.VARGHESE

RESPONDENT/APPELLANT/1ST DEFENDANT: E.BALAGOPAL,
PREVIOUS MANAGER, C.N.N.G.H.SCHOOL, CHERPU, CHERPU.P.O,
THRISSUR DISTRICT. BY ADVS. SRI.V.A.MUHAMMED
SRI.K.A.MANZOOR ALI SRI.M.S.NARAYANAN SRI.N.SUBRAMANIAM
THIS CROSS OBJECTION HAVING COME UP FOR HEARING ON
26.05.2023, ALONG WITH AS.470/2000, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

= = = = =

Dated this the 26th day of May, 2023

J U D G M E N T

The suit for damages was decreed in part. The first defendant and the plaintiffs challenge the decree in so far as it is against them, by way of an appeal and cross objection.

2. Plaintiffs 1 to 3 are the wife and children of late Eacharan. Plaintiffs 4 to 7 are his siblings. Sri.Eacharan was the Head Master of an aided school. The first defendant was the Manager of the School.

3. According to the plaintiffs, the relationship between Sri.Eacharan and the first defendant was not cordial. During the year 1994, there was shortage in revenue stamps. Consequently, the staff of the school were not able to affix their signatures in the acquittance roll while receiving salary. Hence the salary was disbursed after getting their signatures in -: 2 :-

duplicate forms. On 11.11.1994, the second defendant who was the P.A. to the District Education Officer conducted an inspection. On verification of the service books he

noticed irregularities in the acquittance roll. He reported the matter to the DEO. The first defendant, on 28.11.1994, placed Sri.Eacharan under suspension pending enquiry. According to the plaintiffs, being unable to stand the injury to his

reputation, he suffered nervous shock and passed away on 03.12.1994. The plaintiffs contend that Sri.Eacharan was an upright person and that the allegation of falsification of accounts and the suspension was mala fide. The suit is filed seeking recovery of damages under the following heads :-

(a) ` 2 lakh towards compensation for loss of life.

(b) ` 5,000/- due to the deceased under the head of purchase of stationery items.

(c) ` 3 lakh towards compensation for defamation and loss of reputation to the plaintiffs consequent on - : 3 :- the wrongful suspension.

4. The defendants denied the plaint allegations and the claim. They contended that the suspension imposed on

Sri.Eacharan was justified in the light of the inspection report. It was claimed that the action taken was the normal procedure to be adopted on detection of irregularities in the nature reported by the second defendant. The allegation of mala fides was denied. The second defendant contended that, on verification of the acquittance roll it was noticed that signature of some of the staff were seen affixed without affixing revenue stamp whereas signature of some were not seen. Though he

required Sri.Eacharan to obtain the signatures and rectify the defect, that was not complied. Therefore, the matter was reported. The allegation that the demise of Sri.Eacharan was due to the shock suffered by him consequent on his suspension from service, was also denied. - : 4 :-

5. The trial court found that there is no material to find that the demise of Sri.Eacharan has any nexus with the order of suspension. The plea of loss of

reputation was held against. However, a decree was passed for ` 10,000/- as compensation for the injury inflicted on the deceased Eacharan by the order of suspension passed by the first defendant.

6. The first defendant challenges the decree against him for ` 10,000/-, and the plaintiffs have filed cross objection claiming further amount of ` 50,000/-.

7. Heard learned counsel on either side.

8. Though the plaintiffs allege that the demise of

Sri.Eacharan was consequent on the shock suffered by him on the issuance of the order of suspension, the trial court found that there is no material to prove the nexus. There is no evidence to prove the allegation. Hence, there is no reason to interfere with the said -: 5 :- finding of the trial court.

9. Coming to the claim for ` 5,000/- stated to be amount due to the deceased under the head of purchase of stationary items, there is no material before the court

to find that any amounts were outstanding to Sri.Eacharan. The trial court accordingly declined the claim. No material is placed before me to arrive at a different conclusion.

10. As regards the claim for ` 3 lakhs towards the loss of reputation and defamation, the plaint claim is for damages for the loss of reputation of the

plaintiffs. The plea of loss of reputation is held

against by the trial Court. The decree by the trial Court could only be understood as one granted for mental agony to the deceased consequent on the order of

suspension. To grant the decree, the trial Court held

that the order of suspension was not justified. -: 6 :-

11. Suspension pending disciplinary enquiry, is not

a punishment. Rule 67(8) of Chapter XIV KER provides for review of an order of suspension passed by the Manager, by the DEO. It is not in dispute that on 11.11.1994 the second defendant had visited the school and had verified the service books and noticed irregularities with regard to the acquittance roll and the payments under the head salary. Ext.X1 is the report of the second defendant. In Ext.X1, it has been reported that the acquittance roll reveals various irregularities.

The first defendant was required to take appropriate action against the Head Master as provided in KER. It is thereupon that the

first defendant issued the order of suspension. Sri.Eacharan could have submitted his explanation and sought for withdrawal of the suspension. As noticed, the KER even provides for an opportunity for review of suspension at the hands of the statutory authorities. Therefore, the mere fact that an order of suspension was

-: 7 :- issued by the first defendant would not justify a claim for damages.

12. Though the plaintiffs allege that the first defendant was having animosity against late Eacharan and

he was wreaking vengeance by issuing the order of suspension, there is no evidence to find the same. Even the trial court found so. Here it is to be noticed that even the first plaintiff as PW1 has said that though there were certain differences of opinion in official matters, there was no vengeance/animosity between first defendant and her husband-Eacharan. The second defendant as DW2 has deposed that he was constrained to report

about the omissions in the acquittance roll since Sri.Eacharan declined rectification in spite of his request. DW2 has deposed At-lw A-Xv Iq-m-m- km-l-N-cy- n-em-Wv F-\n-v dn-tm-v sN-t-n-h-Xv.

13. Though it is contended that the irregularity in the acquittance roll was occasioned due to the non- -: 8 :-

availability of revenue stamps, there is no case for the plaintiffs that the said fact was duly informed by Sri.Eacharan to the Manager and that the Manager was aware of the same. Therefore, it cannot be said that the Manager was aware of the shortage of revenue stamps and the consequent irregularities in the acquittance roll in spite of which he issued the order of suspension.

14. Thus, the materials indicate that the first

defendant-Manager has, while issuing the order of suspension only adopted a course of action which would have been normally resorted to by an ordinary prudent Manager. It cannot be held that the order of suspension was vitiated by mala fides or was illegal. I am unable to agree with the finding of the trial court that, the

order of suspension was not justified. A decree for

damages cannot be passed merely on assumptions. Therefore, the decree granted by the trial court for ` 10,000/- has no substratum. -: 9 :-

15. Noticeably, the claim for ` 3 lakhs is for defamation and loss of reputation of the plaintiffs. Having found that the order of suspension cannot be said

to be baseless or illegal and was tainted with malafides, the other issues of defamation and loss of reputation etc. does not arise. The claim is only to be declined.

16. Having found that the claims under none of the heads raised are allowable, the suit is liable to be dismissed. In the result, the appeal is allowed, and the cross objection is dismissed. The decree and judgment of the trial court are set aside and the suit is dismissed. Sd/- SATHISH NINAN JUDGE kns/- //True Copy// P.S. to Judge

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com