

(1987) 12 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 5383 of 1986

K. Suseelan

APPELLANT

Vs

D.E.O. and 3 Others

RESPONDENT

Date of Decision : 14-12-1987

Acts Referred:

Kerala Education Rules, 1959 — Rule 12

Citation : (1988) 1 KLJ 702

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : N. Nandakumara Menon, for the Appellant;

Final Decision : Allowed

Judgement

T.L. Viswanatha Iyer, J.—There was a visit to the petitioner's school on 24-9-1985 by the officers authorised as per the notification Ext. P-2 which reads as under: Under clause (5) of Rule 2 Ch. II of the K. E R. 1959, the Government of Kerala hereby entrust the HSAs/HMS of Govt. Schools and Headmasters of aided HS whose services are requisitioned by the DEOs for "one day staff fixation for 85-86", with the duty of inspection imposed on an Educational officer under the said Rules, for the limited purpose of assessment of strength of pupils in the schools for the said year.

As per the findings recorded at the inspection, there were to be 29 divisions in the High School section and 16 divisions in the U.P. School 3 section. This could be seen front the notes of inspection Ext. P1.

The District Educational officer, Neyyattinkara, the first respondent, revisited the school on 18-11-1985. The notes of his visit are recorded in Ext. P3. As per the said notes there will be only 27 divisions in the High School and 14 in the U. P. School, that is, there will be a reduction of 4 divisions for the year 1985-86. The strength of the staff in the school was accordingly fixed by the proceedings Ext. P4 of the first respondent. Petitioner unsuccessfully challenged it, first before the

Deputy Director of Education and subsequently before the Director of Public Instruction. The petitioner's appeal/ revision to them stood rejected by the proceedings Exts. P6 and P8. Petitioner challenges Exts. P4, P6 and P8. 2. The main ground of challenge is that the Rules in Chapter 23 of the Kerala Education Rules (the Rules for short) do not contemplate a second visit or a fixation of pupil strength on the basis of such a visit. This is because the first visit was itself by officers authorised to make such visit by notification issued under clause 5 of Rule 2 of Chapter I of the Rules, namely Ext.P2. This notification entrusted the various persons mentioned, whose services are requisitioned by the District Educational officer, with the duty of inspection imposed on an educational officer under the Rules, for the limited purpose of assessment of strength of pupils in the schools for the year 1985-86. In other words, there was a delegation of the function of visit, which lies with the District Educational officer, to the authorised persons mentioned, of course, for the limited purpose of assessing the pupil strength for 1985-86. The ultimate authority to pass the staff fixation order was no doubt the District Educational officer himself. Therefore, and in view of the delegation of powers in Ext. P2 a visit by the officers contemplated by Ext. P2 is to be deemed to be exercise of functions by the District Educational Officer himself and hence a second visit or a revision of the pupil strength by a second visit is not authorised. Petitioner contrasts the position in 1985-86 with reference to the position in 1986-87, when a revisit was authorised in the case of increase in divisions by the Government order Ext. P9.

3. The Government Pleader however justifies the second visit on 18-11-1985 with reference to clause 10 of a circular No. SC-53856/85 DPI dated 10-9-1985 issued, by the Director of Public Instruction, The said Clause reads:

10. Additional posts if required in any aided school should be sanctioned only after re-verification of the strength of students in the concerned school by the Assistant Educational Officers/District Educational Officers".

It is contended that this Circular is statutory as one issued in exercise of the powers vested in the Director of Public Instruction under sub-rules (1) and (4) of Rule 1 of Chapter XIV-A and therefore the second inspection on 18-11-1985 by the District Educational Officer and the fixation of the staff strength on the basis thereof are valid.

4. Ext.P2 is a Government Order issued in exercise of the powers vested in Government under Clause 5 of Rule 2 of Chapter 1 of the Rules. This clause defines an Educational Officer as the District Educational Officer or Assistant Educational Officer having immediate inspectional and administrative control over the school within his respective jurisdiction. The definition also includes any officer to whom the duty of inspection for specific purposes has been entrusted by competent authority. In other words, the functions which are ordinarily to be performed by the District or Assistant Educational Officer, may be entrusted with any other officer, and such other officer will also be an educational officer as defined under Rule 2 (5) of Chapter 1.

5. Chapter XXIII of the Rules prescribes that the strength of the teaching staff in an aided school shall be fixed in accordance with the provisions contained in the said Chapter, once a year, after finalising the number of divisions, based on the effective strength of the classes. For this purpose the Educational Officer has to verify the strength by paying visit to the school. This function of visiting the school for the purpose of verifying the strength of the pupils has been entrusted by Ext. P2 with the various persons mentioned therein. Therefore, by a statutory entrustment, the persons mentioned in Ext. P2 have been vested with the duty which is ordinarily cast on the District or Assistant Educational Officer to verify the strength of the pupils in any school. There is a delegation by Ext. P2 of the Educational Officer's functions to the persons mentioned. Of course, the delegation is limited to the specific purpose of making inspection and verifying the strength of the students for the purpose of assessment of the strength of pupils for the year 1985-86. Actual fixation of the staff strength, based on such inspection and verification, has to be done only by the District or Assistant Educational Officer.

6. The effect of Ext. P-2 is that any inspection and verification made by the officers mentioned therein will be as effective and operative as if it had been done by the Educational Officer himself. That is because the action of a delegate is the action of the person whose powers or duties are delegated. (Vide *Roop Chand Vs. State of Punjab*,). When Government has placed the persons mentioned in Ext. P2, in the same position as the Educational Officers so far as the verification of pupil strength is concerned, the only further thing that remains to be done after the verification is the fixation of the strength of staff by the Educational Officer in accordance with the provisions of Chapter XXIII. The Educational Officer cannot sit in appeal over the findings on pupil strength rendered by the persons mentioned in Ext. P2, in as much as they stand on an equal footing with the Educational Officers, for this limited purpose.

7. Smt. Seemandini vehemently contended that the Circular above mentioned authorised such a visit. It was one issued pursuant to Sub-rules (1) and (4) of Rule 1 of Chapter XIV - A of the Rules. It was said that the Director of Public Instruction, who issued the Circular had the authority to direct a revisit by the Educational Officer in appropriate cases. She also placed reliance on the decision of this court in Writ Appeal No. 163/1975 in support of her contention. Rule 1 of Chapter XIV-A deals with appointment of teachers who possess the prescribed qualifications. Sub Rule (1) directs the appointments to be made with due regard to requirement of subjects as determined by the Director with reference to the curriculum of studies. Sub rule 4 deals with further guidelines in the matter of requirement of subjects and authorises the Director to issue instructions for the purpose of giving protection to teachers in specified circumstances. This rule is related to the appointment of teachers having regard to subject requirements, with reference to the curriculum of studies and protection to be given to teachers for which purpose the Director of Public Instruction is authorised to issue Circulars and guidelines. This is quite different from the quest on of fixing the

staff strength under Chapter XXIII, related to the strength of pupils. In the first instance the number of divisions to be allowed is fixed having regard to the strength of the pupils. This primary step is followed by the fixation of the strength of staff. Thereafter allocation is made and staff sanctioned with reference to the requirement of subjects and the curricula of studies. The question of applying Rule 1 of Chapter XIV - A therefore arises only after the number of class divisions and the strength of staff are fixed under Rule 12 of Chapter XXIII. I am not therefore impressed with the contention raised by the Government Pleader. The Director of Public Instruction could not have issued the Circular to enable a second visit for purposes of Rule 12 of Chapter XXIII. The judgment is the Writ Appeal No. 163/1975 also related to a like issue and not to a case arising under Chapter XXIII.

8. It has also to be noted that there was no provision in the Act or the Rules, as they stood during the year 1985-86, by which the Educational Officer could make a revisit to the school and ascertain the pupil strength.

9. I am therefore of the opinion that the second visit made by the District Educational officer in this case was not one warranted by the Actor the Rules. If so the fixation of the number of class divisions, based on that inspection has also to be held illegal and invalid. The fixation of the staff has then to be done as per Ext. PI, based on the assessment of the strength of pupils by the authority entrusted with the task by the Government order Ext. P-2.

10. The necessity for specific statutory rules enabling a second visit has been recognised by Government itself as evident from the subsequent amendment to the rules in Chapter XXIII in the year 1986-87. That is only by the way.

11. The Government Pleader has a further contention that the petitioner has got an alternative remedy of revision to Government under Rule-12-F of Chapter XXIII of the Rules. The question involved in this case is one of jurisdiction. No factual issues are involved. The question raised is one of importance relating to the interpretation/interaction of certain provisions in chapters XIV-A and XXIII of the Rules. I do not think that this is a case where the petitioner should be relegated to the alternate remedy under Rule 12-F. The Original petition is therefore allowed. Exts. P4. P6 and P8 are quashed and the respondents are directed to fix the staff strength of the petitioner's school with reference to the findings entered in the first inspection Ext.P1. There will be no order as to costs.