
(1999) 06 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 2591 of 1999

Beena

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 08-06-1999

Acts Referred:

Kerala Education Rules, 1959 — Rule 12E(3), 15, 16

Citation : (2000) 1 KLJ 982

Hon'ble Judges : P.K. Balasubramanian, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : V.P. Seemandini, for the Appellant; V.A. Muhammed, K.E. Hamsa and P.K. Santhamma, (Govt. Pleader), for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishnan, J.—Petitioners are the appellants. They were appointed as UPSA in the fourth respondent's school for the period from 5-1-1995 to 17-3-1995 and 6-1-1995 to 17-3-1995 respectively. Appointments were approved. A regular vacancy of UPSA arose in the school on 13-11-1995 and in that vacancy first appellant was appointed, which was approved. A retirement vacancy of H.S.A: (Social Studies) arose in the High School section of the fourth respondent's school 10-6-1996 and the first appellant was promoted and posted in that vacancy as HSA (Maths). On promotion of the first appellant to the post of HSA, a vacancy of UPSA arose in the school on 10-6-1996, and in that vacancy second appellant was appointed. Appointment of the first appellant as HSA with effect from 10-6-1996 and the appointment of second appellant as UPSA in a leave vacancy from 2-1-1996 to 30-3-1996 and in the regular vacancy from 10-6-1996 were not approved. They preferred O.P. No. 13770 of 1998 before this court and an interim direction was given by this court directing the authorities to approve their appointments and disburse salary subject to further orders from this court. Pursuant to the said direction, salary was disbursed to the appellants from 1-6-1998 onwards was not sanctioned by the third respondent. Consequently,

they filed C.C.C. No. 177 of 1999 before this court and the same is pending consideration.

2. The District Educational Officer for the purpose of fixation of staff strength for the year 1998-99 visited the school on 1-7-1998. The District Educational Officer found that the effective strength of the students in Std. VIII as 90 and passed Ext.P2 order dated 31 -8-1998 holding that the school is eligible for three divisions in Std. VIII for the year 1998-99. Director of Public Instruction, second respondent, however received a complaint with regard to bogus admissions effected in the School so as to augment the students strength. Second respondent then ordered a revisit by a super check officer. The officer visited the school on 20-10-1998. It was found that there was not sufficient strength of students for allowing three divisions in Std.VIII as ordered by the District Educational Officer. Headmaster of the School however approached the Government requesting for revisit.

3. Government, therefore, vide order dated 10-11-1998 ordered a revisit by the super check officer. Accordingly, the said officer re-visited the school on 8-12-1998. At the time of revisit it was found that the staff fixation order issued by the District Educational Officer was liable to be modified for want of sufficient number of students to sanction as much number of divisions in Std.VIII. The officer found the effective student strength as 78. It was also found there were bogus admissions, fraud and misrepresentation of fact by the school authorities which led to the staff fixation for the year 1998-99 by the District Educational Officer. On receipt of report of the super check officer, notice was issued to all the affected parties to show cause why one division in Std.VIII be not abolished. Parties were heard by the Director of Public Instruction and later Ext.P3 order was passed. On the basis of Ext.P3, consequent orders were issued by the District Educational Officer vide Ext.P4. On the basis of Exts.P3 and P4, steps were taken by the authorities to revert the first appellant to the post of UPS A. Consequently, second appellant was ordered to be retrenched from service. Aggrieved by those orders, appellants have preferred the writ petition. Learned single Judge found no infirmity in the orders impugned. Consequently, writ petition was dismissed. Aggrieved by the same, this writ appeal is preferred.

4. Counsel for the appellants relying on Rule 23 of Chap. VI of the K.E.R. submitted that school is entitled to have three divisions in Std.VIII and that the District Educational Officer has rightly effected staff fixation. According to counsel, effective strength of Std. VIII in the school as on 1-7-1998 was 90, Consequently, three divisions in Std.VIII could be sanctioned. Relying on Rule 15A of Chap.23 of the K.E.R. counsel submitted that school is entitled to have 10% allowance on the students strength of VIIIth standard. Counsel submitted that even if the visit of the super check officer is under Rule 16 or 12, school is entitled to have 10% allowance while fixing the students strength. Counsel submitted that authorities misunderstood the scope of Rule 15A vis-?-vis rule 16 of Chap.XXIII of the K.E.R.

5. Counter affidavit has been filed on behalf of the second respondent. According to learned Government Pleader Ext.P3 order was passed by the Director of Public Instruction based on the report of the super check officer submitted Under Rule 16 of Chap.XXIII of the KER. The same was necessitated because of the complaint received by the Director of Public Instruction. The inspection revealed bogus admissions, tampering with admission register, etc. According to learned Government Pleader rule 16 gives ample power to the authorities to examine the correctness or otherwise of the staff fixation made by the educational authorities and that rule 15A is not applicable to the facts of this case.

6. We heard counsel on either side at length. In order to appreciate the rival contentions, it is necessary to examine the scope of Rule 16, Rule 12E(3) and Rule 15 of Chap.XXIII of the Kerala Education Rules. Chap.XXIII deals with fixation of strength of teachers in departmental and aided schools. Rule 12 therein empowers the educational officer to fix the strength of teaching staff in each school in accordance with various provisions in the said Chapter, once a year, after finalising the number of divisions based on the effective strength of the class from the re-opening date of the school. Provision for revisit is also provided in the said rule. Rule 12A also authorises the educational officer to make surprise visits to the schools to check strength, attendance, accommodation etc., and to review the staff fixation if found necessary. Rule 12C authorises the higher officers to scrutinise the staff fixation made by the primary authorities. Provision for appeal is provided under Rule 12D. Rule 12E provides for revision to the Director of Public Instruction against the orders of the Deputy Directors (Education). Rule 12E(3) empowers the Director on his own motion or on the basis of the report of the authorised officer under Rule 16, to call for the records of the orders relating to fixation of staff strength issued by the subordinate officers and to revise the same. Rule 12F empowers the Government at any time to call for the records of the Director of Public Instruction and to revise the same. Rule 15 says that if an educational officer is satisfied for valid and sufficient reasons that the fixation of staff strength was obtained by bogus admission or attendance or by fraud or misrepresentation, the officer could refix the staff strength at any time during the course of the year. Rule 15A states that in cases where the fixation of staff strength in schools is revised by the Director of Public Instruction or by the Educational Officers concerned under Rule 12E or Rule 15, as the case may be after September, an allowance for a fall of 10% in the effective strength only to support the first verification of staff strength shall be allowed. Note to Rule 15A says the 10% concession shall automatically apply only when the first visit is done by the District Educational Officer/ Asst.Educational Officer after September. It is also provided therein that when a subsequent verification is done after September. It is also provided therein that when a subsequent verification is done after September, 10% allowance would be allowed only to support the first verification and not for increasing the staff beyond what has been fixed in the first verification. A reading of Rule 15A read with Rule 12E(3) would show that an allowance for a fall of 10% in the effective

strength would be allowed only in cases where the fixation of staff strength in schools is revised by the Director of Public Instruction, or by the Educational Officers concerned.

7. Rule 16 gives an overriding power to the Government to authorise an officer to check the staff fixation proceedings made by the educational officers so as to find out whether any irregularity has been committed in the staff fixation. For the said purpose, the officer could inspect the school, verify the strength of the pupils, check the area of classrooms, call for records from the Headmaster, Manager and Educational Officer and do such other acts as may be deemed necessary. After conducting enquiry, Authorised Officer shall send a detailed report thereon to the Director of Public Instruction for appropriate action in the matter. Rule 16 is an independent provision and starts with a non-obstante clause. Legislature has employed non-obstante clause in Rule 16 in order to see that the said rule has overriding effect over other provisions of Chapter XXIII. A non-obstante clause is normally appended to a section or rule in the beginning with a view to give the enacting part of the section or rule an overriding effect over other provisions, or the Act or Rules contained in a statute. Rule 16 enables the Director of Public Instruction to take appropriate action in case he detects any irregularity on the basis of the report submitted by the authorised officer. While exercising powers under Rule 16 Director is not exercising any revisional power. Power is conferred on him so as to take appropriate action against the school authorities, which is not a revisional power. Power of revision of staff strength is specifically conferred on the Director under Rule 12E(1) against the orders of the Deputy Directors (Education). Rule 12E(3) also confers suo motu power on the Director or on the basis of report of the Authorised Officer under Rule 16, to revise staff fixation orders issued by the subordinate authorities. It is open to the Director of Public Instruction to give an allowance for a fall of 10% in the effective strength only to support the first verification of staff strength, in case the staff strength is revised by the said officer rule 12E or Rule 15 after September of the relevant year. Note to Rule 15A also says that 10% concession shall automatically apply only when the first visit is done by the District Educational Officer/Asst. Educational Officer after September. When a subsequent verification is done after September, 10% allowance will be allowed only to support the first verification and not for increasing the staff beyond what has been fixed in the first verification.

8. In the instant case, though the order is stated to have been issued under Rule 12E(3) read with Rule 16, the Director of Public Instruction was taken action against the school, especially the Headmaster for bogus admissions, fraud and misrepresentation of facts consequent to which three divisions were happened to be sanctioned in the school by the District Educational Officer in Std.VIII. In cases where the Director finds that students strength is shown by the school authorities after tampering with records, admission register, as well as misrepresenting facts, it is not incumbent on the Director to give 10% concession as provided in Rule 15A so as to validate those orders tainted with fraud as well

as tampering of records. We are of the view that Legislature has never intended to validate a fraudulent act by school authorities giving concession under Rule 15A, as contended by counsel for the appellants. We are of the view that when the Director exercises his power under Rule 16 after getting a report of an officer authorised by the State Government; it is ill ways open to the said Officer to take appropriate action against the school authorities. It is in exercise of the said power that the Director directed that the salary paid to appellants unauthorisedly should be recovered from the Headmaster. We are informed by counsel for the Headmaster that he has preferred an appeal against the portion of the order. We are not expressing any opinion with regard to the merits of the said appeal. When we judge the impugned order in the light of the above mentioned legal position, Director of Public Instruction has rightly interfered with the order of the District Educational Officer on valid and cogent grounds. In the above mentioned circumstances, we find no reason to interfere with the judgment of the learned single Judge.

Writ Appeal therefore lacks merits and the same is dismissed.