
(2012) 07 KL CK 0031
In the High Court Of Kerala
Case No : W.A. No. 1140 of 2012

C.K. Sobhana

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Kerala Education Act, 1958 — Section 11, 12, 12A, 12A(1), 12A(2)

Citation : (2012) 3 KLJ 687

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : K. Ramakumar, S.M. Prasanth and Smitha George, for the Appellant;
Liju V. Stephen, Santheep Ankarath and P.B. Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The connected Writ Appeals are filed by the suspended Headmistress of an Upper Primary School. We have heard Senior counsel Sri. K. Ramakumar appearing for the appellant, Government Pleader for the State and the Educational Officer and also Adv. Sri. Santheep Ankarath appearing for 4th respondent in W.A. No. 1140/2012. The school in this case is taken over by the Government and the District Collector is officiating as it's Manager. A complaint was filed by the senior-most teacher of the school stating that the appellant as Headmistress withdrew the salary and PF advance taken by her for construction of house and appellant without releasing the amount to the teacher concerned deposited the amount in her account and went on long leave. The Assistant Educational Officer conducted enquiry and found that disciplinary action is called for against the appellant. Therefore, in exercise of powers u/s 12A(2) of the Kerala Education Act he informed the District Collector who was functioning as the Manager of the School about the enquiry he proposed to initiate against the appellant. Even though the District Collector as Manager had the power to suspend the appellant based on advice from the Educational Officer in terms of Rule 67(1) of Chapter XIV-A, the District Collector informed the

Assistant Educational Officer to take action by himself. On receipt of District Collector's instruction, the A.E.O. proceeded to initiate disciplinary action against the appellant and as an immediate measure he suspended her in exercise of powers conferred u/s 12A(2) and Rule 67(2) against which writ petition was filed challenging the authority of the A.E.O. to suspend the appellant. The learned Single Judge upheld Ext. P4 suspension order against which the Writ Appeal is filed. One another Writ Appeal happened to be filed because Writ Petition challenging suspension was disposed of by the learned Single Judge along with another W.P. (C) filed by the 4th respondent in W.A. 1140/2012 for direction to the A.E.O. to get her salary and PF advance released from the appellant.

2. Senior counsel Sri. K. Ramakumar relying on two judgments of this court, one in Krishnankutty Nair v. Director of Public Instructions reported in 1972 KLT 204 : 1972 ICO 855 and the other in Thomas v. Regional Deputy Director of Public Instructions & Others reported in ILR 1976 (1) Ker. 477, contended that the District Collector as manager has no authority to instruct the A.E.O. to suspend the Headmistress. Government Pleader on the other relying on the first above decision itself contended that the powers of Manager and Educational Officer are concurrent u/s 12A and if Manager refuses to take disciplinary action or fails to suspend the teacher concerned, the Educational Officer is given independent and concurrent powers to take action. Counsel appearing for the third respondent also supported the argument of Government Pleader and justified the impugned judgment.

3. After hearing both sides, we are unable to accept the contention of the appellant that it is on direction by the District Collector as Manager of the school, the Educational Officer suspended the appellant. In fact, on going through Ext. P4 itself what is clear is that the complaint against the appellant was enquired into by the A.E.O. and only on his being satisfied that there is a need to take disciplinary action against the appellant, he informed the matter to the District Collector. The communication sent by the A.E.O. to the District Collector should be treated as a communication u/s 12A(2) of the Education Act which requires the Educational Authority to intimate the Manager of the school on the circumstances requiring disciplinary action against the teacher concerned which is to give an opportunity to the Manager to initiate disciplinary proceedings. However, it is clear from Section 12A(1) that independent power is conferred on the Government as well as on any Educational Officer authorised by it to take disciplinary action against any teacher of an aided school and to impose on such teacher punishment for the same. There is no dispute that the Educational Officer has independent and concurrent power to take disciplinary action against the delinquent teacher which in this case is the appellant. However, Senior counsel for the appellant submitted that if the Collector was satisfied on the report of the A.E.O., it was for him to initiate disciplinary action and to suspend the appellant which he did not do. There can be no dispute on this proposition because Collector while exercising powers of a Manager has the authority to initiate disciplinary action based on Assistant Educational Officer's report and he

could even suspend the appellant. However, what is to be considered is whether the A.E.O. was justified in suspending the appellant. The Government Pleader rightly pointed out that A.E.O. enjoys power of suspension both u/s 12A(2) as well as under sub-rule (2) of Rule 67 which specifically confers power on the Government or the Educational Authority to initiate disciplinary action against the teacher involved in misconduct. Section 12A and Rule 67(2) are extracted hereunder for easy reference:

S. 12A. Disciplinary powers of Government over Teachers of aided schools:-(1) Notwithstanding anything contained in section 11 of section 12 and subject to such rules as may be prescribed, the Government or such officer not below the rank of an Educational Officer, as may be authorised by the Government in this behalf, shall have power to take disciplinary proceedings against a teacher of an aided school and to impose upon him all or any of the penalties specified in the rules made under this Act.

(2) The Government or the Officer authorised under sub-section (1) as the case may be, may suspend a teacher of an aided school when any disciplinary proceedings is proposed to be taken against him under that sub-section or when such disciplinary proceedings are pending:.....

R. 67(2) The Government or an officer authorised by the Government u/s 12A of the Act may suspend a teacher of an aided school:-

- (a) When any disciplinary proceedings are proposed to be taken against him or
- (b) When disciplinary proceedings are pending against him.

We, therefore, do not find any merit in the challenge against Ext. P4 order which is purely within the powers of the A.E.O. and on facts we do not find any direction issued by the District Collector demanding suspension of the appellant which is the decision taken by the A.E.O. by himself.

4. We have to consider the peculiar facts of this case wherein the Manager happened to be the District Collector who got appointed as such only because the Government took over the school. The District Collector is otherwise the Head of Administration of the District and he has ever so many responsibilities and so much so, practically and realistically nobody can expect the District Collector to sit in the chair of a School Manager and function as such, no matter he has powers under the K.E.R. and the Rules by virtue of his appointment as the manager of the school taken over by the Government. In this case we feel the District Collector acted quite prudently and sensibly by leaving it to the Educational Officer to take follow up action based on his own enquiry because the A.E.O. has statutory power u/s 12A as well as under Rule 67(2) to suspend the appellant, proceed with the enquiry and to take disciplinary action. We, therefore, do not find any ground to interfere with the judgment of the learned Single Judge. Consequently Writ Appeals are dismissed. Senior counsel for the appellant submitted that statutory appeal is provided against suspension orders

before the Deputy Director and in view of the co-ordination between the A.E.O. and the District Collector as the manager of school, the Deputy Director may not grant proper relief. We do not think this apprehension is justified because if Deputy Director is conferred with statutory appellate power to consider the order of suspension issued by the A.E.O., then the role of District Collector as Manager has no significance and it is upto the Deputy Director to decide the case on merit without being prejudiced by the fact that the District Collector happened to be the Manager of the School.