

S.Manikumar, C.J.

&

Shaji P.Chaly, J.

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W.P.(C) No.10478 of 2022-S

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Dated this the 28th day of March, 2022

ORDER

S.Manikumar, C.J.

Mr. S. Chandra Chooden Nair, an Advocate, has filed the instant public interest writ petition, for the following reliefs:

- “i. to declare that the call for General Strike on 28th and 29th of March proposing total cessation of work by forcefully preventing citizens of the state by blocking road and rail is an unconstitutional act against the binding judgments of this Honourable Court including Bharathkumar v. State of Kerala 1997 (2) KLT 287 (FB).
- ii. issue a writ in the nature of mandamus commanding the respondents 1 to 3 to issue appropriate orders/directions similar to Exhibit P5 to P7 to ensure compulsory attendance of government servants on the days of General Strike and to initiate disciplinary proceedings as per service rules against the employees abstaining from work on 28th and 29th March 2022.
- iii. issue a writ in the nature of mandamus commanding the respondents 1 to 3 to issue orders directing the police authorities to invoke the provisions of Kerala Prevention of Damage to Private Property and Payment of

Compensation Act, 2019 against any person/mob/group causing any damage or loss to the private property in connection with the rally/procession in connection with the General Strike on 28th and 29th March 2022.

- iv. issue a writ in the nature of mandamus commanding the respondents 1 to 3 to declare dies-non on 28th and 29th March for the employees/government servants abstaining from work, except for medical emergencies and to initiate appropriate disciplinary proceedings and to withdraw the salary for their absence on the days of General Strike.
- v. issue a writ in the nature of mandamus commanding the 1st respondent to constitute rapid action teams at the district level for the specific purpose of dealing with mob violence and destruction as directed by the Hon'ble Supreme Court in Tehseen S. Poonawala v. Union of India, 2018 KHC 6513."

2. Pending disposal of the writ petition, petitioner has also sought for an interim prayer directing State of Kerala, represented by the Chief Secretary to the Government; the Principal Secretary, Department for General Administration, Thiruvananthapuram and the Principal Secretary, Department of Finance, Thiruvananthapuram, respondents 1 to 3, to issue the following directions:

“1. to the State Police to take adequate measures to ensure the free movement of people and goods on 28th and 29th March 2022 and to register criminal cases as per the provisions of Indian Penal Code against persons/groups obstructing the movement of government employees.

2. to all the concerned to not disburse salary of the employees for the days of their abstention from duty from 28th to 29th March 2022.”

3. Brief facts leading to the filing of the writ petition are as under:

3.1. The petitioner seeks to bring to the notice of this Court the mala fide and illegal attempt of respondents 1 to 3 herein to aid and assist the General strike on 28th and 29th March, 2022 by permitting eligible leave with salary to the State Government employees taking part in the General Strike by not declaring dies non in terms of the directions of this Court in W.P. (C)No.5752 of 2019.

3.2. This Court has prohibited Bandhs in Kerala and had directed the respondents 1 to 3 herein to issue

orders mandating the attendance of Government servants and declaration of dies-non on days of General Strike to mitigate the inconvenience and hardship caused to the public.

3.3. However, over the past few years, the respondents 1 to 3 herein had acted hand in glove with the trade unions and encouraged the Government servants and teachers to participate in the general strike against the policies of Central Government by offering to regularise the absence in strike days as eligible leave with salary.

3.4. In W.P.(C) No.5752 of 2019 challenging such Government order granting eligible leave and salary to the striking employees, this Court quashed the impugned order therein and directed the respondents 1 to 3 herein to verify the attendance register and to take action in accordance with law.

3.5. However, no such steps have been taken by the respondents 1 to 3 till date and presently, they have extended unbridled support to the strike proposed on 28th and 29th March 2022 by not declaring dies-non nor even mandating the compulsory attendance of government servants on the days of proposed General Strike. The trade unions of the ruling party have offered eligible leave and salary to the Government servants for abstaining from office on 28th and 29th of March 2022 to support the general strike. This is being done when workers striking against the state government are penalized appropriately as reflected in Ext.P15. The actions on the part of the respondents 1 and 3 in impliedly supporting the general strike by not insisting attendance and not declaring dies non on the days of General Strike is highly illegal and unjust.

4. Attention of this Court was also invited to our earlier decision in **G.Balagopalan v. State of Kerala and Others** reported in 2021 Lab IC 1764, wherein, after considering the statutory provisions, this Court struck down G.O.(P) No.1/2019/GAD dated 31.01.2019, by which permission was granted to the Government employees and teachers to avail casual leave and other eligible leave, who had not attended duties during the national general strike.

5. While doing so, we also ordered that the Principal Secretary, Department for General Administration (respondent No.2) and the Heads of the Departments to scrutinise the attendance registers and take action, in accordance with law, within two months from the date of receipt of a certified copy of the judgment made in **G.Balagopalan's** case. We also directed the Registry to

post the case after two months for submission of compliance report.

6. Attention of Rule 86 of the Kerala Government Servants' Conduct Rules, 1960, Rule 14A of the Kerala Service Rules and the circulars considered therein, brought to the notice of this Court in the instant case, are reproduced:

"38. R.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 Art.309 of the Constitution of India, the Kerala Service Rules have been framed by the Government of Kerala.

Art.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 R.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 R.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 R.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 R.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."

7. On the basis of the judgment in **G. Balagopalan's** case (cited supra), and the above statutory provisions and circulars, Mr.V.Sajith Kumar, learned counsel for the petitioner, submitted that State Government has not taken any action to prevent the Government servants from participating in the strike called for by the trade unions. He further submitted that trade unions have no role to play in the governance, and therefore, the rules relating to strike and circulars issued should be strictly implemented.

8. Mr.K.Gopalakrishna Kurup, learned Advocate General, submitted that general strike was called for, way back in February, 2022, and that the instant writ petition is filed after a long period.

9. He further submitted that trade unions, which called for the strike, have not been impleaded as party respondents.

10. According to him, Rule 86 of the Kerala Government Servants' Conduct Rules, 1960, enables the employer to take disciplinary action, if only there is violation. He also submitted that if the employer finds, at a later point of time, that the Government servant has participated in the strike, there is always a provision to dis-entitle his salary for the said period.

11. He, therefore, submitted that when there are provisions to take appropriate action against the Government servant, in the absence of the trade unions or others impleaded as party respondents, no interim order prohibiting the Government servants from participating in the strike need be issued.

12. However, learned Advocate General conceded to the interim prayers sought for by the writ petitioner.

13. Referring to the rules provided in the High Court Rules, learned Advocate General further submitted that

no interim order may be granted beyond the prayers sought for.

14. Heard learned counsel for the parties and perused the pleadings and the material on record.

15. Trade Unions Act, 1926 is an Act, to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions. Section 2(g) of the Act defines "trade dispute" and it reads thus:

"2. Definitions.- In this Act 'the appropriate Government' means, in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, the State Government, and, unless there is anything repugnant in the subject or context,-

(g) "trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person,

and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises."

16. Section 2(h) of the Act defines "trade union" to mean, any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more

Trade Unions:

"Provided that this Act shall not affect -

- (i) any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade or handicraft."

17. Industrial Disputes Act, 1947 is an Act to make provisions for the investigation and settlement of industrial disputes, and for certain other purposes.

18. Section 2(n) of the Act defines “public utility service” to mean, (i) any railway service or any transport service for the carriage of passengers or goods by air; (ia) any service in, or in connection with the working of, any major port or dock; (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends; (iii) any postal, telegraph or telephone service; (iv) any industry which supplies power, light or water to the public; and (v) any system of public conservancy or sanitation.

19. Chapter V of the Industrial Disputes Act deals with strikes and lock-outs. Section 22 of Chapter V reads as under:

"22. Prohibition of strike and lock-out:

(1) No person employed in a public utility service shall go on strike in breach of contract--

- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen--

- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry the date of lock-out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it

is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day."

20. As stated supra, when there was a challenge to the G.O.(P) No.1/2019/GAD dated 31.01.2019, which granted permission to the employer, to grant eligible casual leave to the Government employees and teachers, who had not attended duty during the national

general strike, taking note of the statutory provisions, circulars and other decisions, we struck down the said Government Order.

21. Reading of Rule 86 makes it manifestly clear that no Government servant shall engage himself in any strike 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.

22. Though the learned Advocate General submitted that appropriate decisions can be taken only after finding as to whether, the Government servants have indulged in the strike or not, we are of the view that the

Government should also take adequate steps to prevent the Government servants to engage in any activity specified in Rule 86 of the Rules.

23. Judicial notice can be taken that today almost all shops, establishments, Government offices etc., are closed and there is no transport facility. *Inter alia* the question is, whether trade unions can call for a nation-wide strike, in matters not related to trade union dispute under the Trade Unions Act, 1926, and when there is no industrial dispute with the employees in Kerala, within the definition of Industrial Disputes Act, 1947. Though the strike notice is stated to have been issued in March, 2022, there is no response from the Government, by issuing any orders.

24. Though the learned Advocate General has conceded to the first interim relief sought for, the fact remains that there are no buses operated by the State

Government, enabling the Government servants to attend duty. It is one thing to state that Government would take appropriate action against those who are preventing the Government servants from attending duty.

25. At the same time, there are no orders issued by the Government, enabling operation of vehicles, viz., buses and others, so as to facilitate Government servants from attending duty.

26. This we say because, one way of looking at the Rule is that the Government servant has no right to participate in any strike. Equally, it is the duty of the Government to prevent the Government servant from joining in strikes.

27. Trade union activities pertaining to the statutory provisions under the Trade Unions Act, 1926, cannot be allowed to impede the governance. It is the duty of the

welfare Government, to protect not only the citizens, but to continue with, all the Government work, as expected. In other words, it should not be slow down or it should not attempt at slowing down Government work or in any act, which has the tendency to impede the reasonably efficient and speedy transaction of the Government work.

28. A post decision on the alleged failure of the government servants in not attending duty is entirely different from the Government exercising its power and duty to ensure operation of buses with sufficient police protection, to ensure attendance. If this practice is allowed to continue, then Government can always take shelter under Rule 14A which deals with 'dies non'. Disciplinary action can be taken if only there is participation of the Government servant, which fact again requires a detailed enquiry.

29. Merely because there is disciplinary action provided, that does not absolve the State Government from taking preventive action. What is prohibited in Rule 86 is different from what is provided in rule 14A of the Kerala Service Rules.

30. From the material on record, we find that Government has not issued orders well in advance preventing any such Government servant from taking part in the strike nor provided any machinery enabling others to attend office.

31. In the light of the above, we are of the view that though the rules under the Kerala High Court Rules set out the procedure, that would not curtail the powers of this Court to be exercised under Article 226 of the Constitution of India.

32. Therefore, we direct the Government of Kerala represented by the Chief Secretary to the Government;

the Principal Secretary, Department for General Administration, Thiruvananthapuram, and the Principal Secretary, Department of Finance, Thiruvananthapuram, to issue appropriate orders forthwith, to prevent the Government servants from engaging in strike and also to issue necessary orders forthwith, to all the Heads of the Departments, to ensure that Rule 86 of the Government Servants' Conduct Rules, 1960, and the circular extracted supra, are not violated and in case of violation, to take appropriate action. Government should issue appropriate orders to enable the operation of vehicles, to enable the Government servants to attend duty.

33. As the learned Advocate General has conceded to the grant of interim orders prayed for by the petitioner, there shall be direction to respondents 1 to 3, to issue appropriate directions, on the above.

34. Mr.N.Manoj Kumar, learned State Attorney, takes notice for respondents 1 to 3. Learned Central Government Counsel takes notice for respondent No.4.

35. Mr.N.Manoj Kumar, learned State Attorney, is directed to communicate the orders of this court forthwith to respondents 1 to 3 for implementation.

As the State Government has got a duty to enforce its rules and maintain law and order, at this stage, it is not necessary to adjudge as to whether the trade union/service associations should be added as party respondents or not.

**S.Manikumar
Chief Justice**

**Shaji P.Chaly
Judge**