

(2011) 04 KL CK 0030

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5261 of 2010

Manager, M.T.M. Higher Secondary School

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Kerala Education Rules, 1959 — Rule 12

Citation : (2011) 2 ILR (Ker) 647 : (2011) 2 KLJ 809 : (2011) 2 KLJ 805 :
(2011) 3 KLT 22 SN : (2011) 2 UPLBEC 248 : (2012) 51 VST 309

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : Kurian George Kannanthanam and Tony George Kannanthanam, for the Appellant;

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The true interpretation of Rule 12 of Chapter XXIII of Kerala Education Rules, arises for consideration in this case. The writ petition is filed by the Manager of an aided Higher Secondary School. We are concerned with the staff fixation of the year 2008-2009. The District Educational Officer conducted the physical verification of the students strength on 9.7.2008. It was found that the school is entitled to have one additional division in Standard V and two additional divisions in Standard VII. The matter went to the Deputy Director of Education for higher level verification which was conducted on 27.11.2008. After verifying the actual number of students physically present plus 5% of the total strength as on the said day, he did not recommend the additional divisions, as reported by the District Educational Officer. A consequent order was passed by the District Educational Officer as per Ext.P1. Even though appeal and a revision were filed, they were dismissed by the Director of Public Instruction and by the Government respectively, as per Exts.P2 and P6.

2. Heard learned Senior Counsel Shri Kurian George Kannanthanam appearing for the petitioner and learned Govt. Pleader Shri T.T. Muhamood.

3. Learned Senior Counsel for the petitioner submitted that a reading of the rule will show that the verification of physical strength of students is to be done by the Educational Officer or the officer authorised by the Director of Public Instruction as on the 6th working day from the reopening date in June. This procedure forms the first part of the rule. It is pointed out that when additional divisions are found necessary, final orders will be passed only after a higher level verification. The Deputy Director of Education, in this case, who conducted the higher level verification, could have only verified the strength reported by the District Educational Officer along with the supporting documents therein. The method for fixing effective strength by adding 5% to the actual attendance on the day of visit, will not apply to the higher level verification, since the rule specifically provides that the said method has to be followed on the date of visit of the authorised person and that indicates that it is on the day of the first visit. It is pointed out that such being the contingency, the method adopted by the Deputy Director of Education herein to conduct a physical verification and to refix the strength after adding 5% of the roll strength, cannot be supported.

4. We are only concerned with the third division in Standard VII. The Government has only considered the question whether the higher level verification will come within Rule 15A of chapter XXIII K.E.R. The method provided therein for allowing 10% reduction in the roll strength on higher level verification will apply only if the first visit is done by the District Educational Officer/Asst. Educational Officer after September. Obviously, that was not the situation herein. Therefore, the argument as such raised herein, was not answered by the Government even though the petitioner had raised the same.

5. The counter affidavit shows separately the details of roll strength as on the 6th working day, on 9.7.2008 and on the date of higher level verification. On the 6th working day, the strength of students on Standard VII was 96 and when the District Educational Officer visited the school on 9.7.2008 also the strength was the same. With respect to Standard V, it stood as 79 on both occasions. On the date of higher level verification, viz. on 27.11.2008, the strength was 70 and 90 respectively in Standards V and VII. The effective strength fixed on higher level verification, is 74 and 95 respectively and accordingly the number of admissible class divisions were fixed as 2 and 2 respectively. It is maintained in the counter affidavit that the higher level verification officer is empowered to conduct thorough inspection regarding physical presence of students and records maintained for admission, promotion, detention and attendance of students. It is pointed out in para 3 that in the case of higher level verification, the strength of pupils on the date of Higher Level Verification is reckoned for fixing the number of class divisions and staff.

6. Therefore, the point to be considered is whether the Deputy Director of Education who conducted the higher level verification, could have gone only to the correctness of the report of the District Educational Officer. It is pointed out that he could have properly verified the records to find out whether the strength

reported on the date of visit of the District Educational Officer is correct. In this context learned counsel for the petitioner relies upon Exts.P7 and P8. It is explained that all the six students except one, who were absent on the day of higher level verification, were students of the school during the previous years also and the chart showing the date of joining and the present position, has been produced as Ext.P7. With respect to the first named candidate, it is pointed out that he was admitted in that year. He was a student in a nearby school and after obtaining Transfer Certificate he joined the school and the copy of the T.C. has also been produced as Ext.P8. It is further pointed out that the school which issued the T.C. is also under the, same District Educational Officer and therefore if the Deputy Director of Education wanted to verify the veracity of the T.C., that also could have done easily.

7. Rule 12 as it is substituted in the year 2003, has to be analysed on the basis of the procedure prescribed for visits and the fixing of the student strength thereby. Going by the first part of the rule, the Educational Officer will have to fix the strength of teaching staff, once year, after finalising the number of divisions based on the effective strength of the class as on the 6th working day from the reopening date in June. The procedure is specified as follows:

The pupil's strength of all schools both Government and Aided Schools, shall be verified by the Educational Officer or Officers authorised by the Director in this regard by visiting the schools in the State on a single day fixed by the Director for staff fixation purpose.

Thus, the date of single day verification will be fixed by the Director for all schools. The Educational officer or Officers authorised by the Director have to conduct the visit The next limb provides for higher level verification which states as follows:

A further verification of strength at higher level by the District Educational Officer, in the case of fixation of strength in Lower Primary and Upper Primary Schools and by the Deputy Director (Education), in the case of High Schools shall be done wherever additional divisions or additional staff are found necessary, after the one day verification conducted by the Educational Officers or Officers authorised by the Director, in this regard.

It is further made clear that in such cases the final orders of fixation of staff shall be issued only on the basis of such "re-verification of strength.

8. Next we will come to the important part of the rule which provides for the method of fixing the effective strength. The same reads as follows:

The actual attendance on the date of visit of authorised persons plus five percent of the roll strength, not exceeding the roll strength of the each class, alone shall be reckoned as the effective strength of the school for fixing the number of divisions and the strength of staff.

The provision for a revisit as directed by the Government is contained in the

second limb of the rule. Therein, it is provided that the "Government may direct the Educational Officer to re-visit and refix the strength of teaching staff in schools where there has been undue shortage in attendance of pupils on the date of visit of the Educational Officer or the Officers authorised by the Director in this regard or the Higher Verification Officer or the Super Check Officer due to natural calamities like flood, outbreak of epidemic, or other special reasons like agitations, strikes, accidents, death of prominent persons, local celebrations/festivals in the locality, etc." Therefore, it applies in a case where undue shortage is reported on any of the dates of visit and it is attributable to natural causes like agitation and the like. Such requests for revisit should be accompanied by a certificate issued by the Headmaster explaining the reasons for the fall in attendance and the veracity of the reasons adduced should ordinarily be supported by a report of the Tahsildar or Village Officer within whose jurisdiction the school is situated, or the Medical Officer in charge of the nearest Government medical institution as the case may be.

9. The next important provision as to how the result of such a revisit has to be utilised, is provided in the last limb of the rule. It provides that the effective strength shall be worked out on the basis of the strength verified on re-visit made by the Educational Officer or the Higher Verification Officer, as the case may be, and orders shall be passed by such officer, but not granting a new division that was not in the staff fixation in the previous year. Therefore, the number of divisions will be confined to staff fixation in the previous year. As far as this case is concerned, this method has no application.

10. The question herein is whether the higher level verification officer is empowered to adopt a particular method for arriving at the effective strength and can there be a fresh assessment of effective strength as on the day of Higher Level Verification? Shri Kurian George Kannanthanam, learned Senior Counsel appearing for the petitioner argued that as the rule has not specifically provided for any specific method as applicable to Higher Level Verification, he cannot resort to the method which is expressly provided for the Educational Officer or the authorised officer to adopt at the time of first visit in fixing the effective strength. It is pointed out that otherwise the rule would have specifically provided so. He is expected only to have a re-verification of the strength already reported.

11. This argument is raised by the learned Senior Counsel by pinpointing on the words "Educational Officer" and "authorised officer" at different parts of the first limb of the rule and according to him, the method of arriving at the effective strength by reckoning the actual attendance plus 5% of the roll strength being one confined to the first visit alone, the Higher Level Verification Officer cannot adopt the said method. He cannot take the actual attendance on the date of Higher Level Verification along with 5% to fix the effective strength on the day of his visit. What is contemplated is only a re-verification of the strength as reported by the Educational Officer. There cannot be a fresh assessment of the

strength as on the date of Higher Level Verification. Shri T.T. Muhamood, learned Govt. Pleader submitted that there is no such restriction in the rule.

12. For a closer analysis of the contentions of the respective parties, the history of rule which was subjected to various amendments from time to time for the last 50 years, will be of much help. There was a substitution of rule 12, which stood originally, in the year 1964 by notification dated 4.8.1964. The rule which stood prior to the amendment on 4.8.1964 is as follows:

12(1) The strength of the teaching staff in each school shall be fixed by the District Educational Officer in accordance with the above general provisions, once a year, after finalising the number of divisions based on the strength of the class on the 16th working day from the re-opening date in June. Till fixation of staff in accordance with these Rules is made, the staff sanctioned by competent authority under Rules or orders previously in force, shall continue. The fixation of staff shall be finalised by the District Educational Officer not later than 1st August every year.

After the amendment by notification dated 4.8.1964, Rule 12 read thus:

12. (1) The strength of the teaching staff in each school shall be fixed by the District Educational Officer in accordance with the above general provisions, once a year, after finalising the number of divisions based on the effective strength of the class on the sixth working day from the re-opening date in June. The strength as furnished by the Headmaster/Manager shall be verified by the Educational Officer by paying surprise visits to the schools. The actual attendance on the date of visit of the Educational Officer plus 5 percent roll strength for absentees, not exceeding the roll strength of each class, alone shall be reckoned as the effective strength of the school for fixing the number of divisions and the strength of the staff. Till fixation of staff for a school year is made, the staff sanctioned by the competent authority during the previous year, shall continue. The fixation of staff shall be finalised by the District Educational Officer not later than 15th July every year or such other date as may be fixed by Government from time to time for the purpose. The strength of standard I as on the 6th working day after Vijayadasami Day shall be reviewed having regard to the provisions under rule 4(2) Chapter VI and the strength of the staff shall be refixed accordingly, if found necessary.

Herein, one thing to be noticed is that prior to the amendment dated 4.8.1964 the strength had to be fixed on the 16th working day from the re-opening date in June. Till fixation of staff in accordance with the rules, the position which was existing prior to refixation will continue. The Educational Officer had to finalise the fixation of staff not later than 1st August every year. In 1964 the amendment introduced resulted in the following modifications: (a) The strength of teaching staff will have to be fixed after Analysing the number of divisions based on the effective strength on the 6th working day from the reopening date in June; (b) The strength as furnished by the Headmaster/Manager shall be verified by the

Educational Officer by paying surprise visits to the schools (this was not there originally); (c) The method of calculating effective strength by reckoning the actual attendance on the date of visit of the Educational Officer plus 5 percent roll strength for absentees, not exceeding the roll strength of each class, was introduced by the amendment in 1964; and (d) Fixation will have to be finalised not later than 15th July every year or such other date as may be fixed by Government. These were the important amendments made in 1964.

13. This was substituted by amendment dated 21.4.1970. The same reads as follows:

12(1) The strength of the teaching staff in each school shall be fixed by the Educational Officer in accordance with the above general provisions once a year after finalising the number of divisions based on the effective strength of the class on the 6th working day from the re-opening date in May. The strength as furnished by the Headmaster/Manager shall be verified by the Educational Officer by paying surprise visits to the schools. The actual attendance on the date of visit of the Educational Officer plus five percent of the roll strength for absentees, not exceeding the roll strength of each class, alone shall be reckoned as the effective strength of the school for fixing the number of divisions and the strength of the staff. The staff sanctioned by the competent authority during the previous year shall continue till the closing date of the school in June for monsoon vacation. The fixation of staff shall be finalised by the Educational Officer not later than the 21st of June every year or such other date as may be fixed by the Director from time to time for the purpose. The strength of Standard I as on the 6th working day after Vijayadasami Day shall be reviewed having regard to the provisions in sub rule (2) of rule 4 of Chapter VI and the strength of the staff be refixed accordingly, if found necessary.

Therein, the strength has to be fixed in the following manner: It has to be fixed on the 6th working day from the re-opening date in May, by the Educational Officer; (b) Provision was made for conducting surprise visit by the Educational Officer to verify the strength furnished by the Headmaster/Manager; (c) Method of calculating the actual attendance plus five percent of the roll strength for absentees was retained. The staff sanctioned in the previous year will continue till the closing date of the school in June for monsoon vacation; and (d) Fixation of staff will have to be finalised by the Educational Officer not later than the 21st of June every year or such other date as may be fixed by the Director. This was substituted by amendment dated 4.6.1971 and the substituted provision reads as follows:

12. Strength of teaching staff.- Subject to the availability of accommodation the strength of teaching staff in each school shall be fixed by the Educational Officer in accordance with the above general provisions, once a year after finalising the number of divisions based on the effective strength of the class as on the 6th working day from the re-opening date in June. The strength shall be verified by the Educational Officer by paying surprise visits to the schools. The actual

attendance on the date of visit of the Educational Officer plus 5 percent roll strength for absentees not exceeding the roll strength of the each lass alone shall be reckoned as the effective strength of the school for fixing the number of divisions and the strength of staff. The staff sanctioned by the competent authority during the previous year shall continue till the 14th of July of the succeeding year. The fixation of staff shall be finalised by the Educational Officer not late than the 15th July every year or such other date as may be fixed by the Director from time to time for the purpose. The strength of standard I as on the 6th working day after Vijayadasami Day shall be reviewed having regard to the provisions under sub-rule (2) of rule 4 of Chapter VI and the strength of the staff shall be refixed accordingly, if found necessary.

The important amendments are the following: (a) Effective strength has to be verified as on the 6th working day from the re-opening date in June; (b) The strength will have to be verified by the Educational Officer by paying surprise visits to the schools; (c) The method of calculating effective strength was retained; and (d) The staff sanctioned for the previous year will continue till 14th of July of the succeeding year and the fixation of staff shall be finalised by the Educational Officer not later than 15th July every year or such other date as fixed by the Director from time to time.

14. The above provision was substituted by G.O.(P) No. 138/2003/GE_{dn}. dated 29.5.2003. It reads as follows:

12. Strength of teaching staff:- Subject to the availability of accommodation the strength of teaching staff in each school be fixed by the Educational Officer in accordance with the above general provisions, once a year after finalising the number of divisions based on the effective strength of the class as on the 6th working day from the re-opening date in June. The pupil" strength of all schools, both Government and Aided Schools, shall be verified by the Educational Officer or Officers authorised by the Director in this regard by visiting the schools in the State on a single day fixed by the Director for staff fixation purpose. A further verification of strength at higher level by the District Educational Officer, in the case of fixation of strength in Lower Primary and Upper Primary Schools and by the Deputy Director (Education) in the case of High Schools shall be done wherever additional divisions or additional staff are found necessary, after the one day verification conducted by the Educational Officers or Officers authorised by the Director, in this regard. In such cases, the final orders on fixation of staff shall be issued only on the basis of such re-verification of strength. The actual attendance on the date of visit of authorised persons plus five percent of the roll strength, not exceeding the roll strength of the each class, alone shall be reckoned as the effective strength of the school for fixing the number of divisions and the strength of staff. The Staff sanctioned by the competent authority during the previous year shall continue till the 14th July of the succeeding year. The fixation of staff shall be finalised by the Educational Officer not later than the 15th July every year. The strength in Standard I as on the 6th working day after

Vijayadasami Day shall be reviewed having regard to the provisions under sub Rule (2) of rule 4 of Chapter VI and the strength of the staff be refixed accordingly, if found necessary. Government may direct the Educational Officer to re-visit and refix the strength of teaching staff in schools where there has been undue shortage in attendance of pupils on the date of visit of the Educational Officer or the Officers authorised by the Director in this regard or the Higher Verification Officer or the Super Check Officer due to natural calamities like flood, outbreak of epidemic, or other special reasons like agitations, strikes, accidents, death of prominent persons, local celebrations/festivals in the locality, etc. Requests for re-visit should be accompanied by a certificate issued by the Headmaster explaining the reasons for the all in attendance and the veracity of the reasons adduced should ordinarily be supported by a report of the Tahsildar or Village Officer within whose jurisdiction the school is situated, or the Medical Officer in charge of the nearest Government medical institution as the case may be. When such a re-visit is made by the Educational Officer or the Higher Verification Officer following the directions of the Government, the effective strength shall be worked out on the basis of the strength verified on re-visit made by the Educational Officer or the Higher Verification Officer, as the case may be, and orders shall be passed by such officer, but not granting a new division that was not in the staff fixation in the previous year.

15. A reading of these provisions which were introduced from time to time, will show that initially the provision for conducting surprise visit by the Educational Officer was introduced in 1964. The method for fixing actual attendance on the date of visit of Educational Officer plus five percent of the roll strength for absentees, not exceeding the roll strength of each class for reckoning the effective strength, was introduced in 1964. If we go through the subsequent amendments also, it can be seen that the said method has been retained, even though substitution was there in 1971 and in 2003 in the present form. In 2003 when the amendment was made, apart from Educational Officers, the portion that "Officers authorised by the Director in that regard by visiting the schools in the State on a single day fixed by the Director for staff fixation purpose", was introduced. In the Explanatory Note, the reason for the said amendment is given as follows:

...In order to avoid such unhealthy practices, Government have decided to introduce one day verification of schools from the forth coming academic year onwards. For this purpose, services of Senior High School Assistants and Heads of Departmental Schools, etc. will be used. Government, therefore, decided to incorporate the said provision in Rule 12, Chapter XXIII of Kerala Education Rules, 1959.

16. Therefore, it is for that purpose, along with the Educational Officers, others were also included as "Authorised Officers" for conducting the one day visit. If that be so, it can be seen that the method of fixing the effective strength by taking the actual attendance on the date of visit of the authorised persons plus

five percent of the roll strength will apply to the date of such a visit. The said method as originally stood from 1964 enabled the Educational Officers to adopt it and finally in 2003, apart from Educational Officers, when visits are done by the authorised officers, this provision was retained. This gives a strong indication that as far as the Higher Level Verification is concerned, the same is not the method. What is expected of by the Higher Level Verification is only a re-verification of the staff. If the Higher Level Verification Officer is adopting the physical attendance as on the date of his visit and then making a calculation based on the method provided to the Educational Officer and Authorised Officer, then it will result in refixing the strength fixed by the Educational Officer or authorised officer as on the date of the first visit. That is not contemplated under Rule 12.

17. Of course, the rule will have to be interpreted on the basis of the plain meaning. If we analyse Rule 12, it can be seen that the verification has to be of the effective strength as on the 6th working day and it will have to be done by the Educational Officer or officers authorised by the Director. How the effective strength has to be fixed on such visit, is provided by stating that the actual attendance on the date of visit of authorised persons plus five percent of the roll strength not exceeding the roll strength of each class, alone shall be reckoned as the effective strength of the school for fixing the number of divisions and the strength of staff. The higher level verification is required when additional divisions or additional staff are found necessary after the one day verification conducted by the Educational Officer or Officers authorised by the Director in this behalf. Therefore, it can be seen that the first part of the rule empowers the Educational Officer or the authorised officer to finalise the number of divisions and the strength of teaching staff. This is evident from the first sentence in the rule, viz. "Subject to the availability of accommodation the strength of teaching staff in each school be fixed by the Educational Officer in accordance with the above general provisions, once a year, after finalising the number of divisions based on the effective strength of the class as on the 6th working day from the re-opening date in June." The method provided for arriving at the effective strength as we have noted already, is for "fixing the number of divisions and strength of staff". When that part of the rule is read along with the first part, the meaning is very clear that both speak about the number of divisions and strength of class. Therefore, it can be seen that this method is provided to be adopted by the Educational Officer and authorised officer on the first day of visit. As far as the higher level verification is concerned, what is provided under the rule is a re-verification of strength. The same can only be a re-verification of the facts reflected in the first visit. It is not provided in the rule that the higher level verification officer will have to redo the entire action taken by the Educational Officer or the authorised officer. Actually no fixed time limit is provided for a higher level verification and it can be conducted only on a much later day when the Educational Officer points out the necessity for sanctioning an additional division or additional staff. Therefore, if the higher level verification officer is

indulging in physical verification of attendance to find out the necessity of an additional division or additional staff as on the date of his visit, and then fix the effective strength based on the attendance on that day plus five percent of the roll strength as will be reflected, it will be beyond the scope of the rule itself. When the rule expressly provides for fixing the effective strength as on the 6th working day from the reopening date in June, the said method will have to be gone into. Therefore, even if he may be conducting a physical verification of the strength as on the date of his visit for Higher Level Verification, that cannot be adopted as a criteria for fixing the effective strength, since what is provided is only a re-verification. Therefore, he may have to go through the records as on the date of first visit and find out whether the report submitted by the Educational Officer entitles the school to have an additional division and additional staff.

18. Evidently, it is not a case where the rule provides for assessing the physical strength as on the date of Higher Level Verification and then sanction the additional division and staff based on the same. Learned Govt. Pleader submitted that the provision which enables the Government to direct the Educational Officer to conduct a revisit shows that it can be for various reasons like natural calamities, accidents, etc. Therefore, it is pointed out that the rule is of wider amplitude. I do not agree. The second limb which allows the Government to direct a revisit is only if there is undue shortage in attendance of pupils on the date of visit of the Educational Officer or the Officers authorised by the Director in this regard or the Higher Level Verification Officer or the Super Check Officers. The specific circumstances mentioned therein are natural calamities, agitations, strikes, accidents, death of prominent persons, local celebrations/festivals in the locality, etc. In fact, the requests for revisit should be accompanied by a certificate issued by the Headmaster along with a report by the Revenue Officer or the Medical Officer in charge of the nearest Government medical institution. That is not the procedure as far as a higher level verification is concerned. Therefore, the said argument cannot be accepted.

19. Therefore, the rule provides for fixing the effective strength by taking the actual attendance as on the date of visit of the Educational Officer/authorised person only, by adding five percent of the roll strength to the physical strength of pupils. That method cannot be adopted by the higher level verification officers since the rule does not empower to do so and the rule only enables a re-verification of the reported strength alone. The object and purpose of the rule evidently, is to see that an additional division is sanctioned or additional staff is provided after having a re- verification of the strength. It is with a laudable object to avoid any inflated figures as on the 6th working day. Therefore, whether the position as on the 6th working day is actually reflected in the records, is the main purpose of the higher level verification.

20. Herein, therefore, evidently a denovo verification was not at all envisaged. What is done by the Deputy Director of Education herein who conducted the

higher level verification on 27.11.2008 is to verify the attendance as on that day which showed that in Class VII, it was 90. Of course, the attendance in a particular class need not be the same every day and the students may be absent for various reasons like reasons in the family or due to ill health, etc. Therefore, the reasons for absence can be verified and the strength of students as reflected in the attendance register, admission register and other records like Transfer Certificate, etc. can also be gone into by him to find out whether the strength reflected in the visit of the District Educational Officer is correct. Physical verification can be made but the same cannot be the criteria for fixing the effective strength afresh. Such an interpretation of the rule alone will give any effect to the purpose of a re-verification of strength by the higher level verification officer.

21. In that view of the matter, the orders impugned cannot be supported. The District Educational Officer has fixed the strength based on the higher level verification as per Ext.P1 which was upheld by the Joint Director of Public Instruction by Ext.P2 and by the Government as per Ext.P6. The said proceeding are quashed. The petitioners have produced additional documents as Exts.P7 and P8. The strength will be fixed in the light of the above findings, after verifying all the records in the school including Exts.P7 and P8 and after verifying the details of the visit already reported by the Educational Officer/District Educational Officer on the date of his visit. The writ petition is allowed to the above extent. Appropriate orders will be passed by the Deputy Director of Education within a period of two months from the date of receipt of a copy of this judgment and the staff strength will be fixed by the District Educational Officer accordingly, without any delay. No costs.