

(2008) 02 KL CK 0008
In the High Court Of Kerala
Case No : W.A. No. 259 of 2008

Balakrishnan Nair, M. and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Kerala Education Act, 1958 — Section 11, 12, 12A
Kerala Education Rules, 1959 — Rule 12, 67, 7, 75, 75A
Kerala Revenue Recovery Act, 1968 — Section 34

Citation : (2008) 02 KL CK 0008

Hon'ble Judges : P.N. Ravindran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : T.M. Abdul Latheef, for the Appellant; K. Sandesh Raja, Government Pleader, B. Raman Pillai and M.T. Sureshkumar, for the Respondent

Judgement

P.N. Ravindran, J.—Is the manager of an aided school empowered to review and cancel the appointment of a teacher as Headmaster, after the appointment is approved by the Educational Officer, is the main question that arises for consideration in this writ appeal.

2. The Appellants in this writ appeal, who are husband and wife, are the Petitioners in O.P. No. 18698 of 1998. The first Appellant is the educational agency and the second Appellant is the Manager of Upper Primary School, Pulimath, an aided school situated within the territorial limits of the jurisdiction of the Assistant Educational Officer, Kilimanoor.

3. The fifth Respondent entered service as a Part-time Sanskrit Teacher in Upper Primary School, Pulimath, hereinafter referred to as the "school" for short, on 4-6-1973. His appointment as Part-time Sanskrit Teacher was approved by the Assistant Educational Officer. The State Government had in G.O. (Ms.) No. 62/73/G. Edn. dated, 2-5-1973 ordered that Part-time Language Teachers, who have put in more than 5 years of service and have 8 periods of work per week shall henceforth be made Full-time. In terms of the said Government order, the fifth

Respondent was appointed as a Full-time Teacher of the school on 15-7-1978 after he completed 5 years of service. The fifth Respondent's appointment as Full-time Sanskrit Teacher was also approved by the third Respondent.

4. Sri. M.K. Raveendran Nair, the Headmaster of the school retired from service on 31-3-1993 on attaining the age of superannuation. In the resultant vacancy, the second Appellant, the manager of the school of which the first Appellant is the educational agency, appointed the fifth Respondent as Headmaster with effect from 1-4-1993. The appointment of the fifth Respondent as Headmaster was duly approved and his probation in the category of Headmaster was also declared to have been satisfactorily completed.

5. While matters stood thus, the second Appellant, the manager of the school issued and served on the fifth Respondent Ext. P-2 memo of charges dated 5-4-1995. Later, the second Appellant placed the fifth Respondent under suspension with effect from 21-6-1995. The Assistant Educational Officer, Kilimanoor, the third Respondent herein, to whom the matter was reported, held after a preliminary investigation into the grounds of suspension that there are no valid grounds for placing the fifth Respondent under suspension. The third Respondent accordingly directed the manager to reinstate the fifth Respondent in service with effect from the date of suspension. This was as per proceedings dated 3-7-1995. It is relevant to note that the second Appellant had not obtained the previous sanction of the Assistant Educational Officer to place the fifth Respondent under suspension for a continuous period exceeding 15 days. The second Appellant challenged the order dated 3-7-1995 passed by the third Respondent in a revision petition dated 10-7-1995 filed before the State Government under Rule 92 of Chapter XIV A of the KER. After hearing the second Appellant and the fifth Respondent, the State Government issued Ext. P-3 communication dated 23-2-1996 to the second Appellant informing her that the Government do not find any reason to interfere with the order passed by the Assistant Educational Officer. The second Appellant, the manager of the school thereupon filed O.P. No. 6454 of 1996 challenging Ext. P-3 and other related orders. By Ext. P-4 judgment delivered on 10-4-1996, this Court set aside Ext. P-3 on the short ground that it did not give any reason and directed the State Government to consider the revision petition filed by the second Appellant afresh and to pass appropriate orders thereon.

6. As directed in Ext. P-4 judgment, the Additional Secretary to Government, General Education Department heard the parties concerned, namely, the second Appellant and the fifth Respondent herein on 20-7-1996. The State Government thereafter issued Ext. P-5 order dated 24-9-1996 affirming the order dated 3-7-1995 passed by the Assistant Educational Officer, Kilimanoor. Ext. P-5 has become final and has not been challenged in any proceedings including in the original petition from which this writ appeal arises. The effect of Ext. P-5 was that the manager of the school was bound to reinstate the fifth Respondent in service as Headmaster.

7. Instead of reinstating the fifth Respondent in service as directed by the Assistant Educational Officer in his order dated 3-7-1995, which was upheld by Ext. P-5, the Appellants resorted to another method to overreach the orders passed by the Educational Authorities. The first Appellant, styling himself as the manager of the school, issued and served Ext. P-6 show cause notice dated 3-10-1996 on the fifth Respondent calling upon him to show cause why his appointment as Headmaster of the school with effect from 1-4-1993 should not be reviewed. As stated above, the first Appellant is the educational agency of the school and the second Appellant, his wife, is the manager. The Appellants have a case that the second Appellant ceased to be the manager and the first Appellant became the manager on and with effect from 1-8-1996. According to the Appellants, on and with effect from 1-8-1996, the first Appellant, besides being the educational agency, is also the manager of the school. However, the educational officers have not yet approved the change in management. The first Appellant had in Ext. P-6 alleged that the service of the fifth Respondent, who had worked against a part-time post cannot be reckoned as full-time service for the purpose of seniority and therefore, his appointment as Headmaster of the school was made, wrongly reckoning his seniority. In Ext. P-6, the fifth Respondent was described as Headmaster on suspension, ignoring the effect of Ext. P-5. Thereafter, on the short ground that the fifth Respondent did not show cause as to why the proposal in Ext. P-6 should not be implemented, the first Appellant issued Ext. P-7 proceedings dated 19-10-1996 reverting him as Part-time Sanskrit Teacher. The pleadings disclose that the first Appellant had thereafter issued another order on 20-10-1996 reinstating the fifth Respondent in service as Part-time Sanskrit teacher.

8. The fifth Respondent challenged Ext. P-7 proceedings dated 19-10-1996 reverting him as Part-time Sanskrit teacher and the order passed by the first Appellant on 20-10-1996 reinstating him in service as Part-time Sanskrit teacher in a revision petition dated 1-11-1996 filed before the State government under Rule 92 of Chapter XIV A of the K.E.R. Pending disposal of the revision petition, the operation of Ext. P-7 and the order dated 20-10-1996 was stayed as can be seen from Ext. P-8 letter dated 9-12-1996 sent by the Secretary to Government, General Education (H) Department, to the manager of the school. In Ext. P-8 letter, the Secretary to Government, General Education Department also directed the manager of the school to comply with the direction in Ext. P-5.

9. The Deputy Secretary to Government, General Education Department considered the revision petition filed by the fifth Respondent at the hearing held on 24-4-1997. At the hearing, the first Appellant, who styled himself as the manager of the school, was present. He did not however have any authorisation from the second Appellant, who was the approved manager of the school to represent her at the hearing. The second Appellant, the manager of the school did not attend the hearing. Pursuant to the hearing held on 24-4-1997, the State Government issued Ext. P-9 order on 12-6-1997 allowing the revision petition filed by the fifth Respondent. By Ext. P-9, the State Government set aside Ext.

P-7 proceedings dated 19-10-1996 issued by the first Appellant reverting the fifth Respondent as Part-time Sanskrit teacher and the order issued by the first Appellant on 20-10-1996 reinstating the fifth Respondent in service as Part-time Sanskrit Teacher. The State Government also directed the manager of the school to reinstate the fifth Respondent in service as Headmaster and to disburse to him all monetary benefits, with effect from 21-6-1995. The State Government further directed the educational officer concerned to initiate proceedings against the manager under Rule 7 of Chapter III of the K.E.R. and to recover the monetary benefits-paid to the fifth Respondent, from the management, by initiating revenue recovery proceedings. In Ext. P-9, relying on the decision of the Apex Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, , the State Government held that in the absence of conferment of the power of review, the manager had no jurisdiction to review the order issued on 1-4-1993 appointing the fifth Respondent as the Headmaster of the school. The State Government further held that as the order of appointment had been approved by the department, the manager cannot review the same. The State Government also noticed that the manager had not complied with fee directions in Ext. P-5, though it had become final.

10. Shortly after Ext. P-9 order was passed, the educational authorities initiated proceedings under Rule 7 of Chapter III of the K.E.R. against the manager of the school. Since the approved manager of the school was the second Appellant, the Deputy Director of Education, Thiruvananthapuram, the competent authority to disqualify the manager of an aided school, issued a notice dated 11-7-1997 calling upon the second Appellant to show cause why steps should not be taken to disqualify her from holding the post of manager of the school or of any other aided school and also to show cause why the loss sustained by the Government on account of payment of salary to the fifth Respondent should not be recovered from her. The second Appellant did not object to the proposal contained in the said show cause notice. Thereupon, by Ext. P-10 proceedings dated 15-12-1997, the Deputy Director of Education, Thiruvananthapuram disqualified the second Appellant from holding the post of manager of the school or of any other aided educational institution. The Deputy Director of Education further directed the first Appellant, the educational agency of the school to appoint a suitable person as the manager of the school after remitting the loss sustained by the Government on account of payment of salary to the fifth Respondent from 21-6-1995 (the date of suspension) till the date of Ext. P-10. The Assistant Educational Officer was directed to work out the loss sustained by the Government and to discharge the functions of the manager of the school till another manager is appointed by the educational agency of the School. The pleadings disclose that the Assistant Educational Officer, Attingal had initiated proceedings to withdraw the recognition granted to the school and orders in that regard were issued on 6-1-2004 by the said officer. The validity of that order, produced and marked as Ext. R-5(f) along with I.A. No. 10307 of 2007 filed by the fifth Respondent, does not arise for adjudication in this writ appeal.

11. Aggrieved by Ext. P-10 proceedings dated 15-12-1997, the manager filed a revision petition dated 12-1-1998 before the State Government. Ext. P-11 letter produced along with the writ petition discloses that the State Government had pending disposal of the said revision petition stayed the operation of Ext. P-10. In the meanwhile, as directed in Ext. P-9, the educational authorities initiated revenue recovery proceedings against the second Appellant to realise the sum of Rs. 1,60,072 being the emoluments disbursed to the fifth Respondent during the period from 21-6-1995 to 31-10-1997. According to the department, as stated in the counter-affidavit filed on behalf of the Director of Public Instruction, the emoluments paid to the fifth Respondent from 21-5-1995 till July, 2002 will be approximately Rs. 6,50,000. On the request of the educational authorities, the fourth Respondent, the Deputy Tahsildar, initiated proceedings under the Kerala Revenue Recovery Act, 1968 and issued Ext. P-14 demand notice u/s 34 thereof calling upon the second Appellant to pay the sum of Rs. 1,60,072. The Appellants thereupon filed O.P. No. 18698 of 1998 challenging Ext. P-9 Government order dated 12-6-1997 and Ext. P-14 Demand Notice issued under the Kerala Revenue Recovery Act, 1968 and seeking other reliefs. While the original petition was pending, an interim order was passed by this Court staying the revenue recovery proceedings against the manager. On noticing that the order of stay was confined to the recovery alone and not to the reinstatement of the fifth Respondent in service as Headmaster, a learned Single Judge of this Court passed an interim order on 2-2-2006 in O.P. No. 18698 of 1998 directing that the fifth Respondent (who had in the meanwhile filed O.P. No. 1811 of 2003 seeking reinstatement in service as Headmaster) will assume charge as Headmaster on 6-2-2006. The interim order passed by this Court on 2-2-2006 reads as follows:

Pursuant to order dated 12-6-1997, the Government directed the management of an aided school who are the Petitioners in O.P. 18698/1989 to reinstate the Petitioner in O.P. 1811/2003 as Headmaster. The said Headmaster was placed under suspension as early as on 21-6-1995. In the writ petition filed on behalf of the management, this Court did not stay the operation of Ext. P-9 order. The stay was confined to the recovery from the management and yet the Headmaster was not reinstated in service. Sri. Latiff, learned Counsel for the management, submits that the teacher was not reporting for duty. It is the submission of the learned Counsel appearing for the teacher that several times he reported but he was not permitted to join duty. It shocks, judicial conscience (sic for conscience) that pendency of the writ petition was used as a reason by the management for not reinstating the teacher. Now it is more than 8 years since the Government passed the order to reinstate the Headmaster. Sri. B. Sreekumaran Nair, Petitioner in O.P. 1811/03 will assume charge as Headmaster of Upper Primary School, Pulimath on 6-2-2006. There will be a direction to the Superintendent of Police (Rural), Thiruvananthapuram and also the Assistant Educational Officer, Kilimanoor to see that no resistance is caused for such assumption of charge by Sri. B. Sreekumaran Nair. Post for compliance report and for further orders on 8th February, 2006.

12. Thereafter, by yet another interim order passed on 13-2-2006 in O.P. No. 18698 of 1998 this Court directed the Appellants and the official Respondents to finalise the disciplinary proceedings initiated against the fifth Respondent without placing him under suspension. There was also a further direction to complete the enquiry within three months and to file a report before this Court. The pleadings in the case disclose that in terms of the said direction, an enquiry into the charges levelled against the fifth Respondent in Ext. P-2 memo of charges was held by the Assistant Educational Officer, Kilimanoor, who submitted Ext. R-5(k) report exonerating the fifth Respondent of all the charges levelled against him. The pleadings also disclose that though after enquiry, the Assistant Educational Officer submitted his report with the connected records to the manager on 15-5-2006, the manager did not take further steps in the matter. It is also, evident from the pleadings in the case that for keeping the disciplinary proceeding? pending in violation of the interim order passed by this Court on 13-2-2006, the fifth Respondent had filed Contempt Case (Civil) No. 343 of 2007, which was closed on 2-6-2007 by a Division Bench of this Court, recording the submission made by the first Appellant that the direction in the interim order passed by this Court on 13-2-2006 has since been complied with.

13. O.P. No. 18698 of 1998 was finally heard on 19-10-2007. By judgment delivered on the same day, the learned Single Judge dismissed the original petition holding that no grounds exist to interfere with Exts. P-9 and P-14 but granted time to the Appellants to pay the amounts demanded from them in four equal monthly instalments, payable on or before the last working day of every month commencing from November, 2007. The judgment of the learned Single Judge in O.P. No. 18698 of 1998 is under challenge in this writ appeal.

14. We heard Sri. T.M. Abdul Latheef, the learned Counsel appearing for the Appellants. The learned Counsel, assailing Ext. P-9 order passed by the Government submitted that the principle of merger does not stand in the way of the Appellants rectifying a mistake, that Ext. P-6 show cause notice was issued and P-7 order reverting the fifth Respondent as Part-time Sanskrit Teacher was passed to rectify the mistake which occurred in the appointment of the fifth Respondent as Headmaster and that as the appointment of the fifth Respondent was not in accordance with law, under the provisions of the K.E.R., the manager was competent to issue Ext. P-6. The learned Counsel submitted that what was intended to be done by Exts. P-6 and P-7 was only the rectification of a mistake that occurred in appointing the fifth Respondent as Headmaster and that the appointment of the fifth Respondent as Headmaster was in violation of the rules of seniority. The learned Counsel for the Appellant submitted that if the educational officer had approved Ext. P-7, it would have effaced the fifth Respondent's earlier appointment as Headmaster. The learned Counsel contended that the Appellants had not illegally kept the fifth Respondent out of service and that he was in fact reinstated in service on 20-10-1996 as Part-time Sanskrit Teacher. The learned Counsel for the Appellants submitted that the Appellants cannot be held liable to reimburse the expenditure incurred by the

Government for payment of the salary to the fifth Respondent for the reason that the fifth Respondent did not join duty in the post to which he was reverted. The learned Counsel further contended that the quantification of liability was also done without notice to the Appellants.

15. We have considered submissions made at the Bar by the learned Counsel for the Appellants. We have also gone through the findings in Ext. P-5 order dated 24-9-1996 and in Ext. P-9 order dated 12-6-1997. We have also taken note of the contention of the Appellants that the second Appellant ceased to be the manager of the school with effect from 1-8-1996. We have also taken note of the stand taken by the first Appellant that he is the Manager of the school with effect from 1-8-1996. We have also gone through the findings in Ext. R-5 (k) report of enquiry dated 15-5-2006 submitted by the Assistant Educational Officer. As held by a Division Bench of this Court in *Cherian v. Anna S. Varghese* 1987 (1) KLT 301, the findings of the enquiry officer are binding on the manager of an aided school and the manager has no right to reject or discard the findings therein. The enquiry officer has in Ext. R-5 (k) report held that no one of the charges levelled against the fifth Respondent are tenable. It is evident from the proceedings leading to this writ petition that the manager of the school was reluctant to obey the orders passed by the educational officers and the State Government. One of us, (Balakrishnan Nair, J.) had in *Jayasree v. Director of Public Instruction* 2002 (2) KLT 346 held that managers of aided schools are lower or subordinate authorities for the purpose of Kerala Education Rules in relation to the Educational Officers, the Director of Public Instruction, the State Government or the authority empowered by the Government and that the managers cannot ignore the directions/orders issued by the superior officers. This Court had in the said decision held that if that was allowed, it will lead to a situation where orders of statutory authorities can never be enforced. This Court also held in the said decision that such an attitude cannot be tolerated or condoned in the light of the principles governing the rule of law. We concur with the principle laid down in the aforesaid decision. It is evident from the conduct of the Appellants in refusing to implement Ext. P-5 Government Order dated 24-9-1996 that there was a deliberate attempt on their part to overreach Ext. P-5 by reverting the fifth Respondent, whose appointment as Headmaster had been approved by the Educational Officer, as a Part-time Sanskrit Teacher.

16. The Apex Court has in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, held that the power to review is not an inherent power and that it must be conferred by law either specifically or by necessary implication. No provision in the Kerala Education Act, 1958 or the Kerala Education Rules, 1959 was brought to our notice, empowering the manager of an aided school to review an order of appointment issued by him and approved by the educational authorities, who are on the terms of Rule 81A of Chapter XIV A of the K.E.R., officers superior to the manager. We are also not persuaded to agree that the manager of an aided school has any implied power to unsettle the decisions taken by the superior officers. If such an implied power is conceded to

the manager of an aided school, it will lead to a situation where the manager will be able to terminate the services of a teacher without resort to disciplinary proceedings. It is evident from the scheme of Chapter XIV A of the K.E.R. that the manager of an aided school cannot revoke or cancel an appointment made by him and approved by the educational authorities. Rule 7 of Chapter XIV A of the K.E.R. stipulates that the appointment of a teacher shall be effective from the date on which a teacher is admitted to duty, provided the appointment is duly approved by the Educational Officer. The fifth Respondent's appointment as Headmaster was duly approved. The first Appellant, the educational authority of the school or the second Appellant, the manager of the school cannot therefore revoke the said appointment and revert the fifth Respondent to the post of Part-time Sanskrit Teacher. We therefore hold that the Appellants had no jurisdiction or authority and were not competent to review the appointment of the fifth Respondent as Headmaster.

17. In the light of the provisions contained in Rule 81A of Chapter XIV of the K.E.R., the manager of an aided school who is a lower or subordinate authority to the Educational Officers and the State Government was bound to implement Ext. P-5. We have no hesitation to hold that the attempt of the Appellants was to overreach Ext. P-5 Government order dated 24-9-1996. We also notice that Ext. P-5 order dated 24-9-1996 has become final and has not been challenged till date. It was taking note of the totality of the circumstances indicated above that the State Government issued Ext. P-9 order dated 12-6-1997. In view of the authoritative pronouncement of the Apex Court and of this Court in the decisions referred to above, hold that no exception can be taken to the findings and directions in Ext. P-9.

18. The Appellants had illegally kept the fifth Respondent out of service from 25-1-1995 onwards notwithstanding the fact that this Court had not stayed the operation of Ext. P-5 or Ext. P-9. The interim order of stay passed in O.P. No. 18698 of 1998 from which this writ appeal arises was confined only to the revenue recovery proceedings against the manager of the school. The Appellants did not however reinstate the fifth Respondent in service. It was only pursuant to the interim order passed by the learned Single Judge on 2-2-2006 which we have extracted above, that the fifth Respondent could rejoin duty as Headmaster on 6-2-2006. Further, we notice that Ext. P-6 and Ext. P-7 were issued by the first Appellant. The first Appellant had never been approved as the manager of the school by the educational authorities and as the educational agency he had no disciplinary power over the teaching/non teaching staff of the school. So, Ext. P-6 and Ext. P-7 were issued without the sanction or authority of law. The second Appellant is the approved manager of the school. The Kerala Education Act, 1958 and the Kerala Education Rules, 1959 do not confer the power of appointment or the power to initiate and conclude disciplinary action on the educational agency except in cases where the educational agency is also the manager of the school. Corporate Educational Agencies also do not possess the power to appoint the teaching/non teaching staff of the schools established and administered by it or

to initiate disciplinary proceedings against them. The provisions, in Sections 11 and 12 of the Kerala Education Act, 1958 and Chapter XIV A of the Kerala Education Rules, 1959, especially Rules 67 and 75 there of make it evident that the manager alone is the authority having the power to initiate and conclude disciplinary proceedings against teaching and non teaching staff of an aided school. The only other authority having disciplinary power is the State Government or such officer not below the rank of an educational officer, as may be authorised by the Government in the contingencies envisaged in Section 12A of the Kerala Education Act, 1958 and Rule 75 A of Chapter XIV of the Kerala Education Rules, 1959. In our considered opinion, the conduct of the Appellants in refusing to implement the directions issued by the State Government in Exts. P-5 and P-9 is nothing but contumacious. They are therefore liable to reimburse the salary and allowances paid to the fifth Respondent as held in Ext. P-9. We also find no merit in the contention of the Appellants that the quantification of the liability was done without notice to them. Salary and allowances are disbursed to the Headmaster of an aided school based on the scale of pay applicable to the said post and the manager has no role in the matter. The Appellants have also no case that any amount was paid to the fifth Respondent in excess of the salary and allowances that he was entitled to. We accordingly reject the challenge to Ext. P-14.

19. Having regard to the totality of the facts and circumstances set out above, we hold that there is no merit in the contentions raised by the Appellants. The writ appeal accordingly fails and it is dismissed inlimine.