

(2021) 01 KL CK 0392

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17659 Of 2020

Hariharan K

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 18-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0392

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : Biju Abraham, Lilia John, S. Krishnamoorthy, Nithya Sugunan

Final Decision : Disposed Of

Judgement

1. While the petitioner was working as the Headmaster of the A.U.P.School, Chembrasseri, he was placed under suspension. Subsequently, a charge sheet was issued to the petitioner by the Manager of the said School; and in the meanwhile, the initial period of suspension of 15 days, ordered by the Manager, was extended by the jurisdictional Assistant Educational Officer (AEO), through an order dated 02.09.2019, a copy of which is on record as Ext.P12 in W.P.(C)No.17659/2020. The petitioner approached the District Educational Officer (DEO) against this order, which culminated in Ext.P16, produced along with W.P. (C)No.17659/2020, setting it aside and directing that the petitioner be proceeded against for dereliction of duty or violation of the provisions of the Kerala Educational Act and Rules (Act and KER respectively for short) only after following due procedure.
2. It appears that the afore mentioned order of the DEO was challenged by the Manager, by preferring a statutory Revision before the Government, finally culminating in Ext.P25 order marked in W.P.(C)No.17659/2020, whereby,

the directions of the DEO were vacated and the enquiry against the petitioner was directed to be completed within one month.

3. The petitioner challenges this order of the Government on various grounds , but primarily that it does not disclose any valid reason as to why he has been continued under suspension beyond 15 days, as is required under the provisions of Rule 67 of Chapter XIVA of the KER.

4. While so, since the petitioner was not able to obtain any interdictory orders in W.P.(C)Nos.17659/2020, the Manager continued with the enquiry proceedings, leading to Ext.P11 report in W.P.(C)No.29222/2020 and placed it for concurrence, before the DEO, as is required under the provisions of Rule 71 of Chapter XIVA of the KER, since he has proposed the reversion of the petitioner to lower rank as punishment.

5. The petitioner thus challenges Ext.P19 notice in W.P. (C)No.29222/2020, issued by the DEO, Malappuram, under which he has been notified of a hearing scheduled on 29.12.2020. The petitioner says that Ext.P19 is incompetent, since the DEO, who is now going to conduct the enquiry, was the same person, while he was an AEO, who ordered initiation of the enquiry against him, and therefore, that any decision that he may take will be vitiated by technical and actual bias. The petitioner, therefore, prays that the entire proceedings against him, as also the impugned orders in these writ petitions be set aside.

6. In response to the submissions of Sri.Biju Abraham, learned counsel for the petitioner as afore, Sri.Krishnamoorthy, the learned counsel for the Manager, submitted that W.P. (C)No.17659/2020 is no longer relevant because his client has completed the enquiry under Rule 75 Chapter XIVA of the KER and has placed his report before the DEO, under Rule 71 Chapter XIVA of the KER, for concurrence. He submitted that since the petitioner has not sought to challenge the disciplinary report of the Manager, namely Ext.P11 in W.P. (C)No.29222/2020, but has confined his challenge only to Ext.P19 notice issued to him by the DEO, both these writ petitions are not maintainable.

7. After saying as above, Sri.Krishnamoorthy submitted that, in fact, on an earlier occasion, a learned Judge of this Court had issued an interim order in W.P.(C)No.17659/2020 to reinstate the petitioner, but that the same was vacated by a Division Bench of this Court in W.A.No.1545/2020, wherein,

the Manager was directed to complete the enquiry proceedings within a period of one month from the date of the said judgment. He submitted that,

thereafter, the petitioner filed Review Petition No.944/2020 against the said judgment, wherein, reiteratingly, the learned Division Bench concluded

that the proceedings before the DEO cannot be interfered at this stage and that the said Authority must be allowed to complete it as per law.

Sri.Krishnamoorthy therefore, prayed that both these writ petitions be dismissed and the DEO be allowed to complete the proceedings, as initiated by

him through Ext.P19 notice in W.P.(C)No.29222/2020.

8. When I consider the afore submissions, it is without doubt that W.P. (C)No.17659/2020 has been filed by the petitioner impugning Ext.P25 therein,

which grants sanction for the continuation of the petitioner's suspension beyond 15 days; with a resultant direction therein that the enquiry proceedings

against him be concluded within a time frame. The petitioner's specific contention is that the earlier order of the AEO, namely Ext.P12 therein,

allowing the extension of the suspension is without recording any reason which would justify it and that the DEO, through Ext.P16 order, has

confirmed the same, again without recording any justifiable cause. The petitioner asserts that Ext.P25 order of the Government is also vitiated for the

same reason, because it also does not record the reason why such an extension of suspension is warranted. The petitioner in support, relies on a

judgment of this Court in Balakrishnan M. v. State of Kerala and Others [2016 (5) KHC 693], which has affirmatively declared that no suspension

can be extended beyond the period of 15 days unless reasons are recorded and unless the said reasons justify such a course.

9. I have, therefore, examined Ext.P25 order in W.P. (C)No.17659/2020 very carefully.

10. The view of the Government is available in the penultimate page of the said order, wherein, it has been recorded that the allegations against the

petitioner are grievous, which will require a full fledged enquiry. The charge sheets issued to the petitioner have been looked into in some detail in the

said order and the competent Secretary of the Government has concluded that such charges require a proper enquiry, before it can be held to be

proved or otherwise.

11. Since the Government has taken a view that the charges leveled against the

petitioner are grievous and that an enquiry is necessary, it is obvious that the same operate as the reasons why the suspension of the petitioner should continue, particularly because it is also stated therein that the continuation of the petitioner as Headmaster of the School, when he is being enquired into, would not auger well for the institution and therefore, that it is better that he be kept away from service during such process.

12. I cannot find the reasoning in Ext.P25 to be without rationale and I therefore, cannot see any reason why the same should be set aside at this stage.

13. That said, the challenge to Ext.P25 in W.P. (C)No.17659/2020 is unnecessary at this distance of time because, pending the said writ petition, the Manager was allowed to continue with the enquiry proceedings, thus culminating in Ext.P11 enquiry report, produced in W.P. (C)No.29222/2020. This enquiry report will now have to be given concurrence to by the competent Authority and unless such an order is issued, there would be no prejudice caused to the petitioner.

14. Of course, Sri.Biju Abraham, learned counsel for the petitioner, argues that the present DEO will not be in a position to dispassionately deal with the Manager's request for concurrence of his enquiry report, because he had earlier issued Exts. P3 & P4 order, produced in W.P.(C)No.17659/2020 against his client. The allegation made, therefore, is that the DEO will act with prejudice and that the petitioner will not be in a position to obtain justice from him.

15. However, when I examine Exts.P3 and P4 in W.P. (C)No.17659/2020, it is evident that the incumbent AEO has not issued or made any detrimental orders or remarks against the petitioner, but has only requested or directed him to act responsibly as a Headmaster of the School, particularly taking note of the fact that several teachers and non teaching staff had made complaints against him. This by itself cannot persuade me to hold that the said officer will only act against the interests of the petitioner, even though Sri.Biju Abraham explains that it is based on these orders that

37 Teachers had filed a subsequent complaint seeking enquiry against his client. The tenor of Exts.P3 and P4 in W.P.(C)No.17659/2020 is, in fact,

conciliatory in nature and the attempt of the AEO at that time was to make the situation in the school less tense, so that the Teachers and the

Headmaster can co-exist and work together as a team.

16. I am therefore, of the firm opinion that merely because the then AEO - who is the present DEO - had issued Exts.P3 and P4 in W.P.

(C)No.17659/2020, he would not consider the relevant factors and inputs, including the Manager's report, namely Ext.P11 in W.P.(C)No.29222/2020,

in the manner that it deserves to be dealt with as per the provisions of the KER.

17. The above being said, the DEO must implicitly, keep in mind that what is expected of him under the provisions of the KER is that he

dispassionately examine the report of the Manager, in the light of all the other inputs that are available, and decide whether concurrence for the

proposed punishment ought to be granted. The responsibility on the DEO is very acute as far as the KER is concerned, because if the Manager's

actions are not in conformity with the extant provisions of law, then it is for the said officer to ensure that it is set right at this stage itself.

18. In that perspective, I am certain that the DEO must hear the parties and arrive at a considered opinion - after closely examining Ext.P11 enquiry

report produced along with W.P. (C)No.29222/2020 - as to whether the punishment as proposed therein, should be concurred with or otherwise. I am

sure if the DEO takes a decision dispassionately and prudently, keeping in mind the spirit and purpose of the statutory provisions that enable such an

exercise under the KER, then the petitioner will have no cause in feeling threatened.

In the afore circumstances, I dismiss W.P.(C)No.17659/2020 and dispose of W.P. (C)No.29222/2020, directing the DEO to hear the petitioner, as also

the Manager of the School, pursuant to Ext.P19 notice in W.P.(C)No.29222/2020, on a fresh date to be fixed by him, after appropriately notifying both

sides; and to complete the proceedings, keeping in mind my observations above with respect to his responsibilities and duties as a concurring officer

under Rule 71 of Chapter XIVA of the KER.

The afore exercise shall be completed by the DEO as expeditiously as possible but within the time frame fixed by the Division Bench in I.A.No.3/2020

in W.A.No.1545/2020, namely within one month from 11.01.2021.

These writ petitions are thus disposed of.