
(2003) 01 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 21910 of 2001 (G)

Jayasree, K.N.

APPELLANT

Vs

State of Kerala and The Manager, Seethathode High School

RESPONDENT

Date of Decision : 13-01-2003

Acts Referred:

Kerala Education Rules, 1959 — Rule 10, 11, 12, 12(2), 12C

Citation : (2003) 3 ILR (Ker) 155

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : R. Rajasekharan Pillai, for the Appellant; P. Haridas, for R1 to R4 and T.K. Latheef, Government Pleader for R5, for the Respondent

Final Decision : Allowed

Judgement

A.K. Basheer, J.—Petitioner was appointed as Drawing Teacher in High School, Seethathode Pathanamthitta with effect from 1.6.1992. However, by Ext. P3 order dated 30.1.1993 the Deputy Director of Education, Pathanamthitta (Respondent No. 3) abolished the said post of drawing Teacher for the academic year 1992-93 in exercise of the power of revision under Rule 12C of Chapter XXIII of the Kerala Education Rules on the ground that there was no sufficient number of periods. Though a revision petition was filed by the Manager, respondent No. 5 before the Government against Ext. P3 order, the said revision petition was dismissed by Ext. P5 order dated 24.3.2001. In this OP the petitioner prays for issuance of a writ of certiorari to quash Exts. P3 and P5 and she also prays for a direction to the respondents to approve her appointment with effect from 1.6.1992 as Drawing Teacher in High School, Seethathode.

2. The thrust of the argument of learned counsel for the petitioner is with regard to the authority or jurisdiction of respondent No. 3 to exercise his powers of revision while issuing Ext. P3 order. The specific contention raised by the learned counsel is that respondent No. 3 could not have exercised the power of revision under Rule 12C of Chapter XXIII of the KER since he had become functus officio

inasmuch as staff fixation in the school was completed as early as on 19.6.1992, and therefore respondent No. 3 could not have issued Ext. P3 order after a lapse of more than 4 months. However, the contention raised by the learned Government Pleader is that by virtue of Rule 12(2) of Chapter XXIII of the KER, respondent No. 3 was competent to scrutinise and revise the staff fixation of the schools. Specific reference is also made to a circular issued by the Government. It is contended that circular No. 51214/J2-92/G.Edn. dated 4.8.1992 had in fact extended time for staff fixation up to the end of November, 1992. Therefore, it is urged by the learned Government pleader that respondent No. 3 was well within his powers to revise the staff fixation order in respect of High School, Seethathode.

3. It is pertinent to note that Ext. P3 order was issued on 30.1.1993. It is admitted by the petitioner that she had received notice of hearing in this regard on 16.12.1992. It is contended by learned counsel for the petitioner that even assuming the circular mentioned above had extended the time for staff fixation for the academic year 1992-93 till the end of November, 1992, the entire exercise of revision had to be completed within a reasonable time. It is pointed out that by the time Ext. P3 order was issued, the academic year had almost come to an end, and petitioner had put in service as Drawing Teacher for 8 months from 1.6.1992 till the date of order, i.e. 30.1.1993. Rule 12C Chapter XXIII of KER reads as follows:

"Scrutiny of staff fixation by higher officers:-(1) The District Educational Officer shall scrutinise all orders passed by the Assistant Educational Officer in regard to fixation of staff strength in Primary Schools and may revise such of the orders as are found necessary. Such revision orders shall be passed before the end of August every year and forward copy of such orders to the Deputy Directors, Education and the Manager/Headmaster.

(2) The Deputy Director Education shall scrutinise all orders passed by the District Educational Officer in regard to the fixation of staff strength in High and Training Schools and may revise such of the orders as are found necessary. Such revision orders shall be passed before the end of August every year and forward copy of such orders to the Director and the Manager/Headmaster. The Deputy Director Education shall also verify the correctness of the fixation orders of the Assistant Educational Officer and the revision orders of the District Educational Officer relating to at least 10 percent of the Primary Schools within his jurisdiction before the end of September every year and may revise such of the orders as are found necessary. Copies of such orders passed shall be forwarded to the Director/Manager/Headmaster.

(3) Any order by the District Educational Officer or the Deputy Director Education as the case may be, revising the fixation orders shall not be passed unless an opportunity is given to the person who is affected thereby. Such orders shall take effect from the date of these orders".

4. The statutory mandate to scrutinise staff fixation orders and to issue revision orders before the end of August is not without any purpose or object. It is mainly intended to ensure that sufficient staff strength is provided in the schools so that the curriculum of the students is not in any way affected during the academic year. Teachers and students will be able to settle down early in the academic year if there is no uncertainty about the strength and deployment of the teaching staff. A survey of various other provisions of KER relating to retirement of teachers and also their transfer and postings etc. will clearly show the anxiety of the legislature to protect the interests of the students. Rule 62 of Chapter XIV-A entitled a teacher who completed the age of retirement during the course of an academic year but not within one month from the date of re-opening to continue in service till the close of the school for the mid summer vacation. Similarly, Rule 63 of the same Chapter interdicts a teacher from assuming active duty on date of re-opening. If his date of superannuation falls within one months from the date of re-opening of the institution. Rule 12 of Chapter XIV-A relating to transfer of teachers also mandates that all transfers under Rule 10 and 11 of Chapter XIV-A shall ordinarily be made at the beginning of the academic year.

5. The schools in Kerala re-open after the mid summer recess normally in the first week of June. Fixation of staff shall be finalised by the Educational Officer not later than the 15th of July every year or such other date as may be fixed by the Director from time to time for the purpose, as stipulated in Rule 12 of Chapter XXIII. It is also pertinent to note that the staff sanctioned by the competent authority during the previous year shall continue till the 14th of July of the succeeding year. The time frame fixed in the matter of fixation of staff and giving finality to the strength of staff in the educational institution will clearly show that the rule making authority had the paramount interest of the students in their mind, in providing requisite teaching staff in the educational institutions with expedition. Therefore, any delay in giving a finality to staff fixation cannot be countenanced.

6. The learned Government Pleader was asked whether the question of delay in passing the order after scrutiny of staff fixation was considered by the Government while disposing of the revision petition. A perusal of Ext.P5 order will show that this aspect has not been considered by the Government. It is contended by the learned Government Pleader that scrutiny of files relating to staff fixation of various schools necessarily consumes a lot of time and it was in view of the delay the Government had extended the time for staff fixation till the end of November for the academic year 1992-93. I am afraid the explanation given by the learned Government Pleader is far from satisfactory.

7. There is no dispute that staff fixation in the High School, Seethathode for the academic year 1992-93 was completed on 19.8.1992 under Ext.P2 proceedings. By virtue of Rule 12C quoted above respondent No. 3 was bound to scrutinise the order passed by the District Educational Officer in regard to the fixation of staff strength in the High School for the relevant academic year by the end of August.

However since Ext.P2 proceedings were issued only on 19.8.1992, it can be argued that respondent No. 3 could not have scrutinised and revised the staff fixation order in question within the time stipulated under Rule 12C viz. by the end of August. But circular No. 51214/J2-92/G.Edn. dt. 4.8.1992 mentioned above cannot be pressed into service by respondent No. 3 because the said circular admittedly extended the time for finalisation of staff fixation only and that too in the case of schools in which staff fixation could not be finalised due to some reasons.

8. Under such circumstances, it cannot be said that Ext.P3 order passed by respondent No. 3 was sustainable in view of the circular issued by the Government extending the period for staff fixation. Respondents do not have a case that the circular mentioned above extended the period for scrutiny and revision by the higher officers. Even assuming the said circular extended the period for scrutiny and revision of staff fixation orders issued by the Educational Officers upto the end of November, 1992, there is no justification on the part of respondent No. 3 in issuing Ext. P3 order on 30.1.1993. The circular has not been produced before the court.

9. Having regard to the entire facts and circumstances, I am inclined to hold that respondent No. 3 was not entitled to exercise the power of revision at a belated stage and that Ext. P5 order is bad in the eye of law since it has been issued without any authority or sanction of law. In view of the above finding, I do not propose to go into the merits of the order issued by respondent No. 3 with regard to the students strength or the number of periods available in the school in question. Ext. P3 and P5 orders are quashed and set aside. There shall be a direction to respondent No. 3 and 4 to approve the appointment of the petitioner with effect from 1.6.1992 for the academic year 1992-93. The petitioner shall be paid all consequential benefits.

The OP is allowed as above.