

Manager vs State of Kerala

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/6739/2023

Appellant : Manager

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA,
1944 WP(C) NO. 6739 OF 2023 PETITIONER/S: MANAGER AGED 60
YEARS ZAMORIN'S HIGHER SECONDARY SCHOOL,
CHALAPPURAM P O, KOZHIKODE - 673002 RESIDING AT AYODHYA
APARTMENTS THIRUVANOOR KOZHIKODE, PIN - 673029 BY ADVS.
M.A.FAYAZ M.VISHNUPRIYA C.B.ABHINAVA K.SANEESH KUMAR
RESPONDENT/S:

1 STATE OF KERALA REPRESENTED BY SECRETARY TO THE
GOVERNMENT, GENERAL EDUCATION DEPARTMENT,

GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 2 DIRECTOR OF GENERAL EDUCATION O/O THE DIRECTOR OF GENERAL EDUCATION, JAGATHI, THIRUVANANTHAPURAM, PIN - 695014 3 DEPUTY DIRECTOR OF EDUCATION KOZHIKODE O/O THE DEPUTY DIRECTOR OF EDUCATION KOZHIKODE, KOZHIKODE, PIN - 673004 4 DISTRICT EDUCATIONAL OFFICER KOZHIKODE O/O THE DISTRICT EDUCATIONAL OFFICER KOZHIKODE KOZHIKODE, PIN - 673004 5 SIVADASAN.T SAUPARNIKA, KUNDUPARAMBU, IRANHIKKAL PO, KOZHIKODE, PIN - 679587 BY ADV GOVERNMENT PLEADER

OTHER PRESENT: SMT. NISHA BOSE SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- W.P.(C)No. 6739 Of 2023
----- Dated this the 28th day of February,
2023

JUDGMENT

The above writ petition is filed with the following prayers :- i) To call for the records leading to the issuance of the Exts.P19

order of the 3rd respondent and set aside the same by issuing a Writ

of Certiorari. ii) To issue a Writ of Mandamus directing the 3 rd respondent to grant permission on the management decision for removing the 5th respondent from service. iii) To declare that in view of the Enquiry Officer finding all the charges leveled against the 5th respondent proved vide Ext.P11 enquiry report, and there is no

justification on the part of 3rd respondent in refusing to grant prior sanction for the punishment imposed by the petitioner vide Ext.P17. iv) To declare that the disciplinary proceedings initiated by the petitioner are not dependent on the outcome of the criminal case filed against the 5th respondent.(SIC)

2. The petitioner is aggrieved by Ext.P19 order

passed by the 3rd respondent by which a request for ratifying punishment imposed on 5 th respondent is rejected. Aggrieved by Ext.P19, the petitioner submitted Ext.P29 before the 1st respondent and the same is not considered is the grievance. Hence this writ petition is filed.

3. Heard counsel appearing for the petitioner and the government pleader. No notice is necessary to the 5th respondent at this stage.

4. Since Ext.P29 against Ext.P19 is pending

before the 1st respondent, I am of the considered opinion that this writ petition need not be entertained and there can be a direction to the 1 st respondent to consider Ext.P29 with notice to the affected teacher within a time frame.

5. After arguing for sometime, the counsel

appearing for the petitioner also submitted that the petitioner will be satisfied if a direction is given to consider Ext.P29 within a time frame. I think, that prayer can be allowed. Therefore this writ petition is disposed of with following directions:- i. The 1st respondent is directed consider and pass appropriate orders in Ext.P29, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment with notice to the petitioner and 5th respondent. ii. While passing the orders in Ext.P29, the 1 st respondent will also consider Ext.P11 enquiry report and the other documents produced by the petitioner. iii. Petitioner will produce a certified copy of this

judgment along with a copy of this writ petition before

the 1st respondent for compliance. Sd/- P.V.KUNHIKRISHNAN SM JUDGE
APPENDIX OF WP(C) 6739/2023 PETITIONER EXHIBITS Exhibit P1 TRUE
COPY OF THE APPOINTMENT ORDER ISSUED BY THE PETITIONER DATED
01.03.2005 CONTAINING THE ENDORSEMENT OF THE APPROVAL BY THE
4TH RESPONDENT DEO

Exhibit P2 TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE
PETITIONER TO THE 5TH RESPONDENT DATED 27.08.2020 Exhibit P3 TRUE
COPY OF THE SUSPENSION ORDER ISSUED BY THE PETITIONER DATED
17.09.2020 Exhibit P4 TRUE COPY OF THE COVERING LETTER ISSUED BY
THE PETITIONER DATED 17.09.2020 Exhibit P5 TRUE COPY OF THE ORDER
NO.B3/4166/2020 DATED 29.09.2020 ISSUED BY THE 4TH RESPONDENT.
Exhibit P6 TRUE COPY OF THE MEMO OF CHARGES AND STATEMENT OF
ALLEGATIONS AND THE COVERING LETTER ISSUED BY THE PETITIONER
DATED 19.10.2020 Exhibit P7 TRUE COPY OF THE LETTER ADDRESSED BY
THE PETITIONER TO THE 4TH RESPONDENT DATED 11.12.2020 Exhibit P8
TRUE COPY OF LETTER NO.B3/4166/2020 DATED 18.06.2021 ISSUED BY THE
4TH RESPONDENT. Exhibit P9 TRUE COPY OF LETTER NO.B3/4166/2020
DATED 09.08.2021 ISSUED BY THE 4TH RESPONDENT. Exhibit P10 TRUE
COPY OF THE COVERING LETTER NO.B3/4166/2021 DATED 18.10.2021
ISSUED BY THE 4TH RESPONDENT. Exhibit P11 TRUE COPY OF THE
DETAILED ENQUIRY REPORT OF THE 4TH RESPONDENT DATED 20.10.2021

Exhibit P12 TRUE COPY OF THE 3RD RESPONDENTS ORDER

NO.B5/10502/2021/DDE DATED 07.01.2021 Exhibit P13 TRUE COPY OF THE
INTERIM ORDER IN W.P(C)NO.3533/2022 DATED 02.02.2022 Exhibit P14
TRUE COPY OF THE LETTER ADDRESSED TO THE 5TH RESPONDENT
DATED 08.02.2022 ALONG WITH POSTAL RECEIPT Exhibit P15 TRUE COPY
OF THE LETTER DATED 18.02.2022 ISSUED TO THE 3RD RESPONDENT.
Exhibit P16 TRUE COPY OF THE LETTER ISSUED BY THE 5TH RESPONDENT
DATED NIL Exhibit P17 TRUE COPY OF THE PROCEEDINGS
NO.ESTT/NTS/HS/22 DATED 09.03.2022 ISSUED BY THE PETITIONER Exhibit
P18 TRUE COPY OF THE JUDGMENT IN W.P(C)NO.28897/2022 DATED

07.11.2022 Exhibit19 TRUE COPY OF ORDER NO.B5/10502/2021/DDE DATED 30.01.2023 ISSUED BY THE 3RD RESPONDENT Exhibit P20 TRUE COPY OF THE LETTER NO.B3/4166/2020 DATED 19.02.2022 FORWARDED TO THE PETITIONER BY THE DEO. Exhibit P21 TRUE COPY OF THE COMPLAINT FROM SRI.ABHINAV T DATED 22.06.2022 Exhibit P22 TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE CASABA POLICE STATION. Exhibit P23 TRUE COPY OF FIR NO.0649 DATED 12.10.2021 OF ELATHUR POLICE STATION Exhibit P24 TRUE COPY OF FIR NO.0177 DATED 05.03.2022 REGISTERED IN CASABA POLICE STATION. Exhibit P25 TRUE COPY OF THE LETTER ISSUED BY THE 5TH RESPONDENT DATED 20.08.2020 Exhibit P26 TRUE COPY OF LETTER NO. B3/4166/2020 DATED 15.01.2022 ISSUED BY THE 4TH RESPONDENT DEO. Exhibit P27 TRUE COPY OF THE COMPLAINT GIVEN BY SRI SUBITH T U TOGETHER WITH THE RECEIPT GIVEN BY BY THE 5TH RESPONDENT DATED 12.04.2021 Exhibit P28 TRUE COPY OF THE LETTER WRITTEN BY THE 5TH RESPONDENT DATED 26.10.2022 Exhibit P29 TRUE COPY OF THE REVISION FILED BY THE PETITIONER HEREIN DATED 08.02.2023 BEFORE THE 1ST RESPONDENT. RESPONDENTS EXHIBITS : NIL //TRUE COPY// PA TO JUDGE

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