

Joseph Henry.P., vs the Manager,

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Court : Kerala

Decided On : Nov-30-2022

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : WP(C)/2067/2019

Appellant : Joseph Henry.P.,

Respondent : The Manager,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V WEDNESDAY, THE 30TH DAY OF NOVEMBER 2022 / 9TH AGRAHAYANA, 1944 WP(C) NO. 2067 OF 2019 PETITIONER/S: JOSEPH HENRY.P., AGED 50 YEARS S/O.PHICOMIN RAJ, MUSIC TEACHER, ST.FRANCIS SAVIOUR'S HIGHER SECONDARY SCHOOL, PARISAKKAL P.O., PALAKKAD DISTRICT. BY ADV GEORGE ABRAHAM RESPONDENT/S:

1 THE MANAGER, ST.FRANCIS SAVOUR'S HIGHER SECONDARY SCHOOL, CORPORATE MANAGEMENT, COIMBATORE, TAMIL NADU- 641018. 2 THE HEADMISTRESS, ST.FRANCIS SAVIOUR'S

HIGHER SECONDARY SCHOOL, PARISAKKAL P.O., MENONPARA, PALAKKAD DISTRICT- 678556. 3 ASSISTANT EDUCATIONAL OFFICER, CHITTUR- 678101. 4 DY.DIRECTOR OF EDUCATION, PALAKKAD- 678001. 5 DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM- 695014. 6 STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM- 695001.

BY ADVS. SRI.T.K.SAJEEV SMT.ANIMA M, GP THIS WRIT PETITION (CIVIL) HAVING COME UP ON 30.11.2022, ALONG WITH WP(C).6097/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V WEDNESDAY, THE 30TH DAY OF NOVEMBER 2022 / 9TH AGRAHAYANA, 1944 WP(C) NO. 6097 OF 2019 PETITIONER/S: SR.PHILOMINAL HEADMISTRESS, ST.FRANCIS SAVIOURS HIGHER SECONDARY SCHOOL, PARISAKKAL P.O., MENONPARA, PALAKKAD DISTRICT. BY ADV GEORGE ABRAHAM RESPONDENT/S:

1 THE MANAGER ST.FRANCIS SAVIOURS HIGHER SECONDARY SCHOOL, CORPORATE MANAGEMENT, COIMBATORE, TAMILNADU-641 001. 2 ASSISTANT EDUCATIONAL OFFICER, CHITTUR-678101. 3 DY.DIRECTOR OF EDUCATION PALAKKAD-678 001. 4 DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM-695 014. 5 STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM-695 001. BY ADVS. SRI.T.K.SAJEEV SMT ANIMA M GP

THIS WRIT PETITION (CIVIL) HAVING COME ON 30.11.2022, ALONG WITH WP(C).2067/2019, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner in W.P.(C) No.6097 of 2019 served as the Headmistress

in the St.Francis Saviours Convent Higher Secondary School, an aided school under the management of the 1st respondent therein. The petitioner in W.P.(C) No.2067 of 2019 used to function as a Music Teacher in the same school. The petitioners herein have approached this Court, seeking to quash Ext.P2 enquiry report and Ext.P5 proceedings issued by the Manager on the ground of violation of provisions of Kerala Education Rules.

2. Short facts are as under:- An inspection was conducted in the St.Francis Saviours Convent Higher

Secondary School by the Joint Director, and it was found that about 550 kg of rice were illegally stored in the adjacent storeroom of the school, causing a loss of Rs.19,266.50 to the State. A Crime was registered under Section 13(1)(d) r/w. Section 13(2) under the Prevention of Corruption Act, 1988, and under Sections 465 and 471 of the IPC. An enquiry was conducted by the Office of the Director, and Ext.P2 report was submitted. In Ext.P2 report, it is

stated that the petitioners herein are liable to be proceeded against, and departmental proceedings shall be initiated by the Corporate Manager. On the strength of Ext.P2, the Manager issued a show cause notice informing the petitioners that he had decided to bar one increment without cumulative effect, and their explanation was sought. Both the petitioners submitted reply notices pleading innocence, and they requested that a full-fledged enquiry be conducted in accordance with Rule 75 of Chapter XIVA of the KER before

imposing the punishment. Ignoring the representations filed by the petitioners, the Manager proceeded to implement Ext.P3 and imposed the punishment of barring one increment with effect from January 2019. The aforesaid orders are under challenge.

3. In the counter affidavit filed by the 3rd respondent, after

detailing the nature of allegations against the teachers, it is stated that directions were issued by the 3rd respondent to the Corporate Manager to initiate departmental disciplinary proceedings against both the petitioners. It is further stated that the enquiry contemplated under Rule 75 has not yet been conducted by the District Educational Officer, Palakkad.

4. The 4th respondent has also filed a counter affidavit reiterating the contentions made by the 3rd respondent in the counter.

5. Sri.George Abraham, the learned counsel appearing for the

petitioners, submitted that while issuing Ext.P2 order, the Director had ordered the Manager to initiate departmental proceedings against the petitioners herein before imposing punishment. He would refer to Rule 75 and the procedure prescribed for the imposition of major penalties. According to the learned counsel, the allegation against the petitioners being in the nature of unauthorisedly holding rice in the school premises, the Manager ought to have conducted an enquiry under Rule 75 before deciding whether punishment is to be imposed and its nature. The learned counsel has also relied on the law laid down by this Court in K.J. Sulatha and Others v. State and Others [1993 KHC 241], and it is submitted that the disciplinary authority cannot prejudge the particular penalty to be imposed on the delinquent before considering his explanation and before entering into a finding. Referring to the show cause notice issued by the Manager, it is submitted that the disciplinary authority has proceeded on the premise that the petitioners have already been found guilty and only an explanation was sought before imposing punishment. According to the learned counsel, the course followed by the Manager is illegal and cannot be sustained under law.

6. The learned counsel appearing for the Manager submitted that in

view of Rule 76 of the KER, barring one increment would only be a minor penalty as contemplated under the Rules, and the Manager is not bound to initiate action under Rule 75. According to the learned counsel, the materials available before

this Court would show that, on the strength of the detailed report submitted by the DGE directing the Manager to initiate departmental proceedings, a show cause notice was issued to the teacher concerned, and it was thereafter, the punishment of barring one increment was imposed. It is submitted by the learned counsel that the course adopted by the Manager cannot be questioned.

7. The learned Government Pleader submits that in view of the fact

that the Manager has imposed the punishment only of barring one increment, it can only be treated to be a minor penalty, and the procedure adopted by the Manager cannot be found to be illegal. However, it is submitted that an enquiry as contemplated under Rule 75 was not carried out by the Manager. Reliance is also placed on the judgment of the Apex Court in *Kulwant Singh Gill v. State of Punjab* [(1991) Suppl.SCC 514], and it is submitted that the punishment of withholding of increment without cumulative effect is a minor penalty unlike the punishment of withholding of increment with cumulative

effect, which would be a major penalty.

8. I have considered the submissions advanced. The petitioner in W.P.(C) No.2067/2019 was in charge of the noon-meal program in the St. Francis Saviours HSS, Parisakkal. The petitioner in W.P.(C) No. 6097/2019 was the Headmistress of the school. It appears that 550 kg of rice, in addition to stock, was found in the school, and a case was registered by the

Vigilance and Anti-Corruption Bureau. Based on the order issued by the Additional Director (General) and Vigilance Officer, an enquiry was conducted by the Joint Director (Academics).

9. Ext.P2 is an enquiry report prepared by the Joint Director based

on the directions of the Additional Director and Vigilance Officer. After arriving at certain prima facie findings, the following direction was issued by the Assistant Director.,

. 12 (2) (20.7.2016 III).

10. As is evident from paragraph No. 3, the direction to the Manager

is to initiate appropriate departmental proceedings against the petitioners herein. The Manager was also cautioned that his inaction would invite action under section 12A of the Kerala Education Act.

11. Rule 75 of Chapter XIVA provides the procedure for imposing

major penalties. Rule 76 provides for the procedure for imposing minor penalties. In the case on hand, it appears from Ext.P3 show cause notice issued by the Manager that the Manager, based on the directions issued in the enquiry report, concluded that the punishment of barring one increment is to

be imposed against the teachers. The specific contention of the Manager is that since the punishment imposed is barring of one increment, no charge memo and statement of allegations were to be issued as it is contemplated only when a major penalty was to be imposed. As rightly submitted by the learned counsel appearing for the petitioners, given the nature of allegations against the petitioners herein, which amounted to misappropriation of noon-meal funds, the Manager could not have concluded that only a minor penalty was warranted to be imposed against the teachers. The direction in Ext.P2 was to initiate appropriate departmental proceedings and without conducting a proper inquiry, the Manager could not have decided beforehand, without an enquiry under Rule 75, that the acts committed warranted only imposition of a minor penalty. The course open to the Manager was to follow the procedure under Rule 75 of Chapter XIVA of the KER before proceeding to decide on the nature of the punishment to be imposed against the petitioners. The petitioners could have placed materials in their possession and have defended themselves in a manner contemplated under law. The Manager has skipped the procedure and has proceeded on the basis of the report submitted by the educational authorities.

In that view of the matter, I am of the view that the order passed by the Manager cannot be sustained under law. Exts.P2 and P5 orders in W.P.(C) No. 6097/2019 and Ext.P7 order in W.P.(C) No.2067/2019 will stand quashed. It would be open to the Manager to proceed against the petitioners as ordered in Report No. VB

(6)/10986/2016/DPI dated 27.6.2018 (produced as Ext.P4 in W.P.(C) No.2067/2019) by conducting an enquiry as contemplated under Rule 75 of Chapter XIVA of the KER.

With these observations and directions, these writ petitions are disposed of. Sd/- RAJA VIJAYARAGHAVAN V JUDGE Sru APPENDIX OF WP(C) 2067/2019 PETITIONERS EXHIBITS EXHIBIT P1 TRUE COPY OF THE LETTER ISSUED BY THE HEADMISTRESS DATED 08.09.2016. EXHIBIT P2 TRUE COPY OF THE LETTER DATED 21.10.2016 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P3 TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED 25.10.2010. EXHIBIT P4 TRUE COPY OF THE ENQUIRY REPORT DATED 27.06.2018. EXHIBIT P5 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 03.11.2018. EXHIBIT P6 TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED 14.11.2018. EXHIBIT P7 TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 20.12.2018. EXHIBIT P8 TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE OFFICE ATTENDANT DATED 14.01.2019. EXHIBIT P9 TRUE COPY OF THE REPLY SUBMITTED BY THE OFFICE ATTENDANT DATED 15.01.2019. EXHIBIT P9 TRUE COPY OF THE MALAYALAM TRANSLATION OF EXHIBIT P9. APPENDIX OF WP(C) 6097/2019 EXHIBIT P1 TRUE COPY OF THE LETTER ISSUED BY THE HEADMISTRESS DATED 8.9.2016. EXHIBIT P2 TRUE COPY OF THE ENQUIRY REPORT DATED EXHIBIT P3 TRUE COPY OF THE SHOW CAUSE NOTICE DATED EXHIBIT P4 TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED 15/11/2018. EXHIBIT P5 TRUE COPY OF ORDER ISSUED BY THE 1ST RESPONDENT.

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