

**(2024) 10 KL CK 0041**  
**In the High Court Of Kerala**  
**Case No : Writ Appeal No. 630 Of 2021**

Manager, Aided Muslim Lower Primary School

APPELLANT

Vs

Prasanth M.P.

RESPONDENT

**Date of Decision :** 03-10-2024

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Kerala Education Rules, 1959 — Rule 80, 92

**Citation :** (2024) 10 KL CK 0041

**Hon'ble Judges :** Amit Rawal, J;Easwaran S., J

**Bench :** Division Bench

**Advocate :** Elvin Peter P.J. Sidharth Sudheer, A.J.Varghese

**Final Decision :** Dismissed

## Judgement

Easwaran S., J.

1. The writ petitioner, as well as the 6th respondent in the writ petition, have come up with these intra-court appeals.

2. The facts, in brief, for disposal of these writ appeals are as follows:

The petitioner was appointed as Lower Primary School Assistant (LPSA) on 7.8.1999. On 14.10.2015, the petitioner was placed under suspension alleging that he physically manhandled the Manager and his wife. Thereafter, on 19.10.2015, the petitioner was served with a memo of charges. The suspension was later extended beyond fifteen days as per order dated 28.10.2015. Later on 12.4.2016, the District Educational Officer directed the Manager to reinstate the petitioner in service. Challenging the said direction, the Manager approached this Court in WP(C) No.17452/2016. By judgment dated 23.5.2016, the order was set aside and this Court directed the District Educational Officer to reconsider the case afresh. The Assistant Educational Officer completed the enquiry and submitted a report on 29-8-2016. Based on the enquiry report, Ext.P6 show cause notice dated 19.9.2016 was issued to the petitioner by the Manager. The

petitioner submitted his objection on 24.10.2016. Dissatisfied with the explanation given by the petitioner, the Manager as per letter dated 8.11.2016 addressed to the Assistant Educational Officer, sought prior permission for imposition of major penalty of dismissal from the service. The Assistant Educational Officer sought certain clarifications, which was given by the Manager. Later by Ext.P12 order dated 17.4.2017, declined the request of the Manager for imposing a major penalty. Aggrieved by the decision of the District Educational Officer, the Manager approached the Government and by GO(RT) No.4508/2017/G.Edn. dated 22.11.2017 (Ext.P14), the Government set aside the order of the District Educational Officer and granted permission to the Manager to impose the major penalty against the petitioner. Later by Ext.P15 order dated 24.11.2017, the Manager imposed the punishment of dismissal from service against the petitioner. Pertinently, the teacher/petitioner did not think fit to challenge Ext.P14 order. However, against the order dated 24.11.2017, the petitioner preferred appeal under Rule 80 of Chapter-XIV-A of the Kerala Education Rules, 1959 on 26.12.2017. The appeal was dismissed on 9.1.2018 by the District Educational Officer as per Ext.P17. On 12.2.2018, the petitioner filed a revision before the Government. By Ext.P19 order dated 27.5.2019, the Government rejected the revision filed by the petitioner and confirmed Ext.P17 order passed by the District Educational Officer, thereby upholding the punishment imposed against the petitioner. Challenging Ext.P19, the petitioner approached this Court by filing the present writ petition. However, when the present writ petition was filed challenging Ext.P19 order, the petitioner raised a challenge against Ext.P14 order dated 22.11.2017 whereby the Government had granted permission to the Manager to impose the penalty of dismissal from service against the petitioner. The learned Single Judge after considering the rival contentions, directed the Government to re-consider the punishment imposed against the petitioner without setting aside Ext.P19 order. The said direction was issued, especially since the learned Single Judge was of the opinion that the petitioner was entitled to the latitude of re-consideration of the punishment, vis-a-vis, the gravity of the proven offences.

3. Aggrieved by the said direction, the Manager filed intra-court appeal as W.A.No.630/2021 contending that without setting aside the orders impugned in the writ petition, the learned Single Judge could not have remitted the matter back to the Government for reconsideration. At the same time, the delinquent teacher also filed intra-court appeal as W.A.No.991/2021 stating that the learned Single Judge, having found that the petitioner was entitled for the latitude in the matter of punishment vis-a-vis the gravity of the offences alleged against him, ought to have set aside the impugned orders and without setting aside the impugned orders, no useful purpose will be served in remitting the matter before the Government.

4. We have heard Sri.K.R.Ganesh, the learned counsel appearing for the appellant-Manager in W.A.No.630/2021 and Dr.George Abraham, the learned counsel appearing for the appellant/writ petitioner in W.A.No.991/2021 and

Sri.Varghese A.J., the learned Government Pleader appearing for the State.

5. Since the writ petitioner has also come before us in W.A.No.991/2021, we will be considering the said appeal as the lead case, in order to decide as to whether the petitioner was entitled for any reliefs in the writ petition. This is especially since the petitioner contends that the learned Single Judge ought to have set aside the orders impugned in the writ petition before remitting the matter back to the Government.

6. As noticed above, in the light of the indisputable facts, our consideration would be bestowed from the events that occurred after issuance of the Ext.P14 order by Government permitting the Manager to impose the major penalty of dismissal from service against the petitioner. Incidentally, we would also have to examine whether the petitioner was liable to be visited with the corporal punishment of dismissal from service based on the finding of guilt by the enquiry officer in charges 2,3 and 5. It is to be noted that the manager was also satisfied with the report of enquiry finding that the petitioner was guilty of charge Nos.2, 3 and 5. Once the Government issued Ext.P14 order, the Manager proceeded to issue Ext.P15 order. We would at first instance, decide on the sustainability of the challenge raised by the petitioner before the statutory authorities against Ext.P15 order. As noticed above, the petitioner never questioned Ext.P14 order of the Government permitting the Manager to impose the punishment of dismissal from service. However, once the penalty of dismissal from service was imposed on the petitioner the petitioner preferred an appeal under Rule 80 of Chapter-XIV-A of the Kerala Education Rules before the District Educational Officer, Ottappalam.

7. We have bestowed our anxious consideration to the question as to whether the appeal preferred by the teacher against Ext.P15 order was maintainable or not. We must note that in the realm of administrative law, it is trite law that without challenging the basic order, avilment of statutory remedy against the consequential orders is of no consequence. Viewed in the above perspective, neither the appeal against Ext.P15 order nor the revision filed before the Government against Ext.P17 order could have been maintained. The petitioner having not approached this Court challenging Ext.P14 in a properly constituted writ petition at appropriate time, certainly has himself to blame. We thus hold that the appeal filed against Ext.P15 order was clearly not maintainable and accordingly, the same was rightly dismissed by the District Educational Officer. The petitioner thereafter attempted a revision before the Government, which resulted in Ext.P19 order. A reading of Ext.P19 order shows that the Government had mistakenly styled Ext.P18 revision petition dated 12.2.2018 as a review petition filed before it and proceeded to consider the same and ultimately found that there are no sustainable grounds raised and accordingly, dismissed the same. Hence it would be futile exercise in entertaining the challenge to these orders.

8. There is yet another reason as to why the statutory appeal and revision filed by the petitioner is to be held as not maintainable. Theoretically speaking,

against the order of dismissal imposed by the manager, the petitioner is entitled to file an appeal. However, in the absence of a challenge to the basic order passed by the Government (P14), the subordinate authority cannot sit in appeal over the decision of the Manager which is based on the permission granted by the Government as per Ext.P14. Still further, as against the order of rejection of the appeal, though the petitioner invoked the revisional power of the Government under Rule 92 of Chapter XIVA of Kerala Education Rules 1959, the Government was certainly bound by its earlier order. The revisional power under Rule 92 of XIV A would not be thus available to the Government to revisit its earlier decision when a challenge is raised to the consequent order passed in pursuance to Ext.P14 order. Therefore, the Government rightly rejected the revision filed by the petitioner. We may also hasten to add that since Ext.P14 order and Ext.P19 order being passed in independent proceedings, the petitioner also cannot fall back on the principles of merger. Hence, the appellate order and revisional order would thus become immune from challenge because of the basic infirmity as noticed above.

9. Perhaps the petitioner, being conscious of his handicap before presenting this writ petition, chose to challenge Ext.P14 order in this writ petition. Therefore, we will have to see whether challenge to Ext.P14 by the petitioner at this point of time is maintainable. If the answer is in the affirmative, then, the consequences will have to follow. If the answer is negative, then, necessarily, the writ petition will have to be dismissed.

10. It is now settled law that though the law of limitation may not strictly apply to the proceedings before this Court in a writ petition under Article 226 of the Constitution of India. But still, the writ petition will have to be filed within a reasonable time. Absence of challenge to Ext.P14 order dated 22.11.2017 at any point of time before Ext.P15 order was passed, is a determinative factor when we are judging the cause projected by the petitioner. It is also pertinent to note that there is no explanation for the delay of nearly two years caused in filing the writ petition raising challenge against Ext.P14 order. Hence, on this ground alone the writ petition is liable to be dismissed as not maintainable. We are fortified in our views based on the decision of the Supreme Court in *I.Chubha Jamir Vs State of Nagaland* [(2009) 15 SCC 169] wherein the Apex Court considered the issue as to whether the question of delay could be gone into at the appellate stage and held in affirmative that there is no inviolable rule that, once the writ petition is entertained, the appellate court is powerless to go into the question of delay and laches. Therefore, we hold that writ petition is not maintainable due to delay and laches.

11. Alternatively, even if we were to assume that the delay has been explained, the next question would be whether the petitioner is entitled to succeed on merits of the case.

12. Before we delve upon the merits of the case, we must not ignore the basic tenets of a well orchestrated education system is its discipline. The entire system

is thus built on discipline. In *Indulekha Joseph v. Vice Chancellor* [2008 (3) KLT 712], a Division Bench of this Court dealt with the discipline in an educational institution. Paragraph No.23 of the judgment reads as under :

"23. Discipline is the paramount asset of an educational institution. If the said virtue is not inculcated among the students and the teaching and non-teaching staff, it will have a disastrous and deleterious effect on the entire fabric of the society itself, because the educational institution is the breeding ground of the future generation. If any compromise is made in the matter of maintaining discipline in the institution, the result will be disastrous. The message should be loud and clear to all concerned that there is no premium in the matter of discipline in an educational institution. All other so called organisational and individual rights should be subject to the code of conduct prescribed by the institution. ...."

13. A reading of the report of enquiry against the petitioner shows that out of the five charges, three charges were proved against the petitioner. We are not called upon to decide the sufficiency of the evidence before the enquiry officer which persuaded him to find the petitioner guilty of charge Nos.2, 3 & 5. In our considered view, the charges leveled against the petitioner and proved after enquiry would certainly erode the discipline in the institution. We are definite in our view that the petitioner conducted himself unbecoming of a teacher who is supposed to be a role model to the students. On the basis of the findings arrived by the enquiry officer, the Manager decided to impose the punishment of dismissal from service against the petitioner. Normally, the decision on the question of penalty to be imposed on the delinquent employee is to be left to the wisdom of the disciplinary authority who is the best Judge of the cause. The decision of the disciplinary authority cannot be judicially reviewed by the court unless the same is shockingly disproportionate to the misconduct. Under the scheme of Kerala Education Rules 1959, the disciplinary authority, namely the manager, has to seek prior approval of the educational authority before issuing the same to the teacher. The principles underlying the aforesaid mandate could be traced to Rule 67(8) of Chapter-XIV-A of the Kerala Education Rules, 1959. It is in this context, we are constrained to note that Ext.P14 order, which was passed by the Government as early as on 22.11.2017 granting permission to the Manager to impose the punishment, being left unchallenged till 2019, the Manager rightly proceeded to impose the punishment. While testing the reasonableness of the subsequent action of the manager as affirmed by the Educational Authority as well as the Government, we cannot go behind Ext.P14 order in order to find out whether it was appropriate for the Government to have granted permission to the Manager to impose the penalty of dismissal from service. If we chose to do so, then we would be doing an injustice to the opposite party since an indefeasible right had accrued to the Manager on account of the failure of the petitioner to challenge Ext.P14 order at appropriate time. Hence, we thus decline the request of the petitioner.

14. Dr.George Abraham, the learned counsel appearing for the appellant/petitioner would fervently urge before us that the petitioner had an unblemished career as a teacher in the school and this was a solitary instance. He would further plead before this Court to take a lenient view against the punishment imposed by the Manager since the petitioner has a family to take care of. However, we are not impressed by the aforesaid argument . The misconduct on the part of the petitioner destroyed the discipline of the school. Therefore, we are clear in our mind that the Manager is perfectly justified in imposing the punishment against the writ petitioner dismissing him from the service, which has been rightly upheld by the Educational Authorities as well as by the Government.

15. We may further add that a perusal of the grounds of challenge to Ext.P14 reveals that the petitioner has not raised any serious challenge, except to contend that only because of the interference of the Minister, the Government passed Ext.P14 order. We must say that the said contention is not only vague, but also not supported by any material evidence, and, therefore, has to be rejected.

16. As an upshot of these discussions, we hold that the writ petition challenging Exts.P5, P14, P15, P17 and P19 orders is not maintainable. Thus, the learned Single Judge ought not to have directed the Government to reconsider the punishment imposed against the petitioner by showing a latitude on the ground that the proportionality of the punishment has to be revisited. In doing so, the learned Single Judge had completely ignored the overwhelming facts against the petitioner and had gone on a sympathetic ground, which is impermissible under law as it erodes discipline in an educational institution.

17. In the result, we find that the petitioner is not entitled to succeed and the writ petition is thus liable to be dismissed.

In view of our findings above, the appeal filed by the Manager deserves to be allowed. Accordingly, W.A.No.630/2021 is allowed, setting aside the judgment dated 5.3.2021 in WP(C) No.19414/2019. Consequently, WP(C) No.19414/2019 and also W.A.No.991/2021 would stand dismissed. No order as to costs.