
(1968) 02 KL CK 0005
In the High Court Of Kerala

Raman Nair (P.N.)

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-02-1968

Acts Referred:

Penal Code, 1860 (IPC) — Section 417, 468

Citation : (1969) 1 LLJ 333

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Judgement

V. Balakrishna Eradi, J.—The petitioner while functioning as a permanent teacher in the Sakthi Vilasom High School, Edanad, was placed under suspension with effect from 6 February 1957 pending enquiry into a criminal case instituted against him by the police for offences punishable under Sections 417 and 468 of the Indian Penal Code. Although the case ended in a conviction before the District Magistrate's Court of Ernakulam, the petitioner was ultimately acquitted on appeal by the judgment of the Additional Sessions Judge, Parur, dated 18 March 1960. In view of his having been so acquitted, he was directed to be reinstated in service by order dated 7 June 1961 passed by the District Educational Officer, Palai. Exhibit P. 2 is the certificate issued to the petitioner by the headmaster evidencing his reinstatement in service. Thus it would be seen that he was under suspension during the period from 6 February 1957 to 7 June 1961.

2. It is necessary to mention that at the time when the order of suspension was passed, the school in question was governed by the P.S.S. Scheme under which there was no responsibility on the part of the State to disburse the salaries due to the teachers in such private schools. In between the date of suspension and that of reinstatement of the petitioner, the Kerala Education Act and Rules came into force with effect from 1 June 1959. Probably, it was on account of the control exercised by the departmental officers over such institutions under the new Act and Rules that the District Educational Officer, Palai, passed the order

directing the reinstatement of the petitioner into service.

3. The petitioner made an application to respondent 2, the Regional Deputy Director of Public Instruction, Ernakulam, requesting for the disbursement of his salary for the period, 6 February 1957 to 7 June 1961, during which, according to him, he had been wrongly placed under suspension. Exhibit P. 3 is a copy of this representation filed by the petitioner. The petitioner's grievance is that even though three years had elapsed since then, no action whatever had been taken by the department on this petition filed by him and no reply had been sent to him. He accordingly came forward with this writ petition seeking a writ of mandamus compelling the respondents to disburse to him the salary which had accrued for the period during which he had been kept under suspension.

4. On behalf of respondent 1 a counter-affidavit has been filed wherein it is stated, inter alia, that the manager of the school by his letter dated 8 February 1965 had informed the District Educational Officer that the period of suspension was treated as such by his predecessor and that the Regional Deputy Director by his memorandum dated 6 December 1965 informed the District Educational Officer that no interference with the arrangement made by the manager was called for. It is further stated that the District Educational Officer forwarded to the manager a copy of the communication received by him from the Regional Deputy Director under cover of his letter dated 4 December 1965 and had requested the manager to give a suitable reply to the petitioner. It is further contended that under the P.S.S. Scheme the Government had no liability to pay the salary of the teachers and that at any rate the manager had already treated the period of suspension as such and since the petitioner had not filed any appeal to the department within a reasonable time against the action so taken by the manager he is not entitled to any relief from this Court. There is also a plea taken that the writ petition is highly belated.

5. It is the definite case of the petitioner that no reply had been received by him from the department or from the management in respect of his application for payment of the arrears of salary evidenced by Ex. P. 3. Even though the manager has been imploded in this petition as respondent 3, he has not come forward to deny this allegation and no affidavit has been filed by him stating that he had sent any reply to the petitioner as had been requested by the Regional Deputy Director. In these circumstances, I have no hesitation to accept as true the petitioner's averment that he had not received any reply to Ex. P. 3 petition either from the department or from the manager. That being so, I am not impressed with the objection taken in the counter-affidavit that this original petition is belated or that the petitioner could have filed an appeal to the department against the order passed by the manager treating the period of suspension.

6. It is no doubt true that under the P.S.S. Scheme there was no liability on the Government to pay the salaries of the teachers of private schools. But the position certainly did change with the introduction of the Kerala Education Act

and Rules As on the date of the coming into force of the aforesaid Act and rules, viz., 1 June 1959, the petitioner was a teacher in the service of an aided school, though under suspension. On the suspension being terminated and his being reinstated into service as per the direction of the District Educational Officer, he is certainly entitled to have a consideration by the appropriate authority as to how the period of suspension should be dealt with under Rule 91 of Chap. XIV (A) of the Kerala Education Rules (previously Rule 90). This obviously has not been done in the present case. Rule 91 states that

when a teacher who has been dismissed, removed or suspended is reinstated, rules for the time being in force relating to Government servant in the matter Bhall mutatis mutandis apply.

In other words, Rule 56 of the Kerala Service Rules is thereby made applicable to cases of teachers who had been suspended and are subsequently reinstated. As pointed out by this Court in Assistant Educational Officer, Kuttipuram v. Muhammed (vide p. 321 supra), Rule 56

is intended to serve a purpose, of making provision for payment during the period when a Government employee has been kept out of duty as the result of an order or suspension pending enquiry or has been kept out of duty because of the punishment of suspension or dismissal imposed on him, but had been reinstated.

It is an enabling provision for giving specific directions for disbursement of pay and allowances due to a person during such period or part of such pay and allowances depending upon the circumstance of the case. It has also been held by this Court as well as by the Supreme Court that the rule contemplates a quasi-judicial determination as to whether or not the suspension was wholly unjustified and whether or not the period spent on suspension should be treated as a period spent on duty. The authority concerned should apply its mind to these aspects and pass an order regarding the right of the petitioner to receive the pay and allowances for the period in question. The operation of this rule in the present case, however, will be only for the period during which the petitioner was under suspension after the coming into force of the Kerala Education Rules, that is, for the period from 1 June 1959 to 7 June 1961. It is, therefore, necessary that this matter should be considered and proper orders passed by a responsible authority. I would, therefore, direct that the petitioner may make a representation in this regard to respondent 2 within two weeks from today and if such a representation is made, respondent 2 would consider the matter in the light of the provision contained in Rule 56 of the Kerala Service Rules and the observations contained in this judgment and pass appropriate orders. No other directions are called for in this original petition. The original petition is disposed as above. I do not make any order as to costs.