

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 189 / 2009

Wednesday, this the 9th day of June, 2010.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

1. C.P.Venugopalan,
Teacher Gr.II (Senior Grade),
Railway Higher Secondary School,
Railway Colony, Palakkad-9.
2. V.P.K.Rajan,
Teacher Gr.II (Senior Grade),
Railway Higher Secondary School,
Railway Colony, Palakkad-9.
3. G.Krishnan Namboothiri,
Teacher Gr.II (Senior Grade),
Railway Higher Secondary School,
Railway Colony, Palakkad-9.Applicants

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O., Chennai-3.
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town.P.O., Chennai-3.
3. The Sr. Divisional Personnel Officer,
Southern Railway Palakkad Division, Palakkad.
4. The Principal,
Railway Higher Secondary School,
Railway Colony, Palakkad-9.
5. Shri Adithavaraneswaran,
Principal,
Railway Higher Secondary School,
Railway Colony, Palakkad-9.



6. The Director of Public Instructions,
Department of Education,
Government of Kerala,
Thiruvananthapuram.

7. The District Education Officer,
Government of Kerala, Palakkad.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 9.6.2010, the Tribunal on delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicants are aggrieved by the action of the respondents in deducting their pay and allowances for one day on 5.7.2008 from their salary for the month of July, 2008 without any show cause.

2. The facts in brief are as follows: The applicants are Teachers Gr.II (Senior Grade) in Railway Higher Secondary School, Railway Colony, Palakkad (School in short) which follows the syllabus prescribed by the Government of Kerala, Department of Education. According to them, notwithstanding the fact that the school is funded by the Railway, its functioning, supervision, inspection etc are conducted by the State educational authorities as provided for under the Kerala Education Rules. Every holiday declared by the Government of Kerala is applicable to the School as it was the practice from its inception in the year 1958. However, the 5th respondent after taking over the charge as the Principal 3 years ago created confusion, chaos and disorder in the school by importing his own personal methods of functioning. While so, a hartal was called for by some political parties in the State on 3.7.2008 and on 2.7.2008 the Principal notified it as a holiday and declared Saturday the 5th July 2008 as a working day. On 4.7.2008, classes were conducted as usual but Principal was away at Chennai leaving the charge of the school to Smt CK.Hema, the seniormost PGT.



Subsequently, the 6th and the 7th respondents declared 5.7.2008 as a holiday for the educational institutions under the Government of Kerala to conduct the special work relating to Kerala Assembly Elections. As a result, according to the applicants, the teachers including them, Principal and the Principal in-charge Smt C.K.Hema did not attend the school on 5.7.2008 except one or two teachers who went casually to the school to find out the position. Contacting the Principal over phone, they were asked to attend the school and treat the said date as a working day. Thereafter, those teachers contacted few of the other local teachers and nearby students who came to the school and marked their attendance between 10.00 and 1230 hours. There were no students in many classes and in other classes, the attendance was very thin. The applicants reported for work only on 7.7.2008. However, when they noticed on 15.7.2008 that they were marked absent/leave on 5.7.2008, they made representations on 17.7.2008 to the Principal requesting him to intimate the reasons as to why they were marked as "absent" on that date. The 1st applicant has also made a representation dated 15.7.2008 to the 7th respondent under the Right to Information Act to furnish the following information:

1. Being a recognised school, is it binding on Railway Higher Secondary School, Palakkad-678 009, and remain closed when holidays are declared by educational authorities/Govt. Of Kerala.
2. Can this school work on holidays declared by Govt. of Kerala."

Vide the Annexure A-4, the Public Information Officer, Palghat informed the applicant that the Government holidays are applicable even to the recognised unaided schools and once the concerned department declares a holiday, the recognised unaided schools need not function on that day. Thereafter, the applicants again submitted representations to the Additional Divisional Railway Manager, Palakkad with the request to treat 5.7.2008 as a holiday and to arrange disbursement of their withheld pay and allowances. They have also



made another representation to the 7th respondent to clarify why the School was allowed to function on 5.7.2008 and the action taken for the same. Vide the Annexure A-7 letter, the 7th respondent informed them that no permission was given to the School to function on 5.7.2008 and that no compliant was also received regarding working of the school on that date. Thereafter, the 3rd respondent, vide Annexure A-8 letter dated 3.9.2008 directed the 4th respondent to inform the applicants to apply for leave or else, they might lose their salary for one day in addition to disciplinary action which may be taken against him. Meanwhile, in reply to their request dated 18.9.2008, they received the Annexure A-10 letter from the State Public Information Officer enclosing therewith the notification and press release declaring 5.7.2008 as a holiday. They have obtained Annexure A-11 letter dated 11.11.2008, Annexure A-12 letter dated 12.11.2008 and Annexure A-13 letter dated 15.12.2008 under the Right to Information Act, indicating the attendance particulars as on 5.7.2008, the total strength of each class etc. However, the Principal withheld their one day's salary for unauthorised absence on 5.7.2008.

3. The contention of the applicants is that the School from its inception in the year 1958 but for the solitary incident which had occurred on 5.7.2008, was guided by the directions of the State Education Department under the 6th respondent. According to them, they have been singled out for a differential treatment only because they did not oblige to the illegal command of the Principal to submit an application for leave for 5.7.2008 while most others have obliged him. Their further contention is that as 5.7.2008 was declared as a holiday by the Directorate of Public Instructions, Government of Kerala, it is binding upon the Principal and his action of marking them absent/compelling them to apply for a day's leave on that date is arbitrary, discriminatory, contrary to law, without application of mind and hence violative of the guaranteed



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enshrined in Articles 14 and 15. They have, therefore, sought declarations that 5.7.2008 should be deemed to be a holiday for the School and the action of the 4th/5th respondent marking them absent on that date is arbitrary, discriminatory and hence, unconstitutional. They have also sought a declaration that the action of the respondents 1 to 5 in recovering/withholding the pay and allowances for 5.7.2008 from their salary for the month of July 2008 was arbitrary, discriminatory and hence unconstitutional and to release their pay forthwith.

4. Respondents have filed their reply statement opposing the contentions of the applicants. According to them, the applicants have filed this O.A as an experimental measure and are trying to solve their personal problems with the Management of the School. They have further submitted that the Director of Public Instructions, Government of Kerala, Trivandrum and the DPI, Palakkad have observed that it was not an offence that the school has functioned on a day which was declared as a holiday. They have further submitted that the School has already announced on 2.7.2008 itself that it will observe 5.7.2008 as working day on compensation basis for the holiday declared on 3.7.2008 due to Hartal. As regards the news item appeared in the newspapers and in TV on 5.7.2008 morning that the Government of Kerala has declared 5.7.2008 as Holiday, they have submitted that it was only for those schools engaged in election revision work. As the Railway School teachers were not engaged in any such work, the above order was not applicable to the applicants. They were also well aware that their School was not entrusted with the job of revision of electoral rolls and the order of the Government of Kerala was applicable to them. The applicants being well educated persons discharging their duties as teachers were to be disciplined setting themselves as good examples for the students. Instead, they have remained absent without even bothering to call the school authorities to enquire whether the school is functioning or not. When they



approached the Principal, they were advised to apply for leave to regularise their absence. Out of the 13 Teachers who did not attend duty on 5.7.2008, all of them except the applicants have submitted their applications to regularise their absence. They have also submitted that the Management has the power to declare any holiday as working day under the Kerala Education Rules and it was in exercise of the said powers that the Principal declared 3.7.2008 as a holiday due to Hartal and informed all the teaching staff that 5.7.2008 would be the compensatory working day in lieu of said holiday.

5. We have heard the learned counsel for the parties. The Railway schools are managed by the Railway Administration. The staff of Railway Schools being Railway employees, they are bound by the rules and regulations of the Railways. It was well within the knowledge of the applicants that 5.7.2008 was declared by the Principal of the School as Compensatory Working day in lieu of 3.7.2008 which was a closed day on account of Hartal. As teachers, the primary concern of the applicants should have been the welfare of students. As directed by the Principal, they should have attended the School on 5.7.2008 and taught their students to compensate for the lost day on account of the Hartal. The Government of Kerala has declared 5.7.2008 as a holiday only for the purpose of completion of some election related work. When the applicants or any one else from their school were not required to perform any such work it was their duty to attend in school in the normal manner and to do their duty. However, their attitude is that they can keep away work on flimsy reasons but at the same time they have the inherent right to claim payment for the work not done. Such attitude of the applicants is not only to be discouraged but also be deprecated. Instead of taking the profession of teaching as a noble one and being disciplined, the applicants are indulging themselves in unjust and frivolous litigation. We,



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therefore, dismiss this application with cost of Rs.1000/- on each of them which shall be recovered by the respondents from their pay.



K NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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