

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 5TH DAY OF JULY 2021 / 14TH ASHADHA, 1943

WA NO. 517 OF 2021

AGAINST THE JUDGMENT DATED 15-02-2021 IN WP(C) 3724/2020 OF HIGH
COURT OF KERALA

APPELLANT/PETITIONER:

P. MURALIDHARAN
MANAGER, KADAMBUR HIGHER SECONDARY SCHOOL,
KADAMBUR, KANNUR DISTRICT - 670663.

BY ADVS.
GEORGE POONTHOTTAM (SR.)
SMT.NISHA GEORGE

RESPONDENTS/RESPONDENTS:

- 1 THE REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION, PAYYAMBALAM P.O,
KANNUR DISTRICT - 670001.
- 2 VIJAYAKUMAR K.,
KARINJAPARAMBATH HOUSE,
PANNIYANNUR P.O, KANNUR DISTRICT - 670671.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05.07.2021,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T**Gopinath, J:**

The appellant is the Manager of an aided school. The 2nd respondent who was working in the post of Higher Secondary School Teacher (HSST) - Sanskrit faced allegations of sexual abuse against a girl student who appeared for an examination at the Government Girls Higher Secondary School, Thalassery, in which examination, the 2nd respondent was an Invigilator. On receiving information regarding registration of a crime against 2nd respondent, from the Station House Officer, Thalassery Police Station, Ext.P1 order of suspension was issued by the appellant on 25.06.2018. A reading of the order of suspension shows that the only reason for the suspension was the registration of a criminal case against the 2nd respondent. The fact of suspension was intimated to the 1st respondent as required under the provisions of Rule 67 of Chapter XIVA of Kerala Education Rules. The order of suspension was duly approved by the 1st respondent through Ext.p3 and the period of suspension was also extended through Ext.P.4 proceedings dated 09.07.2018 of the 1st respondent. A memo of charges dated 07.12.2018 was thereafter issued by the appellant to the 2nd respondent. The appellant also requested the 1st respondent to conduct a formal enquiry into the memo of charges through Ext.P.6 dated 18.12.2018.

2. The 2nd respondent filed a Crl. M.C. No.5843/2019 before this court seeking to quash the entire criminal proceedings initiated against him on the

premise that the alleged victim and members of her family have now come forward with a statement that the complaint was given upon a misunderstanding and that they do not intend to proceed with the criminal case against the 2nd respondent. This court, on a consideration of the materials placed on record and after hearing the learned Public Prosecutor and the learned counsel appearing for the alleged victim and her mother, quashed the criminal proceedings against the 2nd respondent. The 1st respondent on being appraised of the fact that the criminal proceedings against the 2nd respondent have been quashed reviewed the permission granted for the continuation of the suspension of the 2nd respondent and through Ext.P8 order dated 26.10.2019 directed that the 2nd respondent shall be reinstated in service forthwith. This order of the 1st respondent was challenged in the writ petition.

3. The learned Single Judge, on a consideration of the matter, found that while the disciplinary proceedings may not be dependent upon the quashing of the criminal proceedings, the 2nd respondent could be reinstated in service. The learned Single Judge also directed the 1st respondent to take up the request made by the petitioner for the conduct of the formal enquiry against the 2nd respondent without taking into consideration the reasons set out in Ext.P.8 and complete the proceedings in the manner provided for in the provisions of the Kerala Education Rules.

4. Rule 67 of Chapter XIV A of the Kerala Education Rules, 1959 (the 'KER'), among other things, enables the Manager of an aided educational institution to place a teacher under suspension on the registration of a criminal case against the teacher and during the course of its investigation or trial. The Rule requires the permission of the educational authorities for the continuation of such suspension beyond 15 days and also provides for the review of any permission granted for the continuation of the suspension. The short question that arises for our consideration in this appeal is whether an order of suspension issued on the basis of registration of a criminal case ought to be revoked on the termination of such criminal proceedings.

5. We have heard Sri. George Poonthottam, learned senior counsel appearing for the appellant instructed in that behalf by Smt. Nisha George, the learned counsel for the appellant, Sri. A.J. Vargheese, learned Senior Government Pleader appearing for the 1st respondent and Sri.P.C Sasidharan the learned counsel for the 2nd respondent.

6. The learned senior counsel appearing for the appellant relies on (i) ***Prasanth M.P v. State of Kerala and others*** 2016 (3) KHC 157; (ii) ***Divisional Controller, KSRTC v. M.G. Vittal Rao*** (2012) 1 SCC 442 and (iii) ***State of Orissa v. Bimala Kumar Mohanty*** (1994) 4 SCC 126 to contend that we should not place any reliance on the fact that a criminal case against the 2nd respondent has been quashed. He states that it has been settled

through the judgment in ***Arun Singh and others v. State of U.P. through its Secretary and another*** (2020) 3 SCC 736 that offences under the Protection of Children from Sexual Offences Act, 2012 cannot be quashed on the basis of settlement.

7. Sri. P.C. Sasidharan, the learned counsel appearing for the 2nd respondent would rely on ***Ajay Kumar Choudhary v. Union of India and another***; (2015) 7 SCC 29 to contend that an order of suspension cannot be continued for an unlimited time. He also places reliance on ***Village Panchayat, Calangute v. Additional Director of Panchayat-II and others***; (2012) 7 SCC 770 to contend that the Manager had no *locus standi* to challenge Ext.P8 order of the 1st respondent as it is statutorily provided under Rule 81A of Chapter XIVA of the Kerala Education Rules that the Manager is an authority subordinate to the 1st respondent. The learned Senior Government Pleader would submit that considering the fact that Ext.P1 suspension order is one relatable to the circumstances mentioned in Rule 67 (1) (b) of Chapter XIVA of KER and since the 1st respondent was required to review the permission granted to continue a teacher under suspension under sub-rule 8A of Rule 67 in Chapter XIVA of KER, there is no illegality or infirmity in Ext.P.8 and that the learned Single Judge has rightly upheld the validity of Ext.P.8.

8. Having considered the rival submissions and having perused the records and for reasons that follow we are of the opinion that the impugned

Ext.P.8 order is perfectly justified and in accordance with the law. Rule 67 (1) of Chapter XIVA of the KER contemplates 3 situations where the Manager of an aided school can place a teacher under suspension; **(i)** *“when disciplinary proceedings against him are contemplated or are pending”* or **(ii)** *“when a case against him in respect of any criminal offence is under investigation or trial”* or **(iii)** *“when the final orders are pending in the disciplinary proceedings if the authority considers that in the then prevailing circumstances it is necessary, in public interest that the teacher should be suspended from service.”* It is obvious from a reading of Ext.P.1 order of suspension that it was one issued by the Manager having regard to the circumstances mentioned in sub-rule (b) of Rule 67 (1) of Chapter XIVA of the KER, which provides that an order of suspension may be issued when a case alleging commission of criminal offence is under investigation or trial. In the facts of the present case, it cannot be disputed that the criminal proceedings have been terminated on account of Ext.P.7 judgment of this Court. That being the situation, we are of the opinion that the order passed by the 1st respondent revoking the permission granted for continuing the 2nd respondent under suspension is perfectly justified in the facts and circumstances of this case. As rightly pointed out by the learned counsel appearing for the 2nd respondent and learned Senior Government Pleader once the criminal proceedings have been terminated on account of a judgment of this Court, the 1st respondent was required under sub-rule 8A of Chapter XIVA of

KER to review such order of suspension and if necessary to direct reinstatement of the teacher in question. Obviously, the exercise of the authority to grant an approval or permitting extension of the order of suspension by the 1st respondent will be in relation to the reasons stated in the original order of the suspension issued by the Manager. The reason for the original order of suspension, as already noticed is the registration of a criminal case against the 2nd respondent. That reason or ground for suspension vanished as soon as this court quashed the criminal proceedings against the 2nd respondent.

9. The learned senior counsel for the appellant may be right in contending that the disciplinary proceedings and the criminal case stand on a completely different footing. The Supreme Court in ***GM Tank v. State of Gujarat and others***; (2006) 5 SCC 446 has reviewed the law on the point and held that where the criminal proceedings and the disciplinary proceedings are based on an identical or similar set of facts and the charges in the criminal proceedings and disciplinary proceedings are one and the same, it would be unfair to allow finding in disciplinary proceedings to be sustained if, after a full-fledged trial, the court has come to the conclusion that the employee in question was liable to be exonerated. Here, the termination of proceedings against the 2nd respondent was not on account of acquittal following a full-fledged trial. The proceedings against the 2nd respondent have been quashed on the basis of the statement of the victim and her mother that they have no complaint against the

2nd respondent. Further, from the facts of this case and from a perusal of Ext.P.5 & P.5 (a) we find that there are certain allegations against the 2nd respondent which cannot be said to be identical with the allegation in the criminal proceedings. We are therefore of the opinion that the learned Single Judge rightly allowed the disciplinary proceedings to continue even while directing a reinstatement of the 2nd respondent in service. A reading of Rule 67 (1) of Chapter XIVA of KER, however, suggests to us that it might be open to the Manager to issue another order of suspension if the circumstances exist for the issuance of such an order either under Rule 67(1)(a) or 67 (1)(c) subject, of course, to the approval of such course of action by the 1st respondent. The claim of the 2nd respondent for subsistence allowance during the period of suspension and for any salary after the order of the 1st respondent revoking the order of suspension will be determined in accordance with law. With these observations, the writ appeal will stand dismissed confirming the judgment of the learned Single Judge.

Sd/-

A.K. JAYASANKARAN NAMBIAR
JUDGE

Sd/-

GOPINATH P.
JUDGE