

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 02ND DAY OF FEBRUARY 2021 / 13TH MAGHA,1942

WP(C). No.5752 OF 2019(T)

PETITIONER:

G. BALAGOPALAN, AGED 63 YEARS
S/O. LATE P. K GOVINDA KURUP,
RTD. DIRECTOR, POLICE FINGER PRINT BUREAU, SCRB,
THIRUVANANTHAPURAM, RESIDING AT SAHLAM,
KALARCODE, ALAPUZHA-3.

BY ADVS. SRI.SAJITH KUMAR V.
SRI.AKHIL.T.S.
SRI.GODWIN JOSEPH
SRI.A.V.VIVEK
SMT. APARNA CHANDRAN

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT,
GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM-695 005.
- 2 THE PRINCIPAL SECRETARY,
DEPARTMENT FOR GENERAL ADMINISTRATION, (SECRET SECTION),
GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM-695 005.
- 3 THE PRINCIPAL SECRETARY,
DEPARTMENT FOR FINANCE, GOVERNMENT OF KERALA,
SECRETARIAT, TRIVANDRUM-695 005.
- 4 THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF HOME, MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, NEW DELHI-110 001.

R1-R3 BY SRI. P. NARAYANAN, SENIOR GOVT. PLEADER
R4 BY ADV. SHRI P. VIJAYAKUMAR, ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-02-2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R.”

JUDGMENT

Dated this the 2nd day of February, 2021

S. Manikumar, CJ

Petitioner, a practicing advocate, has filed the instant public interest writ petition challenging G.O.(P) No.1/2019/GAD dated 31.01.2019, whereby permission was accorded to grant eligible/casual leave to the Government employees and teachers, who had not attended duties during nation-wide general strike. He has sought for the following reliefs:

- i. “To issue a writ of *certiorari* or other appropriate writ, order or direction, quashing Exhibit-P1 Order - G.O(P) No.1/2019/GAD dated 31.01.2019.
- ii. To declare that permitting casual leave or other eligible leave to the State Government employees and teachers and to disburse salary after absenting from service of general strike against the Central Government is illegal and unconstitutional.
- iii. To issue a writ of *mandamus* or other appropriate writ, order or direction, commanding the respondents 1 to 3 to not to extend any kind of leave to the employees and teachers, who took part in the general strike by absenting themselves from duties by the issuance of Exhibit-P1 or other similar orders.”

2. Facts leading to the filing the writ petition are that, petitioner, a retired Director of Police, Finger Print Bureau, State Crime Records Bureau (SCRB), Thiruvananthapuram, seeks to bring to the notice of this Court the abuse of powers exercised by respondents 1 to 3, viz., State of Kerala, represented by

Chief Secretary to the Government, Thiruvananthapuram; Principal Secretary, Department of General Administration (Secret Section), Government of Kerala, Trivandrum; and the Principal Secretary, Department of Finance, Government of Kerala, Trivandrum, in sanctioning eligible leave with salary for the employees under the State Government for all the two days on which, they took part in the general strike against the policies of the Central Government.

3. Petitioner has further stated that respondent No.2 has issued Exhibit-P1 order dated 31.01.2019, allowing the Government employees and teachers to avail casual leave or other eligible leave for 8th and 9th of January, 2019, the days on which they were absent from duty, without availing leave as a part of National General Strike.

4. Petitioner has further submitted that the Joint Committee of trade unions, including INTUC, AITUC, HMS, CITU, AIUTUC, TUCC, AICCTU, SEWA, LPF and UTUC, except BMS, have called for a General Strike/Bharath Bandh against the policies of the Central Government for two days from 8th to 9th January, 2019. Pursuant thereto, the organised trade unions blocked the rail and road. Petitioner has contended that those who opposed the general strike in Government service, made their signatures in the attendance register and enjoyed eligible salary in the month of January.

5. Petitioner has further stated that in the earlier years, State Government used to issue orders in advance for avoiding inconvenience to general public. The orders were issued restricting the entitlement of leave for

the employees except on medical grounds with various restrictions. The District Collectors and Head of Departments were ordered to give directions to protect those employees, who are not on strike, and to ensure unhindered access to Government offices and institutions. Dies-Non was declared in advance, informing that the pay for the day in which the strike was taken place will be withheld from salary. The provisional recruits were warned with extreme penalty of removal from service, in case of absence on the date of strike.

6. Petitioner has further stated that in the year 2013 and 2016, a similar situation arose and the State Government have issued orders dated 18.02.2013 and 06.01.2016 (Exhibits-P9 and P10) similar to that of Exhibit-P7. According to the petitioner, there were clear instructions in the said orders prohibiting leave and for preventing violence or destruction of public property, and the District Collectors were ordered to ensure that normal functioning of essential services under their control is not interfered with due to the strike.

7. Petitioner has further stated that in certain occasions, G.O.(P) No.376/2005/GAD dated 18.10.2005 and G.O.(P) No.68/2013/GAD dated 12.03.2013 respectively were relaxed after the strike by clarifying that the absence of employees under relevant date for want of public conveyance will be regularised as eligible leave, including casual leave, on receipt of written undertaking that they had no intention to participate in the strike.

8. Petitioner has further contended that in various occasions, *dies non* got regularised by grant of leave on the change of political administration of

the State. It is pointed out that *dies-non* imposed on 17.02.2009 was regularised by Exhibit-P13 order dated 17.06.2011 issued by the Principal Secretary, Department for General Administration (Secret Section), Government of Kerala, Thiruvananthapuram, 2nd respondent. Thereafter, the *Dies non* imposed on 7.9.2020 and 2.9.2016 etc. were regularised by permitting casual leave.

9. Petitioner has further stated that general strike is being conducted by the employees of organised and unorganised sectors. As far as the unorganised sector is concerned, blocking of road and rail prevents people from earning their wages for the day. Thus, every employee in the unorganised sector is forced to give up their earnings whether they support the strike or not. Those who are in Government service have the option to sign the attendance register and to boycott the call for general strike and to earn their salary. Various mechanisms are available to put their signature and to draw salary. Those who fail to sign the attendance register of the Government department, are necessarily to be construed as persons in support of the general strike in the absence of sufficient explanation. Attendance in Government institutions is reckoned as the relevant factor by the trade unions to decide the success of their call.

10. Petitioner has further contended that by issuing Exhibit-P1 order, State Government have committed serious discrimination. All the employees who took part in the strike were given the opportunity to make good the loss of

participating in the strike by availing eligible leave. According to him, Exhibit-P1 order permitting casual leave for the days of absence by striking against the policies of the Central Government amounts to State Government aid and assistance to its employees to protest against the Central Government. Thus, the State Government have failed to protect the obligations in a federal structure as envisaged in our Constitution.

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

A. Exhibit-P1 order sanctioning casual and eligible leaves for Government employees and teachers, who took part in the General strike against the policies of the Central Government on 8th and 9th of January, 2019, by expending around Rs.180/- crores from the State exchequer which is facing serious crisis to find resources for relief and rehabilitation, after deluge, is highly illegal and arbitrary.

B. The Joint Committee of Trade Unions except BMS had called for a General strike/Bharath bandh against the policies of the Central Government for two days from 8 of January to 9 of January 2019. The joint committee was formed at the State level and a call was made in Kerala also, requesting the employees in the organized and unorganized sectors to support the call for strike. In pursuant thereof, the organized unions blocked the rail and road and observed the general strike. Majority of the Government employees were on strike against the policies of the Central Government and in support of the call made by the trade unions. Those who opposed the general strike in Government service put their attendance and enjoyed the eligible salary in the month of January. Necessarily, those who were absent without any eligible leave or even leave application became ineligible

for the days of strike. The present order permitting casual leave after striking against the Government and claiming victory of strike based on the attendance of employees prima facie is an unfair act against the citizens of the State. Government is expected to act fairly and reasonably and is not supposed to extend illegal benefits to a section of citizens merely because they are Government servants.

C. In the case on hand, the call for strike had mostly affected the unorganized sector. In view of strike by the Government employees, the unorganized sector also lost their earnings on the days of the strike. Through Exhibit P1, the 1st respondent is attempting to discriminate its citizens between organized and unorganized sectors. The organized Government employees are presently being ordered to avail salary though they absented in protest against the policies of the Central Government. The extension of salary to the Government employees for the days of general strike is discriminatory.

D. State of Kerala had faced deluge in the recent months. Even according to the State Government, the loss estimated is above Rs.20,000/- crores. The expenses required for relief, rehabilitation and reconstruction require thousands of crores. The sum of Rs.3,000/- crores offered by the Central Government has been declared as insufficient by the Minister for Finance. It is declared several times that the State is short of funds to meet relief and rehabilitation. Thousands of families who lost their shelter are in line, awaiting Government assistance. The Hon'ble Chief Minister had made various calls seeking contribution towards the funds. When the State is facing a serious financial crisis, the attempt of the 2nd respondent to enrich the Government employees and teachers by granting them salary for the day of strike is highly unfair and illegal.

E. This Court had declared bandh as illegal in **Bharat Kumar v. State of Kerala** [1997 (2) KLT 287 (FB)]. The said decision was upheld by

the Hon'ble Supreme Court. The legal position was reiterated by another Full Bench of this Court in **George Kurian v. State of Kerala** [2004 (2) KLT 758 (FB)]. In spite of the binding precedents, General Strike had taken the shape of bandh in Kerala by blocking the rail and roads. In fact, the State had failed to implement the directions by this Court in providing adequate protection against blockade of rail and roads and in a way abetted the call for strike. The abetment became complete by the issuance of Exhibit-P1. The actions on the part of the respondents are bordering on contempt of court and liable to be proceeded in accordance with law. At any rate, there is no justification to extend financial benefits to those who took part in the strike against the Government.

F. The Hon'ble Supreme Court has also taken the above legal proposition and even laid down extensive guidelines for making an effective mechanism for realizing the loss caused to the public property as well as private property in **Kodungallur Film Society and Another v. Union of India and Others** [2018 (5) KHC 297 SC]. When there is legal obligation on the State, to avoid loss to the citizens, by the General Strike, and to provide a mechanism for recovering the loss from the persons responsible, it is highly irrational and arbitrary to release around Rs.180/- crores to those who participated in the General strike causing inconvenience to the public.

12. The Special Secretary to the Government, General Administration (Secret Section) Department, Thiruvananthapuram, has filed a counter affidavit on behalf of 2nd respondent raising the following contentions:

(a) Government, as per Exhibit-P1 order dated 31.01.2019 granted permission to the employees under it and teachers who had not attended the offices during the national strike on 8th and 9th January, 2019, to avail eligible leave including Casual Leave. There was no

abuse of power as alleged by the petitioner. The employees, who had no intention to participate in the strike need not be disturbed. Certain employees were not in position to attend the office due to lack of transport facilities.

(b) Article 309 of the Constitution of India envisages that subject to the provisions of the Constitution, Acts of appropriate Legislature may regulate the recruitment conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. By invoking the above said Article, the State Government have enacted the Kerala Public Services Act, 1968 (Act 19 of 1968). Section 2(1) of the Kerala Public Services Act, 1968 enables the Government to make rules, either prospectively or retrospectively, to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State of Kerala. Government have not exercised excess jurisdiction and there is no abuse of power.

(c) The petitioner himself admitted that the entire public transport came to standstill. Hence, it is clear that owing to strike, there was lack of conveyance facilities for the employees. According to the 2nd respondent, Exhibit P1 order was issued by the 2nd respondent considering this fact also. It is contended that as per Exhibit-P8 order, Government have issued measures for dealing with the strike of State Government employees and teachers. As per the order, leave for the strike day can be granted on the following:

1. Sickness of the individual or near relatives.
2. Examination purpose of the employees
3. Maternity purpose of the employee
4. Other unavoidable reasons of a like nature.

(d) Since the Government did not declare 8th and 9th January, 2019 as dies non, there is no irregularity in the order for treating the days as eligible / casual leave, taking into account the above grounds. It is

not the policy of the Government to encourage illegal activities. At the same time, genuine reasons cannot be neglected. The leave sanctioning authorities will verify the genuineness of the ground in respect of each and every leave application. Government have considered all the aspects while issuing Exhibit P1 order. Hence, Exhibit P1 order cannot be treated as a blanket order by the Government, but only as a permission to grant eligible leave to employees who had not attended office on 8th and 9th of January, 2019.

(e) Exhibit P13 order was issued permitting to grant eligible leave, including casual leave, to the employees, who had not attended the offices in relation to the strike on 17.02.2009, by cancelling the Dies Non imposed. It reveals that there are precedents in granting eligible leave, including casual leave, to the employees, who had not attended duties during strike days. The issuance of Exhibit P1 order cannot be perceived as an act of the Government in encouraging participation in the general strike. The persons, who could not attend duty on those particular dates due to various exigencies, shall also be considered. The intention of the Government in issuing the Exhibit P1 order is not to legalize strike.

(f) All the persons, who fail to sign the attendance register, cannot be construed as they are in support of the general strike. The persons, who had no intention to participate in the strike, can also apply for eligible leave/ casual leave in writing. There is no suo motu regularization of unauthorized absence. Government have not been permitted to treat the period of absence as duty. In pursuance of Exhibit P1 order, the employees have to apply for Casual Leave, Earned Leave, Half Pay Leave, Commuted Leave or Leave Without Allowance and draw salary accordingly. In the event of applying for and granting LWA, he will not be entitled to any leave salary as per

Rule 95 Part I of the Kerala Services Rules. Grant of eligible leave implies deduction from their leave account an amount of leave equal to the days of dies non so that their credit of leave stands reduced to the extent of leave applied for. If no leave is granted to regularize the period of dies non, that much of leave will remain in the credit of the officer, which he can utilise on some other occasion. Therefore, by granting leave to the officers, who absented themselves from duty, the Government do not stand to incur any additional expenditure because the leave not debited would be utilised later and the officer concerned be entitled to draw leave salary depending upon the kind of leave applied for and granted. Hence, there is no substance in the allegation of excess expenditure to tune of Rs.180/- Crores.

(g) The allegation that those who are in Government service have the option to sign the attendance register and participate in the strike and then put their signature to draw salary is totally baseless. Those who fail to attend office, mark attendance and to perform the duties and responsibilities enjoined upon them will not be paid salary unless the period of absence is regularised by granting eligible leave due and admissible to them. Grant of leave to those in Government service and other sectors cannot be viewed because of the vast difference in the conditions of services of the Government employee flowing out of various Service Rules framed under the Kerala Public Service Act, 1968 enacted under Article 309 of the Constitution.

(h) It is further contended that the Government only granted permission to avail eligible leave, including casual leave through Exhibit P1 order. The State Government functions by abiding the Constitution. The State Government never failed to protect the obligation as a State Government, in a federal structure as envisaged in the Constitution.

(i) It is further contended that the action in having issued the order has not caused any additional financial liability to the Government as alleged by the petitioner. The employees, who were granted eligible leave or casual leave as per the rules are also entitled to get subsequent benefits. The benefits to be granted as per the rules cannot be decided. Government have not provided any undue benefits to the employees. Each and every employee should submit a separate leave application to get it sanctioned by the leave sanctioning authorities. Before sanctioning leave, the leave sanctioning authority will verify the genuineness of the ground. The leave sanctioning authority / Accountant General will also verify the eligibility of leave in respect of each and every leave application. There was no encouragement for participation in the general strike as alleged by the petitioner. Hence, Exhibit P1 order is fair, reasonable and legal. There is no legal prohibition in issuing such an order unless it is prohibited in accordance with law.

(j) It is further contended that permission to grant eligible leave cannot be construed as unfair payment of salary. Salary will be paid only after regularization of period of absence as per rules. Exhibit P1 order is not dangerous to life, health or property of the public and, therefore, the said order is not against public interest. The extension of benefits to the employees and teachers as per the Acts and Rules applicable to them will not affect others. There is no discrimination in granting eligible leave casual leave. The conditions of service of the employees in Government service are governed by KSRs. Here, the contention of the petitioner regarding classification of employees as organized and unorganized sectors has no relevance and cannot be bracketed together. The permission to grant eligible leave / casual leave cannot be construed as extension of salary. Employees and Teachers also deserve human dignity as others. Human dignity is a constitutional value and a constitutional goal. The right of the

employees and teachers cannot be deprived of. At the same time, the Government will not encourage misuse of official position of the employees and teachers. Stringent action will be taken against perpetrators as per relevant rules.

(k) It is further contended that there is no attempt on the part of the 2nd respondent, to enrich the Government employees and teachers by granting them illegal benefits. Government employees and teachers have also contributed to flood relief funds. The issuance of Exhibit P1 order cannot be perceived as an act of the Government encouraging participation in the general strike. The persons who could not attend duty on those particular dates due to various exigencies shall also be considered. The intention of the Government in issuing Exhibit P1 order is not to legalize strike. The order is not a blanket one to remain in force forever. In democratic set up, the Government could not neglect the employees who faced difficulty in attending office owing to unavoidable exigencies and lack of conveyance. Petitioner has relied on the decisions of this Court in, *Bharat Kumar v. State of Kerala* [1997 (2) KLT 287 (FB)] and *George Kurian v. State of Kerala* [2004 (2) KLT 758 (FB)]. The abovesaid decisions are not connected with granting of leave for Government employees, who were absent during strike. The issuance of the Exhibit P1 order is not to be treated as abetment as alleged by the petitioner.

(l) The issuance of Exhibit P1 order never adversely affects the process to recover the loss sustained to the Government from the responsible persons. The 2nd respondent has not ordered to release Rs. 180/- crores to those who participated in the strike. The argument of the petitioner in this regard is against facts and is based on wrong interpretation. In the above circumstances, the 2nd respondent prayed for dismissal of the writ petition.

13. Based on the above grounds, Mr. V. Sajith Kumar, learned counsel for the petitioner, made submissions.

14. Inviting the attention of this Court to **Vishal Ashok Thorat & Others v. Rajesh Shrirambapu - Fate & Others** [2019 SCC Online SC 886], Mr. P. Narayanan, learned Senior Government Pleader, submitted that the writ petition is not maintainable for non-joinder of necessary parties. Beneficiaries of Exhibit-P1 order are not made parties even in the representative capacity, as provided in Rule 148 of the Rules of High Court of Kerala, 1971. According to the learned Senior Government Pleader, Exhibit-P1 order dated 31.01.2019 is an order dealing with service conditions of Government employees, as grant of leave to the employees, is an integral part of service conditions.

15. Learned Senior Government Pleader further contended that no Public Interest Litigation is maintainable in service matters. To substantiate the said contention, he relied on the decisions in **Rajnit Prasad v. Union of India and Others** [(2000) 9 SCC 313], **Neetu v. State of Punjab and Others** [(2007) 10 SCC 614], **Ayaubkhan Noorkhan Pathan v. State of Maharashtra and Others** [(2013) 4 SCC 465].

16. Our attention was also invited to the decisions in **BALCO Employees Union v. Union of India** [(2002) 2 SCC 333], **Directorate of Film Festival and Others v. Gaurav Ashwin Jain and Others** [(2007) 4 SCC 737], and **Santhosh Singh v. Union of India and Another** [(2016) 8 SCC 253], by the learned Senior Government Pleader, to submit that grant of leave

to the employees, who had not attended for duty on the day of strike called by trade unions is a policy decision of the Government and that no writ is maintainable challenging the said policy.

17. Learned Senior Government Pleader has relied on the decision in **Directorate of Film Festivals and Ors. v. Gaurav Ashwin Jain and Ors.** [(2007) 4 SCC 737] to contend that no contentions were raised in the writ petition to the effect that Exhibit-P1 violates any of the constitutional or statutory provisions.

18. Learned Senior Government Pleader further submitted that petitioner has not placed any material before this Court to show that there was a strike called by the Government employees except the fact that trade unions had called for the strike. Therefore, the court cannot proceed with a presumption that there was a strike called by the Government employees and that the employees had participated in the strike called by the trade unions.

19. Learned Senior Government Pleader has also contended that Exhibit-P1 order is issued not for the first time in the State and Exhibit-P13 is a similar order issued in similar circumstances. Therefore, there is a precedent of issuing an order in the nature of Exhibit-P1.

20. Learned Senior Government Pleader has further contended that Exhibit-P1 is an administrative order, which does not require to state the reasons. It is stated in paragraph (8) of the counter affidavit that the persons, who could not attend duty on those particular dates, due to various exigencies,

shall also be considered. The Government could not neglect employees, who had faced difficulty in attending the office, owing to unavoidable exigencies and lack of conveyance.

21. The petitioner himself in the writ petition has admitted that the entire road traffic was brought to a standstill, which shows that the employees could not have attended duty. Since the non-attendance of the Government employees on the days of strike might, either be due to participation in the strike as stated by the petitioner, or due to the inability to attend for duty due to lack of conveyance, and it is a matter for consideration of the leave sanctioning authority.

22. In reply to the above, learned counsel for the petitioner, by placing reliance on the decisions of the Hon'ble Supreme Court, as well as this Court in **Bharat Kumar v. State of Kerala** reported in 1997 (2) KLT 287 (FB), **Kerala Vyapari Vyavasayi Ekopana Samithi v. State of Kerala** reported in 2000 (2) KLT 430 (FB), **Indian National Congress (I) v. Institute of Social Welfare** reported in 2002 (2) KLT 548 (SC), **T.K.Rangarajan v. Government of Tamil Nadu and Ors.** Reported in (2003) 6 SCC 581, and **George Kurian v. State of Kerala** reported in 2004 (2) KLT 758 (FB), made submissions.

23. Heard the learned counsel for the respective parties and perused the material on record.

24. G.O.(P) No.376/2005/GAD dated 18.10.2005 (Exhibit-P11) issued by the 2nd respondent is extracted hereunder:

“GOVERNMENT OF KERALA

Abstract

**PUBLIC SERVICE-STRIKE BY A SECTION OF GOVERNMENT
EMPLOYEES ON 29TH SEPTEMBER 2005 - MODIFIED ORDERS
ISSUED**

GENERAL ADMINISTRATION (SS) DEPARTMENT

G.O(P) No.376/2005/GAD Dated, Thiruvananthapuram, 18th October, 2005

Read:- G.O.(P) No.345/05/GAD dated 26-9-2005

ORDER

In the G.O. Referred above, specific instructions were issued to deal with the threatened strike by certain organisations of State Government employees and Teachers on 29-9-2005. These instructions contained inter alia the specific grounds on the basis of which leave could be granted to employees. It was also ordered that the authorised absence of the employees for participation in the strike would be treated as dies non.

Government have examined the matter in detail and order that eligible leave may be granted to the employees who were not able to attend the office on 29-9-2005 due to less transport facilities, by accepting their self-declaration that they had no intention and interest to participate in the strike on 29-9-2005 and that their absence from duty on that day was due to shortage of conveyance.

By Order of the Governor
E.K. BHARAT BHUSHAN
Principal Secretary”

25. G.O.(P) No.200/2011/GAD dated 17.06.2011 issued by the 2nd respondent (Exhibit-P13) is extracted hereunder:

“GOVERNMENT OF KERALA

BRIEF

Service-Strike on 17-2-2009 - the Non-attendance of Government employees in the office - Orders being issued for permitting grant of eligible leave.

GENERAL ADMINISTRATION (S.S) DEPARTMENT

G.O(P) No.200/2011/GAD Thiruvananthapuram, Dated 17th June, 2011

Ref:- G.O(P) Number: 37/2009/GAD dated 12-2-2009

ORDER

The orders are being issued for permitting grant of eligible leave, including casual leave, cancelling the Dies-Non order imposed in the above referred to the Government and teachers, who had not attended the offices in relation to the national general strike on 8th and 17-2-2009.

By Order of the Governor

K.R. Jyothish
Secretary

26. G.O.(P) No.211/2012/GAD dated 17.08.2012 issued by the 2nd respondent (Exhibit-P8) is extracted hereunder:

“GOVERNMENT OF KERALA

Abstract

Public Services - Threatened Strike by a section of Government Employees & Teachers on 21st August 2012 - Measures for dealing with - Orders Issued.

GENERAL ADMINISTRATION (SECRET SECTION) DEPARTMENT

G.O.(P) No.211/2012/GAD. Dated, Thiruvananthapuram, 17th August, 2012

Read: 1. G.O(P) No.34/2002/GAD, dated, 23.01.2002.

ORDER

Certain Organizations of State Government Employees and Teachers have threatened to go on strike, on 21st August, 2012 To meet the situation, in case the threatened strike materialises, the following orders are issued:

1. No leave of any kind shall be granted to Employees, Teachers etc. (including Gazetted Officers) for the strike day except on the following grounds:

- 1) Sickness of the individual or near relatives (near relative will mean wife, husband, children, father and mother of the Government servant).
- 2) Examination purpose of the employee.
- 3) Maternity purpose of the employee.
- 4) Other unavoidable reasons of a like nature.

2. Heads of Departments and other sanctioning authorities shall insist on Medical Certificates from Government Doctors in the proper form with the office stamp / seal affixed, to be produced by the applicants for the leave applied for on medical grounds. In cases of doubt on the bona fides of the Medical certificates, the applicants are to be directed to appear before the Medical Board immediately. Irrespective of the reason given for the leave, the sanctioning authority will have the discretion to refuse the leave, if such authority has reason to believe that the leave is meant for participation in the strike.

3. The applications for leave from the employees should be disposed of immediately and should not be kept without disposal. While taking decisions, the above instructions should be strictly adhered to.

4. Every Head of office shall keep the Head of Department informed of the details of all employees under him who have been granted leave and should be able to justify the grant of leave, if so required.

5. Sanctioning authorities may be directed to observe strictly the instruction regarding grant of leave to their subordinates. They may be informed that they are liable to be proceeded against in cases of violation of the instructions.

6. If the Head of an office is on strike and as a result the office is closed, thereby preventing employees not on strike from attending the office, they may report before the District Officer. The District Officer should make immediate necessary arrangements for opening the office in such a case.

7. The District Collectors and Heads of departments will take action (a) to give protection to those not on strike, (b) to ensure unhindered access to Government Institutions, and (c) to avoid overcrowding in front of the gates of the offices. Instructions have been given to the Police Department to give all necessary assistance in this context.

8. The Heads of Departments / offices will keep the keys of the offices and of the gates in their personal custody. They should arrange for the opening of the office sufficiently early to enable the employees not on strike to enter the offices.

9. The Director General of Police will, in consultation with the Heads of Departments, make arrangements for guarding the Government offices at night in the event of the strike.

10. The District Collectors are authorized to requisition vehicles belonging to other Departments or agencies or hire private vehicles to the extent necessary to meet the situation. The expenditure may be debited to the contingencies of the Department for whose need the vehicles are so requisitioned.

11. The unauthorized absence of the employees for participation in strike will be treated as **dies non**. The pay for the day which the strike is taking place will be withheld from the salary for the month of September 2012. In the case of Gazetted Officers, their attendance in duty should be certified in the pay bills for the month of September 2012. This certificate need not be recorded by the Principal Secretaries, Secretaries, Special Secretaries to Government, Heads of Departments, District Collectors, Judicial Officers and Executive Officers of the Police Force and the Officers of All India Services.

12. Persons indulging in violence or destruction to public property will be prosecuted.

13. The provisional recruits in Government Service who absent themselves without sanction during the day of the strike will be removed from service.

14. In the event of the strike materializing all Heads of Departments will convey to the Government in the General Administration (Secret Section) Department over Telephone (Telephone NO. 2327559/2518399) by 11.00 am the day of strike, a general situation report indicating their total strength of staff, number of employees present, number of employees unauthorisedly absent, number of employees on authorized leave and number of applications for leave received in their offices. The District Collectors will furnish to the Government in the General Administration (Secret Section) Department over telephone on the day of strike a general situation report by 11.30 am in respect of the employees in their offices as well as in the Major Offices in the District (including non-revenue offices). The Principal secretaries / Secretaries / Special Secretaries will also forward to the General Administration (Secret Section) Department on the day of strike similar situation reports (Consolidated Department-wise) in respect of the employees in their

Department, in the Secretariat, by 11.00 a.m.

15. In addition to the situation report mentioned above, in the case of the secretariat departments, the Principal Secretary/ Secretary/Special Secretary to Government concerned or in his absence the senior most officer available in the Department should get a list of absentees (with name and designation) participating in the strike prepared. Consolidated lists of such employees will be prepared and forwarded to the Secretary to Government, General Administration (Secret Section) Department on the same day of the strike for further action. In the case of the offices of Heads of the Department and officers, a similar list will be prepared on the day of the strike by the officers concerned and forwarded to the Secretary to Government, General Administration (Secret Section) Department as early as possible. The attendance position should be furnished at the appointed time.

16. All Heads of Departments / Offices and District Collectors will ensure that the normal functioning of the essential services under their control is not interfered with.

17. The Director General of Police, in consultation with the Heads of Departments will make necessary arrangements to avoid any untoward incidents and tension in the office premises.

18. All concerned are requested to ensure that the above instructions are followed scrupulously.

By order of the Governor
K.JAYAKUMAR
Chief Secretary to Government"

27. G.O.(P) No.42/2013/GAD dated 18.02.2013 issued by the 2nd respondent (Exhibit-P9) is extracted hereunder:

"GOVERNMENT OF KERALA

Abstract

Public Services - Threatened Strike by a section of Government Employees & Teachers on 20th & 21st February 2013 - Measures for dealing with Orders Issued.

GENERAL ADMINISTRATION (SECRET SECTION) DEPARTMENT
G.O.(P) No. 42/2013/GAD. Dated, Thiruvananthapuram, 18.02.2013

Read: 1. G.O.(P)No.34 /2002/GAD, dated, 23.01.2002.

ORDER

Certain organisations of State Government Employees and Teachers have threatened to go on strike on 20th & 21st February 2013 in connection with the National level strike. To meet the situation, in case the threatened strike materialises, the following orders are issued:

1. No leave of any kind shall be granted to Government Employees, Teachers etc. (including Gazetted Officers) for the strike days except on the following grounds:

- 1) Sickness of the individual or near relatives ('near relative' will mean wife, husband, children, father and mother of the Government servant).
- 2) Examination purpose of the employee.
- 3) Maternity purpose of the employee.
- 4) Other unavoidable reasons of a like nature.

2. Heads of Departments and other sanctioning authorities shall insist on Medical Certificates from Government Doctors in the proper form with the office stamp/seal affixed, to be produced by the applicants for the leave applied for on medical grounds. In case of doubt on the bona fides of the Medical Certificates, the applicants are to be directed to appear before the Medical Board immediately. Irrespective of the reason given for the leave, the sanctioning authority will have the discretion to refuse the leave if such authority has reason to believe that the leave is meant for participation in the strike.

3. The applications for leave from the employees should be disposed of immediately and should not be kept without disposal. While taking decisions the above instructions should be strictly adhered to.

4. Every Head of Office shall keep the Head of his Department informed of the details of all employees under him who have been granted leave and should also be able to justify the grant of leave, if so required.

5. Sanctioning authorities may be directed to observe strictly the instruction regarding grant of leave to their subordinates. They may be informed that they are liable to be proceeded against in cases of violation of the instructions.

6. If the Head of an Office is on strike and as a result the office is closed, thereby preventing employees not on strike from attending the office, they may report before the District Officer. The District

Officer should make immediate necessary arrangements for opening the office in such a case.

7. The District Collectors and Heads of Departments 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. Instructions have been given to the Police Department to give all necessary assistance in this context.

8. The Heads of Departments/Offices will keep the keys of the offices and of the gates in their personal custody. They should arrange for the opening of the office sufficiently early to enable the employees not on strike to enter the offices.

9. The Director General of Police will, in consultation with the Heads of Departments, make arrangements for guarding the Government offices at night in the event of the strike.

10. The District Collectors are authorized to requisition vehicles belonging to other Departments or agencies or hire private vehicles to the extent necessary to meet the situation. The expenditure may be debited to the contingencies of the Department for whose need the vehicles are so requisitioned / hired.

11. The unauthorized absence of the employees for participation in strike will be treated as *dies non*. The pay for the day in which the strike is taking place will be withheld from the salary for the month of March, 2013. In the case of Gazetted Officers, their attendance in duty should be certified in the pay bills for the month of March, 2013. This certificate need not be recorded by the Additional Chief Secretaries, Principal Secretaries, Secretaries, Special Secretaries to Government, Heads of Departments, District Collectors, Judicial Officers and Executive Officers of the Police Force and the Officers of All India Services.

12. Persons indulging in violence or destruction to public property will be prosecuted.

13. The provisional recruits in Government Service who absent themselves without sanction during the day of the strike will be removed from service.

14. In the event of the strike materializing all Heads of Departments will convey to Government in the General Administration (Secret Section) Department over Telephone (Telephone Nos. 2327559/2518399) by 10.30 a.m. on the day of strike, a general situation report indicating their total strength of staff, the number of employees present, number of employees unauthorisedly absent, number of employees on authorized leave

and number of applications for leave received in their offices. The District Collectors will furnish to Government in the General Administration (Secret Section) Department over telephone on the day of strike a general situation report by 10.45 a.m. in respect of the employees in their offices as well as in the Major Offices in the Districts (including non-revenue offices). The Additional Chief Secretaries/ Principal Secretaries/ Secretaries/Special Secretaries will also forward to General Administration (Secret Section) Department on the day of strike similar situation reports (Consolidated Department-wise) in respect of the employees in their Department, in the Secretariat, by 10.30 a.m.

15. In addition to the situation report mentioned above, in the case of the Secretariat Departments, the Additional Chief Secretaries/ Principal Secretaries/ Secretaries/Special Secretaries to Government concerned or in his absence the senior most officer available in the Department should get a list of absentees (with name and designation), participating in the strike prepared: Consolidated lists of such employees will be prepared and forwarded to the Secretary, General Administration (Secret Section) Department on the same day of the strike for further action. In the case of the offices of Heads of the Department and offices, similar lists will be prepared on the day of the strike by the officers concerned and forwarded to the Secretary, General Administration (Secret Section) Department as early as possible. The attendance position should be furnished at the appointed time.

16. All Heads of Departments and District Collectors should forward a detailed report of the attendance position on the next day of the strike separately indicating total number of employees in each Department, number of employees participated in the strike, number of employees attended office and employees on leave to the Secretary General Administration (SS) Department without fail.

17. All Heads of Departments/Offices and District Collectors will ensure that the normal functioning of the essential services under their control is not interfered with.

18. The Director General of Police, in consultation with the Heads of Departments will make necessary arrangements to avoid any untoward incidents and tension in the office premises. 19. All concerned are requested to ensure that the above instructions are followed scrupulously.

By Order of the Governor,

K. JOSE CYRIAC
Chief Secretary”

28. G.O.(P) No.68/2013/GAD dated 12.03.2013 issued by the 2nd respondent (Exhibit-P12) is extracted hereunder:

“GOVERNMENT OF KERALA

Abstract

General Administration (SS) Department — Establishment — National level strike of employees and workers on 20.02.2013 and 21.02.2013 — Absence of employees for want of public conveyance — Regularised - Orders Issued.

GENERAL ADMINISTRATION (SECRET SECTION) DEPARTMENT

G.O.(P) No.68/2013/GAD. Dated, Thiruvananthapuram, 12.03.2013

Read: 1. G.O.(P)No.42/2013/GAD, dated, 18.02.2013.
2. Representation dated 22.02.2013 of Kerala Secretariat Association.

ORDER

1). A section of workers, employees and teachers went on a National level strike on 20th and 21st February 2013. Government as per order read above ordered that the unauthorized absence of the employees who participated in the strike would be treated as Dies-Non. The pay for the day is to be deducted from the salary bill for the month of March, 2013.

2). A large number of employees and employees' organisations have represented to Government that the absence of many employees was due to the absence of public conveyance and therefore requested to grant eligible leave to those employees on the above days.

3). Government have examined the matter in detail and are pleased to order that the absence of employees on 20.02.2013 and 21.02.2013 for want of public conveyance will be regularised as eligible leave including casual leave on receipt of written undertaking that they had no intention to participate in the strike. However, if it is later on found that he / she has participated in any strike related activity like demonstration, the casual leave sanctioned will be cancelled and disciplinary action will be initiated against him / her.

By order of the Governor

K. Jose Cyriac
Chief Secretary”

29. G.O.(P) No.5/2016/GAD dated 06.01.2016 issued by the 2nd respondent (Exhibit-P10) is extracted hereunder:

**“GOVERNMENT OF KERALA
Abstract**

Public Services - Threatened Strike by a section of Government Employees & Teachers on 12th January, 2016 - Measures for dealing with - Orders Issued.

GENERAL ADMINISTRATION (SECRET SECTION) DEPARTMENT
G.O.(P) No.5/2016/GAD. Dated, Thiruvananthapuram, 06.01.2016

Read: 1. G.O.(P) No.34 /2002/GAD, dated, 23.01.2002.
2. G.O.(P) No 227/2015/GAD, dated 25.08.2015.

ORDER

Certain Organizations of State Government Employees and Teachers have threatened to go on strike on 12th January, 2016. To meet the situation, in case the threatened strike materializes, following orders are issued:

1. No leave of any kind shall be granted to Government Employees, Teachers etc. (including Gazetted Officers) for the strike day except on the following grounds:

- 1) Sickness of the individual or near relatives ('near relative' will mean wife, husband, children, father and mother of the Government servant).
- 2) Examination purpose of the employee.
- 3) Maternity purpose of the employee.
- 4) Other unavoidable reasons of a like nature.

2. Heads of Departments and other sanctioning authorities shall insist on Medical Certificates from Government Doctors in the proper form with the office stamp / seal affixed, to be produced by the applicants for the leave applied for on medical grounds. In cases of doubt on the bonafides of the Medical Certificates, the applicants are to be directed to appear before the Medical Board immediately. Irrespective of the reason given for the leave, the sanctioning authority will have the discretion to refuse the leave if such authority has reason to believe that the leave is meant for participation in the strike.

3. The applications for leave from the employees should be disposed of immediately and should not be kept without disposal.

While taking decisions, the above instructions should be strictly adhered to.

4. Every Head of office shall keep the Head of his Department informed of the details of all employees under him who have been granted leave and should also be able to justify the grant of leave, if so required.

5. Sanctioning authorities may be directed to observe strictly the instruction regarding grant of leave to their subordinates. They may be informed that they are liable to be proceeded against in cases of violation of the instructions.

6. If the Head of an office is on strike and as a result the office is closed, thereby preventing employees not on strike from attending the office, they may report before the District Officer. The District Officer should make immediate necessary arrangements for opening the office in such a case.

7. The District Collectors and Heads of Departments 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. Instructions have been given to the Police Department to give all necessary assistance in this context.

8. The Heads of Departments / offices will keep the keys of the offices and of the gates in their personal custody. They should arrange for the opening of the office sufficiently early to enable the employees not on strike to enter the offices.

9. The Director General of Police will, in consultation with the Heads of Departments, make arrangements for guarding the Government offices at night in the event of the strike.

10. The District Collectors are authorized to requisition vehicles belonging to other Departments or agencies or hire private vehicles to the extent necessary to meet the situation. The expenditure may be debited to the contingencies of the Department for whose need the vehicles are so requisitioned / hired

11. The unauthorized absence of the employees for participation in strike will be treated as **dies non**. The pay for the day in which the strike is taking place will be withheld from the salary for the month of February 2016. In the case of Gazetted Officers, their attendance in duty should be certified in the pay bills for the month of February 2016. This certificate need not be recorded by the Principal Secretaries, Secretaries, Special Secretaries to Government, Heads of Departments, District Collectors, Judicial Officers and Executive Officers of the Police Force and the Officers of All India Services.

12. Persons indulging in violence or destruction to public property will be prosecuted.

13. The provisional recruits in Government Service who absent themselves without sanction during the day of the strike will be removed from service.

14. In the event of the strike materializing all Heads of departments will convey to Government in the General administration (Secret Section) Department over Telephone (Telephone No.0471-2327559/2518399) by 10.30 a.m. on the day of strike, a general situation report indicating their total strength of staff, the number of employees present, number of employees unauthorisedly absent, number of employees on authorized leave and number of applications for leave received in their offices. The District Collectors will furnish to Government in the General Administration (Secret Section) Department over telephone on the day of strike a general situation report by 11.30 a.m. in respect of the employees in their offices as well as in the Major Offices in the Districts (including non-revenue offices). The Addl. Chief Secretaries/Principal secretaries/ Secretaries/Special Secretaries will also forward to General Administration (Secret Section) Department on the day of strike similar situation reports (Consolidated Department-wise) in respect of the employees in their Department, in the Secretariat, by 10.30 a.m.

15. In addition to the situation report mentioned above, in the case of the secretariat departments, the Additional Chief Secretaries/Principal Secretaries/Secretaries/Special Secretaries to Government concerned or in his absence the senior most officer available in the Department should get a list of absentees (with name and designation) participating in the strike prepared. Consolidated lists of such employees will be prepared and forwarded to the Secretary to Government, General Administration (Secret Section) Department on the same day of the strike for further action. In the case of the offices of Heads of the Department and officers, similar lists will be prepared on the day of the strike by the officers concerned and forwarded to the Secretary to Government, General Administration (Secret Section) Department as early as possible. The attendance position should be furnished at the appointed time.

16. All Heads of Departments and District Collectors should forward a detailed report to the attendance position on the next day of the strike separately indicating total number of employees in each Department, number of employees participated in the strike, number of employees attended office and employees on leave to the Secretary, General Administration (SS) Department without fail.

17. All Heads of Departments / Offices and District Collectors will ensure that the normal functioning of the essential services under

their control is not interfered with.

18. The Director General of Police, in consultation with the Heads of Departments will make necessary arrangements to avoid any untoward incidents and tension in the office premises.

19. All concerned are requested to ensure that the above instructions are followed scrupulously.

By order of the Governor,
JIJI THOMSON
Chief Secretary to Government”

30. G.O.(P) No.1/2019/GAD dated 31.01.2019 (Exhibit-P1) issued by the 2nd respondent is extracted hereunder:

“GOVERNMENT OF KERALA
BRIEF

Service-The National Strike on 8th and 9th of January, 2019 - the Non-attendance of Government employees and Teachers in the Office - Orders being issued for permitting grant of eligible leave.

GENERAL ADMINISTRATION DEPARTMENTS

G.O(P) No.1/2019/GAD Thiruvananthapuram, Dated 31st January, 2019

ORDER

The orders are being issued for permitting grant of eligible leave, including casual leave to the Government employees and teachers, who had not attended the offices in relation to the national general strike on 8th and 9th January, 2019.

By Order of the Governor

Dr. A. Jayathilak
Principal Secretary”

31. Exhibit-P2 is the online report dated 7.1.2019 reported in, The Week Online report, wherein it is reported that 10 Central trade unions that have called for a 48 hour general strike against the economic policies of the Narendra Modi Government on Tuesday and Wednesday have announced that they would organise road and rail blockades nationwide in addition to

street protests. Further, the trade unions have issued a press communique stating about their plans for the 48 hour strike on Monday. The trade unions which organised the strike are INTUC, AITUC, HMS, CITU, AIUTUC, TUCC, AICCTU, SEWA, LPF AND UTUC. On Friday, a CITU leader told THE WEEK that more than 14 Crores workers would participate in the 48 hour general strike.

32. Exhibit-P3 is the online report appeared in Mathrubhumi dated 5.1.2019, wherein it is reported that Central-State Government employees, staff in banks, insurance companies, workers in the road transport sector will take part in the strike. All employees in the organised and unorganised sectors will observe the nationwide strike. Further, the joint committee informed that workers in the business and industrial sector also extended support to the strike. All workers in the shops would take part in the strike. Meanwhile, vehicles of Sabarimala pilgrims are exempted from the strike.

33. Exhibits-P4 to P6 are the newspaper reports dated 9.1.2019, 10.01.2019, 12.01.2019 published in Hindu daily and Exhibit-P7 is the online report of the Economic Times dated 10.01.2019.

34. Before advertng to the submissions advanced by both sides, let us have a cursory look to the statutory provisions.

35. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of all previous rules on the subject, the Governor of Kerala has framed the Kerala Government Servants'

Conduct Rules, 1960 (hereinafter referred to as, the 'Rules, 1960', for short). As per Section 2(a), Government means the Government of Kerala State. Section 2(b) of the Act defines Government Servant, which means any person in the service of the Government and under its rule-making control whether for the time being in foreign service or not.

36. Rule 60 of the Rules, 1960 which deals with discussion of the policy or action of the Government, reads thus:

“(a) No Government servant shall, by any utterance, writing or otherwise discuss or criticise in public or at any meeting or association or body, any policy pursued or action taken by Government nor shall be in any manner participate in such discussion or criticism:

Provided that nothing contained in this rule shall be deemed to prohibit-

(i) A Government servant from participating in discussion at any private meeting solely of Government servants or of any recognised association of Government servants of matters which affect the personal interests of such servants individually or generally; or

(ii) A Government servant from defending and explaining in public or private meetings any policy or action of Government for the purpose of removing misapprehensions and correcting mis-statements or for the purpose of effectively carrying out such policy.

Explanation:—Nothing contained in this rule shall be construed to limit or abridge the power of Government requiring any Government servant to publish and explain any policy or action of Government in such manner as may appear to them to be expedient or necessary.

(b) No Government servant shall engage himself or participate in any demonstration which is prejudicial to the interests of the

sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or which involves contempt of Court, defamation or incitement to an offence.

(c) No Government servant shall raise any slogans or participate in any disorderly demonstrations or otherwise engage himself in any other disorderly conduct, within office premises or while on duty.

(d) No Government servant shall wear any badges, arm-bands or such other symbols having inscriptions or slogans which may offend the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or which may amount to contempt of court, defamation or incitement to an offence, strike or breach of discipline.

(e) No Government servant shall engage himself in anti-secular activities or activities which tend to create communal disharmony.”

37. Rule 77 of the Rules, 1960 which deals with conditions for recognition of an association, reads thus:

“77. (a) Conditions for recognition.- No association of Government servants or association purporting to represent Government servants or any class thereof shall be recognised unless it satisfies the following conditions, namely:-

(1) (i) The association must consist of a distinct class of Government employees and must represent 25 per cent of the total strength of that class or 50 persons whichever is higher.

Note 1.—Class I and Class II Officers shall not be allowed to be members in the same association in which Class III Officers are members and vice versa.

Note 2—The Heads of Departments concerned will satisfy themselves about the prescribed minimum representative strength and report to Government while forwarding the applications from Service Association for the grant of recognition.

(ii) Every Government employee of the same class must be eligible for membership of the Association;

(iii) Persons who are not in the service of Government shall not be office bearers of the Association; and

(iv) The Association must not be formed on a territorial or communal basis.

(2) The Association shall not be, in any way, connected with, or affiliated to any association, which does not, or any federation of associations, which do not, satisfy condition (1).

(3) The Association shall not be, in any way, connected with any political party or organisation.

(b) Rules to be observed by Service Organisations.-

Government shall withdraw the recognition granted to any Association, if it violates any of the following rules:-

(1) The Association shall not seek the assistance of any political party or organisation to represent the grievance of its members, or indulge in any seditious propaganda, or expression of disloyal sentiments.

(2) The Association shall not resort to any strike or threat of strike as a means of achieving any of its purposes or for any other reason.

(3) (omitted)

(4) The Association shall not, except with the previous sanction Government.

(i) issue or maintain any periodical publication;

(ii) permit its proceedings to be open to the Press, or publish any representation, on behalf of its members, in the Press or otherwise.

(4A) No publication issued by the Association should contain commercial advertisements.

(5) The Association shall not engage in any political activity.

(6) The Association shall not.

- (i) pay, or contribute towards any expenses incurred by a candidate for any election to a legislative body whether in India or elsewhere, or to a Local Authority or Body;
- (ii) support by any means, the candidature of any person for such election;
- (iii) undertake or assist in the registration of electors or the selection of candidate for such election; and
- (iv) maintain or contribute towards the maintenance of any member of a legislative body or of local authority or body.

(7) Government may require the regular submission for their information copies of the rules of the Association and the annual statement of its accounts and of lists of its members.

[(8) The funds of a Service Association shall consist exclusively of subscriptions from members and grants, if any, made by the Government or the money collected with the prior sanction of the Government and shall be applied only for the furtherance of the objects of the Service Association.

Note:—The Association shall not ask for or collect money (other than subscriptions from members of the Association) without obtaining the prior sanction of the Government.

(9) Any amendment of a substantial character in the rules of the Service Association shall be made only with the previous approval of the Government; and any other amendment of minor importance shall be communicated through proper channels for transmission to the Government for information.

(10) The Service Association shall not do any act or assist in the doing of any act which, if done by a Government servant, would contravene any of the provisions of the Government Servants' Conduct Rules.

(11) The Service Association shall not address any communication to a foreign authority except through the Government which shall have the right to withhold it.

(12) Communications addressed by the Service Association or by any office bearer on its behalf to the Government or a Government authority shall not contain any disrespectful or improper language.

(13) Federation or a Confederation of Service Associations shall affiliate only recognised Service Associations, and if the recognition accorded to any of the Service Associations affiliated to a Federation or a Confederation of Service Associations is withdrawn, the Federation or Confederation of Service Associations shall forthwith disaffiliate such Service Association.

(14) The Service Association shall cease to be affiliated to a Federation or Confederation of Service Associations whose recognition under these rules is withdrawn by the Government.

(15) The Service Association shall not invite non-officials to speak at meetings of the Association without obtaining the prior sanction of the Government.

(c) Procedure for making representations.-(1) Representations from such Associations whether made orally, by deputation or presented in writing, may be received by Government officers, notwithstanding anything contained in the rules relating to the submission of petitions and memorials by Government servants, provided that no representations or deputations will be received except in connection with a matter which is, or raises questions which are, of common interest to the class represented by the Association.

(2) Government may specify the channel through which representations from the Association shall be submitted and authority by whom deputations may be received.”

38. Rule 86 of the Rules, 1960 which deals with prohibition of Government servants to partake in any strike, reads thus:

“86. Government servants not to partake in any strike. -

No Government servant shall engage himself in any strike or incitement thereto or in any similar activities. Government servants should not engage themselves in any concerted or organised slowing down or attempt at slowing down Government work or in any act which has the tendency to impede the reasonably efficient and speedy transaction of Government work. Concerted or organised refusal on the part of Government servants to receive their pay will entail severe disciplinary action.”

39. In exercise of the powers conferred under Article 309 of the Constitution of India, the Kerala Service Rules have been framed by the Government of Kerala. Article 309 of the Constitution of India provides that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed in Public Services and posts in connection with the affairs of the State. Chapter III Rule 14A of the Kerala Service Rules part 1 reads as follows:

“14A. The period of unauthorised absence of an officer on account of participation in strike shall be treated as “Dies-non”. During the period of “Dies-non”, he shall not be eligible for pay and allowances and the period shall not be counted for admissibility of earned leave. However, such period shall be counted for the purposes of increment and half pay leave, notwithstanding anything contained in any other rules in this part.”

40. Under Rule 14A of Part I KSR, the Commissioner and Secretary to Government, General Administration (SS) Department, has issued a circular dated 21.01.1985 and the same reads thus:

**“GENERAL ADMINISTRATION (SS) DEPARTMENT
CIRCULAR MEMORANDUM**

No. 142749/SSI/84/GAD *Dated, Trivandrum, 21st January, 1985*

Sub:- Public Services - 'Work to Rule' as a form of agitation - Dealing with Revised orders issued.

Ref:- Circular Memorandum No.48063/SSI/75/PD. Dated 27-7-1976.

The order issued in Circular Memorandum cited is hereby cancelled. The matter has been reviewed and the following procedure will hereafter be followed by the Heads of Departments/ Offices, if and when any section of employees resort to 'work to rule' as a part of an agitation.

2. Whenever a section of employees resort to 'work to rule' as a part of an agitation, the Head of the Department/Office shall verify everyday during the period of agitation, whether all employees under their control have attended to their normal work. Lists of employees namely (i) who have done only a part of their normal work; and (ii) who did not do any work at all during the day shall be prepared by the Heads of Offices on all days of the agitation before the expiry of the office/duty time. The performance of the employees who did not attend. to any work at all on the day(s) will be considered as 'NIL' and they will be treated as on 'unauthorised absence'. The period thus considered as unauthorised absence will be treated as '*dies-non*' under rule 14A Part I, Kerala Service Rules. In the case of the employees who have done only a part of their work thereby causing slowing down of or impeding the reasonably efficient transaction of Government work, disciplinary action will be initiated against them under Rule 86 of the Kerala Government Servants'

Conduct Rules. Those employees who are found to be causing obstruction to the work of others or indulging in harassment intimidation or other illegal acts during the agitation shall also be placed under suspension pending disciplinary-action.

3. In the Secretariat, the Secretary to Government concerned or in his absence the senior most officer available in the Department shall prepare such lists and further action taken on that basis.

M. DANDAPANI,
Commissioner and Secretary to Government.”

41. As per Rule 14(a) of Part I of the Kerala Service Rules, the period of unauthorised absence of an officer on account of participation in strike shall be treated as “dies non”. During the period of “dies non”, he shall not be eligible for pay and allowance and the period shall not be counted for admissibility of earned leave. However, such period shall be counted for the purposes of increment and half pay leave, notwithstanding anything contained in any other rules in this Part.

42. Primarily, the rules and notifications discussed above dealing with State Government servants would make it clear that there are serious restrictions on Government servants from participating in any political activity, strike, etc. It is also clear from the Government orders and the rules that, if a Government servant participates in any strike and consequential unauthorised absence, the absence will be treated as *dies non* and during the period of *dies non*, he shall not be eligible for pay and allowances and the period shall not be counted for admissibility of earned leave, though such period can be counted

for the purpose of increment and half pay leave, notwithstanding anything contained in any other rules in Part I of Kerala Service Rules. However, by Exhibit-P1 Government order dated 31.01.2019, eligible leave, including casual leave, was granted to the Government employees and teachers, who had not attended the offices in connection with the nation-wide general strike on the 8th and 9th of January, 2019, which is in clear violation of Rule 14A of Part I KSR.

43. It is also worthwhile to note that the State Government have issued a Circular Memorandum dated 21.01.1985, extracted above, whereby the earlier circular dated 27.07.1976 was cancelled. In the circular dated 21.01.1985, it is stipulated that whenever a section of employees resort to work to rule, as a part of an agitation, the Head of the Department/office shall verify every day during the period of agitation, whether all employees under their control have attended their normal work. It further reads that a list of employees, (i) who have done only a part of their normal work; and (ii) who did not do any work at all during the day shall be prepared by the Heads of Offices on all days of the agitation before the expiry of the office/duty time. The said circular further stipulates that the performance of the employees, who did not attend to any work at all on the day(s), will be considered as 'NIL' and they will be treated as on "unauthorised absence". The period thus considered as "unauthorised absence", will be treated as *dies non* under Rule 14A Part I of the Kerala Service Rules.

44. The abovesaid circular memorandum further stipulates that in case of the employees, who have done only a part of their work, thereby causing slowing down of or impeding the reasonably efficient transaction of Government work, disciplinary action will be initiated against them under Rule 86 of the Kerala Government Servants' Conduct Rules, 1960, as extracted above. The circular further states that employees who are found to be causing obstruction to the work of others or indulging in harassment, intimidation, or other illegal acts during the agitation shall also be placed under suspension pending disciplinary action.

45. Thus, relying on the aforesaid Government orders/circulars and the rules, learned counsel for the petitioner has addressed arguments to contend and canvass that the strike undertaken by the State Government employees on 8th and 9th of January, 2019 was illegal and further that Exhibit-P1 order sanctioning casual and eligible leaves for Government employees, who took part in the strike on 8th and 9th of January, 2019 is in absolute violation of the rules /Government orders/circulars.

46. *Per contra*, learned Senior Government Pleader submitted that the subject issue raised by the petitioner in the writ petition is purely a service matter and, therefore, a public interest writ petition is not maintainable, which is a well settled proposition in law, especially since no where in the instant writ petition, it is stated that the petitioner is an affected person consequent to the strike carried out by the Government servants or on account of Exhibit-P1

impugned order passed by the State Government protecting the interest of the Government employees, who took part in the strike.

47. It was further contended that the action of the State Government in issuing Exhibit-P1 is not vitiated by any other provisions of law and Article 309 of the Constitution of India envisages that subject to the provisions of the Constitution, Acts of appropriate Legislature, may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Therefore, it is submitted that, by invoking the provisions of the Constitution, the State Government have enacted the Kerala Public Services Act, 1968. Section 2(1) of the Act, 1968, enables the Government to make rules, either prospectively or retrospectively, to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State of Kerala.

48. Sum and substance of the contentions advanced by the learned Senior Government Pleader is that the State Government have not exercised the power excessively and, therefore, there is no abuse of power or illegality in issuing Exhibit-P1 Government order dated 31.01.2019.

49. It is further submitted that due to the strike, the entire public transport came to a standstill. It is clear that owing to the strike, there was lack of conveyance facilities for the employees and Exhibit-P1 order was issued considering the said fact also. It is also contended that since the Government

did not declare 8th and 9th of January, 2019 as *dies non*, there is no irregularity in issuing Exhibit-P1 order for treating the day(s) eligible leave/casual leave, taking into account the above circumstances also. That apart, he submitted that even though it is not a policy of the Government to encourage illegal activities, genuine reasons cannot be neglected and, therefore, the leave sanctioning authorities will verify the genuineness of the grounds in respect of each and every application. Considering all the above aspects, Exhibit-P1 Government order dated 31.01.2019 was issued. Therefore, Exhibit-P1 order cannot be treated as a blanket order issued by the State Government granting eligible leave to the employees, who had not attended the office on 8th and 9th of January, 2019.

50. Contention has been made that Exhibit-P13 order dated 17.06.2011 was issued by the Principal Secretary, Department for General Administration (Secret Section), Government of Kerala, 2nd respondent, permitting to grant eligible leave, including casual leave, to the employees, who had not attended the offices in connection with the strike on 17.02.2009, by cancelling the *dies non* imposed. He, therefore, submitted that there are precedents in granting eligible leave, including casual leave, who have not attended duties during strike.

51. Sum and substance of the contention is that there is no *suo motu* regularisation of any unauthorised absence and the Government had not permitted to treat the period of absence as duty, and in terms of Exhibit-P1

order dated 31.01.2019, the employees have to apply for casual leave, earned leave, half pay leave, commuted leave or leave without allowance and draw leave salary accordingly. Other contentions have also raised justifying the action of the Government in issuing Exhibit-P1 order.

52. Contention has also been made that the decisions were rendered by a Hon'ble Full Bench of this Court in **Bharath Kumar** (cited supra) and **George Kurian** (cited supra) on account of bandh and hartal, which has no manner of connection with the strike by the Government servants and other consequential actions. Therefore, it was submitted that the writ petition does not merit any consideration and liable to be dismissed.

53. In support of his contentions, learned counsel for the petitioner has relied on the decision in **T.K. Rangarajan v. Government of Tamil Nadu and Ors.** reported in (2003) 6 SCC 581, wherein the Hon'ble Supreme Court had an occasion to consider a case in relation to a strike vis-a-vis the T.N.Government Servants' Conduct Rules, 1973 and held that there is no legal or statutory right to go on strike. On the facts and particular circumstances of the case, Government servants, in fact, were expressly prohibited from going on strike, inciting anyone to strike, or any "similar activities" by virtue of the provisions of Rules, 1973. It was further held in the said judgment that there is no moral or equitable jurisdiction to go on strike, and the Hon'ble Apex Court has laid down the legitimate mode of redressal of grievances. That apart, in the said decision, social cost of strikes and its consequences are also pointed

out. Paragraphs 17 to 22, which are relevant to the context, read thus:

“17. There is no statutory provision empowering the employees to go on strike.

18. Further, there is prohibition to go on strike under the Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as "the Conduct Rules"). Rule 22 provides that "no Government servant shall engage himself in strike or in incitements thereto or in similar activities." Explanation to the said provision explains the term 'simile activities'. It states that "for the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative last usually called "hunger strike" for similar purposes. Rule 22-A provides that "no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises --

(a) during office hours on any working day; and

(b) outside office hours or on holidays, save with the prior permission of the head of the Department or head of office, as the case may be.

(C) There is no moral or equitable justification to go on strike.

19. Apart from statutory rights. Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse, the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a stand still; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public

properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.

20. Further, Mr. K.K. Venugopal, learned senior counsel appealing for the State of Tamil Nadu also submitted that there are about 12 lacs Government employees in the State. Out of the total income from direct tax, approximately 90% of the amount is spent on the salary of the employees. Therefore, he rightly submits that in a Society where there is a large scale unemployment and number of qualified persons are eagerly waiting for employment in Government Departments or in public sector undertakings, strikes cannot be justified on any equitable ground.

21. We agree with the said submission. In the prevailing situation, apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but also by people at large. The reason being, in a democracy even though they are Government employees, they are part and parcel of governing body and owe duty to the Society.

22. We also agree that misconduct by the government employees is required to be dealt with in accordance with law. However, considering the gravity of the situation and the fact that on occasion, even if the employees are not prepared to agree with what is contended by some leaders who encourage the strikes, they are forced to go on strikes for reasons beyond their control. Therefore, even though the provisions of the Act and the Rules are to be enforced, they are to be enforced after taking into consideration the situation and the capacity of the employees to resist. On occasion, there is tendency or compulsion to blindly follow the others. In this view of the matter, we had suggested to the learned senior counsel Mr. Venugopal that employees who went on strike may be reinstated in service and that suggestion was accepted by Mr. Venugopal after obtaining instructions from the State Government. Hence, on 24.7.2003, we had passed the following order:--

"Heard the learned counsel for the parties.

Mr. K.K. Venugopal, the learned senior counsel appearing for the State of Tamil Nadu after obtaining necessary

instructions states that:

1. The State Government will reinstate all the government employees who are dismissed because they had gone on strike, except (i) 2,200 employees who had been arrested and (ii) employees against whom FIR had been lodged.

2. This reinstatement in service would be subject to unconditional apology as well as undertaking to the effect that employees would abide by Rule 22 of the Tamil Nadu Government Servants Conduct Rules, 1973 which provides as under: -

"22. Strikes: No Government servant shall engage himself in strike or in incitements thereto or in similar activities."

Explanation -- For the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes."

It is also stated that the Government will proceed under the Disciplinary Rules only against those employees who had indulged in violence and who had incited the other employees to go on strike.

From 25th July such employees would be reinstated in service subject to their giving unconditional apology for resorting to strike and also an undertaking to the effect that in future he would abide by Rule 22.

He also states that for the employees who would be reinstated in service with regard to the period for which they remained absent, appropriate order would be passed by the State Government for regularizing their absence. However, this would not be treated as a break in service.

Ordered accordingly.

For further orders and directions list the matter on 31.7.2003."

54. In **George Kurian** (cited supra), a Full Bench of this Court had an occasion to consider calling of hartal and general strike and held that nobody should be compelled to participate in the hartal or general strike and people

who are calling strike or hartals are vicariously liable to pay damages. It was further held that the State Government is also liable and if necessary, the army should be called in. Taking note of the respective judgments rendered earlier, certain directions were issued by this Court, which read thus:

“13. Already forced hartals and general strikes were declared to be illegal and unconstitutional by the Division Bench and approved by the Apex Court and they are equated to bandh and bandh like situations. But whatever name it is called, whether general strike, hartal or any other name, nobody can create a bandh like situation or obstruct the fundamental rights of others. The directions issued by the Division Bench and Full Bench as approved by the Supreme Court shall be strictly adhered to. Apart from the directions issued by the Full Bench in *Bharath Kumar's Case* and Division Bench quoted in paragraph 9 of this judgment as modified by the Hon'ble Apex Court, we issue the following directions also:

- (1) Whenever a hartal or a general strike is called, the Government should take adequate measures to see that normal life of the citizens is not paralysed. That is to be done not by declaring holidays or postponing examinations; but, by giving effective protection to those who are not participating in such hartals or strikes. Government should be able to deal with the situation with strong hands. Considering the past experience, if the Government is feeling that they are unable to give adequate protection, it should request the Centre for deputing Army or paramilitary forces so that there should not be any constitutional breakdown and violation of fundamental rights of the citizens;
- (2) The District Administration should be given sufficient direction to avail para-military force as provided under Chapter X of the Code of Criminal Procedure to maintain public services if law and order problem arises during the hartal or general strike by unlawful assembly of hartal or strike supporters;
- (3) In cases of damage to public property, action should be taken to recover the damages from the persons who actually cause

damages and also from the political parties, organizers and persons who give actual call for such hartal or general strikes. In view of the happenings in the past, they cannot say that they did not visualize such a situation which was created by anti-social elements and directions issued in this regard in paragraph 18 of Bharat Kumar's case which is affirmed by the Supreme Court shall be followed strictly and if no proper action is taken, it should be realized from the defaulting officers and stern action should be taken against such officers;

(4) Effective action should be taken under the Prevention of Damages to Public Property Act, 1984 and circular dated 17.12.2003 (produced as Ext.R1(d) in W.P.(C) No. 20078 of 2003) shall be implemented strictly;

(5) Those who call for hartals or strikes by whatever reason should make it clear in their call that nobody will be compelled to participate in the hartals or strikes, that traffic will not be obstructed and those who are willing can go for work and that fundamental rights of others to move about will not be affected. They should also instruct their supporters to see that no coercion or force is used for compelling others to participate in the strike or hartal;

(6) With regard to the injuries and damages caused to the private persons and their properties, Government should adequately compensate them immediately as Government has failed to fulfill its constitutional obligation to protect lives and properties of the citizens and the Government should take steps to recover the same from the persons who caused such damages or injuries and also from the persons and political parties or organizations who called for such hartals or general strikes. Criminal cases also should be taken against the offenders as well as the abettors to the offence. Such criminal cases registered should be pursued with enthusiasm and it should not be withdrawn merely on political pressure and investigation should be conducted fairly not with a purpose of filing a subsequent refer report as undetected;

(7) Government should see that an atmosphere is created so that citizens can move about on the roads freely without fear and vehicular traffic is not obstructed and public transport can ply without any hindrance;

(8) Damages caused to the public or private properties etc. and recovery steps initiated should be published by the Government. Circular dated 17.12.2003 issued by the Government regarding recovery of damages should be implemented fully;

(9) Government should also take appropriate action against the District Administration and Police authorities if effective steps are not taken by them against the persons who use force or who are trying to impose their will on others to deprive the fundamental rights of majority of the citizens in the guise of hartals and general strikes.”

55. In **Harish Uppal v. Union of India** reported in 2003 (1) KLT 192 (SC), the Hon'ble Supreme Court considered an issue as regards strike called by the lawyers, wherein it was held that lawyers have no right to go on strike or give a call for boycott not even a token strike and protest, and grievances if any can only be redressed through press statements, T.V. Interviews, peaceful protest marches outside and away from court premises. True, the facts and circumstances considered by the Hon'ble Apex Court in the abovesaid decision were taking into account the duties and responsibilities of a lawyer holding the Vakalath of a client and the circumstances occur due to the strike called for by the lawyers, however, what could be culled out from the said decision is that there is no right to go on strike or to give a call for boycott, taking into account the provisions of Bar Council of India (Conduct and Disciplinary) Rules and the relevant provisions of the Advocates Act, 1961. Said decision substantiates the contention of the petitioner that when there is a prohibition under laws to go on, for strike, nobody is entitled to go on strike as of right.

56. In **All India Bank Employees' Association v. National Industrial Tribunal and Ors.** reported in AIR 1962 SC 171, the Hon'ble Apex Court

considered the question of freedom to form association vis-a-vis the scope of Labour Unions and the right guaranteed under Articles 19(1)(c) and 14 of the Constitution of India. Therein, it was held that a right to form unions guaranteed by sub clause (c) of Article 19(1), does not carry with it a fundamental right in the union so formed to achieve every object for which it was formed and even a very liberal interpretation of sub clause (c) of clause (1) of Article 19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. It was also held that the right to strike or the right to declare lock-out may be controlled or restricted by appropriate industrial legislation, and the validity of such legislation would have to be tested with reference to the criteria laid down in clause (4) of Article 19, but by totally different considerations.

57. In **Kerala Vyapari Ekopana Samithi v. State of Kerala** [2000 (2) KLT 430], a Hon'ble Division Bench of this Court had occasion to consider an issue with respect to staging a hartal and other consequential difficulties faced by the public, and it was held that there cannot be any doubt that forcibly compelling an individual or a group of individuals to participate in a general strike or to join a hartal would amount to interference with the rights of those persons equally jealously safeguarded by the Constitution. Therefore, it was held that those who call for hartal cannot take shelter behind the plea that hartal was only a legitimate weapon of mass protest and at the same time,

create an atmosphere of physical and psychological fear so as to compel others to toe the line or to prevent them from exercising their rights. Even though it was observed that mere calling of a hartal or advocating of it, as understood in the strict sense, cannot be held to be objectionable, the moment it comes out of the concept of hartal strictly so called and seeks to impinge on the rights of others, it ceases to be a hartal in the real sense of the term and really becomes a violent demonstration affecting the rights of others. In the said decision, it was further held that facet of it has certainly to be curtailed and can be curtailed by this Court at the instance of others, who have equal constitutional rights, while exercising jurisdiction under Article 226 of the Constitution of India.

58. Therefore, going by the preposition of law laid down by the Hon'ble Apex Court in the decisions cited supra, and the rules in vogue, it is clear that not only there was any right conferred on the Government servants to go on strike, but also there is clear prohibition under law to call for and participate in strikes and, therefore, the action of the Government in issuing Exhibit-P1 order dated 31.01.2019, regularising an illegal act, cannot be sustained in law.

59. However, the paramount contention advanced by the learned Senior Government Pleader is that the petitioner is not aggrieved by the Government granting any relief so as to protect the interest of the Government servants, which is a service matter, purely within the realm of the Government, and therefore, no Public Interest Litigation is maintainable.

60. On the above aspect, learned Senior Government Pleader has relied upon various decisions of the Hon'ble Apex Court.

61. In **Vishal Ashok Thorat and Others v. Rajesh Shrirambapu Fate and Others** reported in 2019 SCC Online SC 886, the Hon'ble Apex Court had an occasion to consider a question with respect to the selection conducted and the consequential challenge made in a Public Interest Litigation. We do not think that the proposition of law laid down in the said judgment has any bearing to the issue in the case on hand.

62. In **Rajnit Prasad v. Union of India and Others** reported in (2000) 9 SCC 313, the Hon'ble Apex Court held that disciplinary proceedings are essentially a matter between employer and employee and a stranger, even a practicing advocate, cannot be said to have any interest in them. Going through the facts and circumstances of the said decision, we do not think that the same has any real bearing to the issue at hand.

63. In **Neetu v. State of Punjab and Others** reported in (2007) 10 SCC 614, the Hon'ble Apex Court dealt with the maintainability of a private dispute styled as 'Public Interest Litigation', in the matter of a person who got appointed as an Audit Inspector, Co-operative Societies, Ferozepur on the basis of Scheduled Caste certificate, though he was not a member of the Schedule Caste community. Therein, it was held that when a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to

unleash a private vendetta, personal grouse or some other *mala fide* object, and therefore, the writ petition was not maintainable under law.

64. In **Santosh Singh v. Union of India and Another** reported in (2016) 8 SCC 253, the Hon'ble Apex Court had an occasion to consider a question as to whether, a judicial process can be an answer to every social ill and it was held that in a PIL, strict rule of *locus standi* though relaxed, courts need to abide by the parameters governing nuanced exercise of judicial power and further that matters of policy are dealt with by the executive organ of State, whereas, Courts are concerned with preservation of rule and, therefore, it is unrealistic for courts to assume that it can provide solution to the vexed issues drawing balance between conflicting dimensions that travel beyond legal plane. It was also held therein that when solutions traverse different fields, it is difficult to perceive that such matters can be regulated by issuing mandamus and every good that is perceived to be in the interest of society cannot be mandated by courts.

65. Apart from the above, learned Senior Government Pleader has also relied on the decisions of the Hon'ble Apex Court in **Balco Employees' Union (Regd.) v. Union of India** [(2002) 2 SCC 333], **Directorate of Film Festivals and Others v. Gaurav Aswin Jain and Others** [(2007) 4 SCC 737], and **Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and Others** [(2013) 4 SCC 465], to canvas the proposition that when a policy decision is taken by the Government, interference of the court would be very slow. Learned Senior

Government Pleader has also relied on a decision of the Hon'ble Apex Court in **M/s. Mahabir Jute Mills Ltd., Gorakhpore v. Shri Shibban Lal Saxena and Others** [(1975) 2 SCC 818], to canvas the proposition that none of the affected persons are made parties in the writ petition, and therefore, if any orders are passed adverse to the striking workers, it would be in violation of the principles of natural justice.

66. However, in **Dr. D.C. Wadhwa and Ors. v. State of Bihar and Ors.** reported in [1987] 1 SCR 798, the Hon'ble Supreme Court observed thus:

“The rule of law constitutes the core of our Constitution of India and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, petitioner No. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice.”

67. Taking into account the contentions advanced by the learned counsel for the writ petitioner, we are of the considered opinion that Exhibit-P1 order dated 31.01.2019 issued by the State Government cannot be said to be a pure service matter, even though, by virtue of the said notification, the interest of the striking workers has been protected.

68. It can be deduced from the statutory provisions dealing with the prohibition of Government servants participating in strike, and the decisions cited supra, that the Government servants had struck work in violation of the

rules/notifications/ circulars issued by the State Government affecting the normal life of the public and public exchequer, and it is also clear from the proposition of law laid down by the Hon'ble Apex Court that even though right to form association is a right guaranteed under Article 19(1)(c) of the Constitution of India, there is no legal right for the workers/such associations, to call for a general strike or instigate the employees to strike, in the guise of the said fundamental right. Apparently, consequent to the strike of the Government servants and others, the offices came to a standstill for two days and the public had suffered substantially on account of the same.

69. It is clearly specified in Part I of the Kerala Service Rules and other conduct rules, discussed above, that if any Government servant indulges in strike, he is liable to be proceeded in accordance with the provisions of the said rules. However, quite contrary to the provisions of law, Government have issued Exhibit-P1 notification absolutely protecting the interests of the Government employees, who had struck work. It is not reflected in the said Government order, as to whether the Government have made necessary inquiries on the basis of the appropriate Government orders, as stated in the counter affidavit of the 2nd respondent. It is not spelt out in Exhibit-P1 Government order that leave would be granted to eligible persons alone, but on the other hand, it clearly specifies that orders are being issued for permitting grant of eligible leave, including casual leave to the Government employees and teachers, who have not attended the offices, in relation to the

national general strike on 8th and 9th of January, 2019.

70. As we have already pointed out, there are clear provisions of law to deal with such situations, and in view of the same, Government were not at liberty to issue a blanket order, as that of Exhibit-P1 dated 31.01.2019, which enabled the striking workers to go scot-free, unmindful of the imperatives contained in the provisions of law, which according to us, is a practice clearly deprecated by the Hon'ble Apex Court in the decisions cited supra.

71. Though a contention has been raised that none of the affected persons were made parties to the writ petition, we are of the view that the question raised is in respect of a Government order issued and the Government have defended the same by filing a detailed counter affidavit, explaining the circumstances under which the said order came to be issued. In effect, interests of the Government servants is protected by the Government substantially and even argued on behalf of them. The lis is between the public interest litigant and the Government, and therefore, writ petition cannot be dismissed on the above ground.

72. Though the learned Senior Government Pleader addressed arguments and cited various decisions of the Hon'ble Apex Court, in regard to the policy decision of the Government, and the scope of interference by this Court, we do not think that Government are at liberty to take any policy decision in absolute violation of the rules in vogue and the proposition of law laid down by the Hon'ble Apex Court in regard to the illegal strike of the

Government servants.

73. Contention on the above aspect is against rule of law and fallacious. Rule of law, what it means, Massey in his book on 'Administrative Law', states that rule of law is a dynamic concept, and like many other such concepts, is not capable of any exact definition. However, it does not mean that there is no agreement on the basic values which it represents. Rule of law is a consolidation of all the laws based on the principles of freedom, equality, fraternity, accountability and non-arbitrariness. As the term itself connotes, 'Rule of Law' means rule of law and not of men. Rule of law is one of the basic and general principles of the Constitution. Rule of law imposes a duty on all the citizens in a parliamentary democracy, to obey the law and for such obedience, the law itself must be just law, and not arbitrary or oppressive. The aim of rule of law is to protect freedom and fundamental rights of the people. The concept of rule of law is that the State is governed, not by the ruler or the nominated representatives of the people, but by the Law, which means, the supremacy of the Constitution would prevail in the country. The Legislature and the Executive derive their authority only from the Constitution, and bound to maintain rule of law.

74. Let us also consider a few decisions of the Hon'ble Supreme Court on the aspect of Rule of Law, which are extracted hereunder:

(i) In **K.T. Plantation Pvt. Ltd. v. State of Karnataka** [(2011) 9 SCC 1], the Hon'ble Supreme Court held as under:

“The rule of law as a principle contains no explicit substantive component like eminent domain but has many shades and colours. Violation of principle of natural justice may undermine the rule of law resulting in arbitrariness, unreasonableness, etc. but such violations may not undermine the rule of law of law so as to invalidate a statute. Violation must be of such a serious nature which undermines the very basic structure of the constitution and the democratic principles of India. But once the court finds, a statute undermines the rule of law which has the status of a constitutional principle like the basic structure, the said grounds are also available and not vice versa. Any law which in the opinion of the court is not just, fair and reasonable is not a ground to strike down a statute because such an approach would always be subjective not the will of the people because there is always a presumption of constitutionality for a statute. The rule of law as a principle is not an absolute means of achieving equity, human rights, justice, freedom and even democracy and it all depends upon the nature of the legislation and the seriousness of the violation. The rule of the law as an overarching principle can be applied by the constitutional courts, in the rarest of rare cases and the courts can undo laws, which are tyrannical, violate the basic structure of the constitution and norms of law and justice.”

Rule of law can be traced back to Aristotle and has been championed by Roman jurists; medieval natural law thinkers; Enlightenment philosophers such as Hobbes, Locke, Rousseau, Montesquieu, Dicey etc. Rule of law has also been accepted as the basic principle of Canadian Constitution order. Rule of law has been considered to be as an implied limitation on Parliament's powers to legislate. In **Reference Re Manitoba Language Rights** (1985) 1 SCR 721, the Supreme Court of Canada described the constitutional status of the rule of law as follows:

“The Constitution Act, 1982.... is explicit recognition that "the rule of law is a fundamental postulate of our constitutional structure." The rule of law has always been understood as the very basis of the English Constitution characterising the political institutions of England from the time of the Norman Conquest. It becomes a postulate of our own constitutional order by way of the preamble to the Constitution Act, 1982 and its implicit inclusion in the preamble to the c by virtue of the words "with a Constitution similar in principle to that of the United Kingdom.

Additional to the inclusion of the rule of law in the preamble of the Constitution Acts of 1867 and 1982, the principle is clearly implicit in the very nature of a Constitution. The Constitution, as the Supreme Law, must be understood as a purposive ordering of social relations providing a basis upon which an actual order of positive laws can be brought into existence. The founders of this nation must have intended, as one of the basic principles of nation building, that Canada be a society of legal order and normative structure: one governed by the rule of law. While this is not set out in a specific provision, the principle of the rule of law is clearly a principle of our Constitution.”

The Canadian Constitution and Courts have, therefore, considered the rule of law as one of the "basic structural imperatives" of the Constitution. Courts in Canada have exclusively rejected the notion that only "provisions" of the Constitution can be used to strike down legislation and comes down squarely in favour of the proposition that the rule of law binds legislatures as well as governments.

Rule of law as a principle contains no explicit substantive component like eminent domain but has many shades and colours. Violation of principle of natural justice may undermine rule of law resulting in arbitrariness, unreasonableness etc., but such violations may not undermine rule of law so as to invalidate a statute. Violation must be of such a serious nature which undermines the very basic structure of our Constitution and our democratic principles. But once the Court finds, a Statute, undermines the rule of law which has the status of a constitutional principle like the basic structure, the above grounds are also available and not vice versa. Any law which, in the opinion of the Court, is not just, fair and reasonable, is not a ground to strike down a Statute because such an approach would always be subjective, not the will of the people, because there is always a presumption of constitutionality for a statute.

Rule of law as a principle, it may be mentioned, is not an absolute means of achieving the equality, human rights, justice, freedom and even democracy and it all depends upon the nature of the legislation and the seriousness of the violation. Rule of law as an overarching principle can be applied by the constitutional courts, in rarest of rare cases, in situations, we have referred to earlier and can undo laws which are tyrannical, violate the basic structure of our Constitution, and our cherished norms of law and justice. One of the fundamental principles of a democratic society inherent in all the provisions of the Constitution is that

any interference with the peaceful enjoyment of possession should be lawful.”

(ii) In **Chief Settlement Commissioner Punjab v. Om Prakash** [AIR 1969 SC 33], the Hon'ble Supreme Court observed thus:

“In our Constitutional system, the central and most characteristic feature is the concept of the Rule of Law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality.”

(iii) In **ADM Jabalpur v. Shivakant Shukla** [AIR 1976 SC 1207], the Hon'ble Supreme court observed thus:

“The constitution is the mandate. The constitution is the Rule of Law... There cannot be any rule of law other than the constitutional rule of law. There cannot be any pre Constitution or post Constitution Rule of Law which can run counter to the rule of law embodied in the Constitution, nor there any invocation to any rule of law to nullify the constitutional provisions during the times of emergency... Article 21 is our Rule of Law regarding life and liberty. No other rule of law can have separate existence as a distinct right... The rule of law is not a mere catchword or incantation. Rule of law is not a law of nature consistent and invariable at all times and in all circumstances... There cannot be a brooding and omnipotent rule of law drowning in its effervescence the emergency provisions of the Constitution.”

75. Therefore, Government cannot take shelter under the guise of a policy decision taken by them. Moreover, it is not an absolute rule that Court cannot interfere with the policy decisions of the Government. Even if it is a policy decision, Court can look into the legality, correctness or arbitrariness of the same, and interfere, by exercising the power under Article 226 of the Constitution of India, if such a policy is against the statutory provisions. On the said aspect, let us consider a few decisions, as hereunder:

(i) In **Ekta Shakti Foundation v. Government of NCT of Delhi** [(2006) 10 SCC 337], the Hon'ble Supreme Court held as under:

“11. "5. While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. [See **Ashif Hamid v. State of J. & K.**AIR 1989 SC 1899, **Shri Sitaram Sugar Co. v. Union of India** (AIR 1990 SC 1277)].

The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

8. The Court should constantly remind itself of what the Supreme Court of the United States said in **Metropolis Theatre Company v. City of Chicago** (1912) 57 L Ed 730.

“The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. [See: **State of Orissa and Ors. v. Gopinath Dash and Ors.** (2005) 13 SCC 495].”

(ii) In **Directorate of Film Festivals and Ors. v. Gaurav Ashwin Jain and Ors.** [(2007) 4 SCC 737], the Hon'ble Supreme Court considered the scope of judicial review, while examining a policy of the Government, to check whether it violates the

fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary and held thus:

16. The scope of judicial review of Governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. Nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review [vide: **Asif Hameed v. State of J&K 1989 Supp (2) SCC 364**; **Shri Sitaram Sugar Co. Ltd., v. Union of India 1990 (3) SCC 223**; **Khoday Distilleries v. State of Karnataka 1996 (10) SCC 304**, **Balco Employees Union v. Union of India 2002 (2) SCC 333**), **State of Orissa v. Gopinath Dash 2005 (13) SCC 495** and **Akhil Bharat Goseva Sangh v. State of Andhra Pradesh 2006 (4) SCC 162**].

(iii) In **Delhi Development Authority and Anr. v. Joint Action Committee Allottee of SFS Flats and Ors.** [(2008) 2 SCC 672], the Hon'ble Supreme Court held that broadly, a policy decision is subject to judicial review on the following grounds:

“(a) if it is unconstitutional;
(b) if it is de hors the provisions of the Act and the Regulations;
(c) if the delegatee has acted beyond its power of delegation;
(d) if the executive policy is contrary to the statutory or a larger policy.”

(iv) In **State of Madhya Pradesh v. Narmada Bachao Andolan** [(2011) 7 SCC 639], on judicial interference in a policy matter, at paragraphs 36 and 37, the Hon'ble Supreme Court, observed thus:

“36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See **Ram Singh Vijay Pal Singh v. State of U.P. [(2007) 6 SCC 44]**,

Villianur Iyarkkai Padukappu Maiyam v. Union of India [(2009) 7 SCC 561] and State of Kerala v. Peoples Union for Civil Liberties [(2009) 8 SCC 46].)

37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions.”

(emphasis supplied)

(v) In **Indian Railway Catering and Tourism Corpn. Ltd. vs. Indian Railway Major and Minor Caterers Association and Ors.** [(2011) 12 SCC 792], the Hon'ble Supreme Court observed thus:

“These appeals are directed against the judgment and order dated 24/1/2006 passed by the Division Bench of Orissa High Court. By the impugned order, the High Court has interfered with the Catering Policy of 2005 in respect of reservations. By now it is a well settled principle of law that policy decisions of the Government should not be interfered in a routine manner unless the policy is contrary to the provisions of statutory rules or of the Constitution. Nothing has been brought to our notice that the Policy is contrary to the provisions of the statutory rules or the Constitution.”

(vi) In **Ripley and Co. Stevedoring and Holding Pvt. Ltd. and Ors. v. The Board of Trustees for the Port of Kolkata and Ors.** [WP No.22511 (W) of 2014, dated 09.12.2015], the High Court of Calcutta held that:

“114. In any event, a proposition that courts can never interfere with policy decision of the State or public authorities will be stretching the argument too far and not acceptable. If a policy decision of a State is palpably and manifestly illegal or contrary to the provisions of Constitution or a statute, the Court is not powerless to interfere. Similarly, if the policy decision of a statutory authority is contrary to the provisions of the incorporating statute or if such a decision is taken in exercise of a power which the parent statute does not give to the statutory body, the policy decision would be *ultra vires* and would be open to interference by way of judicial review.”

76. Though the learned Senior Government Pleader has relied on Exhibit-P13 order dated 17.06.2011 passed by the 2nd respondent, granting

similar reliefs, we are not impressed with the same since an illegality cannot be permitted to breed another illegality.

77. Giving due consideration to the facts, law, submissions of the parties, and circumstances involved in the case, we are of the considered opinion that Exhibit-P1 Government order dated 31.01.2019 issued by the 2nd respondent is illegal, arbitrary, contrary to the statutory provisions, and therefore, liable to be interfered with by this Court under Article 226 of the Constitution of India.

78. In the light of the above discussion and decisions, Exhibit-P1 order dated 31.01.2019 issued by the 2nd respondent is quashed. Writ petition is allowed. Keeping in mind the provisions of law, Circulars/Government orders, the 2nd respondent and the Heads of the Departments are directed to scrutinize the attendance registers, and take action, in accordance with law, within two months from the date of receipt of a certified copy of this judgment.

Registry is directed to post the matter after two months, for submission of a compliance report.

Sd/-
S. Manikumar
Chief Justice

Sd/-
Shaji P. Chaly
Judge

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 COPY OF THE ORDER NO. GO(PRINT) NO. 1/2019/GAD DATED 31-01-2019 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P2 COPY OF THE ONLINE REPORT DATED 07-01-2019 APPEARED IN THE WEEK ONLINE REPORT.
- EXHIBIT P3 COPY OF THE GO(P) NUMBER 200/2011/GAD DATED, 17-06-2011 ISSUED BY THE 2ND RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION.
- EXHIBIT P4 COPY OF THE NEWSPAPER REPORT DATED 09-01-2019 IN THE HINDU DAILY.
- EXHIBIT P5 COPY OF THE NEWSPAPER REPORT DATED 10-01-2019 IN THE HINDU DAILY.
- EXHIBIT P6 COPY OF THE NEWSPAPER REPORT DATED 12-01-2019 IN THE HINDU DAILY.
- EXHIBIT P7 COPY OF THE ONLINE REPORT OF THE ECONOMICS TIMES DATED 10-01-2019.
- EXHIBIT P8 COPY OF THE G.O(P) NO. 211/2012/GAD DATED 17TH AUGUST, 2012 BY THE 2ND RESPONDENT.
- EXHIBIT P9 COPY OF THE G.O(P). NO.42/2013/GAD DATED 18.03.2013.
- EXHIBIT P10 COPY OF THE G.O. (P) NO. 5/2016/GAD DATED 06-01-2016.
- EXHIBIT P11 COPY OF THE G.O(P) NO. 376/2005/GAD DATED 18TH OCTOBER 2005.
- EXHIBIT P12 COPY OF THE G.O(P) NO. 68/2013/GAD THIRUVANANTHAPURAM, DATED 12-03-2013.
- EXHIBIT P13 COPY OF THE GO(P) NUMBER 200/2011/GAD DATED 17-06-2011, ISSUED BY THE 2ND RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS:-NIL

//TRUE COPY//

P.A. TO C.J.