

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 18<sup>TH</sup> DAY OF MAY 2022 / 28TH VAISAKHA, 1944

WP(C) NO. 19714 OF 2021

PETITIONER:

REV.T.G.JOHNSON  
MANAGER, SANKARA MENON MEMORIAL  
HIGHER SECONDARY SCHOOL, PAZHAMPALACODE,  
PALAKKAD DISTRICT. PIN 678 544.  
REP.BY HIS POWER OF ATTORNEY HOLDER,  
REV. E.P.VARGHESE,  
AGED 58 YEARS, S/O.ULAHANNAN,  
TREASURER, CO-ORDINATING COUNCIL OF  
THE CHURCH OF GOD IN SOUTH INDIA,  
ECCLESIA, KOCHI 682 024  
BY ADV KODOOTH SREEDHARAN

RESPONDENTS:

- 1 STATE OF KERALA  
REP.BY PRINCIPAL SECRETARY,  
GENERAL EDUCATION DEPARTMENT,  
(HIGHER SECONDARY)  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM PIN 695 001
- 2 THE DIRECTOR OF EDUCATION  
(HIGHER SECONDARY),  
GOVERNMENT OF KERALA,  
HOUSING BOARD BUILDING, SHANTHI NAGAR,  
THIRUVANANTHAPURAM, PIN 695 005
- 3 REGIONAL DEPUTY DIRECTOR  
HIGHER SECONDARY EDUCATION,  
MALAPPURAM, PIN 676 505

4 SIVAKUMARI R.  
AGED 51 YEARS, W/O.AJITH PRASAD,  
PRINCIPAL, SANKARA MENON MEMORIAL HIGHER  
SECONDARY SCHOOL, (UNDER SUSPENSION),  
PAZHAMPALACODE,  
PALAKKAD DISTRICT, PIN 678 544  
R/AT VEPPILKKAT HOUSE,  
PATTIPPARAMBU POST, THIRUVILLAUAMALA,  
THRISSUR DISTRICT 680 588

\*5 RAJESH.S  
AGED 47 YEARS, S/O. SHYAMALAN,  
RESIDING AT VALAKKARA,  
THAROOR.P.O., (VIA) ALATHUR.

\*(ADDL. R5 IS IMPLADED AS PER ORDER DATED  
7-10-2021 IN IA NO.1/2021 IN WPC NO. 19714/2021.

BY ADVS.

R1-R3 BY SMT.NISHA BOSE, SR. GOVT. PLEADER

R4 BY SRI.P.C.SASIDHARAN

R5 BY SRI.GEORGE ABRAHAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 15.03.2022, THE COURT ON 18.05.2022 DELIVERED  
THE FOLLOWING:

**"C.R."**

**BECHU KURIAN THOMAS, J.**

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**W.P.(C) No.19714 of 2021**  
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Dated this the 18<sup>th</sup> day of May, 2022

**JUDGMENT**

Petitioner is the Manager of Sankara Menon Memorial Higher Secondary School (for short the School). Smt.Sivakumari R., the fourth respondent, was the Principal of the School. She was initially suspended on 22.09.2020 which was extended for six months on 06-10-2020. The order of suspension was challenged by Smt.Sivakumari R., before this Court. By judgment dated 30.03.2021 in W.P.(C) No.125859 of 2020, this Court set aside the order of suspension as well as the order extending the period of suspension and issued the following directions:

*"In the afore circumstances, I have no hesitation to hold that the petitioner has made out a case warranting interference by this Court; and resultantly, I allow this Writ Petition and quash Exts.P18 and P20, however, leaving full liberty to the Manager and to the competent Educational Authorities to initiate and conclude any action against the petitioner, that may*

*be permissible under the KER, but only as per law and after following the imperative and mandatory procedure established under it."*

2. Immediately thereafter, on 07.04.2021, petitioner once again suspended the fourth respondent. Alleging that the Manager's refusal to reinstate her, pursuant to the judgment dated 30.03.2021, amounted to contempt of court, the fourth respondent filed Contempt Case (Civil) No.788 of 2021. However, by judgment dated 10.08.2021, this Court closed the contempt case, observing that if there was a violation of the statute, the remedy was to challenge it.

3. In the meantime, petitioner filed W.P.(C) No.10368 of 2021 seeking a direction to the Director of General Education (for short 'DGE') to consider the request for extension of the period of suspension imposed on the fourth respondent on 07-04-2021. The writ petition was disposed of by Ext.P6, directing a decision to be taken within two weeks. The impugned order dated 06.09.2021 was issued by the second respondent thereafter, directing the fourth respondent to be reinstated in service.

4. A counter affidavit has been filed by the fourth

respondent contending that the DGE had declined the request of the Manager to grant an extension of the order of suspension, since, to continue the suspension of a teacher beyond 15 days, sanction has to be obtained and for that purpose petitioner himself had filed W.P.(C) No.10368 of 2021 and obtained a direction to the DGE to consider the representation. It was also pleaded that on the expiry of the initial period of the order of suspension, the fourth respondent ought to have been re-inducted in service, as this Court had set aside the order of suspension. However, without reinducting the fourth respondent, another suspension order was issued as Ext.R4(a) for which an extension of period was also sought. A detailed representation was given as Ext.R4(b). Ext.R4(a) was issued in continuation of the earlier suspension order, which is legally not sustainable and hence, fourth respondent is liable to be reinstated. The fourth respondent also pleaded that as per Rule 67 of Chapter XIVA of KER, a teacher whose suspension has not been extended is duty-bound to be reinstated and also that liberty was granted by Ext.P1 only to proceed with the disciplinary action. Fourth respondent is kept under suspension from 23.09.2020 and no subsistence allowance has been paid after February, 2021 and

further that since the order of suspension was set aside by this Court, fourth respondent is entitled for salary from 23-09-2020 to 04-07-2021, excluding the 15 days from 07-04-2021. It was further pleaded that even otherwise, salary is liable to be paid to the fourth respondent from 22.04.2021.

5. I have heard Sri.Kodoth Sreedharan, the learned counsel for the petitioner, Sri.P.C.Sasidharan, the learned counsel for the fourth respondent as well as Sri.George Abraham, learned counsel for the fifth respondent apart from Smt. Nisha Bose, the learned Senior Government Pleader.

6. Indisputably the order of suspension imposed upon the fourth respondent was set aside by this Court in W.P.(C) No.2589 of 2020 and therefore there was no suspension or extension of suspension from 23-09-2020 till 07-04-2021. On the basis of the liberty granted by this Court to the petitioner to initiate and conclude any action against the fourth respondent, a fresh order of suspension was issued on 07-04-2021. An application was also filed before the second respondent seeking extension of suspension beyond 15 days and by the judgment in W.P.(C) No.10368 of 2021, this Court directed the second respondent to pass appropriate orders. Consequent to the said

direction and the objection filed by the fourth respondent, the second respondent issued Ext.P7 impugned order, directing the Manager to reinstate the fourth respondent.

7. In the decision in **Varghese v. Deputy Director of Education** (2000 (2) KLT 109), this Court held that Rule 67 of chapter XIVA of the KER will not apply to the Higher Secondary Schools. However, as per GO(MS) No.235(1)/2009/G.Edn. dated 05-12-2009, it was ordered that the provisions against the teaching and non-teaching staff of aided schools shall apply mutatis mutandis to the teaching and non-teaching staff of Aided Higher Secondary Schools. Subsequently, the proviso to Rule 67 and Rule 68 of Chapter XIVA of KER was amended by SRO No.433/2019 dated 30-06-2019 in exercise of the powers under section 36 of the Act. After the amendment, the proviso to Rule 67(7) of KER reads as below:

*"provided that no teacher shall be placed under suspension by the manager for a continuous period exceeding 15 days without the previous sanction of such other officer authorised by the Government in the case of teachers of Higher Secondary course and Principal and the Deputy Director (Education) in the case of Headmaster/Headmistress/Vice-Principal of Secondary Schools and Training School and of the Educational Officer in other cases."*

In view of the above amendment to Rule 67(7) and the

amendment carried out to Rule 68, there can be no quarrel that the provisions of Rule 67 and 68 as it stands, apply to the teachers of Higher Secondary Schools also. The decision of the Full Bench in **Varghese's case** (supra) cannot have any application in view of the change in statutory provisions.

8. A reading of the proviso to Rule 67(7) of Chapter XIV A of KER shows that sanction to extend the period of suspension can be granted by the officer authorised by the Government. Though the power of suspension is only with the Manager and for the first 15 days the said power is absolute, the subsequent power to extend the period of suspension is a regulated power. [See the decision in **Manager, S.N.V. High School v. State of Kerala** (1982 KLT 229)]. The statutory regulations as far as Higher Secondary Schools are concerned obligate an officer authorised by the Government alone to grant previous sanction to continue the period beyond 15 days. In other words, only the authorized officer can grant sanction extending the period of suspension beyond 15 days.

9. The learned Government Pleader submitted that no such authorisation has been issued by the Government till date conferring such a power on the DGE to extend the period of



suspension. Thus, in the absence of any officer having been authorised to grant sanction to extend the period of 15 days of suspension, the Government alone can extend the period. The second respondent cannot grant sanction to extend the period of suspension. Therefore when this Court directed the second respondent to pass orders on the application filed by the petitioner to extend the period of suspension, the second respondent could not have issued any order extending the period of suspension. Petitioner's application to the second respondent cannot be treated as a valid application to extend the period of suspension. Therefore in the eye of law, there is no application filed by the petitioner before the proper authority, to extend the period of suspension.

10. It is trite law that in the absence of an order extending the suspension period beyond 15 days, the teacher is entitled for reinstatement in service. In the instant case, the order of suspension is not in existence after 23-04-2021. The impugned order Ext.P7 directing the fourth respondent to be reinstated in service, therefore, does not call for any interference, even though the reasons given therein for arriving at the said conclusion, are different. The circumstances of the instant case

do not manifest a need to exercise the discretionary jurisdiction under Article 226 of the Constitution of India and hence I find no merit in this writ petition.

The writ petition fails and is hence dismissed.

Sd/-

**BECHU KURIAN THOMAS  
JUDGE**

vps

APPENDIX OF WP(C) 19714/2021

PETITIONER'S/S' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.25859/2020 DATED 30/3/2021 BY THIS HON'BLE COURT.
- EXHIBIT P2 TRUE COPY OF THE ORDER OF APPROVAL OF THE APPOINTMENT OF THE 4TH RESPONDENT DATED 22/1/2020
- EXHIBIT P3 TRUE COPY OF THE GO(MS) NO.192/2005 ISSUED BY THE GOVERNMENT.
- EXHIBIT P4 TRUE COPY OF THE COMMUNICATION ISSUED TO THE 4TH RESPONDENT BY THE PRINCIPAL SECRETARY DATED 15/7/2021
- EXHIBIT P5 TRUE COPY OF THE ORDER IN CCC NO.788/2021 DATED 10/8/2021 BY THIS HON'BLE COURT
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT IN WP(C) NO.10368/2021 DATED 23/4/2021 BY THIS HON'BLE COURT.
- EXHIBIT P7 TRUE COPY OF THE PROCEEDINGS OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION DATED 6/9/2021
- EXHIBIT P8 TRUE COPY OF THE LETTER DATED 22.9.2020 ISSUED BY MANAGER TO THE 4TH RESPONDENT
- EXHIBIT P9 TRUE COPY OF THE FIR IN CRIME NO 153/2022 BY THE ALATHUR POLICE STATION DATED 21.2.2022
- EXHIBIT P10 TRUE COPY OF THE FIR IN CRIME NO 154/2022 BY THE ALATHUR POLICE STATION DATED 21.2.2022
- EXHIBIT P11 TRUE COPY OF THE FIR IN CRIME NO 155/2022 BY THE LATHUR POLICE STATION DATED 21.2.2022

**RESPONDENT EXHIBITS**

**EXHIBIT R4 (a)            TRUE COPY OF THE ORDER ISSUED BY THE  
MANAGER DATED 07/04/2021.**

**EXHIBIT R4 (b)            TRUE COPY OF THE REPRESENTATION DATED  
09/07/2021 SUBMITTED BY THE PETITIONER  
BEFORE THE DIRECTOR OF GENERAL  
EDUCATION.**