

(1987) 02 KL CK 0043
In the High Court Of Kerala
Case No : W.A. No. 522 of 1982

G. Ravindra Babu

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:

Kerala Education Rules, 1959 — Rule 65, 74, 80, 81, 92

Citation : (1987) 02 KL CK 0043

Hon'ble Judges : V.S. Malimath, C.J.;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : S. Easwara Iyer and E. Subramani, for the Appellant; Government Pleader, for the Respondent

Judgement

V.S. Malimath, C.J.—This appeal is against the judgment of the learned Single Judge in O.P. No. 3191 of 1982. The Appellant was the Headmaster of the S.N.V. Sanskrit High School, Thrikkakara, of which the 2nd Respondent is the Manager. In respect of certain alleged misconducts, a disciplinary inquiry was held against the Appellant. After a few attempts to secure prior concurrence for the action proposed by the Manager failed the authorities having declined to grant the permission under Rule 74 of Chapter XIV-A of the Kerala Education Rules, the 2nd Respondent made one more attempt, proposing to impose the punishment of reduction of the Appellant to the post of High School Assistant by way of punishment and sought concurrence of the authority specified in Rule 74. The said authority having declined to grant permission by Ext. P-1 dated 4th February 1976, the second Respondent challenged the said order by way of revision to the State Government. The State Government allowed the revision petition under Rule 92 of Chapter XIV-A of the Rules by Ext. P-2, dated 9th April 1981, set aside the order made under Rule 74 and granted the prior sanction for imposition of the penalty of reduction to the cadre of High School Assistant. The Appellant sought review of the said order which review petition came to be dismissed by Ext. P-4 dated 21st April 1982. It is in this background that the Appellant challenged Ext. P-2 and P-4 in O.P. No. 3191 of 1982. The learned Single Judge

having dismissed the original petition he has come up with this appeal.

2. The first contention of Shri Subramani, the learned Counsel for the Appellant, is that the revision petition was not maintainable under Rule 92 as the order passed is not made appealable. The relevant portion of Sub-rule (1) of Rule 92 in so far as it is necessary for the purpose of this case may be extracted as follows:

Notwithstanding anything contained in these rules, the Government may, on their own motion or otherwise, after calling for the records of the case, revise any order passed by a subordinate authority in respect of matters contained in this Chapter which is made or is appealable under these Rules....

It was submitted that the expression "in respect of matters contained in this chapter which is made or is appealable under these rules" contemplates orders which are made appealable. In our opinion, the expression "which is made" refers to the order which is made in respect of matters contained in the Chapter and not to orders which are made appealable. If the construction put forward by Sri Subramani is to be accepted, it will lead to redundancy for, the latter part of Rule 92(1) itself expressly provides that a revision is contemplated against the order which is appealable under those rules. Thus, in our opinion, Sub-rule (1) of Rule 92 makes it clear that all orders in respect of matters contained in Chapter XIV-A are revisable under Rule 92 whether such orders are made by the original authority, or by the appellate authority. We have, therefore, no hesitation in repelling the contention of Sri Subramani that a revision petition was not competent under Rule 92(1) against the order made under Rule 74 on the ground that the order made under the said provision is not made expressly appealable under the rules.

3. It was next contended by Sri Subramani, the learned Counsel for the Appellant, that at any rate the revisional authority should not have exercised its revisional power under Rule 92 in such a manner as to deprive the Appellant of the valuable right of appeal which has been conferred on him under the Rules. It is not and cannot be computed that under Rule 92 the State Government can in exercise of its power of revision interfere with an order made under Rule 74 and make such appropriate order as it deems fit. If the prescribed authority wrongly declines to grant sanction prayed for under Rule 74, the revisional authority would be competent to revise such an order and make appropriate order, which the original authority under Rule 74 ought to have made. Sri Subramani also does not dispute the existence of such a power in the State Government. He however contends that such a power under Rule 92 being discretionary power should not be exercised in such a manner as to deprive the Appellant of the right of appeal which law has conferred on him. Rule 80 of the Rules provides that a teacher shall be entitled to appeal from an order imposing on him any of the penalties specified in Rule 65 to the next higher authority to whom the former authority is subordinate. If prior sanction is accorded by the revisional authority and thereafter penalty is imposed by the Manager, the aggrieved teacher can exercise that right of appeal. Rule 81 provides that where sanction has been

accorded for the imposition of any of the penalties by any authority then the appeal shall lie to the next higher authority to whom the authority who accorded the sanction is subordinate. Thus Rule 81 makes it clear that the appellate forum has to be an authority higher than the authority which accorded the sanction. It is in this background it was submitted by Sri Subramani that if the State Government grants sanction under Rule 92 there would be no authority to which the Appellant can prefer an appeal there being no authority higher than the State Government. We have to bear in mind that while considering the question of granting prior sanction under Rule 74 the authority is not required to examine the question whether the charges levelled are satisfactorily proved or not. It is not reasonable to impute that the intention of the rule making authority was to render the order of the Manager imposing penalty, final without an appellate forum to correct the same. It appears to us that in a matter like this where sanction is refused by the Director under Rule 74 and is granted by the State Government in revision, such an order must be deemed to be an order made by the authority specified under Rule 74. If that is how the order of sanction by the State Government under Rule 74 is construed, there would be no hurdle in the way of the Appellant in exercising his right of appeal under Rule 81 of the Rules. We have no hesitation in taking the,, view that the right of appeal conferred by Rule 81 of the Rules is not in any way affected by the grant of sanction by the State Government in exercise of its power of revision under Rule 92 of the Rules.

4. It was brought to our notice by Sri Subramani, the learned Counsel for the Appellant, that the Manager has in the meanwhile passed an order imposing penalty of reduction to the cadre of High School Assistant. The Appellant, it was submitted, did not prefer an appeal as he was bona fide pursuing his remedy in the High Court, and he was also under the bona fide belief that no appeal was competent having regard to the fact that sanction has been granted by the State Government itself. We are satisfied that there is bona fides in the conduct of the Appellant. We makes it clear that if the Appellant prefers an appeal within two weeks from this date, the appellate authority may proceed on the basis that there is sufficient cause for not preferring the appeal within the specified time.

5. As it was not argued we have not considered it necessary to examine as to whether on the facts of the case Sanction was necessary for the imposition of the penalty proposed in this case.

6. Reserving liberty as aforesaid, this appeal fails and is dismissed. No costs.