IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 5TH DAY OF JANUARY 2023 / 15TH POUSHA, 1944

WP(C) NO. 10478 OF 2022

PETITIONER:

CHANDRA CHOODEN NAIR S.,
AGED 61 YEARS, S/O. SIVASANKARAN NAIR,
SECTION OFFICER (RETD), SECRETARIAT,
THIRUVANANTHAPURAM P.O, PIN - 695005,
RESIDING AT SANKARA MANGALAM, PALLIPURAM P.O,
THIRUVANANTHAPURAM - 695316.

BY ADVS. SRI. SAJITH KUMAR V.
SRI. VIVEK A.V.
SRI. GODWIN JOSEPH
SRI. APARNA CHANDRAN
SRI. REMYA VARMA N.K

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT,
GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM - 695005.

2 THE PRINCIPAL SECRETARY,
DEPARTMENT FOR GENERAL ADMINISTRATION (SECRET SECTION),
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM - 695005.

3 THE PRINCIPAL SECRETARY,
DEPARTMENT FOR FINANCE, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM - 695005.

4 THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF HOME, MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, NEW DELHI - 110001.

#5 JOINT COUNCIL OF STATE SERVICE ORGANIZATIONS(JCSSO)
REG. NO.32/69/GAD, PRESS CLUB ROAD, THYCAUD, THIRUVANANTHAPURAM, REPRESENTED BY ITS GENERAL SECRETARY V. JAYACHANDRAN @ JAYACHANDRAN KALLINGAL, AGED 53 YEARS, S/O. BALAKRISHNAN NAIR, KNRA65B, LANE14, KADAPPATHALA GOLF CLUB, KAWDIAR, THIRUVANANTHAPUARAM,PIN-695 003.

#6 ANISH C.A., 42 YEARS,
S/O. M. P. ARAVINDAKSHAN, NANDANAM, CHALASSERY HOUSE, PERUMBILLY P.O, MULAMTHURUTHY,ERNAKULAM, PIN-682 503.
(JUNIOR SUPERINTENDENT, COLLECTORATE, ERNAKULAM).

ADDITIONAL R5 AND ADDITIONAL R6 ARE IMPLEADED VIDE ORDER DATED 28/06/2022 IN I.A NO.1/22 IN WP(C) NO.10478/2022(S).

R1 TO R3 BY STATE ATTORNEY SHRI N.MANOJ KUMAR,
BY SRI. K.P.HARISH, SENIOR GOVERNMENT PLEADER
R4 BY ADV. SRI. S. MANU, DSGI (CGC)
R5 & R6 BY SENIOR ADVOCATE SRI. RENJITH THAMPAN
BY ADV. SRI. V.M.KRISHNAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

S. Manikumar, CJ

Instant public interest writ petition is filed for the following reliefs:

(i) To declare that the call for General Strike on 28th and 29th of March, 2022 proposing total cessation of work by forcefully preventing citizens of the State by blocking road and rail is an unconstitutional act and against the binding judgments of this Court including **Bharath Kumar v. State of Kerala** [1997 (2) KLT 287 (FB)].

(ii) Issue a writ in the nature of mandamus commanding the respondents 1 to 3 to issue appropriate orders/directions similar to Exhibits P5 to P7, to ensure compulsory attendance of Government servants on the days of General Strike and to initiate disciplinary proceedings as per service rules against the employees abstaining from work on 28th and 29th March, 2022.

(iii) Issue a writ in the nature of mandamus commanding the respondents 1 to 3 to issue orders directing the police personnel to invoke the provisions of Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019 against any person/mob/group causing any damage or loss to the private property in connection with the rally/procession in connection with the General Strike on 28th and 29th March, 2022.

(iv) Issue a writ in the nature of mandamus commanding the respondents 1 to 3 to declare dies-non on 28th and 29th March, 2022 for the employees/Government servants abstaining from work, except for medical emergencies and to Initiate appropriate disciplinary proceedings and to withdraw the salary for their absence on the days of General Strike.

(v) Issue a writ in the nature of mandamus commanding the 1st respondent to constitute rapid action teams at the district level for the specific purpose of dealing with mob violence and destruction as directed by the Hon'ble Apex

Court in **Tehseen S. Poonawala v. Union of India** (2018 KHC 6513)."

2. Brief facts for disposal of the writ petition are that; petitioner retired from the service as a Section Officer in the Secretariat, Thiruvananthapuram, in the year 2017. After retirement, he got enrolled and is practicing in courts mainly at Thiruvananthapuram, for the past 4 years. He stated that the National Convention of Workers had proposed to organise a nation-wide strike on February 23-24 during the budget session of Parliament. In view of the pandemic and assembly election, in various parts of the country, the strike was postponed to March 28-29. However, the trade unions had called for a nation-wide strike to protest against the economic policies of the country, by giving two month's notice in advance.

3. Petitioner seeks to bring to the notice of this Court the *mala fide* attempt on the part of respondents 1 to 3, viz., Chief Secretary to the Government, State of Kerala, Trivandrum; the Principal Secretary, Department of General Administration (Secret Section), Trivandrum; and the Principal Secretary, Department of Finance, Trivandrum, to aid and assist the general strike on 28th and 29th of March, 2022, by permitting eligible leave with salary to the State Government employees taking part

in the general strike, by not declaring dies-non, in terms of the directions of this Court in W.P.(C) No. 5752/2019.

4. Petitioner has also stated that this Court has prohibited Bandh in Kerala and directed respondents 1 to 3 herein to issue orders mandating the attendance of Government servants and declaration of *dies non*, on days of general strike, to mitigate the inconvenience and hardship caused to the public. However, over the past few years, respondents 1 to 3 herein have acted hand in glove with the trade unions and encouraged the Government servants and teachers to participate in general strike against the policies of Central Government by offering to regularize the absence in strike days as eligible leave with salary.

5. Petitioner has further pointed out that in W.P.(C) No. 5752/2019, this Court quashed the Government order dated 31.01.2019 (Exhibit-P10) permitting the State Government employees and teachers to avail casual and other eligible leaves for 8th and 9th of January, 2019, wherein they were absent from duties as a part of National General Strike, and directed respondents 1 to 3 herein, to verify the attendance register and take action, in accordance with law. However, no such steps were taken by respondents 1 to 3 till date and presently, they have extended unbridled

support to the strike proposed on 28th and 29th March, 2022, by not declaring dies-non nor even mandating the compulsory attendance of Government servants on the days of proposed general strike.

6. Petitioner has further stated that the trade unions of the ruling party have offered eligible leave and salary to the Government servants for abstaining from office on 28th and 29th of March, 2022, to support the general strike, which according to him, is being done when workers striking against the State Government are penalized appropriately as reflected in Exhibit-P15 news report dated 22.03.2022 published in New Indian Express.

7. Petitioner has further stated that in view of the directions issued by this Court, prohibiting Bandh and veiling of Bandh as general strike, the State Government issued orders in advance for avoiding inconvenience to the public, which restricted the entitlement of leave for the employees except on medical grounds with various restrictions. Though the District Collectors and Heads of Departments were also directed to protect those employees, who are not on strike, and to ensure unhindered access to Government offices and institutions, no such steps were taken. The *dies-non* has not been declared in advance, informing

that the pay for the day in which strike is conducted, will be withheld from salary.

8. Referring to Exhibits-P6 and P7 Government orders dated 18.02.2013 and 6.1.2016 issued by the 2nd respondent – the Principal Secretary to the Government, Department of General Administration, petitioner has stated that in the year 2013 and 2016 also, a similar situation arose and the State Government have issued orders almost on similar terms as that of Exhibit-P5. He has further stated that there were clear instructions prohibiting leave and to prevent violence or destruction of public property and the District Collectors were directed to ensure that the normal functioning of the essential services under their control is not interfered with.

9. Petitioner has also contended that the action on the part of respondents 1 to 3 in implicitly supporting the general strike, by not insisting for attendance, and not declaring dies non, on the days of general strike is illegal and hence, instant writ petition is filed for the reliefs stated supra.

10. On the above pleadings, petitioner has raised the following grounds in the writ petition:

A. Respondents 1 to 3 have failed to uphold the Constitutional ethos by failing to comply with the directions of this Court in taking effective steps to mitigate the effect of general strike. In spite of repeated directions against the conduct of Bandh, by the call of harthal/ general strike, the official respondents and political administration are yet to issue any orders to carry out their duties and responsibilities, as envisaged in the Constitution, to protect the freedom of movement of the citizens of the State.

B. The ruling party trade unions have given verbal assurance of their salary and leave during strike days to their members to support the national general strike. The political parties in the State have openly declared their support and called for the support of Government servants to make the general strike a grand success, despite the specific directions of this Court in various cases. The inaction on the part of the official Respondents in taking adequate preventive/remedial measures to mitigate the impact of general strike on 28th and 29th March, 2022 to the general public amounts to breakdown of constitutional machinery of the State.

C. The State of Kerala is trying hard to tide over the adverse effects of Covid-19 pandemic and reconstruction and rejuvenation works are going ahead. The traders and the businessmen are attempting to revive their business and to ensure their livelihood. Even the common citizens are trying hard to earn some money to take back their lives to the pre-pandemic days and the present general strike would cause irreparable Injury and hardship to the common people. The information about the General Strike itself has severely affected the tourism sector of the State and the cancellation of bookings itself evidences the impact on the revenue from tourism. The failure on the part of respondents 1 to 3 in issuing appropriate directions/orders to enable the free movement of people and goods would adversely affect the pandemic affected State and people alike. Furthermore, any attempt to support or grant earned leave or salary to the striking employees would seriously jeopardize the livelihood of citizens. The Inaction on the part of respondents 1 to 3 in

taking adequate measures to mitigate the effect of general strike on the general public is illegal and unjust.

D. In this particular case, the call for general strike was made by a section of the trade unions and the same would adversely affect the free movement of people and goods during the days of general strike. The strike by Government employees would further aggravate the situation and unorganized sectors would also be affected due to the general strike called by a section of the employees/trade unions with purely political objectives. In such a situation, the inaction on the part of respondents 1 to 3 in issuing appropriate orders similar to Exhibits P5 to P7 mandating the attendance of Government employees in the offices except for exceptional situations would amount to support/encouragement to general strike and the implied offer of eligible leave and salary to the striking employees would further worsen the situation of the common public trying hard to earn their daily bread. Therefore, it is highly necessary that appropriate orders/directions are issued by respondents 1 to 3 to ensure mandatory attendance of Government employees during the days of general strike and to not to issue any order regularizing/granting salary on the days of general strike. According to the petitioner, respondents 1 to 3 are bound to issue orders/directions declaring that the Government employees abstaining from work on days of general strike, except for medical reasons or other emergencies, would be subject to disciplinary proceedings and punishment in accordance with law.

E. This Court had declared Bandh as illegal in **Bharath Kumar v. State of Kerala** reported in **1997 (2) KLT 287(FB)**. The same was upheld by the Honourable Supreme Court also. The legal position was reiterated by another Full Bench of this Honourable Court in **George Kurian v. State of Kerala** reported in **2004 (2) KLT 758 (FB)**. Therefore, the respondents 1 to 3 are duty bound to take appropriate steps to avoid the occurrence of a harthal However, in the present case, the ruling party dispensation along with the opposition are acting hand in glove to coerce the Government employees/ trade union members to abstain from work on the days of General

Strike turning it into a Bandh. The culpable inaction on the part of the Respondents 1 to 3 in taking adequate measures to ensure free movement of people and goods on the days of General Strike is arbitrary and violative of Articles 14 and 21 of the Constitution of India.

F. Petitioner has also contended that Government of Kerala had enacted the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019 taking cue from the Prevention of Damage to Public Property Act, 1894, to deal with the damage to private property caused by the striking employees/mobs. In the earlier instances, Government had invoked the provisions of the enactment to deal with such instances of violence/damage on the days of Sabarimala protests and in the instant case, the respondents are bound to declare that the provisions of the enactment would be invoked to deal any instances of damages to private property by the members/participants of General Strike on 28th and 29th March, 2022.

G. Respondents 1 to 3 are constitutionally bound to notify that the provisions of 2019 Act would be invoked and cases will be registered against any/all individuals of the mob/group causing any damage/loss to private property in connection with the rallies and protests on the days of General Strike. The inaction on the part of the Respondents in issuing appropriate orders/directions notifying the registration of cases under 2019 Act against any person causing damage to private property in connection with the general strike on 28th and 29th March, 2022 is highly illegal and unjust.

H. Exhibit P15 news report itself evidences that the mere call for general strike has caused significant revenue loss to the Government from the tourism sector. Therefore, the impact of the general strike on the lives of the common people including the traders, businessmen, street vendors and other poor sections of the society is beyond imagination. The loss of work/business for 2 days at the end of the financial year would severely affect the entire economy of the nation including the GDP. Furthermore, the nation itself on the path of recovery and

rejuvenation from the adverse effects of Covid-19 pandemic would be pulled down to a standstill due to the General strike by a section of the trade unions.

I. Referring to the Kerala Government Servants Conduct Rules, 1960, Rule 77(b)(2), petitioner has submitted that a service association shall not resort to any strike or use threat of strike as a means of achieving any of its purposes or for any other reasons. Referring to Rule 77 (b)(10), petitioner has also submitted that a service association shall not do any act which if done by a government servant contravening any of the provisions of the Kerala Government Servants Conduct Rules. In Rule 86, there is an express prohibition from taking part in the strike. The above provisions read together restrains a Government servant or an association from resorting to strike against the policies of the Government.

J. As per Rule 14 (a) of Part I of Kerala Service Rules, the period of unauthorized absence of an officer on account of participation in strike shall be treated as dies-non. Such an officer shall not be eligible for pay and allowance for that period and shall not even be counted for admissibility of earned leave. In view of the specific statutory provisions, 1st respondent owes a responsibility to impose dies-non against the striking employees on 28th and 29th March, 2022.

11. On 01.08.2022, taking note of the fact that Government have issued proceedings to initiate disciplinary action as per the Kerala Service Rules against Government employees, who have abstained from work on 28.03.2022 and 29.03.2022, we directed the learned Senior Government Pleader to obtain all the necessary details from various Government offices/departments, as regards the number of Government employees, who were engaged in the strike, against whom action is taken etc. It was

also ordered that the details of employees, who have availed leave, permission whether granted or not/pending and outcome of the same shall be furnished in a tabular column.

12. Thereafter, on 26.08.2022, we passed the following order:

> "Earlier, vide judgment in **G. Balagopalan v. State of Kerala and Others** reported in **2021 Lab IC 1764** dated 02.02.2021, while quashing Exhibit P1 Government Order dated 31.01.2019 issued by the Principal Secretary, Department of General Administration (Secret Section), Thiruvananthapuram, respondent No.2 therein, we directed the 2nd respondent and the Heads of the Departments to scrutinise the attendance registers and take action, in accordance with law, within two months from the date of receipt of a certified copy of the judgment.
>
> 2. Taking note of the above, in the instant writ petition, we passed an order on 01.08.2022 as hereunder:
>
> > "Mr. V.M. Krishnakumar, learned counsel for additional respondent Nos.5 and 6, prays for some more time to file their respective counter affidavits.
> >
> > 2. Mr. K.P. Harish, learned Senior Government Pleader, submitted that vide G. O. (P) No. 10/2022/GAD dated 28.03.2022, Government have issued orders directing to treat the unauthorized absence of employees participating in the strike as dies-non and directions have also been issued to take action against those who have availed unauthorized leave. Submission of the learned Senior Government Pleader is placed on record.
> >
> > 3. However, taking note of the fact that Government have issued proceedings to initiate disciplinary action as per the Kerala Service Rules against Government Employees, who have abstained from work on 28.03.2022 and 29.03.2022,

> we direct Mr. K.P. Harish, learned Senior Government Pleader, to obtain all necessary details from various Government Offices / Departments, regarding the number of Government Employees, who were engaged in the strike, against whom action is taken. Details of employees who have availed leave, permission whether granted or not / pending and outcome of the same, shall be furnished in a tabular column.
>
> 4. Mr. K.P. Harish, learned Senior Government Pleader, requests three weeks time to file a detailed statement, with all supporting documents.
>
> We make it clear that the said statement should also contain the details of the disciplinary action taken, outcome etc.
>
> Post on 24.08.2022."

3. On this day, when the matter came up for further hearing, Mr.K.P.Harish, learned Senior Government Pleader has filed a memo dated 25.08.2022 as hereunder:

"As directed by this Hon'ble Court on 01.08.2022, the Principal Secretary to Government, General Administration (SS) Department, issued directions to all the Heads of the Departments of Government Departments, Universities. Heads of Departments of PSUs requesting them to furnish the consolidated details from all the subordinate offices/institutions under them in the prescribed proforma on 08.08.2022 vide letter No. SS1/16/2022/GAD dated 08.08.2022, I am producing herewith the letter and performa along with this memo.

The details of about 5 lakh employees (government servants and teachers) working under different Government Departments and Employees of Boards, Public Sector Undertakings, Universities etc. are to be collected and compiled for filing the report. The collection and compilation of the above is a time consuming process. In compliance of the direction of this Hon'ble Court though process has been initiated, three more months time is required for collection of the entire

> data and compilation. The above letter and performa produced along with this memo may be accepted on the file as part of the record in the interest of Justice."
>
> 4. Though the learned Senior Government Pleader has sought for three months' time, we are not inclined to grant the same for the reason that directions have been issued in W.P. (C)No.5752 of 2019 way back on February 2021, directing the Principal Secretary, Department of General Administration (Secret Section), Thiruvananthapuram, respondent No.2 therein and Heads of the Departments to take appropriate action. Following the directions, if any action has already been taken, the same would be available with the Heads of the Departments/Principal Secretary, Department of General Administration (Secret Section), Thiruvananthapuram (respondent No.2 therein).
>
> 5. However, Mr.K.P.Harish, learned Senior Government Pleader submitted that some details have already been received and compilation of the same would take some time.
>
> Post after three weeks for filing the necessary details as directed."

13. Pursuant to the order dated 01.08.2022, Mr. K.P.Harish, learned Senior Government Pleader, has filed a memo dated 25.08.2022, wherein it is stated that the Principal Secretary to the Government, General Administration (SS) Department, has issued directions to all the Heads of Departments, Universities, and Heads of Departments of PSUS, to furnish the consolidated details from all the subordinate offices/institutions under them, in the prescribed proforma vide letter No.SS1/16/2022/GAD. dated 08.08.2022.

14. That apart, the 1st respondent has filed a detailed statement dated 20.09.2022, wherein, it is averred that in compliance of the order dated 28.03.2022, Government have issued directions to prevent the general strike on 28.03.2022 and 29.03.2022 vide G.O.(P) No.10/2022/GAD dated 28.03.2022. It is also stated that the directions, inter alia, include instructions to all the Heads of Departments to treat the unauthorised absence of employees participating in the strike as dies non under Rule 14 Part I KSR and the pay for the days in which the strike is taking place, will be withheld from the salary for the month of April, 2022.

15. It is further stated that the State Government have issued further directions on 31.08.2022, to the remaining Heads of Departments, Universities, etc., to furnish the consolidated details from all the subordinate offices/institutions under them, in the prescribed revised proforma dated 31.08.2022, vide letter No.SS1/16/2022/GAD, and that, in pursuance of the revised proforma issued, majority of the Heads of Departments have forwarded the details as sought for, in a tabular column [Annexure-R1(d)].

16. Annexure-R1(d) statement shows the details of Government employees, who have availed leave; permission, whether granted or

not/pending and outcome of the same; that out of 4,65,867 employees, 1,72,668 and 1,62,354 number of employees were engaged in the strike on 28th and 29th of March, 2022 respectively; and that the salary of 1,68,598 and 1,29,209 number of employees have been withheld during those days, in compliance of the order dated 28.03.2022.

17. It is also stated that in the statement that the details of about 5 lakh employees (Government servants and teachers), working under different departments, Universities, etc., are to be collected and compiled and that it is a time consuming process.

18. That apart, the learned Senior Government Pleader has produced letter No.SS1/16/2022/GAD. dated 13.10.2022, wherein the details received from the Heads of Departments are consolidated in the form of a statement, as regards the National Strike on 28th and 29th March, 2022. Said statement reveals that, salary of 196931 employees has been withheld for absence on 28.03.2022 and salary of 156845 employees has been withheld for absence on 29.03.2022 respectively. It is specifically mentioned in the said statement that disciplinary action was taken against 24 employees, who were absent on 28.03.2022, and against 4 employees, absent on 29.03.2022 respectively.

19. Finally, it is contended that the State Government is taking earnest efforts to collect the details of the employees from various departments, including forest, revenue, higher secondary education, public works etc.

20. Heard Mr. V. Sajith Kumar, learned counsel for the petitioner; Mr. Ranjith Thampan, learned Senior Counsel appearing for additional respondents 5 and 6; Mr. K.P. Harish, learned Senior Government Pleader; and perused the material on record.

21. G.O.(P) No.10/2022/GAD dated 28.03.2022 is reproduced:

"Government of Kerala

Abstract

General Administration Department – Public Service – Strike by a section of employees on 28th and 29th March, 2022, Measures for dealing with – Orders issued

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GENERAL ADMINISTRATION (SS) DEPARTMENT

G.O.(P) No.10/2022/GAD

Dated, Thiruvananthapuram, 28-03-2022

Read:- Order dated 28.03.2022 of the Hon'ble High Court of Kerala in WP(C) No.10478/2022

O R D E R

Certain organisations of State Government Employees and Teachers have gone on strike on 28 and 29 of March, 2022 in connection with the National level strike.

The matter has been brought to the notice of Hon'ble High Court by Shri Chandrachoodan Nair through WP(C) No. 10478/2022 to declare the strike as illegal and seeking directions to ensure attendance of the Government servants and to initiate disciplinary proceedings as per service Rules against those employees who abstain from work. As per Rule 14 A of Part I of Kerala Service Rules, the period of unauthorised absence of an officer on account of participation in a strike shall be treated as dies-non.

The Hon'ble High Court in the order read above declared the ongoing strike of Government employees illegal and directed Government to issue directions to prevent the Government Servants from engaging in strikes and to enable operation of vehicles.

In compliance with the directions, following orders are issued:

1. The unauthorised absence of employees participating in the strike will be treated as *dies-non,* under Rule 14 A of Part I KSR The pay for the days in which the strike is taking place will be withheld from the salary for the month of April 2022.

2. No leave of any kind shall be granted to Government Employees and Teachers etc., for the strike days except on the following grounds:

(a) Sickness of the individual or near relatives (near relative will mean wife, husband, children, father, and mother of the Government servant).

(b) Examination purpose of the employee.

(c) Maternity purpose of the employee.

(d) Other unavoidable reasons of a like nature.

3. Persons indulging in violence or destruction of public property will be prosecuted.

4. Provisional recruits in Government Service who absent themselves without sanction during the days of the strike will be removed from service.

5. Heads of Departments will ensure that Rule 86 of Kerala Government Servants' Conduct Rules, 1960 and the Circular No. 142749/SS1/84/GAD Dated 21st January, 1985 are not violated,

and in case of violation. appropriate action is taken.

6. Managing Director, Kerala State Road Transport Corporation and the District Collectors will ensure that sufficient vehicles are operated to enable the Government Servants to attend duty.

7. The District Collectors, Heads of Departments, District Police Chiefs, etc., will take action:

a) To give protection to those not on strike.

b) To ensure unhindered access to Government Offices/ institutions, and

c) to avoid overcrowding in front of the gates of the offices.

By order of the Governor

Dr. VP Joy
Chief Secretary"

22. The elaborate discussion of facts made above would make it clear that the question emerging for consideration is as to whether, Government employees are entitled to participate in a strike against the provisions of the Service Rules.

23. In fact, the said question was considered by us elaborately in the judgment in **G. Balagopalan v. State of Kerala and Others** reported in **2021 Lab IC 1764**, taking into account the provisions of Kerala Service Rules, as well as the notifications issued by the State Government, and has arrived at the conclusion that if any Government employee participate in a strike, in violation of the provisions of the Government Servants' Conduct Rules, 1960/notifications/circulars issued by the State

Government, affecting the normal life of the public and Public Exchequer, is not entitled to be protected under the rights guaranteed in Article 19(1)(c) of the Constitution of India. It was further held therein that there is no legal right for the workers or any associations, to call for a general strike or instigate the employees to strike, in the guise of the fundamental right guaranteed under Article 19(1)(c) of the Constitution.

24. We have also found, in the decision in **G. Balagopalan** (cited supra), that Part I of the Kerala Service Rules and Kerala Government Servants' Conduct Rules, 1960, discussed therein, make it clear that if any Government servant indulges in strike, he is liable to be proceeded in accordance with the provisions of the said rules.

25. Anyhow, the State Government, in their statement filed before this Court along with the documents produced as Annexures, have made it clear that steps are being taken to proceed against the workers/ Government employees, who had participated in the strike held on 28th and 29th of March, 2022. The facts and figures also would show that necessary steps are being taken, in order to identify the workers/employees who have taken leave for participating in the strike, in accordance with the provisions of Kerala Service Rules and other

notifications/circulars issued by the State Government.

26. It is also to be noted that against the judgment dated 2.2.2021 in W.P.(C) No.5752/2019, [***G. Balagopalan's*** *case (cited supra)*], by which G.O.(P) No.1/2019/GAD. dated 31.01.2019 has been quashed, though the State Government has filed S.L.P(C) No.6922/2021, no order of stay has been granted by the Hon'ble Apex Court.

27. In the light of the above and since action is being taken by the State Government against the erring employees, we are of the view that this writ petition can be disposed of in terms of what is stated in the statement filed by the 1st respondent.

28. Accordingly, this writ petition is disposed of recording the steps taken by the Government, as stated in the statement filed before this Court along with the documents, and consequently, there will be a direction to the State Government, to proceed with the action and do the necessary, in order to ensure that the erring workers/employees who have acted against the Kerala Service Rules and other Conduct Rules, circulars/notifications issued by the State Government, in regard to participation in strikes, in accordance with law, and culminate in appropriate action.

We make it clear that the proposition of law laid down in **G. Balagopalan**'s case (cited supra) would be squarely applicable to the instant writ petition also.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P.CHALY
JUDGE

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APPENDIX

PETITIONER EXHIBITS:-

Exhibit P1	COPY OF THE ONLINE NEWS REPORT DATED 10.03.2022 IN THE HINDU.
Exhibit P2	COPY OF THE JUDGMENT DATED 02.02.2021 IN WP(C) NO.5752/2019 OF THIS HON'BLE COURT REPORTED IN 2021 SCC ONLINE KER 533.
Exhibit P3	COPY OF THE NEWS REPORT DATED 29.01.2022 IN THE ECONOMIC TIMES.
Exhibit P4	COPY OF THE NEWS REPORT DATED 23.02.2022 IN THE NEW INDIAN EXPRESS ONLINE.
Exhibit P5	COPY OF THE ORDER NO.G.O(P) NO.211/2012/GAD DATED 17.08.2012 BY THE 2ND RESPONDENT.
Exhibit P6	COPY OF THE G.O(P) NO. 42/2013/GAD DATED 18.02.2013 ISSUED BY THE 2ND RESPONDENT.
Exhibit P7	COPY OF THE G.O(P) NO.5/2016/GAD DATED 06.01.2016 ISSUED BY THE 2ND RESPONDENT.
Exhibit P8	COPY OF THE NEWS REPORT DATED 09.01.2019 IN THE HINDU DAILY.
Exhibit P8(a)	COPY OF THE NEWS REPORT DATED 10.01.2019 IN THE HINDU DAILY.
Exhibit P8(b)	COPY OF THE NEWS REPORT DATED 12.01.2019 IN THE HINDU DAILY.
Exhibit P9	COPY OF THE ONLINE NEWS REPORT DATED 10.01.2019 IN THE ECONOMIC TIMES.
Exhibit P10	COPY OF THE G.O(PRINT) NO.1/2019/GAD DATED 31.01.2019 ISSUED BY THE 2ND RESPONDENT ALONG WITH ENGLISH TRANSLATION.
Exhibit P11	COPY OF THE GO(P) NO. 376/2005/GAD DATED 18.10.2005 ISSUED BEHALF OF THE 1ST RESPONDENT.
Exhibit P12	COPY OF THE G.O(P) NO.68/2013/GAD DATED 12.03.2013 ISSUED ON BEHALF OF THE 1ST RESPONDENT.
Exhibit P13	COPY OF THE NEWS REPORT DATED 15.03.2022 IN THE HINDU ONLINE.
Exhibit P14	COPY OF THE REPRESENTATION DATED 19.03.2022 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT ALONG WITH ENGLISH TRANSLATION.
Exhibit P15	COPY OF THE ONLINE NEWS REPORT DATED 22.03.2022 IN THE NEW INDIAN EXPRESS.

Exhibit P16	COPY OF THE ORDER NO. AGRI I.F.A 1/19/2022-AGRI DATED 24.02.2022 ISSUED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT FOR AGRICULTURE ALONG WITH ITS ENGLISH TRANSPORT.

RESPONDENTS' EXHIBITS:-

ANNEX.-R1(A)	COPY OF G.O(P) NO.10/2022/GAD DATED 28.03.2022.
ANNEX.- R1(B)	COPY OF PRESCRIBED PROFORMA DATED 08.08.2022 BY VIDE LETTER NO.SS1/16/2022/GAD DATED 08.08.2022.
ANNEX.-R1(C)	COPY OF PRESCRIBED REVISED PROFORMA DATED 31.08.2022 BY VIDE LETTER NO.SS1/16/2022/GAD DATED 31.08.2022.
ANNEX.-R1(D)	COPY OF THE DETAILS OF THE EMPLOYEES WHO AVAILED LEAVE, PERMISSION WHETHER GRANTED OR NOT/PENDING AND OUTCOME OF THE SAME IN THE TABULAR FORM.

//TRUE COPY//

P.A. TO C.J.