

(2016) 09 KL CK 0031

High Court Of Kerala

Case No: WP(C).No. 29169 of 2016 (U).

Amil Antony M.A., S/o.
Antony, Aged 15 Years,
Std.XC, Kendriya
Vidyalaya, Ernakulam,
Kadavanthra, Kochi -
682 020, Minor,
represented by his
Natural Guardian and
Father, Antony M.T,
S/o. Late M.C. Thomas,
Aged 47 Years,
"Tharavad", Maliakkal
House, Panang

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 20, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 4 ILRKerala 596 : (2016) 4 KerLJ 216

Hon'ble Judges: Shaji P. Chaly, J.

Bench: Single Bench

Advocate: Babu Joseph Kuruvathazha and P.T. Abhilash, Advocates, for the Petitioner; N. Nagaresh, Assistant Solicitor General and Jaishankar V. Nair, CGC, for the Respondent No. 1; K. Mayankutty Mather, SC, for the Respondent No. 2

Final Decision: Dismissed

Judgement

Shaji P. Chaly, J. - This writ petition is filed by the petitioner seeking to quash Exts.P3 and P4, whereby an order was forwarded to the petitioner along with Ext.P4 Transfer Certificate, compulsorily transferring the petitioner, student from the school of the 2nd respondent. Material facts for the disposal of the writ petition are as follows:

2. Petitioner is a Xth Standard student of Kendriya Vidyalaya, represented by his father. Pursuant to an incident occurred, one Sheri T. has filed a complaint before the 2nd respondent, alleging that about 10 sovereigns of gold was lost from her house. It is further stated in the said complaint that the same was removed by her ward one Jimson James, also a student of the same school, which was sold through the petitioner herein. It was on the basis of the said complaint, action was initiated by the 2nd respondent. According to the petitioner, father of the petitioner paid the entire value of gold ornaments to the aunt and uncle of Jimson James and the entire issue has been settled amicably, consequent to which, there was no complaint made by the respective parties to the police seeking investigation of the same.

3. However, in connection with the above incident, 2nd respondent issued Ext.P1 order of suspension dated 22.08.2016 suspending the petitioner along with 4 other students with effect from 22.08.2016, subject to the outcome of enquiry by the Disciplinary Committee. On receipt of Ext.P1, petitioner submitted Ext.P2 whereas his father submitted Ext.P2(a) representation before the 2nd respondent extending unconditional apology, and also with a prayer to pardon the mistake committed by the petitioner. However, Ext.P3 is issued whereby the decision to compulsorily transfer the petitioner was communicated along with Ext.P4 compulsory Transfer Certificate dated 27.08.2016. It is in this background, challenging Exts.P3 and P4, petitioner has filed this writ petition.

4. Second respondent has filed a counter affidavit disputing the statements and allegations made against the 2nd respondent. The subject matter of the issue was based on Ext.R2(a) complaint filed by the guardian of Jimson James, wherein serious untoward incident was reported with respect to the loss of gold ornaments, which was sold by her ward through the petitioner herein, and the sale proceeds were shared among them. Apart from the same, various other illegalities are pointed out in the counter affidavit. On the basis of the same, an enquiry was conducted and Ext.R2(b) enquiry report was submitted by the Disciplinary Committee consisting of five teachers of the school of the 2nd respondent.

It was on the basis of Ext.R2(b) report, which was approved by the Executive Committee for disciplinary action, evident from Ext.R2(c), Exts.P3 and P4 are issued to the petitioner. It is also stated that petitioner was suspended earlier as per order dated 01.12.2015 with respect to the involvement of the petitioner in a criminal offence involving theft of electronic goods from a shop at Kadavanthra on 28.11.2015.

5. Petitioner has filed a reply affidavit adopting the stand taken in the writ petition and also contending that Exts.P3 and P4 are issued behind the back of the petitioner and therefore violative of the principles of natural justice. It is also contended in the reply that, Jimson James who stole the ornaments has submitted an application for transfer on 22.08.2016 and he was given a Transfer Certificate and thereafter only his guardian has submitted Ext.R2(a) complaint before the 2nd respondent. It is also prayed that petitioner is also entitled to get similar treatment at the hands of the 2nd respondent.

6. Heard learned counsel for the petitioner and learned counsel appearing for respondents 1 and 2. Perused the documents on record and the pleadings put forth.

7. The sole question to be considered is whether any manner of interference is required in Ext.P3 order whereby a compulsory Transfer Certificate was issued to the petitioner, evident from Ext.P4. Discussion of the above facts would show that on the basis of Ext.R2(a) complaint received from the guardian of another student, an enquiry was initiated, petitioner and others were suspended and after obtaining a report, and securing approval of the Disciplinary Committee, the decision was taken to issue Transfer Certificate compulsorily to the petitioner. The facts and circumstances would also show that the offence in which the petitioner is involved is of very serious nature affecting the reputation of the school and morale of other students, which was taken into consideration by the enquiry committee, and has arrived at a decision. In my considered opinion, the subject matter of the enquiry was based on a complaint filed by a guardian of another student, in which their ward was also involved. The teachers of the school have conducted the enquiry, and the status of the teachers are that of a parent and by applying principles of loco parentis, it cannot be heard to say, a teacher will take any action against a student which is detrimental to him, without sufficient and cogent reasons. That apart, the documents produced by the 2nd respondent would show, an enquiry was undertaken by the 2nd respondent through an enquiry committee consisting of five teachers as members, and it has arrived at a conclusive finding that petitioner was involved in serious and grave criminal offences, and it was thereupon that, after securing approval of the disciplinary committee, Ext.P3 order was issued compulsorily transferring the petitioner. I do not think that there is any violation of principles of natural justice involved in the subject issue, since the interest of the student was taken care of by the teachers in the enquiry.

8. Therefore, in that view of the matter, I do not think that 2nd respondent has committed any illegality in issuing Exts.P3 and P4 orders. Ext.P3 order, and Ext.P4 Transfer Certificate are based on the enquiry, as per Ext.R2(b) report, which was also considered by the disciplinary committee. In that view of the matter also, I do not think that any illegality was committed by the 2nd respondent in issuing Exts.P3 and P4. Petitioner has not made out any case warranting interference of this Court with respect to the findings contained in the enquiry report as well as the order of compulsory transfer. Moreover, Ext.R2(b) enquiry report is not under challenge before this Court. Therefore, it can only be treated as an admission on the part of the petitioner with respect to the enquiry and the findings rendered thereunder. That apart, petitioner has no case that the proceedings are based on any ill will, grudge or malafides nurtured by the 2nd respondent against the petitioner. So also, students are entrusted by their parents/guardian to the teachers, and it is the duty of the teachers to ensure obedience, discipline and morality of the students. Therefore, when a student indulges in any activities against the discipline and interest of the school, it is also the obligation and duty of the teachers to rectify the same, however harsh it may be, in order to caution other students and maintain a healthy, serene and

cogent atmosphere in the school. Above all, the incident in question is of a very serious nature involving moral turpitude, not at all expected from a student at the tender age of 15 years.

9. Taking into account the totality of circumstances, I am of the considered opinion that petitioner is not entitled to get any relief, invoking the writ jurisdiction conferred on this Court under Article 226 of the Constitution of India, there being no arbitrariness and legal infirmities.

10. Therefore, writ petition fails, accordingly same is dismissed.