
(1996) 06 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No"s. 11080 of 1990 and 14863 of 1993

Ayisha, P.K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-06-1996

Acts Referred:

Kerala Education Rules, 1959 — Rule 12(3), 12E(3), 16

Citation : (1996) 2 KLJ 102

Hon'ble Judges : K.P. Dandapani, J

Bench : Single Bench

Advocate : C.P. Damodaran Nair, in O.P. 11080/90, for the Appellant; N. Radhakrishnan, Government Pleader, for the Respondent

Judgement

K.P. Dandapani, J.—O.P. No. 11080/90 is filed by the Manager of Kadavathur High School, Kannur and O.P. No. 14863/93 is filed by three High School Assistants and one menial staff of the same school, challenging the same order and therefore, they are being disposed of by this common judgment.

2. Petitioners 1 to 3 in the second Original Petition are High School Assistants and 4th Petitioner is a menial staff of the school. They are qualified to hold their posts. Their services were approved and they were paid the salary. While so, the Super Check Officer, Kozhikode, who is one of the Respondents in both the cases, passed an order dated 25th March 1988, (Ext. P-3 in the first case and Ext. P-1 in the second case), cancelling the posts held by the above teachers and menial staff. As against the said order, the Manager approached the Government by way of filing a revision, without success.

3. The State has filed counter affidavits in both the cases justifying the action of the Super Check Officer.

4. The question to be considered in both the cases is whether the Super Check Officer has got powers to pass such an order and jurisdiction to cancel the said posts.

5. The Super Check Officer is purported to have exercised powers conferred on him under Rule 16 of Chapter XXIII of the Kerala Education Rules. The said Rule 16 may be usefully extracted as follows:

16. Notwithstanding anything contained in these rules any officer authorised by the Government in this behalf shall, for the purpose of checking the staff fixation proceedings made by the Education Department, call for the relevant records and make enquiries to find out whether any irregularity has been committed in staff fixation. In the course of the said enquiry the authorised officer can inspect schools, verify the strength of pupils, check the area of class-rooms, call for records from Headmasters, Managers and Educational Officers and do such other acts as may be deemed necessary. As soon as the enquiry is over the authorised officer shall send a detailed report thereon to the Director of Public Instruction for appropriate action in the matter.

It is clear from Rule 16 that the power of the Super Check Officer is only to conduct an appropriate enquiry in regard to the staff fixation and then make a report in that behalf to the Director of Public Instruction, for appropriate action. The power to modify the orders of subordinate officers in the matter of staff fixation is conferred on the Director of Public Instruction under Sub-rule (3) of Rule 12(e) of Chapter XXIII of the Kerala Education Rules.

6. In this connection Rule 12(e)(3) of Chapter XXIII is also to be noted and it reads as follows:

12E * * *

(3) The Director may on his own motion (or on the basis of the report of the authorised officer under Rule 16 including the evidence and other details, if any, collected by him) or otherwise call for the records of the orders relating to fixation of staff strength issued by Subordinate officers and revise the same.

The power under Rule 12(e)(3) can be exercised only by the Director of Public Instruction on his own or on the basis of the report of the authorised officer under Rule 16. Therefore, there cannot be any doubt that the officer functioning under Rule 16 has no right whatsoever to make any final orders modifying the orders of the subordinate officers in regard to staff fixation. That power can only be exercised by the Director of Public Instruction functioning under Rule 12(e)(3) of the Rules.

7. On a perusal of Ext. P-1 order dated 25th March 1988 passed by the Super Check Officer, Kozhikode, I find that he has passed orders modifying the staff fixation made by the District Educational Officer in regard to staff strength of the school for the year 1987-88. The Super Check Officer visited the school on 12th January 1987 and seen to have verified the attendance. As per notice dated 9th December 1987 issued to the Manager and the affected teachers, he proposed to cancel certain divisions and consequent abolition of the post. The Manager and the affected teachers submitted their replies. Finally he passed the impugned

order, the operative portion of which reads as follows:

In the circumstances, the undersigned does not find any reason to change the decision already taken in the matter which was communicated to the Manager in the notice dated 9th December 1987. Therefore, in exercise of the powers conferred on the undersigned under Rule 12E(3) and Rule 16 of Chapter XXIII K.E.R. and G.O. (MS) 117/86/G. Edn., dated 10th July 1986 one division in Standard VIII and consequent post of H.S.A., one H.S.A. (Urdu) and one Full-time Menial in Kadavathur H.S. for the year 1987-88 are hereby abolished. The order of the District Educational Officer, Tellicherry, referred to as first paper above stands modified to the above extent.

8. Hence, it may be seen that he has exercised the powers conferred under Rule 12E(3) and Rule 16 of Chapter XXIII of the Rules. As stated above, neither Rule 12E(3) nor Rule 16, empowers the Super Check Officer to pass such an order. Power under Rule 12E(3) can be exercised only by the Director of Public Instruction whereas power under Rule 16 is conferred on the Super Check Officer only to the extent of submitting a proper report, after inspection, recommending to the Director of Public Instruction that the staff fixation should be modified in the light of his recommendation. It is also to be noticed that the Director of Public Instruction is not bound or under any obligation to accept the report made by the Super Check Officer. The Director can either accept or reject the report. It is, therefore, clear that the order passed by the Super Check Officer is without any authority or jurisdiction. Subsequent to the said orders, consequential orders have also been passed by the authorities taking steps to recover the amount already paid to the teachers.

In view of what is stated above, I quash Exts. P-3, P-5, P-7 and P-9 orders in O.P. No. 11080/90 and Exts. P-1, P-2, P-3, P-4, P-5, P-6 and P-7 Orders in O.P. No. 14863/93. Original Petitions are allowed. No costs.