
(1993) 10 KL CK 0039
In the High Court Of Kerala
Case No : O.P. No. 522 of 1989-K

Johnson

APPELLANT

Vs

Manager, St. George's High School and Others

RESPONDENT

Date of Decision : 11-10-1993

Acts Referred:

Kerala Education (Amendment) Rules, 1988 — Rule 1, 12, 12B, 12C, 12D
Kerala Education Rules, 1959 — Rule 12, 16, 3

Citation : (1993) 2 KLJ 988

Hon'ble Judges : Mathew P. Muricken, J

Bench : Single Bench

Advocate : A.R. Prakasam, for the Appellant; M. Lalitha Nair, Government Pleader for Respondents 2 to 5, for the Respondent

Judgement

Mathews P. Mathew, J.—The Petitioner is a last grade servant in the first Respondent's school. He was appointed as a full time menial with effect from 1st January 1982 as against the third sanctioned vacancy of full time menial in the said school during the academic year 1983-84. The second Respondent District Educational Officer visited the school on 25th July 1983 and on the basis of the said visit issued Ext. P-1 staff fixation order dated 30th July 1983 fixing the staff strength of the school, whereby one post of full-time menial was abolished on the basis that the effective total strength of the students in the school was below 1500 namely, 1492. Aggrieved by Ext. P-1, the manager of the school made a representation to the 6th Respondent-State Government seeking a re-visit by the District Educational Officer, for the purpose of re-fixation of the staff strength. Accordingly the second Respondent re-visited the school on 20th September 1983 and the report of the re-visit is submitted as Ext. P-1 (a). It was found that there was some increase in the strength of the school. According to the Petitioner the increase is sufficient for sanctioning the continuance of the third full-time post of menial, but according to the Department it was still not sufficient to justify the continuation of the third full-time post of menial in the school. As against Ext. P-1 a statutory appeal was filed before the third Respondent-Deputy

Director of Education who rejected the said appeal by Ext. P-3 order. A revision was filed against Ext. P-3 before the 4th Respondent-Director of Public Instruction which was also rejected as per Ext. P-4. A further revision was filed before the 5th Respondent-Government but without success. Ultimately the Petitioner filed O.P. No. 4561/84 before this Court which was disposed of by Ext. P-7 judgment directing re-consideration of the entire issues raised by the 5th Respondent and directing the 5th Respondent to issue appropriate orders in accordance with law. The Government by Ext. P-8 order re-considered the revision petition as directed by Ext. P-7 judgement, but rejected the contentions of the Petitioner. Hence this Original Petition.

2. It is submitted by the learned Advocate Shri A.R. Prakasam, appearing on behalf of the Petitioner that the interpretation given by the Government regarding the applicability of Rule 12 in Chapter XXIII of the Kerala Education Rules is absolutely wrong. However he further contended that even assuming that Rule 12 is applicable in the present case as contended by the Government, the decision regarding the abolition of the post of third full-time menial on the basis that there was not sufficient strength of students is wrong in the facts and circumstances of the case. It is contended by the learned Counsel for the Petitioner that the actual attendance as on the day of re-visit of the D.E.O. was 1447. As per Rule 12 of Chapter XXIII it is permissible to add 5 per cent of the total roll strength of the students to the total number of the students actually present, provided such addition does not exceed the roll strength of the school. In the present case, the total roll strength of the school is 1526. If 5 per cent of the roll strength is added to the actual number of students present on the day of the re-visit, the total would work out to be 1523, thereby justifying the continuance of the third full-time post of menial in the school.

3. The Respondents have a case that from the actual number of students present on the day of the re-visit, three students who were re-admitted to the school as well as two students who were newly admitted after the 6th working day should be excluded. It is true that Rule 16 of Chapter VI of the K.E.R. provides that re-admitted students shall not be counted for fixation of staff strength. But there is no exclusion of newly admitted students as per any rule.

4. As per Rule 3 of Chapter I of the K.E.R., the Government is given power to grant exemption to mitigate hardships in the implementation of any rule in a particular case. The Government have been admittedly issuing orders from time to time exempting the application of the rule whereby the re-admitted students are excluded from being reckoned for the purpose of calculating the total strength of the school. As per Ext. P-12, the Government have extended the benefit of exemption in this regard during the academic year 1983-84 also. The validity of Ext. P-12 is not challenged before me by anyone. Further, the 5th Respondent stand by Ext. P-12 and I cannot ignore Ext. P-12 in this regard. At any rate, the 5th Respondent after having applied Ext. P-12 in respect of every other school in the State, cannot take the stand that it is not applicable in

respect of the Petitioner's school alone. Thus in calculating the student strength as on the date of re-visit of the second Respondent, three students who were re-admitted to the school as well as two students who were newly admitted after the 6th working day are bound to be reckoned with the addition of 5 per cent roll strength to the actual attendance of 1447, and then the total strength of students as on the re-visit of the D.E.O. would work out to be 1526, thereby justifying the continuance of the third full-time post of menial. Therefore, in the absence of any rule preventing the inclusion of newly admitted students after the 6th working day for the purpose of calculating the total strength and in view of Ext. P-12 whereby re-admitted students are permitted to be included, there is no justification for discontinuance of the third post of full-time menial in the Petitioner's school on the basis of Ext. P-1 (a) report of re-visit by the second Respondent-District Educational Officer.

5. Learned Advocate for the Petitioner correctly submitted that the total strength of students in a school, for the purpose of fixation of non-teaching staff, has to be based on the total strength of the school and not on the aggregate of the divisional strength standard-wise. It stands to reason that standard-wise calculation of strength is relevant only for the purpose of sanctioning of divisions and the teaching staff on the strength of each division. That is irrelevant for the purpose of fixation of non-teaching staff including menials. As a matter of fact, the Government has understood the rule, before the amendment introduced to Rule 1A of Chapter XXIV-A of the K.E.R. in the year 1988, as is evident from the explanatory note in the amendment introduced in the year 1988, in such a way that the total strength of the school alone is applicable in the matter of fixation of non-teaching staff. The amendment introduced in 1988 as Rule 1A is as follows.

1A. The provisions contained in Rules 12, 12B, 12C, 12D, 12E and 15 in Chapter XXIII for the fixation of strength of the teaching staff in aided schools shall mutatis mutandis apply to the fixation of strength of the non-teaching staff in aided school also with exceptions that the strength of schools referred to in Rule 1 shall mean effective strength and the effective strength shall be calculated on the basis of the total roll strength and the actual attendance on the date of visit of the Educational Officer in all Upper Primary and High Schools classes taken together for the purpose of sanctioning posts of non-teaching staff.

It is not a fresh rule. It is only by way of removing doubts and is only clarificatory in nature. No change is intended by the said amendment. The amendment merely states what had been intended and how the rule should be interpreted. Further more, from the very scheme of the sanctioning of total staff strength separately for teaching and non-teaching staff, it is clear that total strength of the school along is relevant for the purpose of determining the strength of non-teaching staff in the school. The Head of the Department has confirmed the stand of the Department in this respect by issuing Ext. P-9, dated 25th July 1966. The 5th Respondent-State Government has endorsed the views

of the Head of the Department in the counter affidavit filed in this case but has made a vague attempt to justify the stand taken in Ext. P-8, by distinguishing the principle applicable in the fixation of strength for the post of menial as well as clerks. In the counter affidavit it is stated that the principles as applicable in the case of fixation of staff strength of clerks is not applicable in the matter of fixation of staff strength of menials. The Kerala Education Rules makes no distinction as to the fixation of the staff strength in respect of menials and clerks. The principles governing both are the same and are referred to as one category for this purpose, viz., that of non-teaching staff. So there is no justification in adopting different interpretations of the same rule for the purpose of fixation of staff strength in the matter of clerks and menials.

6. In the light of the above it is declared that the Petitioner's school is entitled to have three full time menials for the academic year 1983-84. It was argued by the learned Counsel for the Petitioner that even if the strength is calculated standard-wise, in the present case there would be 1500 students in the school, as pointed out by the Petitioner in the chart produced along with the reply affidavit. However no detailed discussion on this aspect is necessary in view of the declaration I have granted in favour of continuation of the third full time post of menial during the academic year 1983-84 in the Petitioner's school. The Original Petition is allowed by setting aside the impugned orders culminating in Ext. P-8.