

**BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM**

PRESENT: SHRI.K.SASIDHARAN NAIR, STATE ELECTION COMMISSIONER

Friday, the 20th day of June 2014

O.P.Nos.155/2011, 156/2011 & 157/2011

O.P.155/2011

Petitioner : N.Muhammed Ali,
S/o Kuttu, Nedumkandathil Veedu,
Pavukonam P.O.,
(Via) Vaniyamkulam.
Member, Ward No.13,
Ananganadi Grama Panchayat,
Palakkad District.

**(By Advs. Cherunniyoor P.Sasidharan
Nair & Kallambalam.S.Sree Kumar)**

Respondent : Nafeesa.K,
Member, Ward No.2,
Ananganadi Grama Panchayat,
Palakkad District.

**(By Advocates M.Hashim Babu &
Sajitha.S)**

O.P.156/2011

Petitioner : N.Muhammed Ali,
S/o Kuttu, Nedumkandathil Veedu,
Pavukonam P.O.,
(Via) Vaniyamkulam.
Member, Ward No.13,
Ananganadi Grama Panchayat,
Palakkad District.
**(By Advs. Cherunniyoor P.Sasidharan
Nair & Kallambalam.S.Sree Kumar)**

Respondent : V.Muraleedharan,
Member, Ward No.11,
Ananganadi Grama Panchayat,
Palakkad District.

**(By Advocates M.Hashim Babu &
Sajitha.S)**

O.P.157/2011

Petitioner : N.Muhammed Ali,
S/o Kuttu, Nedumkandathil Veedu,
Pavukonam P.O.,
(Via) Vaniyamkulam.
Member, Ward No.13,
Ananganadi Grama Panchayat,
Palakkad District.
**(By Advs. Cherunniyoor P.Sasidharan
Nair & Kallambalam.S.Sree Kumar)**

Respondent : Saidalavy,
Member, Ward No.9,
Ananganadi Grama Panchayat,
Palakkad District.

**(By Advocates M.Hashim Babu &
Sajitha.S)**

These petitions having come up for hearing on 27th day of May 2014, in the presence of Advocates **Cherunniyoor P.Sasidharan Nair & Kallambalam S.Sree Kumar** for the petitioner and Advocates **M.Hashim Babu & Sajitha.S** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These are Petitions filed under Sections 35(l) and 35(o) read with Section 36 of the Kerala Panchayat Raj Act for declaring that the respective respondents have ceased to hold office as members of Ananganadi Grama Panchayat. The petitions are filed a common petitioner and as common questions of law and facts arise for consideration in all these cases, they have been taken up jointly as per order on I.A No.53/2012.

2. The allegations raised by the common petitioner in these cases are in short as follows,- The petitioner and respondents are elected members of Ananganadi Grama Panchayat after the general election, the respondent in O.P.No.155/2011 was elected as a President of the Panchayat. The respondents are working as Teachers in Aided Schools. The respondent in O.P.No.155/2011 is working in Narayana Vidhyalayam AUP School, Panamanna South and the respondents in O.P.Nos.156/2011 and 157/2011 are working in Ananganadi

Higher Secondary School, Panamanna. The respondents are drawing salary from the School and they are also attending the meetings of the Panchayat and receiving sitting fees from the Panchayat. The respondents are disqualified to continue as members of Ananganadi Grama Panchayat as provided by Section 35(1) of the Kerala Panchayat Raj Act. It is true that the Government has issued certain executive orders enabling full time employees of Aided Schools to contest in election and to receive the remunerations as members under certain conditions. But such executive orders will not enable them to hold two posts having office of profit which is prohibited under Section 35(1) of the Kerala Panchayat Raj Act. In order to get exemption from statutory disqualification an amendment is necessary to the statute itself and executive orders cannot remove the embargo in holding such posts. Even as per the executive orders the duties and functions of a Panchayat should not adversely affect the duties and functions of the post of teacher. In such cases they have to avail special and eligible leave and receive only leave salary. In these cases the respondents are drawing full salary and also honorarium from the Panchayat simultaneously and so they are disqualified under Section 35(1) of the Kerala Panchayat Raj Act.

3. In O.P.No.155/2011 it is further alleged in the amended petition as follows,- The respondent in her capacity as President of the Panchayat has misused her official position and made unlawful gain by accepting sitting fees for

attending the General committees and Standing Committees on 28.01.11, 18.02.11, 22.02.11, 24.02.11, 07.06.11, 28.06.11, 11.08.11, 29.08.11 and 31.10.11 and on the above dates, this respondent has also signed the attendance register of the school and obtained her salary. The respondent in order to loot the money and caused loss to the Panchayat had unauthorizedly received traveling allowance from the Panchayat on different dates as shown in the amended petition. So this respondent is liable for the losses caused to the Panchayat. Therefore this respondent is disqualified, as per Section 35(o) of the Kerala Panchayat Raj Act, to hold the office as a member.

4. In O.P.No.156/2011, the petitioner would further allege that the respondent in his capacity as Vice President of the Panchayat has misused his official position and made unlawful gain by accepting sitting fee for attending the General Committees and Standing committees on 7.01.2011, 22.02.2011 and 16.03.2011 and on the same dates he had signed in the attendance register of the school and obtained his salary. Thus this respondent has caused losses to the Panchayat and so he is liable to be disqualified as provided by Section 35(o) of the Kerala Panchayat Raj Act.

5. In O.P.No.157/2011, the petitioner would further allege that the respondent in his capacity as a member of the Panchayat has misused his official position and made unlawful gain by accepting traveling allowances on

14.06.2011, and 17.06.2011 and on the same dates he signed the attendance register of the school and obtained his salary. Thus this respondent has caused losses to the Panchayat and so he is liable to be disqualified as provided by Section 35(o) of the Kerala Panchayat Raj Act.

6. The common contentions raised by the respondents in their separate objections are in short as follows,- The petition is not maintainable either in law or on facts. It is true that the respondents are working as teachers in Aided Schools. When there is a special statute the provisions of General statute have no application. If the petitioner has any objections or grievance regarding the provisions in the Kerala Panchayat Raj Act or the orders issued by the Government, he has to challenge the same in appropriate court by initiating proper proceedings. This Commission does not have jurisdiction to entertain the challenge with respect to the provisions of a statute. Section 35(1) of the Kerala Panchayat Raj Act is not applicable in this case. The duties as teachers are not affected by their functioning as members of Ananganadi Grama Panchayat. When situations arise, these respondents are availing leave and the teaching portions are completed as per the schedule fixed by the authorities.

7. The respondent in O.P.No.155/2011 would further contend as follows,- It is true that this respondent is functioning as the President of the Panchayat. The respondent has not obtained amounts by way of allowance while she was on

duty at School. On 28.01.2011, 22.02.2011, 24.02.2011, 24.03.2011 and 28.06.2011 she got permission from the Headmistress to attend the meetings of the Panchayat. On 18.02.2011 and 29.08.2011 were holidays and on 31.10.2011 the respondent was on duty leave. This respondent has not caused any monetary loss to the Panchayat. She is drawing salary by attending the school and she is functioning in a responsible manner. The respondent has not become disqualified to hold the office of the member of the Panchayat.

8. The further contentions raised by the respondent in O.P.156/2011 are briefly, the following,- This respondent is a teacher of Ananganadi Higher Secondary School. It is not necessary for teachers to avail leave for functioning as member of the Panchayat. This respondent has not obtained amounts by way of allowance while he was on duty at school. On 07.01.2011, 22.02.2011 and 16.03.2011 this respondent was on casual leave. The allegation that this respondent had signed in the attendance register of the school on 07.01.2011, 22.02.2011 and 16.03.2011 is totally false. The respondent has not caused any loss to the Panchayat and he has not become disqualified to continue as a member of the Panchayat.

9. The further contentions raised by the respondent in O.P.No.157/2011 are the following,- The respondent is working as a teacher in Ananganadi Higher Secondary School. It is not necessary for teachers to avail leave to function as

member of a Panchayat. This respondent has not obtained amounts by way of allowance while he was on duty at school. On 14.06.2011 and 17.06.2011 this respondent was on leave and he has not attended the school on those days. The respondent has not caused any loss to the Panchayat and he has not become disqualified to continue as a member of the Panchayat. So the respondents have prayed for dismissal of the petitions with compensatory cost of ₹ 3,000/- respectively.

10. The evidence consists of the oral deposition of PW1, RWs 1 to 4 and Exts.P1 to P3, R1 to R5, X1 and X2.

11. All parties were heard.

12. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondents are disqualified under any of the provisions of Constitution of India or under any law for the time being force for continuing as members of Ananganadi Grama Panchayat?
- (iii) Whether the respondents have caused loss, misuse or waste to the Panchayat as alleged?
- (iv) Whether the respondents have ceased to hold office as members of the Ananganadi Grama Panchayat as provided by Section 35(1) or 35(o) of the Kerala Panchayat Raj Act?
- (v) Reliefs and costs?

13. **POINT No.1:** These are petitions filed under Sections 35(1) and 35(o) read with Section 36 of the Kerala Panchayat Raj Act. According to the common petitioner the respondent in O.P.No.155/2011 being School Teacher in Aided School and functioning as President of the Panchayat has not applied for leave and she is drawing salary from government till date and also attending the meetings of the Panchayat and simultaneously receiving sitting fee and traveling allowances and thus caused loss to the Panchayat and she also being a full time officer of the Panchayat is disqualified to continue two offices of the profit and thus incurred disqualification under Section 35(1) of the Kerala Panchayat Raj Act and the respondent in O.P.Nos.156/2011 and 157/2011 being teachers of aided school and members of the same Panchayat have attended the school and received salary and at the same time attended the meetings of the Panchayat committees and received sitting fee and traveling allowances and they also are holding two offices of profit and thus disqualified to continue as members under Section 35(1) and 35(o) of the Kerala Panchayat Raj Act, for short the 'Act'. The respondents have denied the above allegations and contended that they being Teachers of Aided Schools are entitled to contest and function as Panchayat members and that they have not committed any loss or misuse to the Panchayat. The petitioner is a member of ward No.13 of the same Panchayat of which the respondents are members. Section 36 of the Act states that whenever a question

arises as to whether a member has become disqualified under the provisions of Section 35 of the Act, after having been elected as a member, any member of the Panchayat concerned or any other person entitled to vote at the election in which the member was elected can file a petition before the State Election Commission for decision. Since the common petitioner is a member of the same Panchayat in which the respondents also are members, he is fully competent to file the petitions. From the rival claims it is found that a question arises as to whether the respondents have become disqualified under Section 35(l) or Section 35(o) of the Act and so such questions have to be decided as provided by Section 36 of the Act. Except an evasive contention that the petitions are no maintainable, no specific plea is raised challenging the maintainability of the same. Therefore I find that the petitions are maintainable. The point is answered in favour of the petitioner.

14. **POINT No.(ii)**: These petitions are filed by a common petitioner against three members of Ananganadi Grama Panchayat who are shown as the respondent in each case. According to the petitioner the respondents who are working as Teachers in Aided Schools are disqualified to contest in an election to local bodies as they have disqualification under the provisions of Kerala Panchayat Raj Act and certain executive orders of the Government cannot remove such disqualification and it is also alleged that these respondents are

holding two posts having office of profit which is prohibited under the provisions of the Constitution and also under Section 35(1) of the Kerala Panchayat Raj Act and so the petitioner prays for declaring that the respondents are disqualified to continue as members under Section 35(1) of the Act. **Section 35(1)** of the Act reads as follows,-

“Subject to the provisions of Section 36 or Section 102, a member shall cease to hold office as such, if he is disqualified under any provisions of the Constitution or under any law for the time being in force for the purpose of elections to the Legislature of the State.”

15. The main allegation raised for attracting this Section is that the respondents being Teachers of Aided Schools are not entitled to contest in an election to a local authority. **Section 30 of the Kerala Panchayat Raj Act** deals with disqualification of officers and employees of Government and local authorities to contest in an election or to hold office and it reads as follows,-

“30. Disqualification of Officers and employees of Government, local authorities, etc,- (1) No officer or employee in the service of the State or Central Government or of a local authority or a corporation controlled by the State or Central Government or of a local authority or any

company in which the State or Central Government or a local authority (not less than fifty one percent share) or of a Statutory Board or of any University in the State shall be qualified for election or for holding office as a member of a Panchayat at any level.”

Only officers or employees in the service of the State or Central Government or of a local authority or a corporation controlled by the State or Central Government or any company in which the State or Central Government or a local authority has not less than fifty one percent of share or of a Statutory Board or of any University shall be disqualified under this provision. An aided school will not come under the purview of a company or a Statutory Board or any University and a Teacher in an aided school cannot be considered as in the service of the State or Central Government or a local authority so as to attract the vice of Section 30 of the Act. The owner of an aided School is its Manager and the appointment of Teacher in aided School is by the Manager and not by the Government. In **Mercy John V. Thankam (2003(2) KLT 798)** it has been held that even teachers of schools established and maintained by the Panchayat cannot be treated as employees in the service of the Panchayat and they are neither officers or employees in the service of the State nor in the service of the Panchayat and they have been put in the same position as teacher of a private

aided school and as such the Hon'ble High Court held that Section 30(1) of the Panchayat Raj Act does not apply to such teachers. Since a teacher in the service of an aided school cannot be considered as an employee in the service of the State or of a Statutory Board or of any University in the State, they do not have any disqualification as provided by Section 30 of the Act. They also cannot be considered as holding two offices of profit by virtue of being a teacher and a member of a local body. The petitioner has failed to point out any provision in the Constitution or any statute to indicate that these respondents are disqualified either to contest in an election or to hold the office as a member of a local body. It is settled law that teachers of aided schools are entitled to contest in an election to local bodies. Hence I find that the ground taken under Section 35(1) of the Act, cannot legally sustain.

16. **POINT Nos.(iii) to (v)**: The next ground alleged against the respondents is under Section 35(o) of the Act. **Section 35(o) of the Act** reads as follows,-

“35.Disqualification of members,- Subject to the provisions of Section 36 or Section 102, a member shall cease to hold office as such, if he is liable, for the loss, waste or misuse caused to the Panchayat.”

17. The merits of the case against the respondents under this ground requires consideration separately. In O.P.No.155/2011 the respondent is one Nafeesa who has been holding the post of President of the Panchayat. The petitioner would allege that this respondent has caused monetary loss to the Panchayat by accepting sitting fee attending the general committees and Standing Committee on 28.01.2011,18.02.2011, 22.02.2011, 24.02.2011, 07.06.2011, 28.06.2011, 11.08.2011, 29.08.2011 and 31.10.2011 and on the above dates she has signed the attendance register of Narayana Vidhayalayam AUP School and obtained salary. The contention of the respondent against this allegation as revealed in **Para 6** of her objection reads as follows,-

“It is not necessary for teachers to avail leave to function as member of Grama Panchayat. This respondent has not obtained amounts by way of allowance while she is on duty at School. On 28.01.2011, 22.02.2011, 24.02.2011, 24.03.2011 and 28.06.2011 she got permission from the Headmistress to attend the meetings in Panchayat and 18.02.2011, 29.08.2011 are holidays and on 31.10.2011 the respondent was having duty leave. Moreover the School is very near to the Panchayat. The allegation is unfounded and there is no reason for proceeding with the present case.”

18. In Para 8 of the objection she has further stated that the allegation that she had signed the attendance register of Ananganady Higher Secondary School on 14.06.2011 and 17.06.2011 is false. The petitioner has been examined as PW1. In his deposition he has repeated the allegations contained in his petition regarding receipt of sitting fee on the dates mentioned in the petition at the same time received salary for the above dates from the school. In cross-examination it was suggested to PW1 that on 28.01.2011 this respondent was given permission for 45 minutes from 11 am for attending the meeting of the Panchayat and again on 22.02.2011 she was given permission for 45 minutes by the Headmistress for attending the meeting in the Panchayat and on 24.02.2011 she was given one hour permission for attending the Welfare Standing Committee meeting and on 07.06.2011 the Development Standing Committee meeting started only at 4pm and on 28.06.2011 she was given permission from the school for attending the Welfare Standing Committee meeting and on 11.08.2011 the Development Standing Committee meeting started only at 4 O'Clock to which PW1 has stated that he does not know the same. So the defence taken by the respondent is that she had obtained permission from the school to attend the meetings of the Panchayat on 28.01.2011, 22.02.2011, 24.02.2011, 28.06.2011 and on 07.06.2011 and 11.08.2011 the standing committee meetings started only at 4pm.

19. The respondent as RW1 has admitted in her chief examination itself that she had attended several meetings of Panchayat by obtaining permission from the Headmistress of the school and on the same days she had marked her attendance in the register and received salary. Her case is that she need not take full day leave on the dates in which she had to attend the committee meetings of the Panchayat and she had attended such meetings by obtaining permission from the school. She has categorically admitted that on 28.01.2011, 22.02.2011, 24.02.2011, 24.03.2011 and 28.06.2011 she had attended the committee meetings of the Panchayat by obtaining permission from the school. Ext.R1 is relied on to support her contention in this respect. Ext.R1 is seen to be a declaration given by the Headmistress of the Narayana Vidhyalayam AUP School stating that the respondent was given permission for 45 minutes from 11am on 28.01.2011 and 22.02.2011 and one hour from 3 pm on 24.02.2011 and 24.03.2011 and 45 minutes from 11 am on 28.06.2011.

20. From the admission of this respondent that she had attended the school on 28.01.2011, 22.02.2011, 24.02.2011, 24.03.2011 and 28.06.2011 and received salary for such dates as teacher of the school and also attended various meetings of the Panchayat and received sitting fee for attending such meetings is itself self incriminatory and the same would spell out that she had received salary from the school on such days and also received sitting fee for attending the meetings of the

Panchayat committee on the very same dates. The headmistress of a school is not entitled to give permission to a teacher to attend the meetings of the Panchayat and such permission will not rescue the respondent from the liability of causing loss to the Panchayat by receiving double benefit. In this context it is significant note that at the relevant period, the respondent was the President of the Panchayat and as such she was a full time officer of the Panchayat. The respondent has no case that she did not receive the sitting fee on the days on which the so called permission was given by the Headmistress to attend such meetings. Therefore it is clear that the respondent has caused loss to the Panchayat by receiving the sitting fee for attending the meetings of the Panchayat on 28.01.2011, 22.02.2011, 24.02.2011, 24.03.2011 and 28.06.2011. From the suggestive questions put to PW1 in cross examination that the meetings of the Standing committee held on 07.06.2011 and 11.08.2011 started only at 4 pm also would clearly prove that she had attended the meetings of the Standing Committee on the above days and received sitting fee without taking any leave and such days. PW1 has stated that the School where this respondent is working is about 5 kms away from the Panchayat office. The admission of the respondent in her objection as well as in her evidence that she attended several meetings of the Panchayat Committee or Standing committee without taking leave from the school and received sitting fee for participating in such meetings and also

received salary from the School inclusive of those days would clearly prove that she had caused loss of the Panchayat. Her further version that on two days the meetings of the Standing Committee started at 4 pm and so she did not avail any leave from the school also cannot legally sustain. It is settled law that admission is conclusive as against the person who makes it. In this case even on the basis of the admission in the objection that she attended the meetings of the Panchayat on 28.01.2011, 22.02.2011, 24.02.2011, 24.03.2011 and 28.06.2011 on the basis of the permission obtained from the Headmistress and from the suggestive questions put to PW1 in cross-examination that on 07.06.2011 and 11.08.2011 the meetings started only at 4 pm and so she attended the above meetings without taking leave would abundantly prove that the respondent was receiving double benefits, i.e., receiving salary from the school and at the same time received sitting fee from the Panchayat by attending meetings on the above dates without taking leave from the school. Her explanation that she had obtained permission from the Headmistress and thus attended the meetings of the Panchayat without taking leave cannot stand to legal scrutiny.

21. In this context it is also relevant notice that the respondent was at the relevant time the President of the Panchayat and as such a full time Officer of the Panchayat. As per sub-Section 1 of Section 153 of the Act, the President shall be a full time functionary of the panchayat. The respondent has no case that she

had availed leave during the period in which she was working as President. In the G.O.(MS) No.81/08/LSGD, dated 15.03.2008, it has been clarified that the Panchayat President being a full time functionary of the panchayat will have to avail leave for functioning as President during the entire period in which he is functioning as President and he is entitled to only leave salary along with honorarium during such period.

22. After adducing evidence the petitioner has filed I.A.58/2014 for incorporating certain amendments. That application was allowed as per order dated 02.05.2014 and it has been carried out in the original petition as per order on I.A.No.78/2014. The amendment as incorporated is as follows,-

“The respondent in order to loot the money of the Panchayat and to cause loss to the Panchayat unauthorisedly received Travelling Allowance from the Panchayat on 13.11.2010, 14.11.2010, 20.11.2010, 04.12.2010, 05.12.2010, 14.12.2010, 15.12.2010, 18.12.2010, 27.12.2010, 31.12.2010, 18.01.2011, 24.01.2011, 29.01.2011, 15.02.2011, 16.02.2011, 20.02.2011, 26.02.2011, 05.03.2011, 18.03.2011, 24.03.2011, 26.03.2011, 30.03.2011, 31.03.2011, 26.04.2011, 27.04.2011, 29.04.2011, 03.05.2011,

05.05.2011, 06.05.2011, 09.05.2011, 11.05.2011, 12.05.2011, 19.05.2011, 20.05.2011, 22.05.2011, 23.05.2011, 28.05.2011, 08.06.2011, 10.06.2011 (1/2 day leave 11.06.2011, 16.06.2011, 17.06.2011 and 18.06.2011). It can be seen from the records that she on the very same day attended the School. The documents from the Panchayat and the Narayana Vidhalayam AUP School clearly prove the illegal act of the respondent without any room of doubt.”

23. The above amendment was allowed without objection from this respondent. It is further seen that the respondent did not file any objection to the amended petition and as such the said amendments remain undisputed. The petitioner as PW1 had already given evidence regarding the receipt of Travelling allowance on the very same days in which the respondent had marked her attendance in the School register and obtained salary. No explanation is offered by the respondent as to how she undertook such journeys on the days in which she attended the School and received salary. In the evidence of PW1, he has stated that the respondent had received Travelling allowance for the journeys said to have been undertaken by her from 25.11.2010, 26.11.2010, 14.12.2010, 18.01.2011, 24.01.2011, 16.02.2011, 18.03.2011, 24.03.2011, 30.03.2011,

31.03.2011 and 16.06.2011. The amendments include the above dates also. There is no cross examination regarding the receipt of Travelling allowance on the same days on which the respondent had attended the school and received salary. The respondent as RW1 has not deposed anything regarding the receipt of Travelling Allowance on the days on which she signed her attendance in the school and received salary. In the report of the Panchayat Deputy Director given in O.P.No.1646/2011 before the Hon'ble Ombudsman which is marked as Ext.P1, it is stated that the respondent did not offer any explanation for receiving Travelling Allowance on 14.12.2010, 30.03.2011, 31.03.2011 and 16.06.2011 on which days she attended the school and received the salary and it is further stated that the receipt of salary by the respondent on certain other days for attending the committee meetings of the Panchayat on the same days on which she attended the school on the basis of a permission from the school Headmistress cannot legally sustain. Ext.P2 is the Travelling Allowance bill which contains the details of the Travelling Allowance received by her and Ext.P3 is the record issued by the Narayana Vidhalayam AUP School showing the details of the leave taken by the respondent from November 2010 to 31.1.2012. These records were allowed to be marked as per order on I.A.No.54/2014 dated 22.04.2014. Though these records have been produced belatedly, since they are relevant records for arriving at a proper decision and marked without objection, they can be considered in this

case. On an evaluation of the entire facts and materials on record, it is clearly found that the respondent, who was then the President of the Panchayat had received sitting fee for attending the committees of the panchayat on 28.01.2011, 22.02.2011, 24.02.2011, 24.03.2011, 28.06.2011, 07.06.2011 and 11.08.2011 and received salary on such dates from the school. Therefore, I find that the respondent is liable for the loss and misuse caused of the Panchayat by receiving sitting fee and Travelling Allowance from the Panchayat without taking leave on such dates from the School.

24. The learned counsel for the respondent would argue that a member would become liable for loss or misuse caused to the Panchayat only if such loss or misuse has been quantified by way of an audit or on the basis of finding by the Ombudsman. As per Section 215 of the Kerala Panchayat Raj Act, the auditors shall specify in his report the loss caused of the Panchayat by way of negligence or misconduct on the part of the authorities of the panchayat. The audit as contemplated under Section 215 will not contain any details regarding the receipt of salary by a member who is employed as a teacher and only on the basis of a complaint made under Section 36 of the Act or on the basis of a petition before the Hon'ble Ombudsman, such a matter could be ascertained. The audit of accounts in the Panchayat does not extent to receipt of any amounts from the institution where such member is working and it is confined to accounts of

receipt and expenditure of the Panchayat funds. So the argument of the learned Counsel for the respondent that the liability has to be ascertained by way of an audit cannot legally stand. The argument of the learned counsel for the respondent that there should be finding regarding the loss, misuse or waste caused to the Panchayat by the Ombudsman for Local Self Government Institutions for passing an order of disqualification under Section 35(o) of the Act also is untenable. Such a finding by the Ombudsman is a prerequisite only if the petition is under Section 35(a) of the Act. Section 35(a) of the Act states that a member shall cease to hold office as such if he is found guilty as described under cause (b) of Sub Section (1) of Section 34 of the Act. Sub clause (iii) of clause (b) of Section 34 states that a person shall be disqualified for being chosen as and for being a member of a Panchayat if he has been held personally liable for maladministration by Ombudsman. Such a prerequisite is not contained in Section 35(o) of the Act. As per Section 36 of the Act when a question arises as to whether a member has ceased to hold office as a member, the Commission has to decide such a dispute.

25. The liability regarding loss, caused to the Panchayat need not have been assessed in an audit and the parties can let in evidence and the Commission can consider such evidence for arriving at a decision regarding disqualification under Section 35(o) of the Act. This position has been clarified by a catena of

decisions of the Hon'ble High Court. In the judgment of the Hon'ble High Court passed on 30.01.2010 in WP(c) No.2976/2010, it is held at **Para 14** as follows,-

“ The learned counsel contended that unless in an audit as contemplated in Section 215 is held and that the audit report has attained finality, no proceedings under Section 35(o) will lie against a member. On a reading of Section 35, I am not able to infer such a conclusion. Section 35(o) only provides for subject to the provisions of Section 36, a member shall cease to hold office if he is liable for the loss caused to the Panchayat. Therefore, on an application made under Section 36, if the petitioner is able to substantiate his case that a member has caused loss to the Panchayat, the Election Commission is perfectly within its rights to entertain a plea under Section 35(o) of the Act. I also notice that under Section 34 providing for disqualification of candidates, sub Section (p) requires that a person should have been found liable for loss to suffer disqualification as provided therein. Therefore, the terminologies in Section 34 and 35 being different, and in view of the only requirement of loss caused to

the Panchayat as provided under Section 35(o), I am not in a position to accept this plea either.”

26. The above position has been further reiterated in the judgment of the Hon’ble High Court in WP(c) Nos.11637/2008 & 11860/2008 dated 08.03.2010 and at Para 6 of the above decision it has been held as follows,-

“The power to declare a member disqualified under this section is conferred on the State Election Commission. Section 35(o) is one of the grounds available and therefore it is perfectly within the jurisdiction of the Commission to decide as to whether the ground urged has been made out.”

27. The further argument of the learned counsel for the respondent that there should have been finding by the Hon’ble Ombudsman regarding the loss or misuse caused to the Panchayat for invoking Section 35(o) of the Act also cannot legally stand. In the same judgment passed in WP(c) Nos.11637/2008 & 11860/2008 cited supra, at Para 8, it has been held as follows,-

“I am also not impressed on the contention of the learned senior counsel appearing for the petitioners that realization of loss and fixation or liability are the functions of the Ombudsman for Local Self Government Institutions, and

therefore, unless in a proceedings before the Ombudsman, the liability is fixed, proceedings cannot be initiated under Section 36 of the Act, in my view, the reason which I assigned for rejecting the contention relying on Section 215 is an answer to this contention.”

28. The ratio of this decision is found to have been confirmed by the Division Bench of the Hon'ble High Court in WA No.482/2010 dated 16.03.2010. Though the above decision of the Hon'ble Single Judge has been set aside as per this judgment, that was on the ground of insufficiency of evidence adduced before the Commission and not on any other ground. The fact that insufficiency of evidence before the Commission was taken up as the reason to set aside the judgment of the Hon'ble Single Judge would itself mean that it should be on the basis of the evidence being let in before the Commission that the question of disqualification under Section 35(o) of the Act is to be decided.

29. From the discussion held above it is found that the petitioner has succeeded in establishing that the respondent in O.P.No.155/2011 is liable for the loss and misuse caused to the Panchayat by receiving the sitting fee and Travelling Allowances from the Panchayat and also receiving salary on the same days in which such sitting fee and allowances have been received

and it is also to be pointed out that this respondent being the President of the Panchayat was a full time Officer and she did not take any kind of leave from the school for functioning as President and was receiving double benefits during her period as President. Therefore I find that the respondent in O.P.No.155/2011 has ceased to hold office as a member of Ananganadi Grama Panchayat under Section 35 (o) of the Kerala Panchayat Raj Act.

30. In.O.P.No.156/2011, the petitioner would allege that the respondent who is a teacher in an Ananganadi Aided Higher Secondary School, Panamanna has misused his official position and caused monetary loss to the Panchayat by accepting sitting fee for attending the General Committee and Standing Committee of the Panchayat held on 07.01.2011, 12.02.2011 and 16.03.2011 and he also received salary by signing the attendance register of the School and thereby caused loss to the Panchayat. The petitioner as PW1 has repeated the above allegation. The respondent would contend that he was on casual leave on 07.01.2011, 22.02.2011 and 16.03.2011 and so he has not caused any loss to the Panchayat. The respondent as RW1 has deposed that he had availed half day casual leave on 07.01.2011 and 22.02.2011 and was having S.S.L.C Examination duty on 16.08.2011 which was in the afternoon on that day and that he has not caused any loss to the Panchayat. Exts.R2 to R5 have been marked on his side to prove his contention. RW4 who is a teacher holding charge of the Headmaster

of this School has produced Ext.X1 casual leave register. As per this record, this respondent had availed casual leave on 07.01.2011 and 22.02.2011. RW4 would further depose that this respondent was having S.S.L.C examination duty in the nearby High School on 16.03.2011. From the above records and the evidence of RWs 3 and 4 it is clearly found that this respondent has not caused any loss to the Panchayat. He was on half day casual leave on 07.01.2011 and 22.02.2011 and he was having S.S.L.C Examination duty only in the afternoon on 16.03.2011 and as such there was no inhibition for him to attend the committee meetings of the Panchayat on the above dates. So this petition is only to be dismissed.

31. In O.P.No.157/2011, the definite allegation is that the respondent being a Teacher of Ananganadi Higher Secondary School, Panamanna had received Travelling Allowance on 14.06.2011 and 17.06.2011 from the Panchayat and on the above dates he also received sitting fee by marking attendance for the meetings of the panchayat and thus caused loss to the Panchayat. The respondent would contend that he was on casual leave on 14.06.2011 and 17.06.2011 and as such he has not caused any loss to the Panchayat. The petitioner has reiterated his allegations while adducing evidence as PW1. The respondent as RW2 has deposed that he did not attend the School on 14.06.2011 and 17.06.2011 and Ext.R2 is produced to prove the same. RW4 who is holding charge of the Headmaster of the School has deposed that this

respondent was on casual leave on 14.06.2011 and 17.06.2011 and Ext.X1 casual leave register is produced by him. The details regarding the casual leave of this respondent has been marked as Ext.X1(b). From Ext.X1(b) it is clearly found that this respondent was on leave on 14.06.2011 and 17.06.2011 and as such he was entitled to attend the meetings of the Panchayat on the above dates. From the above facts and materials on record, I am of the view that the petitioner has completely failed in proving that the respondent in O.P.Nos.156/2011 and 157/2011 are liable for any loss or misuse caused to the Panchayat. The points are answered accordingly.

In the result, O.P.No.155/2011 is allowed and it is declared that the respondent has ceased to hold office as a member of Ananganadi Grama Panchayat as provided by Section 35(o) r/w Section 36 of the Kerala Panchayat Raj Act. O.P.Nos.156/2011 and 157/2011 are dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 20th day of June 2014

K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.
APPENDIX

Witnesse examined on the side of the petitioner

PW1 : Sri.N.Muhammed Ali, Member, Ward No.13,
Ananganadi Grama Panchayat

Witnesses examined on the side of the respondent

- RW1 : Smt.Nafeesa.K, Teacher, Kakkattinmel Veedu,
Panamanna P.O
- RW2 : Sri.Sailavi, Teacher, Ovingal Veedu,
- RW3 : Muraleedharan, Teacher, Velladu Veedu,
Pavukkonam P.O.
- RW4 : Ahamamed Rasheed, Teacher, Anangnadi Higher
Secondary School, Panamanna

Documents produced on the side of the petitioner

- P1 : Copy of the letter No.E5-3241/2012 dated 21.07,2012 of the
Deputy Director of Panchayats, Palakkad
- P2 : Copy of the Travelling Allowance Bill of President/Vice
President of Ananganadi Grama Panchayat for the month of
December, 2010
- P3 : Letter of Headmistress, NVAUP School, Panamanna South

Documents produced on the side of the Respondent

- R1 : Certificate issued by the Headmistress, NVAUPS,
Panamanna South
- R2 : Copy of the Attendance Register of Teachers, for the month
of June 2011
- R3 : Copy of the Attendance Register of Teachers, for the month
of January 2011
- R4 : Copy of the Attendance Register of Teachers, for the month
of February 2011
- R5 : Copy of the Attendance Register of Teachers, for the month
of March 2011

Documents produced on the side of the Witness:

- X1 : Casual leave Register of H.S.S Ananganadi
- X1(a) : Page showing the casual leave of Sri.Muraleedharan,
HSA in X1
- X1(b) : Page showing the casual leave of Sri.Saidalavi
in X1
- X1(c) : Page showing the casual leave of Sri.V.Muraleedharan,
in X1
- X1(d) : Page showing the casual leave of Sri.Saidalavi in X1

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.**