



2023/KER/46879

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

TUESDAY, THE 25TH DAY OF JULY 2023 / 3RD SRAVANA, 1945

WP (C) NO. 19562 OF 2023

PETITIONER:

SREELATHA. P.T
AGED 54 YEARS
W/O MURALEEDHARAN. K.P, LOWER PRIMARY SCHOOL TEACHER,
S.V.U.P. SCHOOL, MUTHATHY, KOROM P.O, PAYYANUR VIA,
KANNUR DIST. PIN : 670307 RESIDING AT 'NAVANEETHAM',
VILLAGE OFFICE TEMPLE ROAD, PAYYANUR P.O, KANNUR DIST.,
PIN - 670307

BY ADV MURALI PALLATH

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVT.
GENERAL EDUCATION DEPARTMENT, GOVT. SECRETARIAT (ANNEX
II) THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DIRECTOR OF GENERAL EDUCATION
DIRECTORATE OF GENERAL EDUCATION, JAGATHY, THYCAUD P.O,
THIRUVANANTHAPURAM, PIN - 695014
- 3 THE DEPUTY DIRECTOR OF EDUCATION
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, KANNUR,
THANA P.O., KANNUR DIST., PIN - 670002
- 4 THE DISTRICT EDUCATIONAL OFFICER
DISTRICT EDUCATIONAL OFFICE, TALIPARAMBA, MINI CIVIL
STATION, TALIPARAMBA, KANNUR DIST., PIN - 670141
- 5 THE ASST. EDUCATIONAL OFFICER
ASST. EDUCATIONAL OFFICE, PAYYANUR, PAYYANUR P.O,
KANNUR DIST., PIN - 670307
- 6 THE HEADMASTER
S.V.U.P. SCHOOL, MUTHATHY, KOROM P.O, PAYYANUR VIA,
KANNUR DIST., PIN - 670607
- 7 THE MANAGER
S.V.U.P. SCHOOL, MUTHATHY, KOROM P.O, PAYYANUR VIA,
KANNUR DIST., PIN - 670307



2023/KER/46879

W.P.(C) No.19562 of 2023

-2-

BY ADV M.SASINDRAN

OTHER PRESENT:

SR.GP - SUNILKUMAR KURIAKOSE

**THIS WRIT PETITION (CIVIL) HAVING BEEN
FINALLY HEARD ON 25.07.2023, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

**“CR”****VIJU ABRAHAM, J.****W.P.(C) No.19562 of 2023**Dated this the 25th day of July, 2023**JUDGMENT**

The above writ petition is filed seeking a direction to the 6th and the 7th respondents to admit the petitioner to duty at once. The petitioner has also sought other consequential reliefs.

The brief facts necessary for the disposal of the writ petition are as follows:

2. The petitioner is employed as Lower Primary School Teacher in Saraswathi Vilasam Upper Primary School, Muthathy, an aided school under the management of the 7th respondent. The petitioner was granted Leave Without Allowances (LWA) for the period from 10.06.2014 to 09.06.2018 to join the spouse within India, as per Ext.P1 Government Order. The petitioner relying on relevant rules in Appendix XII C Part I KSR, sought for extension of LWA for a further period of 5 years from 10.06.2018 to



09.06.2023. There was no response on the part of the 7th respondent. As there was no approved Manager or approved Headmaster at that point in time, she submitted an application for extension of leave before the 5th respondent. The 5th respondent returned the petitioner's application for extension of leave, noting certain defects. Thereupon, the petitioner submitted Ext.P2 letter before the 2nd respondent seeking extension of LWA. The 2nd respondent as per Ext.P3 sought a detailed report from the 5th respondent regarding the leave application submitted by the petitioner. The petitioner being aggrieved by the non-sanction of the leave applied for, approached the 1st respondent by submitting a letter dated 18.07.2019 and the 2nd respondent by Ext.P4 letter, submitted a detailed report to the 1st respondent on her application for extension of leave. Thereupon, the 1st respondent issued Ext.P5 communication to the 2nd respondent directing to produce documents with the recommendation of the controlling officer for proceeding further with the leave application. Thereafter, no information was received by the petitioner and the petitioner submits that her application for extension of leave is



pending with the Government. As per Ext.P6, the 7th respondent issued Memo of Charges and Statement of Allegation to the petitioner alleging unauthorized absence from duty. The petitioner submitted Ext.P7 defence statement to the said Memo of Charges and Statement of Allegation. Thereafter, Ext.P8 letter was issued by the 7th respondent to the petitioner intimating that disciplinary proceedings are initiated against her, to which she submitted Ext.P9 reply. In Ext. P9 letter, the petitioner informed the 7th respondent of her willingness to rejoin duty, but the 6th respondent declined permission to the petitioner to rejoin duty. The petitioner vide Exts. P10 and P12, again approached the 6th and 5th respondent respectively, seeking permission to rejoin duty. Thereupon by Ext.P14 reply, the 7th respondent intimated the petitioner that her request to permit her to rejoin duty has been rejected as disciplinary proceedings have already been initiated. The petitioner submits that the action of the 6th and 7th respondents in not admitting the petitioner to duty on 09.06.2023 is illegal and arbitrary. Pendency of disciplinary proceedings if any is not a sufficient ground for not admitting her to duty on



expiry of the leave applied for. The petitioner relies on paragraph 53 of the Manual for Disciplinary Proceedings to contend for the position that the absentee who returns to duty could not be denied readmission to duty, until the absentee has been placed under suspension pending disciplinary proceedings or final orders have been passed dismissing or removing him from service. Petitioner also relies on the judgment of this Court in ***Elsy P. Oomman v. State of Kerala [2011 (1) KLT 491]*** to contend that in spite of the provisions contained in Rule 56(4) of Chapter XIV A KER, a teacher can be terminated from service only following the provisions as prescribed by Rule 75 of Chapter XIV A KER. Petitioner also relies on Rule 56(1) of Chapter XIV A KER to contend that in the matter of casual leave and other kind of leave, teachers of aided school shall be governed by the rules for teachers of Government schools in the service regulation for the time being in force and therefore, going by Appendix XII A of KSR, dealing with grant of leave without allowances for taking employment abroad or within India and as per Clause 6, if the employee does not return back for duty on expiry of leave, his



service shall be terminated, after following the procedures laid down in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. On the strength of the same, the petitioner would contend that in spite of the provision under Rule 56(4) of Chapter XIV A KER, she could be terminated from service only following the provisions as prescribed under Rule 75 of Chapter XIV A KER.

3. A detailed counter affidavit has been filed by the 7th respondent Manager wherein it is contended that the petitioner has suppressed certain material facts in the writ petition, especially regarding the leave she has availed even prior to the grant of leave as per Ext.P1. The 7th respondent would contend that from the year 1992 onwards, the petitioner has been availing various kinds of leaves continuously, and from 17.07.2002 onwards, she has availed LWA. The 7th respondent has produced Ext.R7(a) chart detailing the availing of leave by the petitioner and contended that the petitioner has been availing leave from 17.07.1992 onwards and the petitioner has been on continuous leave without allowance from 15.10.2003 onwards, till



09.06.2018. Thereafter from 10.06.2018, she has been unauthorisedly absent from duty. The 7th respondent would further contend that Rule 56(4) of Chapter XIV A KER which is a special provision concerning the aided school teachers and the same would prevail over the general provision regarding Leave Without Allowance to the aided school teachers and therefore the general provision contained in Rule 56(1) would apply subject to the exception enumerated in Rule 56(4). It is also contended that as per G.O.(P) No.87/2022 dated 03.08.2022, Rule 6 of Appendix XII C Part I KSR has been amended, reducing the 20-year period to 5 years and therefore, the maximum period of leave which could be availed for joining spouse is 5 years only and therefore, there is no justification for her unauthorised absence. It is also contended that the said amendment was carried out also taking into consideration the direction issued by this Court in ***Bini John v. Regional Deputy Director of Education, Kochi [2017(2) KHC 213]*** wherein this Court has condemned the grant of leave for 20 years etc. The learned counsel for the 7th respondent also relies on the judgment of the Division Bench of this Court in



Shaji P. Joseph v. State of Kerala and others [2022(1) KHC 203] and also the judgment in ***Vinod S. v. Kerala Electricity Board Ltd & Others [2020 KHC 842]*** in support of his contentions.

4. I have heard the rival contentions on both sides.

5. The question to be decided is as to whether the petitioner could be allowed to rejoin duty, pending disciplinary proceedings. The thrust of the contention of the petitioner is based on the judgment of this Court in ***Elsy P. Oomman***'s case cited (Supra) and contended that in spite of the provisions in Rule 56(4), the petitioner could be terminated from service only following the provisions prescribed under Rule 75 of Chapter XIV A KER. The petitioner further contends that going by Appendix XII C Part I KSR, the service of an unauthorised absentee could be terminated only after following the procedure laid down in Kerala Civil Services(Classification, Control and Appeal)Rules, 1960. The petitioner also relies on paragraph 53 of the Manual for Disciplinary Proceedings which mandates that an absentee who returns to duty cannot be denied readmission to duty unless he



has been placed under suspension pending disciplinary proceedings or final orders have been passed dismissing or removing him from service. This Court in **Elsy P. Oomman's** case (Supra) considered the question as to whether the procedures contemplated under Rule 75 of Chapter XIV A KER has to be followed, in spite of the provisions in Rule 56(4) of Chapter XIV A KER and held that a teacher can be terminated from service only following provisions as prescribed in Rule 75 of Chapter XIV A KER. To enter on the said finding, the Court relied on an earlier judgment of this Court in **Devaky v. State of Kerala [1999 (2) KLT SN 12]** which held that in spite of Rule 56(4) of Chapter XIV A KER, an aided school teacher could be terminated from service only after following the provisions prescribed in Rule 75 of Chapter XIV A KER. This Court in **Elsy P. Oomman's** case (Supra) observed that in the light of Rule 56(1) of Chapter XIV A KER, holding a teacher as ceased to be in service after a continuous period of 5 years with leave in terms of Rule 56(4) of Chapter XIV A KER, would definitely make Rule 56(1) redundant. In **Devaky's** case (Supra) which is relied on in



Elsy P. Oomman's case (Supra), the Manager, invoking the provisions of Rule 56(4) of Chapter XIV A KER, removed the teachers from service and the court held that the dismissal of those teachers without following the proceedings under Section 75 of Chapter XIV A KER is not valid. Even though the Court entered a finding to that effect in the said judgment, took note of the fact that the teachers therein have been continuously taking leave for long and in doing so, they have not only harmed the institution but also the students, and the Court further observed that the kind of practice of taking long leave for 10 years and 15 years should be discouraged and long leave must be sanctioned only in genuine and deserving cases and not on mere asking and held that the teachers who were on leave without allowance cannot make any claim to join the school as teaching staff by seeking extension of leave or in any other manner. In **Devaky's** case (Supra), the Court only held that in spite of the relevant provisions under Rule 56(4) of Chapter XIV A KER, the proceedings under Section 75 of Chapter XIV A KER should be followed before termination of the service of a teacher.



But taking into consideration the conduct of the teachers therein, who have taken long leave, the Court also held that they cannot make any claim to join the school as teaching staff by extension of leave or in any other manner. Paragraphs 16, 17 and 20 of the said judgment reads as follows:

16. The then question comes is that can the court to dismiss this original petition. In matters of this type, where the interest of the parties like petitioners 2 and 3, the institution and the public at large are involved, the court has to view the matter more practically taking note of the subsequent events. Admittedly, respondents 4 and 5 after working for three years and one year respectively went on long leave for ten years. The 4th respondent did not turn up even after the expiry of leave and did not even apply for any extension of leave. As far as the 5th respondent is concerned, she also went on leave for ten years. Thereafter, she applied for leave for another five years by giving some reasons. The application sent in this regard is dated 28.1.1989, a copy of the same is marked as Ext.p5(a). From that it is clear that the 5th respondent's husband was permanently employed in Dubai. The application mentions the illness of her husband as well as the education of the first daughter and the tender age of the second child as the reasons for seeking extension of



leave. Of course, to some extent, the same can be considered as valid reasons for applying for extension of leave. At that time the first child was 9 years old. True, one would also like to have his personal problems solved first. But, at the same time, one has to remember that the family should take important family decisions within a reasonable time. Long time should not be taken which would affect the interest of others. Here, in this case, respondents 4 and 5 even after taking leave for ten years and the 5th respondent again for five years, did not come back and join duty. They have virtually deserted the school which provided them employment. By so doing, not only they harm the institution but also the students. This kind of practice of taking long leave for ten years and 15 years should be discouraged and long leave must be sanctioned only in genuine and deserving cases and not for mere asking. Respondents 4 and 5, in the opinion of this Court, are unfit to be reemployed in future in any educational institution as they failed to realise their responsibility and moral duty to see that the educational institution does not suffer.

17. Naturally, the Manager, who is more concerned about the institution, thought fit to appoint petitioners 2 and 3 in the vacancies of respondents 4 and 5. This anxiety could be seen from the communication sent by the Manager to respondents 4 and 5, wherein he has



specifically mentioned the deplorable position in which the institution is placed and which affects the academic standard of the school and its reputation. As already pointed out, the Manager has erred in not following rule 75 of Chapter XIV-A K.E.R. But, at the same time, it has to be noticed that he proceeded only bona fide relying on rule 56(4) of Chapter XIV-A K.E.R. which is to the effect that a teacher shall cease to be in service after a continuous absence of 5 years whether with or without leave, and also the communication of the Director of Public Instruction to the District Educational Officer, Kozhikode dated 26.9.1981 that appointments made in the leave vacancies can be approved after two months from the date of occurrence of the vacancies

20. In the peculiar circumstances as pointed above the court has to take a practical view of the matter and pass appropriate orders which would meet the ends of justice. On a serious consideration of the entire matter, this Court is of the considered opinion, that the proper order that has to be passed in this case is to direct respondents 1 to 3 to grant necessary exemptions from the relevant provisions of the Act even retrospectively, if required, and pass suitable orders approving the appointments of petitioners 2 and 3 as Upper Primary School Assistant and Lower Primary School assistant with effect from 1.4.1989 and 9.3.1989 respectively



and grant all consequential benefits. Consequently, it will also follow that the communications, namely, Ext.P8 dated 12.2.1990, Ext.P13 dated 1.11.1990 and Ext.P17 dated 9.1.1991 have to be quashed. Respondents 4 and 5 cannot make any claim to join the school as teaching staff by seeking extension of leave or in any other manner. Respondents 1 to 3 are directed to pass appropriate orders within three months from the date of receipt of a copy of this judgment.

The fact that in **Devaky's** case (Supra) reinstatement was declined, was not noticed while deciding **Elsy P. Oomman's** case cited (Supra). In **Elsy P. Oomman's** case (Supra), the Court directed to reinstate the petitioner therein in service, taking note of the fact that no Memo of Charges was issued to the concerned employee and therefore based on the settled position of law that disciplinary proceedings could be said to have been initiated only on issuance of the Memo of Charges, held that no disciplinary proceeding is stated to have been taken against the petitioner therein. Firstly, **Devaky's** case (Supra) while holding that, in spite of Rule56(4) of Chapter XIV A KER, the proceedings under Section 75 of Chapter XIV A KER should be followed before



termination of service of a teacher, did not order reinstatement in service. Further, in **Elsy. P. Oommen's** case (Supra) reinstatement was ordered for the reason that since memo of charges have not been issued, it cannot be said that disciplinary proceedings have been initiated. But in the present case, a perusal of Ext.P6 would reveal that memo of charges and statement of allegation have already been served on the petitioner and she submitted Ext.P7 reply to the same. Taking note of these two aspects that **Devaky's** case cited (Supra) have declined reinstatement in service of the teachers therein and further that the disciplinary proceedings have already been initiated in the present case, the petitioner cannot rely on the judgment in **Elsy P. Oommen's** case (Supra) in support of her contentions. It is also to be noted that Ext.R3(a) Circular dated 28.04.1995 produced along with the counter affidavit of the 3rd respondent in **Devaky's** case (Supra) is also relevant for consideration of this case. The said circular is extracted below:

28-4-'95: Leave without allowance to take up employment or to join spouse - Disciplinary action if left before sanction.



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*Circular No. 1/95/G. Edn. General Education (J) Department
Thiruvananthapuram, Dated, 28-4-'95.*

CIRCULAR

Sub:- General Education - Aided Teaching/Non-Teaching Staff Leave without allowances to take up employment/join spouse abroad or within the country Leaving Office before getting leave sanctioned - Initiation of disciplinary action - Instructions issued.

*Ref:- 1. G.O. (P) 780/83/Fin. dated 16-12-83
2. G.O.(P) 209/84/Fin. Dated 12-4-84.
3.G.O.(MS) No. 48/93/G.Edn. dated 2-4-93.
4.G.O.(MS) No. 86/94/G.Edn. dated 27-5-94.*

Instances have come to the notice of Government that teaching and non-teaching staff in aided schools who apply for leave without allowances to take up employment/join spouse abroad or within the country leave office before getting the same sanctioned.

2. The rules in force enjoin that the applicants should enter on leave without allowances to take up employment abroad/join spouse only after the leave is sanctioned by the competent authority. The departmental officers are instructed to ensure that the above rules are strictly adhered to by those applying for the leave. In cases of violations, necessary



instructions may be issued to the Managers concerned to initiate prompt disciplinary action against those who unauthorisedly leave office before getting the leave sanctioned. In such cases the incumbents will not be allowed by the Managers to rejoin duty before completion of the disciplinary action already initiated.

*K.K. Vijayakumar,
Secretary to Government.*

The 7th respondent relying on the judgment in **Shaji P. Joseph's** case (Supra), submitted that this is a case where the provisions of Rule 56(4) of Chapter XIV A KER would definitely come into play, which specifically mandates that a teacher shall cease to be in service after a continuous absence of 5 years, whether with or without leave and therefore, in a case where Rule 56(4) could be invoked, the teacher could not take shelter under the provisions of the KSR as provided under Rule 56(1) of Chapter XIV A KER, in the matter of entitlement of leave. In **Shaji P. Joseph's** case (Supra), the Division Bench held that the finding in **Deepa S. v. State of Kerala and Others[2010 (4) KHC 820]** that Rule 56(4) of Chapter XIV A KER should be harmoniously construed



and read along with Rules in Appendix XII C of the KSR was held to be bad law. Paragraph 5 of the said judgment reads as follows:

5. On a consideration of the rival submissions, we are of the view that on the facts in the instant case, the provisions of Rule 56 of Chapter XIVA KER have to be seen as carving out an exception in the matter of sanctioning of casual leave and all other kinds of leave to teachers of aided schools. While Rule 56 (1) suggests that in the matter of casual leave and all other kinds of leave, the teachers of aided schools shall be governed by the same Rules as those applicable for teachers of Government schools, Sub Rule 4 of Rule 56 clearly carves out an exception for teachers in aided schools by making it clear that the said teachers would cease to be in service after a continuous absence of 5 years whether with or without leave. In our view, the effect of Sub Rule 4 of Rule 56 would be that, on the expiry of the continuous period of 5 years, there would be no requirement of referring to the KSR for determining the leave entitlement of the teacher in an aided school whether it be casual leave or any other kinds of leave. This would be because the reference to the KSR envisaged under Rule 56 (1) would be required only for the time limited permitted by the provisions of Rule 56 (4), and on expiry of the period of 5 years mentioned in Rule 56 (4), the teacher of a private aided school cannot look to the KSR for determining her leave



entitlement. We, therefore, disapprove of the view taken by the learned Single Judge in Deepa S v. State of Kerala and Others 2010 (4) KHC 820: 2010 (4) KLT 795 : ILR 2010(4) Ker.825 : 2010 (3) KLJ 812 to the extent it holds otherwise. We also find that, at any rate, there was no consideration of the interplay between the two sets of Rules in the said judgment, as the learned Judge despite noticing a conflict between the rules, felt it was not necessary for the purpose of disposal of the Writ Petition to resolve that controversy.

Therefore, the contention of the petitioner based on **Elsy P. Oomman's** case (Supra), Appendix XII C of the KSR and paragraph 53 of the Manual of Disciplinary Proceedings is only to be rejected. The learned counsel for the 7th respondent also relied on the judgment in **Vinod S.** 's case (Supra) to contend for the position that when an employee has abandoned the service by a unilateral action is no longer in the rolls of the establishment for the purpose of requiring disciplinary proceedings against him. Therefore, I am of the view that the request of the petitioner to permit her to rejoin duty, pending disciplinary proceedings cannot be accepted.

6. In view of the above facts and circumstances, I am of the



opinion that the reliefs sought for by the petitioner cannot be granted. However, there will be a direction to the 7th respondent to complete the disciplinary proceedings without much delay, after granting reasonable opportunity to the petitioner to participate in the same and further steps in this regard shall be taken subject to the outcome of the disciplinary proceedings already initiated.

The writ petition is disposed of as above.

Sd/-
VIJU ABRAHAM
JUDGE

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**APPENDIX OF WP (C) 19562/2023**

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF GO (RT.) NO.5380/2014/G.EDN.
DATED 02.12.2014
- Exhibit P2 TRUE COPY OF LETTER DATED 06.06.2018
SUBMITTED BY THE PETITIONER TO THE 2ND
RESPONDENT
- Exhibit P3 TRUE COPY OF LETTER DATED 02.10.2018
ISSUED ON BEHALF OF THE 2ND RESPONDENT
- Exhibit P4 TRUE COPY OF LETTER NO.
G4/9974/2019/D.G.E DATED 10.12.2019
- Exhibit P5 TRUE COPY OF GOVT. LETTER NO.
P3/194/2019-G.EDN. DATED 27.02.2020
- Exhibit P6 TRUE COPY OF CHARGE MEMO AND STATEMENT OF
ALLEGATION DATED 23.09.2019 ISSUED BY THE
7TH RESPONDENT
- Exhibit P7 TRUE COPY OF DEFENCE STATEMENT SUBMITTED
BY THE PETITIONER
- Exhibit P8 TRUE COPY OF LETTER DATED 09.03.2023
ISSUED BY THE 7TH RESPONDENT TO THE
PETITIONER
- Exhibit P9 TRUE COPY OF REPLY LETTER DATED
21.03.2023 SUBMITTED BY THE PETITIONER TO
THE 7TH RESPONDENT
- Exhibit P10 TRUE COPY OF LETTER DATED 09.06.2023 SENT
BY THE PETITIONER TO THE 6TH RESPONDENT
BY REGISTERED POST
- Exhibit P11 TRUE COPY OF POSTAL RECEIPT DATED
09.06.2023



Exhibit P12 TRUE COPY OF LETTER DATED 09.06.2023 SENT
BY THE PETITIONER TO THE 5TH RESPONDENT

Exhibit P13 TRUE COPY OF POSTAL RECEIPT DATED
09.06.2023

Exhibit P14 TRUE COPY OF LETTER DATED 08.06.2023
ISSUED BY THE 7TH RESPONDENT

Exhibit P15 TRUE COPY OF LETTER NO. AEOPNR/149/ 2023-
C DATED 09.06.2023 ISSUED BY THE 5TH
RESPONDENT

RESPONDENT EXHIBITS

Exhibit R7(a) A chart of the details of the availing of
leave by the petitioner