
(2014) 02 KL CK 0021
In the High Court Of Kerala
Case No : W.P. (C) No. 2447 of 2014

Bro. K.T. Joseph

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Kerala Education Act, 1958 — Section 12A, 12A(1), 12A(2)

Citation : (2014) 1 KLT 831

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : George Poonthottam, Advocate for the Appellant; K.A. Lowsy, Government Pleader, Advocate for the Respondent

Final Decision : Allowed

Judgement

C.K. Abdul Rehim, J.—Challenge is against Ext. P2 Order, to the extent it suspended the petitioner from the post of Headmaster. Among other grounds, the petitioner had assailed Ext. P2 alleging non-compliance of the proviso to S. 12A of the Kerala Education Act. Inter alia, the petitioner contents that the entire allegations in Ext. P2 are baseless and the suspension had resulted in imposition of a punishment. To a specific query made by this court to the Government Pleader as to whether the procedure contemplated under the proviso to S. 12A was followed in the matter of Ext. P2, it is conceded on the basis of instructions that no notice or intimation was given to the Manager of the aided school in which the petitioner is working, in compliance with the proviso to S. 12A.

2. Under S. 12A of the Act, the Government or the Authorised officer is vested with powers to take disciplinary action against any teacher of an aided school and to impose all or any of the penalties specified in the relevant Rules. Sub-s. (2) enables the Government or the Authorised officer as the case may be, to suspend a teacher when any disciplinary proceedings is proposed to be taken against him under sub-s. (1). But the proviso to S. 12A insist that before exercising powers under sub-s. (1) the Government or the Authorised officer

may intimate the Manager regarding the circumstances requiring such action and to give the Manager a reasonable opportunity for taking disciplinary action. Proviso (b) enables the Government or the Authorised officer to take appropriate disciplinary action if the Manager fails to take any appropriate action on the basis of such intimation.

3. In the case at hand, it is evident from Ext. P2 that the petitioner was suspended from the post of Headmaster stating the reason that continuance of the petitioner in the post will create hindrance for detailed verification and audit of the accounts relating to "noon meal feeding". It specifically mentioned that the suspension is ordered in exercise of power vested under S. 12A of the Act. The impugned order further says that the suspension is ordered pending finalisation of the audit of the "noon meal feeding account".

4. Question arises as to whether the 2nd respondent can exercise power vested under S. 12A(2) to suspend a teacher for the reasons mentioned as above. Learned Government Pleader contended that the requirement in proviso(a) to S. 12A for intimating and requiring the Manager to take disciplinary action, before exercising the power directly by the educational authority, is applicable only with respect to sub-s. (1) of S. 12A. In other words, sub-s. (2) of S. 12A is independent and the proviso is not applicable with respect to the power of suspension.

5. In this regard reference is made to a decision of this court in Sajil Vs. State of Kerala, . It is observed that, on a reading of sub-ss. (1) and (2) of S. 12A and the proviso, it is clear that the proviso governs only sub-s. (1) and it does not govern sub-s. (2). For exercising the power to suspend a teacher in exercise of S. 12A(2) it is not a condition to intimate the Manager as contemplated in the proviso. The proviso will apply only in the case of taking disciplinary proceedings in exercise of power under S. 12A(1). Hence it is held that the power vested on the educational authority to suspend a teacher stands on a different footing and is not necessary to wait till the Manager fails to take appropriate action as provided in proviso (b). But the learned Judge further observed that, the power under sub-s. (2) of S. 12A is controlled under R. 67(2) of Chapter XIV(A) K.E.R. A reading of S. 12A(2) and R. 67(2) indicate that a teacher can be suspended in exercise of powers under those provisions, only when any disciplinary proceedings has to be taken against him or when such disciplinary proceedings is pending. No other grounds enable the educational authority to suspend a teacher in exercise of S. 12A(2). Here the suspension is ordered not on the basis that any disciplinary action is proposed or because any disciplinary action is pending.

6. Learned Government Pleader contended that, the suspension is made as a prelude to disciplinary action proposed to be initiated. But such a version is not supported by contents of the impugned order. The impugned order specifies that the suspension is ordered pending finalisation of the audit and it is for the reason that the petitioner should be kept out of the post pending finalisation of such audit and verification. The impugned order does not indicate anything to the

effect that the educational authority had either made a request or has taken any decision to request the Manager concerned to initiate any disciplinary action against the petitioner. Therefore it cannot be contended that the suspension is on the basis of a proposal to initiate disciplinary action. Since the impugned suspension is not on the basis of any of the contingencies upon which such suspension is permitted under S. 12A(2) read with R. 67(2), the same cannot be sustained.

7. Under the above mentioned circumstances the Writ Petition is allowed and Ext. P2 is hereby quashed. However it is made clear this judgment will not stand in the way of the educational authority requesting the Manager to initiate disciplinary action if the said authority is of the opinion that any such disciplinary action is warranted on the basis of any allegations contained in the impugned order.