

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO:LOK/INQ/14-A/133/2014/ARE-3

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 16/01/2018

RECOMMENDATION

Sub:- Departmental inquiry against Sri Devendra Pavadeppa Nayak, Head Master, Sri Varamarutheshwara High School, Kandaganura, Muddebihal Taluk, Vijayapura District.

Ref:- 1) Government Order No.ಇಡಿ 76 ಎಲ್ಬಪಿ 2014, Bengaluru dated 21/2/2014

2) Nomination order No.LOK/INQ/14-A/133/2014, Bengaluru dated 13/3/2014 of Upalokayukta-1, State of Karnataka, Bengaluru

3) Inquiry Report dated 11/1/2018 of Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 21/2/2014, initiated the disciplinary proceedings against Sri Devendra Pavadeppa Nayak, Head Master Sri Varamarutheshwara High School, Kandaganur, Muddebihal Taluk, Vijayapura District (hereinafter referred to as Delinquent Government Official, for short as '**DGO**') and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No.LOK/INQ/14-A/133/2014, Bengaluru dated 13/3/2014, nominated Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGO for the alleged charge of misconduct, said to have been committed by him.

3. The DGO Sri Devendra Pavadeppa Nayak, Head Master Sri Varamarutheshwara High School, Kandaganur, Muddebihal Taluk, Vijayapura District was tried for the following charge:-

“That you DGO Sri Devendra Parasappa Nayak, Head Master, Sri Varamarutheshwara High School, Kandaganura, Muddebihal Taluk, Bijapur District, while discharging your official duties i.e., while distributing the bicycles supplied by the Karnataka State Government during the year 2008-09 received bribe of Rs.150/- each from 18 students and Rs.100/- from five students, studying in the said school, as illegal money and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and thus you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules, 1966.

4. The Inquiry Officer (Additional Registrar of Enquiries-3) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge against DGO Sri Devendra Pavadeppa Nayak, Head Master Sri Varamarutheshwara High School, Kandaganur, Muddebihal Taluk, Vijayapura District.

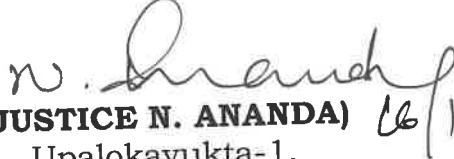
5. On re-consideration of report of inquiry, I do not find any reason to interfere with the findings recorded by the Inquiry Officer. It is hereby recommended to the Government to accept the report of Inquiry Officer.

6. As per the First Oral Statement submitted by DGO, he has retired from service on 31/5/2016 (during the pendency of inquiry).

7. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO Sri Devendra Pavadeppa Nayak, it is hereby recommended to the Government to impose penalty of permanently withholding 50% of pension payable to DGO Sri Devendra Pavadeppa Nayak, Head Master Sri Varamarutheshwara High School, Kandaganur, Muddebihal Taluk, Vijayapura District.

8. Action taken in the matter shall be intimated to this Authority.

Connected records are enclosed herewith.


(JUSTICE N. ANANDA) 16/1
Upalokayukta-1,
State of Karnataka,
Bengaluru

KARNATAKA LOKAYUKTA

No. LOK/INQ/14-A/133/2014/ARE-3

M.S.Building,
Dr. B.R.Ambedkar Veedhi,
Bengaluru - 560001.

Date: 11.01.2018

Enquiry report**Present: Sri.S. Renuka Prasad**
Additional Registrar Enquiries-3

Sub: Departmental Enquiry against Sri Devendra,
Pavadeppa Nayak, Head Master, Sri
Varamarutheshwara High School, Kandaganura,
Muddebihal Taluk, Bijapur District – reg

Ref: 1. Report under Section 12(3) of the Karnataka
Lokayukta Act, 1984, in No. Compt/Uplok/BGM/
227/2011/ARE-8 dated 5.12.2013

2. G.O. No. ED 76 LBP 2014 dated 21.2.2014

3. Nomination Order No.LOK/INQ/14-A/133/2014
dated 13.3.2014 of Hon'ble Upalokayukta-1,
Karnataka State, Bengaluru.

1. The complainant Sri Rajabaksh, Kaseem Sab Mokashi R/o Kandaganoor village, Muddebihal Taluk, Vijayapura District (hereinafter referred to as 'complainant') has filed a complaint against Sri Devendra, Pavadeppa Nayak, Head Master, Sri Varamarutheshwara High School, Kandaganura, Muddebihal Taluk, Bijapur District (hereinafter referred to as DGO) making allegations against him that, he being the Head Master of the said school, has collected Rs. 150/- from each of the students while distributing

cycles to those students, as per the scheme of the Government in providing free cycles to the students of Government schools and Government aided schools.

2. According to the allegation of the complainant, his brother is studying in VIII standard in Varamarutheshwara School and as per the scheme of the Government, free bicycles were to be distributed to 40 students of the said school. It is the allegation made by the complainant that, DGO/Head Master has collected Rs. 150/- each from each of such students in whose favour bicycles have been allotted under the said scheme and collected Rs. 150/- each from each of the beneficiary students thus, indulged in corrupt practices.
3. It is his contention that, he has filed complaint against the DGO, to BEO, DDPI and other Government officers but, no action has been taken against the DGO on his complaint. Hence, he filed complaint to this institution in form no.1 and 2 and also a detailed complaint addressed to Hon'ble Lokayukta as per Ex-P10 to P13.
4. On taking up investigation of the said complaint under Section 9 of the Karnataka Lokayukta Act, the complaint was entrusted for scrutiny to ARE-8 and comments of the DGO were called for. DGO has filed his reply dated 7.9.2013 denying the allegations made against him and also denying the report submitted by Sri R.R.Bennur investigating officer appointed by BEO, to investigate the allegations made in the complaint against him. He has made allegations against the complainant stating that, due to vengeance against him, the complainant has filed a false complaint against him. It is the further contention of the DGO that, on the basis of the complaint filed by the complainant against him, he was kept under suspension by the management of Varamarutheshwara Vidhya

Vardhaka Sangha, who are running Varamarutheshwara high School, but the said order of his suspension was set aside by the Appellate Authority/DDPI and the Writ Petition preferred by the management against the order of the DDPI before the Hon'ble High Court came to be withdrawn by the management on satisfying that, he/DGO has not committed any such corrupt practice and he has been reinstated as Head Master. It is the allegation of the DGO that, the complainant has taken up recourse of filing complaint to Hon'ble Lokayukta, since the complaint filed before the BEO was not effective and the order of suspension issued by the Management came to be withdrawn, by reinstating him to service. He requested for rejecting the complaint.

5. During scrutiny of the complaint the report submitted by Sri R.R. Bennur, investigating officer appointed by the BEO was also secured and perused. On considering the explanation offered by the DGO, since was not satisfactory and as there was no grounds to drop the proceedings against the DGO, a report under Section 12(3) of the Karnataka Lokayukta Act was forwarded to the Competent Authority dated 4.12.2013, recommending to initiate disciplinary proceedings against the DGO. The Government in Education department (Higher Education) vide G.O. dated 21.2.2014 initiated disciplinary proceedings against the DGO and entrusted the enquiry under Rule 14-A of KCS(CCA) Rules to this institution to hold enquiry and to submit report. As per the nomination order issued by Hon'ble Upalokayukta-1, ARE-3 has been nominated to frame charges against the DGO and to hold enquiry and to submit report. Accordingly, the then ARE-3 framed Articles of charges against DGO which reads as follows:

“Charge:

That you DGO Sri.Devendra Parasappa Nayak, Head Master, Sri.Varamarutheswara High School, Kandaganura, Muddebihal Taluk Bijapur District, while discharging your official duties i.e., while distributing the bicycles, supplied by the Karnataka State Government during the year 2008-09, received bribe of Rs.150/- each from 18 students and Rs.100/- each from five students, studying in the said school, as illegal money and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and thus you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct)Rules 1966.

STATEMENT OF IMPUTATION OF MISCONDUCT:

On the complaint filed by Sri. Rajabaksha Kaseemsaba Mokashi R/o Kandaganur in Muddebihal Taluka of Bijapur District, against you Sri. Devendra Pavadeppa Nayak - Head Master of Sri.Varamarutheshwar High School at Kandaganur of Muddebihal Taluka in Belgaum District, alleging that you have taken (bribe) of Rs.150/- from each student for distributing bicycle, an investigation was taken up after invoking Sec.9 of Karnataka Lokayukta Act, 1984 and, Deputy Director of Public Instructions at Bijapur was directed to submit report on the complaint.

2) After making enquiry, the said Deputy Director of Public Instructions has submitted report stating that B.E.O at Muddebihal was directed to enquire and accordingly, B.E.O. enquired and his report disclose that enquiry was conducted by Physical Education Teacher and the report of Physical Education Teacher is that the you had taken amount from the students to issue bicycles.

3) Then a copy of report of B.E.O., Physical Education Teacher and complaint were sent to the you DGO for reply. For that, you have submitted reply. However, on considering the material on record carefully, the same has not been found convincing to drop or accept the proceedings.

4) The said facts and material on record show that DGO, being a public/government servant, has failed to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of a public/government servant, and thereby committed misconduct and made himself liable for disciplinary action.

5) As the facts and material on record prima-facie show that the DGO has committed misconduct as per Rule 3(1) of KCS (Conduct) Rules, 1966, recommendation under Section 12(3) of the Karnataka Lokayukta Act, was made by the Hon'ble Upalokayukta-1 to the Competent Authority to initiate disciplinary proceedings against the DGO and to entrust the inquiry to this Institution under Rule 14-A of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

6) The Government after considering the recommendation made in the report, entrusted the matter to the Hon'ble Upalokayukta to conduct departmental/disciplinary proceedings against the DGO and to submit report. Hence the charge."

6. On service of AOC, DGO has put in his appearance and engaged the services of an advocate to defend him in this enquiry. First Oral statement of the DGO was recorded. DGO has denied the charges framed against him and desired to contest the charges. DGO has filed his written statement on 20.6.2014 taking up a contention that, false allegations have been made against him by the complainant, though he never indulged in any such corrupt practice as alleged against him. He has categorically denied the allegation that, he has collected Rs. 150/- each from each of the beneficiary students, while distributing bicycles to them.
7. He has taken up a specific contention that, he is not a Government servant as he was appointed by the Management of Varamarutheshwara High School, Kandaganoor and appointing authority and disciplinary authority being the Management of the said school, the Government initiating disciplinary enquiry against him is illegal. He has further taken up a contention that, the management has kept him under suspension, pending initiating disciplinary proceedings against him but, the said order of his suspension came to be set aside by DDPI on appeal preferred by

him. Though the management has challenged the order of Appellate Authority/DDPI by filing Writ Petition before the Hon'ble High Court, the said Writ Petition came to be withdrawn by the management and he was reinstated into service by the management on satisfying that, he has not indulged in any such corrupt practice. So far as the report submitted by Sri R.R. Bennur Investigating officer appointed by BEO is concerned, he has denied the correctness of the said report claiming that, the investigating officer being prejudiced against him filed a false report and requested this authority, not to act on the said report of the said investigating officer. He has requested this authority to drop the proceedings against him and to absolve him from the charges levelled against him.

8. During enquiry on behalf of the disciplinary authority the complainant has been examined as PW2 and Sri R.R. Bennur investigating officer appointed by BEO, has been examined as PW1. Two beneficiary students who were studying in the said school during the relevant period have been examined as PW3 and PW4. During enquiry totally 18 documents came to be marked as Ex-P1 to P18.
9. After closure of the evidence of the disciplinary authority, second oral statement of DGO was recorded. DGO having denied the evidence given against him by PW1 and PW2, further desired to lead defence evidence. Permission was granted to him accordingly. DGO examined himself as DW-1 and produced 6 documents in support of his defence which came to be marked as Ex-D1 to D6 during his defence evidence. Thereafter, I have heard the learned Presenting Officer and also the learned counsel appearing for DGO who have submitted their arguments and also filed their written arguments in support of their oral submission. The learned counsel for DGO has

produced certain citations in support of his arguments. Thereafter, this matter is taken up for consideration.

10. On considering the evidence adduced by way of oral and documentary, both on behalf of disciplinary authority and also DGO, the following points would arise for my consideration:

Point No.1: Whether the charges framed against the DGO is proved by the Disciplinary Authority?

Point No.2: What order?

11. The above points are answered as under:

Point No.1: In the 'Affirmative'

Point No.2: As per final order.

REASONS

Points No.1:-

12. DGO was working as Head Master of Sri Varamarutheshwara High School, Kandaganoor of Muddebihal Taluk Vijayapura District during the relevant period. The said school has been run by the management Varamarutheshwara Vidhyavardhaka Sangha. It is a Government aided school being run with 100% Government aid.
13. As per the complaint filed by complainant Sri Rajabaksh Mokashi, R/o Kandaganoor, his brother Lale Mashyk Mokashi was studying in IX standard in the said school during 2009. As per the scheme of the Government introduced for distribution of free bicycles to the high school students, 43 bicycles were allotted to Varamarutheshwara High School for distribution to the beneficiary students. It is his allegation that, DGO being the Head Master has collected Rs. 150/- each from each of the beneficiary students before

distributing cycles to them and after collecting money as such, cycles were distributed to such beneficiary students. According to him, since his brother told him that, Head Master is demanding him to pay Rs. 150/- in order to get the bicycle and took Rs. 150/- from him, the complainant has filed complaint against the DGO, to BEO, Muddebihal, DDPI, Vijayapura, Superintendent of Police, Vijayapura bringing to their notice the corrupt practice of the Head Master in collecting Rs. 150/- each from each of the beneficiary students while distributing bicycles in their favour, requesting them to take action against the DGO. According to the complainant, since none of them took any action against the DGO, he has approached this institution by filing complaint, requesting this authority to take action against the DGO.

14. During his evidence he has reiterated his allegations against the DGO and also explained the circumstances which forced him to file complaint against the DGO to various authorities and also to this institution. He has also produced the copies of the complaints he has filed to BEO, DDPI, SP and President SDMC of the said school as per Ex-P13 to P18 and also produced the Xerox copies of the news items published with regard to this corrupt practice of the DGO, in the various kannada newspapers and further claimed that, he came to know about the DGO indulging in corrupt practice of demanding Rs. 150/- from each of the beneficiary students, through his brother, he has filed such complaints to various authorities. It is his further contention that, since none of those authorities have taken any action against the DGO on his complaint, he has filed complaint to this institution as per Ex-P10 to P12.
15. This complainant/PW2 was thoroughly cross examined by the learned counsel for DGO. He has pleaded his ignorance about the

management initially keeping the DGO under suspension and subsequently reinstating him to service. He has further admitted that, the investigating officer Sri R.R. Bennur appointed by the BEO, during his inspection summoned him/complainant and recorded his statement but, DGO was not present during investigation by the said investigating officer. All other suggestions put to him by way of defence of the DGO, have been categorically denied by him.

16. PW1 is the investigating officer appointed by the BEO to investigate into the allegations made by the complainant against the DGO. According to the complainant, he has filed complaint to BEO, DDPI and SP, Lokayukta about, the DGO collecting money from each of the beneficiary students in order to distribute bicycles supplied by the Government at free of cost as per the scheme of the Government. SP, Lokayukta, Bijapur District referred the complaint to BEO, to submit a report regarding the allegations made by the complainant against the DGO. BEO, Muddebihal appointed PW-1 as investigating officer, since PW1 was working as Subject Inspector in physical education in the office of BEO, Muddebihal and he was also discharging the duties as Nodel officer regarding the implementation of the scheme of free distribution of bicycles to students in Muddebihal Taluk, during the relevant period.
17. PW1 has stated in his evidence that, since the complaint against the DGO was referred to him for investigation as per the letter of the BEO, Muddebihal as per Ex-P1(1&2), he visited Sri Varamarutheshwara High School, Kandaganoor on 10.8.2009, 13.8.2009 and 12.1.2010. During his first visit on 10.8.2009 the attendance of students in the school was very less due to local festival and he could not be able to record the statements of only 13 students who have attended the school on that day. On the basis of

the materials collected on 10.8.2009, he/PW1 submitted a report as per Ex-P2. He has further stated that, as per the direction of the BEO, he again visited the said school on 12.1.2010 and enquired IX Standard students of the said school and obtained their statements in their own handwriting and he could able to obtain such statements of 29 students as per Ex-P3 (1 to 29). Even DGO gave his explanation before him in writing as per Ex-P4 denying the allegations made against him. PW1 has further stated that, as per the materials collected during his investigation, he has submitted his report to the BEO as per Ex-P5 concluding that, irregularities have been committed by the DGO while distributing bicycles to the beneficiary students and DGO being the head master had collected amounts ranging from Rs. 100/- to 150/-, from such beneficiary students while distributing bicycles in their favour. On perusing his report Ex-P5, he has relied upon the statements in writing obtained from various students as per Ex-P3 and also the relevant registers containing entries regarding distribution of bicycles and other documents. PW1 in his evidence has reiterated all these contentions and gave evidence with reference to his report Ex-P5 and P6.

18. PW1 has been thoroughly cross examined by the learned counsel for DGO. He admitted in his cross examination that, when he visited the said school for investigation, DGO was under suspension and incharge head master was discharging the duties as Head Master. He has further admitted that, DGO was kept under suspension by the management. All the other suggestions put to him during his cross examination have been categorically denied by PW1.
19. Out of 29 students enquired by PW1 during his investigation, 2 students have been summoned before this authority as witnesses. PW3 was a student studying in IX standard in the said school

during 2010 and now he is prosecuting his BA course. PW4 was also a student of IX standard during 2010 and now he is working in a private company after undergoing ITI training. They have admitted that, DGO was the Head master of the said school during the relevant period, but denied that, the said head master collected money from them while distributing bicycles to them. The statement given by them in their own handwriting as per Ex-P3(27) and P3(9) have been confronted to them during their cross examination, on treating them as hostile witnesses. They have denied those letters when confronted to them claiming that, they have not executed any such letters and even they went to an extent of denying their signatures. Considering the fact that, DGO was their head master, the possibility of these witnesses won over by the DGO and at his instance, the possibility of they giving false evidence at the instance of the DGO, cannot be ruled out.

20. Considering the evidence of PW1 and PW2 and the documents produced in this enquiry, it is to be decided whether charges against the DGO are established or not. DGO by examining himself as DW1 has produced 6 documents in support of his defence. DGO was kept under suspension by the management of the said school and the management addressed a letter to DDPI informing about the suspension of the DGO and the various allegations on which he was kept under suspension. DGO has challenged this order of his suspension, by filing appeal before the Commissioner of public instruction in appeal no 8/2010-11. The appellate authority/ Commissioner of Public instruction vide his order dated 14.7.2010 set aside the order of suspension issued against the DGO by the management on technical grounds that, before keeping any teacher under suspension, the management has to take prior approval of the Competent Authority under Rule 92 and has to obtain the

confirmation of the order of suspension from the Competent Authority. Since no prior approval to suspend the DGO was obtained by the management and no confirmation of order of suspension was obtained by the management and since subsistence allowance during the period of suspension was not provided to the DGO, on the basis of these lapses, the appellate authority set aside the order of suspension issued by the management against the DGO directing the management to take back the DGO for duty. The management in fact challenged the said order before the Hon'ble High Court of Karnataka in W.P. No. 82953/2010. During the pendency of writ petition, since there was some settlement arrived at between the management and the DGO, Management withdrew the writ petition and hence vide order dated 25.7.2011, writ petition came to be dismissed as withdrawn.

21. As per the order of suspension, for which a reference has been made in Ex-D1, 15 charges have been made against the DGO in order to make a ground for his suspension. One of the charges was with regard to the allegation of unauthorisedly collecting money from each students while distributing cycles to them and it reads as follows:

“ಸರಕಾರದ ಜನಪ್ರಿಯ ಕಾರ್ಯಕ್ರಮಗಳಾದ 8ನೇಯ ತರಗತಿಯ ಶಾಲೆಯ ವಿದ್ಯಾರ್ಥಿಗೆ ಸರಕಾರದಿಂದ ಬಂದಿರುವಂತಹ ಸೈಕಲ್‌ಗಳ ವಿತರಣೆ ಮಾಡುವಾಗ ಪ್ರತಿಯೊಬ್ಬ ವಿದ್ಯಾರ್ಥಿ ವಿದ್ಯಾರ್ಥಿನಿಯರಿಗೆ ಉಚಿತವಾಗಿ ನೀಡಲು ಸರಕಾರದ ಆದೇಶವಿದ್ದರೂ ಕೂಡಾ ಸರಕಾರದ ನಿಯಮವನ್ನು ಉಲ್ಲಂಘಿಸಿ ಪ್ರತಿಯೊಬ್ಬ ವಿದ್ಯಾರ್ಥಿ ವಿದ್ಯಾರ್ಥಿನಿಯರಿಂದ ಒಂದು ನೂರಾ ಐವತ್ತು ರೂಪಾಯಿಗಳನ್ನು ಪಡೆದುಕೊಳ್ಳುವುದು.”
 ಹೊಸಪುಟ.

22. The investigating officer/PW1 in his report Ex-P5 has concluded that, the allegations made against the DGO are established. The relevant portion of report/Ex-P5 prepared by PW1 reads as follows:

“2008-09ನೇ ಸಾಲಿಗೆ ಸಂಬಂಧಿಸಿದಂತಹ ಮಕ್ಕಳನ್ನು ಪ್ರಶ್ನಾವಳಿಗಳ ಮೂಲಕ ವಿಚಾರಣೆಗೆ ಒಳಪಡಿಸಲಾಯಿತು ಹಾಗೂ ಮಕ್ಕಳ ಹೇಳಿಕೆಗಳನ್ನೊಳಗೊಂಡ ಪತ್ರಗಳನ್ನು ಇಸಿದುಕೊಳ್ಳಲಾಗಿ ಹಾಜರಿದ್ದ 30 ಮಕ್ಕಳಲ್ಲಿ 18 ಮಕ್ಕಳು 150 ರೂಗಳಂತೆ ಇಸಿದುಕೊಂಡಿದ್ದಾರೆಂದು 5 ಮಕ್ಕಳು 100 ರೂಗಳಂತೆ ಇಸಿದುಕೊಂಡಿದ್ದಾರೆಂದು ಹಾಗೂ 6 ಮಕ್ಕಳು ಯಾವುದೇ ಹಣವನ್ನು ಇಸಿದುಕೊಂಡಿಲ್ಲವೆಂದು ಮಕ್ಕಳು ಲಿಖಿತವಾಗಿ ಹೇಳಿಕೊಟ್ಟರು. ಹಣ ತೆಗೆದುಕೊಂಡಿರುವಂತಹ ಪ್ರಕರಣಗಳಲ್ಲಿ 19 ಮಕ್ಕಳ ಹಣವನ್ನು ಆಪಾದನೆಯ ತರುವಾಯ ಮರಳಿಕೊಟ್ಟಿರುವುದು ಕಂಡುಬರುತ್ತದೆ. ಹಾಗೂ 4 ಮಕ್ಕಳ ಹಣವನ್ನು ಹಿಂದುರಿಗಿಸಿ ಕೊಟ್ಟಿಲ್ಲದಿರುವುದು ಕಂಡುಬರುತ್ತದೆ.

ಒಟ್ಟಿನಲ್ಲಿ ಬೈಸಿಕಲ್‌ಗಳನ್ನು ಫಲಾನುಭವಿ ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಸರಿಯಾಗಿ ಹಂಚಿಕೆ ಮಾಡಿರುವುದು ಮೇಲನೋಟಕ್ಕೆ ಸ್ಥಿರಪಟ್ಟಿದ್ದು ಇರುತ್ತದೆ. ಆದರೆ ವಿದ್ಯಾರ್ಥಿಗಳಿಂದ ಬೈಸಿಕಲ್ ವಿತರಿಸಲು 100 ರಿಂದ 150ರೂಗಳನ್ನು ಇಸಿದುಕೊಂಡಿದ್ದು ಕಂಡುಬರುತ್ತದೆ. ಹಾಗೂ ಆಪಾದನೆಯ ತರುವಾಯ 19 ಮಕ್ಕಳ ಹಣವನ್ನು ಮರಳಿ ಕೊಡಲಾಗಿದೆ. ಆದರೆ 4 ಜನ ವಿದ್ಯಾರ್ಥಿಗಳ ಹಣವನ್ನು ಮರಳಿ ಕೊಟ್ಟಿರುವುದಿಲ್ಲವೆಂದು ಮಕ್ಕಳ ಹೇಳಿಕೆಯಿಂದ ಸ್ಥಿರಪಟ್ಟಿದೆ.

ಒಟ್ಟಿನಲ್ಲಿ ಮೇಲನೋಟಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಶಾಲೆಯಲ್ಲಿ ಬೈಸಿಕಲ್ ವಿತರಣೆಯಲ್ಲಿ ಹಣದ ಅವ್ಯವಹಾರ ನಡೆದಿರುವುದು ಮಕ್ಕಳ ಹೇಳಿಕೆಗಳಿಂದ ಸ್ಥಿರಪಟ್ಟಿರುತ್ತದೆ.”

23. Investigating officer/PW1 basing on the materials he has collected during his investigation and information he has received, he has concluded that, the allegation made against the DGO are established. Though PW1 was cross examined on behalf of DGO, except putting suggestions to him, nothing was elicited in his cross examination to disbelieve the evidence of PW1 and the report he has submitted as per Ex-P5.
24. DGO in his defense evidence has contended that, though he was kept under suspension by the management he has been reinstated to duty by the management since, the management came to the conclusion that, the allegations made against him are false. But such a defense contention taken by the DGO cannot be accepted for the reason that, the appellate authority/Commissioner for public instruction, set aside the order of his suspension on technical grounds but not on merits. The Appellate authority in its order Ex-D2 has not held that, the allegation of unauthorised collection of money from the beneficiary students while distributing free cycles to

them, are false. Therefore, the order of appellate authority in setting aside the order of suspension of the DGO since not on merits but on technical grounds, it is not in any way helpful to the DGO and on that basis, it cannot be concluded that, the allegation against the DGO is not established.

25. DGO has made comments on the report of Investigating officer/PW1 and also questioned the authority of PW1 in holding investigation and disputed the correctness of the report as per Ex-P5. But the fact that, he was working as Nodel officer, looking after implementation of the scheme of the Government in distributing free bicycles to the students, in Muddebihal Taluk during the relevant period, is not disputed or denied by the DGO. PW1 conducted investigation as per the orders of the BEO, Muddebihal is also not disputed. He has produced the letters of the beneficiary students obtained by him during the investigation as per Ex-P3(1 to 29). On perusing these letters, certain students have stated that, DGO had received Rs. 150/- from each of them and certain students have stated that, DGO has received Rs. 100/- from them. Certain students have stated in their letters that, since the villagers have filed complaint against the Head Master, the amount paid by them, have been returned by the Head Master. Though PW3 and PW4 turned hostile and refused to accept the letters given by them to PW1 during investigation conducted in the year 2010, there is nothing to disbelieve the evidence of PW1 and the report submitted by him to the BEO as per Ex-P5. DGO has not made any allegation of animosity or vengeance against PW1, in order to give such a report against him/DGO as per Ex-P5. Therefore, I am of the considered opinion that, there is nothing to disbelieve the evidence of PW1 and also the report submitted by him to the BEO as per Ex-P5.

26. I have already concluded that, the order of the appellate authority/Commissioner of public instruction as per Ex-D2 was not on merits but, on technical grounds. Hence the setting aside of the suspension order, issued by the management against the DGO, is not in anyway helpful to come to the conclusion that, the allegation made against the DGO are false. Except his self serving testimony, DGO has not produced any evidence or materials, to disbelieve the evidence of PW1 and the report submitted by him to the BEO as per Ex-P5 and the allegations made by the complainant in his complaint. Hence, I have no hesitation to conclude that, the charge against the DGO that, he has collected money unauthorisedly from the beneficiary students while distributing cycles to them as per the scheme of the Government and thus indulged in corrupt practice while implementing the scheme of the Government and thus is guilty of misconduct.
27. DGO has taken up a contention in his written statement and also in his written arguments that, he is not a Government servant as he was appointed by the management of Varamarutheshwara Vidhyavardhaka Sangha and the management is the disciplinary authority to him. But this argument of the DGO cannot be accepted since Varamarutheshwara high school though run by the management, is receiving 100% grant from the Government. All the teaching and non-teaching staff appointed by the management with due approval of the Competent Authority, are public servants within the meaning of Section 2(12) of Karnataka Lokayukta Act. Since Sri Varamarutheshwara Vidhyavardhaka Sangha is a registered society under the provisions of Karnataka Societies Registration Act, as Section 2(12)(iv) provides that, a person in the service or pay of a Society registered or deemed to have been registered under the Karnataka Societies Registration Act 1960, which is subject to the

control of the State Government and which is notified in this behalf in the Official Gazette the DGO can be considered to be public servant. Admittedly, DGO is a teaching staff of the said school being run by the management and was working as Head Master of the said school during the relevant period. The school since receiving 100% grant from the Government and the management is running the said school, under the direct control and supervision of the Government and since the DGO was holding a post entitling him to receive pension from the Government, he should be considered to be a public servant within the meaning of Section 2(12) of Karnataka Lokayukta Act and this enquiry initiated against him by the State Government is perfectly maintainable. Hence, the contention taken by the DGO in this regard, is hereby rejected.

28. Having regard to the discussions made above and conclusion arrived at regarding the charges framed against the DGO, I am of the considered opinion that, disciplinary authority is able to establish the charges against the DGO and accordingly, I answer point no.1 in the affirmative.
29. **Point No.2:-** Having regard to the discussions made above, and in view of my findings on the charge, my findings are as follows:

FINDINGS

- (a) The Disciplinary Authority has proved the charge as framed against the DGO - Sri Devendra, Pavadeppa Nayak, the then Head Master, Sri Varamarutheshwara High School, Kandaganura, Muddebihal Taluk, Bijapur District

(b) As per the first oral statement, the date of birth of the DGO is 16.05.1956 and he has already retired from service on 31.5.2016.



(S. Renuka Prasad)

Additional Registrar of Enquiries-3
Karnataka Lokayukta, Bengaluru.

ANNEXURES**I. Witnesses examined on behalf of the Disciplinary Authority:**

PW-1	Sri R.R. Bennur
PW-2	Sri Rajabaksh Kashimsab Mokashi
PW-3	Sri Hajiwali Naikodi
PW-4	Sri Javeed Doddamani

II. Witnesses examined on behalf of the DGO:

DW-1	Sri Devanand Pavadeppa Naik (DGO)
-------------	-----------------------------------

III Documents marked on behalf of D.A.

Ex.P-1	Original letter of authorization issued by BEO to PW1
Ex.P-2	Original report of PW1 dated 13.8.2009
Ex.P-3	Original statements given by 29 students
Ex.P-4	Original explanation of DGO
Ex.P-5	Original final report of PW1 dated 23.1.2010
Ex.P-6	Original covering letter of final report
Ex-P7	Original copy of the notice issued to the DGO
Ex-P8	Xerox copy of the extract of the register
Ex-P9	Xerox copy of the sheet containing signatures of students and parents present
Ex-P10	Xerox copy of the complaint in form no.1 filed by the complainant
Ex-P11	Xerox copy of the complaint I form no.2
Ex-P12	Xerox copy of the written complaint addressed to Hon'ble Lokayukta
Ex-P13	Xerox copy of Complaint filed by the complainant to BEO, Muddebihal
Ex-P14 to P16	Xerox copy of Complaint filed by the complainant to DDPI, Vijayapura
Ex-P17	Xerox copy of Complaint filed by the complainant to SP, Vijayapura
Ex-P18	Xerox copy of Complaint filed by the complainant to President, SDMC

IV. Documents marked on behalf of DGO:

Ex-D1	Certified copy of the letter written by Chairman of Varamarutheshwara Vidyavardaka Sangha to DDPI, Vijayapura
Ex-D2	Certified copy of the Order of Appellate Authority in No. 8/2010-11
Ex-D3	Certified copy of the Order of Hon'ble High Court of Karnataka in W.P. No. 82953/2010
EX-D4	Certified copy of the letter of Secretary to BEO
Ex-D5	Certified copy of the representation given by DGO to the Enquiry officer
Ex-D6	Certified copy of written statement of DGO dated 20.6.2014

V. Material Objects marked on behalf of the D.A:

Nil



(S. Renuka Prasad)
Additional Registrar of Enquiries-3,
Karnataka Lokayukta, Bengaluru.

