



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

WP(C) NO. 5627 OF 2019

PETITIONER/S:

THE INSTITUTE OF HUMAN RESOURCES
DEVELOPMENT(IHRD),
PRAJO'E TOWERS, VAZHUTHACAUD, THIRUVANANTHAPURAM-
14 REP. BY ITS DIRECTOR.

BY ADV DEEPU THANKAN

RESPONDENT/S:

- 1 KERALA STATE HUMAN RIGHTS COMMISSION,
PMG JUNCTION, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM -33. REPRESENTED BY SECRETARY
GENERAL.
- 2 MEERAJA GRACE,
E.K.NAYANAR MEMORIAL MODEL POLYTECHNIC COLLEGE,
KALLIASERY, KANNUR - 670562.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 13.02.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



JUDGMENT

S. Manikumar, C. J.

Though Ms. Meeraja Grace, the 2nd respondent, has been served, there is no appearance. Therefore, this Court is inclined to consider the writ petition on its own merits.

2. Before the Kerala State Human Rights Commission, the 2nd respondent herein has filed HRMP No. 7107/2018/KNR seeking revision of pay of guest lecturers of IHRD College.

3. Considering the averments and the prayers sought for, Human Rights Commission has passed an interim order dated 30.11.2018, directing the Director, IHRD, the petitioner herein, to take steps to grant the revised salary notified by the Government as per the recommendation of the 10th Pay Commission urgently to the IHRD workers and Guest Lecturers.

4. Challenging the correctness of the said order, Director, IHRD, has filed the instant writ petition on the grounds inter alia that clause (f) of Regulation 17 of the Kerala State Human Rights Commission



(Procedure) Regulations, 2001, clearly specifies that issues related to civil dispute, service matter, labour or industrial disputes are not maintainable before the Kerala State Human Rights Commission. Therefore, the Commission ought not to have considered the complaint preferred by the 2nd respondent, as the Regulation clearly specifies to dismiss such complaints in the in limine itself.

5. Petitioner has contended that as per Regulation 38 of the Kerala State Human Rights Commission (Procedure) Regulations, 2001, the Commission has the power to summons. The Commission, before passing an order based on the compliant, has the power to summon the person, who should be heard for appropriate disposal of the matter. The impugned order has been passed by the Commission without hearing the petitioner or any other concerned authority, and therefore, it is liable to be quashed.

6. Petitioner has further contended that the petitioner's institution was served with no notice or summons before passing the impugned order. The direction of the Human Rights Commission to implement the 10th pay commission, without analyzing the facts and circumstances and granting an opportunity for hearing, is against the



natural justice, and liable to be interfered by this Court.

7. Petitioner has also contended that the Commission, while passing the impugned order, also failed to understand the fact that the benefits under the 10th Pay Commission cannot be granted to the employees and guest lectures of the petitioner's institutions with immediate effect, as the Government of Kerala has not even taken a decision for implementation of the benefits under the 10th Pay Commission in the petitioner's institutions. Moreover, the benefits under the 9th Pay Revision has also not yet completely implemented in the petitioner's institution due to lack of funds. These aspects were not considered by the Human Rights Commission.

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8. On the above grounds, Mr. Deepu Thankan, learned counsel for the petitioner, made submissions.

9. On the aspect of jurisdiction of the Kerala State Human Rights Commission in entertaining a complaint regarding service matter, a Hon'ble Division Bench of this Court in **Malabar Cements Ltd. (M/s.) v. K. Baburajan and Others [2019 (4) KHC 131]**, after considering clause (f) of Regulation 17 of the Kerala State Human



Rights Commission (Procedure) Regulations, 2001, has held thus:-

“18. At this juncture, we may take note of Regulation 17 of the Kerala State Human Rights Commission (Procedure) Regulations, 2001 which deals with maintainability of complaints before the Commission. Regulation 17 states that, the Commission may dismiss in limine complaints of the nature enumerated in clauses (a) to (l). Clause (f) of Regulation 17 provides that, the Commission may dismiss in limine, complaints wherein the issue raised relates to civil disputes, service matters, labour or industrial dispute. Clause (i) of Regulation 17 provides that, the Commission may dismiss in limine complaints, if the matter is covered by a judicial verdict/decision of the National Commission or a State Commission. Similarly, going by clause (l), the Commission may dismiss the complaints in limine, where the matter raised is outside the purview of the Commission or on any other ground.

19. Clause (f) of Regulation 17 specifically provides that, the Commission may dismiss in limine a complaint, if the issue raised relates to service matters. The issue raised by the first respondent in Ext.P6 petition relates to his appointment as a Mazdoor in the company and it is a service matter. The Commission should have dismissed the complaint in limine especially in the light of Ext.P1judgment of this Court in the same matter between the same parties, which had attained finality.”



10. That apart, after considering the statutory provisions, in **District Tourism Promotion Council, represented by its Secretary v. State of Kerala represented by the Secretary and Others [2021 SCC Online Ker. 3052]**, this Court has held as under:

“8. In exercise of the powers conferred by Section 10(2) read with Section 29 of the Protection of Human Rights Act, 1993, the Kerala State Human Rights Commission has made the Kerala State Human Rights Commission (Procedure) Regulations, 2001. As per Regulation 17, certain complaints are not ordinarily maintainable and that the Commission may dismiss in limine complaints of the following nature:

- (a) Illegible;
- (b) vague, anonymous or pseudonymous;
- (c) trivial or frivolous;
- (d) barred under sub-section (1) or (2) of section 36 of the Act;
- (e) allegations do not disclose involvement of any public servant;
- (f) issue raised relates to civil disputes, service matters, labour or industrial dispute;
- (g) allegations do not raise any violation of human rights;



- (h) If the matter raised is subjudice before a Court or Tribunal;
- (i) the matter is covered by a Judicial verdict/decision of the National Commission or a State Commission.
- (j) Where the complaint is only a copy of the petition addressed to some other authority.
- (k) Where the petition is not signed or where the original petition is not sent to the Commission;
- (l) Where the matter raised is outside the purview of the Commission or on any other ground.

9. As the matter pertains to service dispute, in the light of clause (f) of Regulation 17 of the Kerala State Human Rights Commission (Procedure) Regulations, 2001, in our considered view, the Commission ought to have dismissed Exhibit P5 complaint preferred by respondent No. 4 in limine.

10. To put it clear, undoubtedly the Commission has no jurisdiction to entertain the complaint in service matters and consequently to adjudicate the same. Accordingly, the order passed in H.R.M.P. No. 7247/11/11/19/KLM is also without jurisdiction.

11. In such a view of the matter, instant writ petition is allowed and Exhibit P7 order dated 30.01.2020 in H.R.M.P. No. 7247/11/11/19/KLM is quashed, and consequently Exhibit P5 complaint filed by the 3rd respondent dated 3.10.2019 on the files



of the Kerala State Human Rights Commission is dismissed.

11. That apart, reading of the order dated 30.11.2018 indicates that by way of the interim order, the main relief sought for in the complaint has been issued. Notwithstanding the jurisdiction of Kerala State Human Rights Commission in entertaining a complaint, it is well settled that interim order should not be issued in the guise of the main relief itself. Reference can be made to a few decisions:-

(i) In **The State of Orissa v. Madan Gopal Rungta [AIR 1952 SC 12]**, a Constitution Bench of the Hon'ble Apex Court clearly spelt out the contours within which interim relief can be granted, and held as under:-

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".....An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have



made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution such suit, issue directions in the nature of temporary injunctions, under Art.226 of the Constitution. In our opinion, the language of Art.226 does not permit such an action. On that short ground, that judgement of the Orissa High Court under appeal cannot be upheld."

(ii) In *Deoraj v. State of Maharashtra* reported in AIR 2004

SC 1975, the Hon'ble Supreme Court, at para 12, held as under:-

"Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong *prima facie* case - of a standard much higher than just *prima facie* case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such



would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent."

(iii) In **State of U.P v. Ram Sukhi Devi [(2005) 9 SCC 733]**

the Hon'ble Apex Court observed that final relief cannot be granted by way of interim relief. Paragraph 8 of the said decision is extracted hereunder:

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"To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on



numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable Government Order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a *prima facie* case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See *Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd.* (1985 (1) SCC 260 at p. 265), *State of Rajasthan v. M/s Swaika Properties* (1985 (3) SCC 217 at p.224), *State of U.P. and Ors. v. Visheshwar* (1995 Supp (3) SCC 590), *Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa and Ors.* (1995 Supp (2) SCC 593), *Shiv Shankar and Ors. v. Board of Directors, U.P.S.R.T.C. and Anr.* (1995 Supp (2) SCC 726) and *Commissioner/Secretary to Govt. Health and Medical Education Department Civil Sectt., Jammu v. Dr. Ashok Kumar Kohli* (1995 Supp (4) SCC 214).] No basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a *prima facie* case was made out though as noted above that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench without



expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow compass, we request the High Court to dispose of the matter as early as practicable preferably within six months from the date of receipt of this judgment."

In the light of the statutory provisions, discussions, and the decisions considered, we are of the view that the interim order in HRMP No. 7107/2018/KNR dated 30.11.2018, is liable to be set aside. Accordingly, set aside.

Writ petition is allowed.

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Sd/-

**S. MANIKUMAR
CHIEF JUSTICE**

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

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**///TRUE COPY///
P. A. TO JUDGE**



APPENDIX OF WP(C) 5627/2019

PETITIONER EXHIBITS

EXHIBIT P1 **TRUE COPY OF THE COMMUNICATION DATED 10.01.2019 OF THE FIRST RESPONDENT ADDRESSED TO THE PETITIONER WITH TRANSLATION**

EXHIBIT P2 **TRUE COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT IN HMRP NO. 71.07/2018 DATED 30.11.2018.**



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