



WP(C) No.1955 and 37436 of 2017

2024:KER:76302

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 16TH DAY OF OCTOBER 2024 / 24TH ASWINA, 1946

WP(C) NO. 1955 OF 2017

PETITIONER:

JIJI JOHN CHERIAN, AGED 50 YEARS,
HSA (PHYSICAL SCIENCE), CMS HS OLASSA,
KOTTAYAM DISTRICT - 686 014.

BY ADVS.
SRI.KALEESWARAM RAJ
SRI.VARUN C.VIJAY

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY SECRETARY
TO GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM - 695 001.
- 3 DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM.
- 4 DISTRICT EDUCATIONAL OFFICER,
KOTTAYAM.
- 5 THE CORPORATE MANAGER,
CMS SCHOOL, DIOCESE OF MADHYA KERALA, (CHURCH OF SEVENTH
INDIA), DIOCESAN OFFIE, BISHOP GRILL MEMORAIL
BUILDINGSCATHEDRAL ROAD, KOTTAYAM - 686 001.
- 6 THE HEADMISTRESS, CMS HIGH SCHOOL, OLASSA,
KOTTAYAM - 686 014.



WP(C) No.1955 and 37436 of 2017

2024:KER:76302

BY ADVS.
SRI.V.A.MUHAMMED
SRI.V.RAJASEKHARAN NAIR
BY SENIOR GOVERNMENT PLEADER, SRI.JUSTIN JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.10.2024,
ALONG WITH WP(C).37436/2017, THE COURT ON 16.10.2024 DELIVERED THE
FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 16TH DAY OF OCTOBER 2024 / 24TH ASWINA, 1946

WP(C) NO. 37436 OF 2017

PETITIONER:

JIJI JOHN CHERIAN, AGED 52 YEARS,
H.S.A (PHYSICAL SCIENCE), C.M.S HIGH
SCHOOL,OLASSA,OLASSA P.O, KOTTAYAM - 686 014.

BY ADVS.
SRI.KALEESWARAM RAJ
KUM.A.ARUNA
KUM.THULASI K. RAJ
SRI.VARUN C.VIJAY

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 2 DIRECTOR OF PUBLIC INSTRUCTIONS, VAZHUTHACAUD-POOJAPPURA ROAD, JUNCTION, DPI, JAGATHY, THIRUVANANTHAPURAM - 695 001.
- 3 DEPUTY DIRECTOR OF EDUCATION, OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, PALACE ROAD, KOTTAYAM, KERALA-686001.
- 4 THE DISTRICT EDUCATIONAL OFFICER, AZAD LINE NEAR FIRE STATION, VYASKARA, THIRUNAKARA, KOTTAYAM, KERALA-686001.
- 5 THE CORPORATE MANAGER, C.M.S SCHOOLS, DIOCESE OF MADHYA KERALA(CHURCH OF SOUTH INDIA),



WP(C) No.1955 and 37436 of 2017

2024:KER:76302

DIOCESAN OFFICE, BISHOP GILL MEMORIAL BUILDING,
CATHEDRAL ROAD, KOTTAYAM - 686 001.

6 THE HEADMISTRESS, C.M.S HIGH SCHOOL, OLASSA,
OLASSA P.O, KOTTAYAM - 686 014.

BY ADV.V.RAJASEKHARAN NAIR
BY GOVERNMENT PLEADER, SMT.SUNY K.B.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.10.2024,
ALONG WITH WP(C).1955/2017, THE COURT ON 16.10.2024 DELIVERED THE
FOLLOWING:

**JUDGMENT****(W.P(C) Nos.1955 and 37436 of 2017)**

These two connected writ petitions are filed by the same petitioner who was appointed as HSA (Physical Science) in an Aided School on 01.06.2005. In W.P.(C) No.1955 of 2017, the petitioner points out that the Management of the School is not entering correct entries such as "official duty/duty leave" in the attendance register, though the petitioner has ample evidence to prove the above claim. In other words, the petitioner contends that the Management was not permitting him to avail duty leave on the dates covered by the certificates produced at Ext.P3, for no valid reasons. In such circumstances, the petitioner has filed WP(C) No.1955 of 2017, seeking a direction to the 6th respondent to permit the petitioner to continue as HSA (Physical Science) at the School and also to mark attendance. There is also a further prayer seeking for a direction to respondents 5 and 6 to sanction the eligible duty leave claimed by the petitioner pursuant to Ext.P3 duty certificates.

2. Pending the afore writ petition, the petitioner points out



that, he was informed that he was suspended from service, without serving any order to that effect. Later by an order dated 17.10.2017, the 4th respondent sanctioned the suspension of the petitioner beyond 15 days period. Producing the said order as Ext.P2, the petitioner has preferred WP(C) No.37436 of 2017 contending that the petitioner cannot be placed under suspension beyond 15 days and since Ext.P2 has been issued beyond the period of 15 days from the date of suspension, which order itself was not served upon the petitioner, the continued suspension of the petitioner is without any justification. Therefore, in WP(C) No.37436 of 2017, the petitioner has sought to challenge Ext.P2 and also for a declaration that he is not liable to be suspended and that he is to be treated as on duty with effect from 21.06.2017. On 27.11.2017 this Court admitted WP(C) No.37436 of 2017, staying the operation of Ext.P2.

3. Later, the petitioner has sought to amend the writ petition pointing out that as he retired on 29.05.2021, no further proceedings can be continued in view of the provisions under



Rule 3 Part III of KSR. This Court permitted the petitioner to carry out the amendments and WP(C) No.37436 of 2017 is also amended accordingly.

4. In the amended writ petition, apart from challenging Ext.P2, the petitioner has also sought for a direction to the respondents to pay salary and other consequential benefits till 29.05.2021 and also all terminal benefits due to him including pension from the date of his retirement - 29.05.2021. There is also a further prayer for a declaration that no disciplinary action can be continued against the petitioner after the lapse of three years of his retirement. The petitioner has also sought to quash Ext.R5(b) and Ext.R5(d) produced along with the counter affidavit filed by the 5th respondent herein.

5. On 15.07.2024, when the learned counsel for the petitioner pointed out that the petitioner has since retired from service on 29.05.2021 and no further disciplinary proceedings can be continued on account of the operation of Rule 3, Part III of KSR, the learned Government Pleader pointed out that disciplinary proceedings have already been finalised and a



penalty of removal from service is also imposed on the petitioner as per the proceedings dated 30.03.2021. Therefore, this Court on 15.07.2024, directed the learned Government Pleader to file a counter affidavit producing a copy of the order passed and explaining the steps taken to “communicate” the said order to the petitioner herein.

6. On the basis of the above direction, the learned Government Pleader produced an order No.B2/5927/16 dated 30.03.2021 issued by the District Educational Officer, Kottayam, by which, the petitioner is removed from service with effect from 16.02.2017. The above order produced along with the memo, is followed with a statement dated 27.09.2024 filed by the 4th respondent herein, wherein it is pointed out as under:

“3. As the Manager is the appointing authority of petitioner, this office sent a copy of order to the Manager and also the petitioner through Manager. As per Letter No.434/2024 dated 24.09.2024 of the CMS Corporate Manager, the Manager reported that the order of termination was communicated to the petitioner on 29.04.2021 with the address. Shri.Jiji John Cherian, Puthenpurackal, Muttuchira P.O., Kottayam through ordinary post. The Manager informed that this communication has not been returned so far. The above reference letter was



sent to the petitioner with the number 132/2021. A true copy of the relevant page of the register is produced herewith and marked as Annexure R4(a). No acknowledgement on receipt of termination order seen provided.”

7. I have heard Sri.Kaleeswaram Raj, the learned counsel for the petitioner and Sri.Justin Jacob, the learned Senior Government Pleader.

8. The learned counsel for the petitioner would contend that insofar as the alleged termination order is not communicated to the petitioner prior to the expiry of three years from the petitioner's superannuation, the proceedings against the petitioner cannot be sustained. He points out to the provisions under Rule 3, Note 3, Part III of KSR in this regard. He also relies on the judgment of this Court in **Annamma Joseph v. State of Kerala [2024 KLT Online 1832]** in support of the above submissions. As regards the averments in the statement filed on behalf of the 4th respondent, the learned counsel for the petitioner points out that the petitioner has never received any intimation about his termination from service. He further points out that unless and until the order of



termination is "validly served", the same cannot be acted upon. In this regard, he relies on the provisions of Section 27 of the General Clauses Act, 1977 and contends that in the case at hand the despatch by the Manager was only by "ordinary post" which does not confirm to the mandate under Section 27. He also relies on the judgment of this Court in **Kooroppada Service Co-operative Bank No.3965 v. Shanthi Abraham [2016 KHC 37]**.

9. Per contra, the learned Senior Government Pleader would rely on the alleged service of the termination order by the Manager on 29.04.2021 in the address stated in the statement through "ordinary post". Therefore, he points out that the petitioner is not entitled to succeed.

10. I have considered the rival submissions as well as the connected records.

11. It is seen that the petitioner has admittedly retired on 29.05.2021 on superannuation. It is seen that the petitioner has raised a specific contention to the effect that the order of termination dated 30.03.2021 produced along with the Memo



dated 11.09.2024 is never served on the petitioner. The respondents have only pointed out that the said termination order was sent to the petitioner through the Manager concerned. It is further pointed out by the respondents that the Manager has sent the said order through "ordinary post". In this connection, the provisions under Section 27 of the General Clauses Act, 1977 are to be referred to and the same reads as under:

"27. Meaning of service by post:- Where any Act made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions, "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered, in the ordinary course of post."

Thus under Section 27 of the General Clauses Act, it is only in a situation where the document is sought to be served by "registered post", it can be seen that there is a valid service. Here, admittedly there is no such service or attempt to serve by



“registered post”. Even according to the respondents, the Manager has only sent the communication/termination order through “ordinary post”.

12. Therefore, I am of the opinion that there is no intimation of the termination to the petitioner, in a manner known to law. This Court in **Annamma Joseph's** case (*supra*) has also found that in cases where the intimation of the findings pursuant to the disciplinary proceedings is effected on the pensioner beyond the period of three years from the date of retirement, no recovery is possible. The above judgment also applies to the facts and circumstances of the case at hand.

13. Resultantly, I allow WP(C) No.37436 of 2017, by declaring that no disciplinary action can be continued against the petitioner. There will also be a further declaration that the petitioner would be entitled to receive salary and other consequential benefits till 29.05.2021 and also terminal benefits including pension from the date of retirement.

In view of the directions issued in WP(C) No.37436 of



WP(C) No.1955 and 37436 of 2017

2024:KER:76302

2017, WP(C) No.1955 of 2017 does not require to be considered any further. Therefore, WP(C) No.1955 of 2017 would stand dismissed as infructuous.

Sd/-

JUSTICE HARISANKAR V. MENON, JUDGE

In



APPENDIX OF WP(C) 37436/2017

PETITIONER'S EXHIBITS:

- EXHIBIT P3 TRUE COPY OF THE REVISION PETITION
DATED 30.05.2024 BEFORE THE 1ST
RESPONDENT
- EXHIBIT P1 TRUE COPY OF THE INTERIM ORDER DATED
10.4.2017 IN W.P(C) NO. 1955/2017.
- EXHIBIT P2 TRUE COPY OF THE ORDER NO.B2/5927/2017
DATED 17.10.2017.

RESPONDENTS' EXHIBITS:

- EXHIBIT R5 (A) TRUE COPY OF THE LETTER
NO.VA(2)/90058/16/DPI DATED 04.05.2017
OF THE 2ND RESPONDENT ALONG WITH THE
REPORT.
- EXHIBIT R5 (B) TRUE COPY OF THE ORDER NO.29/2017 DATED
21.06.2017 OF THE CORPORATE MANAGER.
- EXHIBIT R5 (C) TRUE COPY OF THE ORDER NO.B2/5927/2017
DATED 17.10.2017 OF THE DISTRICT
EDUCATIONAL OFFICER.
- EXHIBIT R5 (D) TRUE COPY OF THE ORDER NO.78/2017 DATED
06.11.2017 OF THE CORPORATE MANAGER.
- EXHIBIT R5 (E) TRUE COPY OF THE ACKNOWLEDGEMENT.
- EXHIBIT R5 (F) TRUE COPY OF THE POSTAL COVER RETURNED
AS UNCLAIMED.



APPENDIX OF WP(C) 1955/2017

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A COPY OF THE ORDER DATED 23.5.2016 ISSUED BY THE DISTRICT EDUCATIONAL OFFICER, THIRUVALLA UNDER RULE 67(8) OF CHAPTER XIV A KER.
- EXHIBIT P2 A COPY OF THE RELEVANT PART OF THE ATTENDANCE REGISTER FOR THE MONTH OF OCTOBER TO NOVEMBER 2016.
- EXHIBIT P3 COPIES OF THE DUTY CERTIFICATES PERTAINING TO THE PETITIONER.
- EXHIBIT P4 A COPY OF THE COMPLAINT DATED 08.11.2016 SUBMITTED BY THE PETITIONER BEFORE THE DEPUTY DIRECTOR OF EDUCATION, KOTTAYAM.
- EXHIBIT P5 A COPY OF THE COMPLAINT DATED 11.11.2016 SUBMITTED BY THE PETITIONER BEFORE THE DEPUTY DIRECTOR OF EDUCATION, KOTTAYAM.