
(1996) 09 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 1964 of 1994

K. Ravindranatha Pillai

APPELLANT

Vs

Director of Public Instructions and Others

RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Kerala Education Rules, 1959 — Rule 12E, 15, 15A

Citation : (1996) 09 KL CK 0005

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : P. Gopalakrishnan Nair, for the Appellant; P.V. Asha, Government Pleader for Respondents 1 and 2 and Prakash P. George, for Respondents 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

C.S. Rajan, J.—Petitioner is the Manager of an aided High School. Second Respondent fixed staff strength of the school for the year 1993-94 as per Ext. P-1. This was done after due verification of strength and attendance of pupils by the 2nd Respondent. The disputed class divisions are Standards VI and VII. Ext. P-1 reveals that the roll strength, verified attendance strength and effective strength of the post in the two standards are 192, 177, 187, 239, 220 and 232 respectively. Later, 2nd Respondent issued Ext. P-3 order after giving notice to the Petitioner by which one division each in Standard VI and VII and consequently posts of two Upper Primary School Assistants were abolished with effect from 15th July 1993. Obviously, the 2nd Respondent has passed this order in exercise of the powers conferred on him as per Rule 15 Chapter XXIII Kerala Education Rules. The challenge in this Original Petition is against Ext. P-3 order.

2. Therefore, in order to consider the legality of Ext. P-3 order we have to look into the scope and ambit of the powers conferred on the Educational authorities under Rule 15 Chapter XXIII K.E.R. which reads as follows:

Notwithstanding anything contained in these, if Educational Officers are satisfied for valid and sufficient reasons to be recorded in writing that the fixation of staff strength was obtained by bogus admission or attendance or by fraud or misrepresentation, and the like the Educational Officers shall be competent to prefix the staff strength at any time during the course of the year:

Provided that no order under this rule shall be issued without notice to the parties who are likely to be affected thereby.

Learned Counsel for the Petitioner also drew my attention to Rule 15 A of the same chapter which reads as follows:

In cases where the fixation of staff strength in schools is revised by the Director of Public Instruction or by the Educational Officers concerned under Rule 12E or Rule 15 as the case may be after September, an allowance for all of 10 percent in the effective strength only to support the first verification of staff strength shall be allowed.

Therefore, according to the Counsel for the Petitioner, even if it is revisable under Rule 15 an allowance for all 10 percent in the effective strength to support the first verification of the staff strength should be allowed. In this case, the difference is only three students in Standard VII and six students in Standard VI. This comes to only much less than the 10 percent referred to in Rule 15 A of Chapter XXIII K.E.R. The Petitioner has got a further case that the staff strength dwindled only because of the issuance of Transfer Certificate to these students at the instance of the 2nd Respondent himself. Therefore, it is idle for the 2nd Respondent to contend that there was bogus admission so as to enable him to invoke Rule 15.

3. A reading of the rule will show that the order can be passed under that rule only if the educational authorities came to the conclusion that fixation of staff strength was obtained by bogus admission or attendance or by fraud or by misrepresentation. None of these grounds exists in this case. Ext. P-3 order does not say that the earlier fixation of staff was due to the bogus admission granted by the Petitioner or it was obtained by fraud or by misrepresentation. In the absence of these, I do not think that Ext. P-3 can be sustained under Rule 15 of Chapter XXIII K.E.R. When the rule empowers the educational authorities to interfere to set at naught the fixation of staff strength only when they are satisfied about the existence of the grounds mentioned above. The action can be upheld only if it is found that the grounds mentioned in that section exists and that too for valid and sufficient reasons to be recorded in writing. In this case such a foundation to invoke the rule is lacking in. I am fortified in taking the above view by a ruling of this Court in *Nalini Kumari v. State of Kerala* ILR 1975 Ker 496 in the above ruling this Court went a step further and held that the Educational Officer should go into the details and examine individual cases of pupils who are removed for long absence and for other reasons. Without making such an enquiry, it cannot be said that the pupils removed from the roll were

really bogus admissions. In this case, if such an enquiry was conducted by the 2nd Respondent, it was possible for him to come to the conclusion that pupils left the school because Transfer Certificates were issued by the Headmaster at the instance of 2nd Respondent himself.

4. Under these circumstances, Ext. P-3 cannot be legally sustained and it is quashed. Consequently, the divisions for Standard VI and VII as originally sanctioned as per Ext. P-1 will stand restored and the appointment of the teachers as per Ext. P-1 staff strength will continue to hold good.

Original Petition is allowed as indicated above.