
(2012) 03 KL CK 0027

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3097 of 2006

Manager, Seetharam U.P. School

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Kerala Education Rules, 1959 — Rule 75

Citation : (2012) 2 ILR (Ker) 434

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : K. Mohanakannan and Smt. Pravitha, A. R, for the Appellant; Sajan Vargheese and Sri Liju, M. P., for the Respondent

Judgement

Mr. Justice S. Siri Jagan

1. The petitioner is the Manager of an aided school by name Seetharam Upper Primary School, Kunissery P.O., Palakkad District. The 3rd respondent is a Hindi Teacher of that school. She was suspended from service on certain allegations. Subsequently Ext. P-1 memo of charges was issued to the 3rd respondent by the Manager. Since the 2nd respondent--Assistant Educational Officer, Alathur to whom the manager forwarded the memo of charges and connected papers for conducting an enquiry under Chapter XIV A of the Kerala Education Rules, did not conduct enquiry pursuant thereto, the Manger approached this Court by filing O.P. No. 10756/2002, in which by Ext. P-1 (a) judgment dated 9-10-2003, this Court recorded the submission of the learned Government Pleader that the Assistant Educational Officer will take appropriate action to see that the enquiry is carried out in respect of the charge sheet and will also ensure that the said proceedings are completed within a period of four months from the date of receipt of a copy of that judgment. Subsequently, the Manager filed Ext. P-2 styling it as Notes of Arguments citing 19 witnesses and 21 documents to be examined in the enquiry. The Assistant Educational Officer submitted Ext. P-3 enquiry report wherein the A.E.O. found that none of the charges levelled against

the teacher was proved convincingly. Against Ext. P-3 enquiry report, the petitioner filed Ext. P-4 revision under Rule 92 of Chapter XIV A of K.E.R., taking the stand that the enquiry is not proper and valid. In the meanwhile, the teacher filed writ petition namely W.P. (C) No. 3707/2005, wherein by Ext. P-5 judgment dated 25-8-2005, this Court directed the Government to consider and dispose of Ext. P-4 revision petition expeditiously. The petitioner filed Ext P-6 argument notes before the Government But by Ext.P-9, the Government rejected the revision petition and directed recovery of amounts paid to the teacher for the period during which she was kept out of service unauthorisedly from the Manager. The petitioner is challenging Ext. P-9 order in this writ petition seeking the following relief:

(i) To issue a Writ of Certiorari or any other appropriate Writ, Order or direction to call for the records leading to Exts. P-3 & P-9 and quash the same;

The contentions of the petitioner is that none of the grounds raised by the petitioner in Ext. P-4 revision petition has been considered by the Government in Ext. P-9 order. He would contend that in Ext. P-9 order, after detailing the case of the petitioner, no finding has been entered therein either way against the petitioner or in favour of the petitioner on the validity of the enquiry conducted by the Government But a direction which was not the subject-matter of the revision petition has been issued to recover the amounts from the Manager which was unwarranted, that too without giving the petitioner an opportunity to show cause against such action. According to the petitioner, the Government should have specifically considered the contention of the petitioner that Ext. P-3 enquiry report is not valid and proper and entered a finding whether the enquiry is valid and proper, which finding is conspicuously absent in Ext. P-9 order.

2. A counter-affidavit has been filed by the 3rd respondent, wherein the 3rd respondent seeks to support Ext. P-9 order. According to the counsel for the 3rd respondent, enquiry which resulted in Ext. P-3 report was held validly and properly and although it is not so stated in so many words in Ext. P-9, it is specifically stated therein that the revision petition stands rejected, from which it must be presumed that the Government has upheld the enquiry. The counsel further argues that the charges are so flimsy in nature and therefore what is contemplated is only proceedings under Rule 76 of Chapter XIV A of K.E.R. and not under Rule 75 of Chapter XXV A of K.E.R., in which case, what is required is only a summary procedure, which has been done by Ext. P-3 and therefore no vitiating factor is attached to Ext. P-3 enquiry report. He also refers to the decisions of this Court in *State of Kerala v. Ranganathan* 1997 (2) K.L.T 121 and *State of Kerala and ors. v. K. Ramakrishnan Nambiar* 2007 (1) K.H.C. 645 to the effect that in the case of minor penalties no detailed enquiry is called for.

3. I have considered the rival contentions in detail.

4. Ext. P-4 is the revision petition filed by the petitioner before the Government. In Ext. P-4, in paragraphs 5 to 10, the petitioner has specifically contended as

follows:

5. A scrupulous examination of the enquiry report reveals that findings are not set out based on factual information, recordal evidence or oral evidences collected at the time of enquiry. The enquiry report is a mere reproduction of the charge memo and a statement of arguments elicited out by the accused.

6. No detailed study of the enquiry or details of the records and details of statements, witnesses, etc. relied upon for setting out the findings are seen made in the enquiry report. Though the Enquiry Officer has not recorded that allegations are false, he has with least hesitation stated that none of the charges has been conclusively proved.

7. Evidently, the enquiry report is a cock and bull story cooked for and on behalf of the accused for reasons not known. The charges are seen held as not conclusively proved.

8. I totally disagree with the enquiry report since the charges were framed based on recordal evidences, where as the details of such records of evidence are not found a place anywhere in the enquiry report.

9. While forwarding the enquiry report, the Enquiry Officer has not observed the procedure laid down in Sub-rule (9) of Rule 75 of Chap. XIV "A", K.E.R. The enquiry report does not contain the following records.

(a) The oral evidence taken during the course of enquiry.

(b) The documentary evidences considered at the course of enquiry.

(c) The enquiry report does not contain the reasons and grounds for arriving to findings recorded in the enquiry report. These are lot of procedural infirmities in the enquiry held by the Enquiry Officer.

Though the revision petitioner has requested the 1st respondent to make up the deficiency in the enquiry report as per my letter dated 3-3-2004, he has not yet complied with that. A copy of my letter dated 3-3-2004 addressed to Assistant Edl. Officer is enclosed herewith marked as ANNEXURE "D". A copy of my argument notes submitted before the Enquiry Officer at the time of enquiry with all supporting documents is herewith submitted for kind perusal of the Government marked as ANNEXURE "E" The said argument notes is an exhaustive and true case history, receipt of which has been duly acknowledged by the Enquiry Officer during the time of enquiry.

10. In spite of the above, the Enquiry Officer has failed to be impartial and hence I do not accept his enquiry report. Therefore revision petitioner hereby request the Government to be kind enough to examine the connected records of the case and order a de novo enquiry by the Deputy Director of Education, Palakkad into the charges levelled against the 2nd respondent, so that the disciplinary action can be finalised without delay. A detailed argument notes defending the findings of the Enquiry Officer against each charges will be submitted at the time of

personal hearing in this matter.

That revision petition has been considered by the Government while passing Ext. P-9 impugned order. That impugned order reads thus:

The Manager, S.R.U.P.S., Kunissery in his appeal petition read as 1st paper above placed a prayer before Government against the enquiry report of Assistant Educational Officer, Alathur vide No. C/2953/2000/AEO (1) dated 20-2-2004 with regard to the disciplinary action against Smt.V. Usha, Hindi Teacher of the school and prayed for a de novo enquiry by Deputy Director of Education, Palakkad into the charges levelled against the teacher.

In the judgment read as 3rd paper above, the Court directed Government to hear all the parties in the revision petition [Exhibit R-2(b) in the W.P.(C)] and dispose of the same within a period of 2 months. The Court also directed to pay the pay and allowances due to the petitioner during the period from 5-7-2000 to 10-6-2002 within one month on production of a copy of the judgment.

Accordingly a hearing was allowed on 15-11-2005 to all the concerned by the undersigned.

The Manager and Smt. V. Usha submitted their arguments. The main prayer of the Manager is to order a fresh enquiry by the Deputy Director of Education, Palakkad as he alleges that the Assistant Educational Officer, Alathur has not conducted the enquiry according to the provisions of the K.E.R. He also requested to order that the Manager is not responsible for payment of dues for the period of the suspension of the teacher and to order recovery of the amounts thus paid based on the orders of the High Court.

All the relevant documents were examined. It is seen that the Assistant Educational Officer had conducted the enquiry as ordered by the High Court in O.P. No. 34755/01 and O.P. No. 10750/02. The Manager has delayed the reinstatement of the teacher Smt. V. Usha on flimsy grounds and that he has been defying the directions of the Department to reinstate her. The delay of nearly 2 years in reinstating the teacher and the consequent direction of the High Court in W.P.(C) No. 3707/05 in judgment dated 25-8-2005 to disburse the pay and allowances due to her for the period of suspension i.e. from 5-7-2000 to 10-6-2002 has caused loss to Government. The direction to recover the amount paid for "work not done", during the above period, from the Manager is fully justified. The revision petition stands rejected. Directions contained in the judgment read as 3rd paper are thus complied with.

5. I do not think that any hair splitting examination is necessary to come to the conclusion that by Ext. P-9 the Government has not decided Ext. P-4 revision petition either way by giving reasons as to why the petitioner's contentions are not correct or why the enquiry can be held to be valid. In the first four paragraphs, the Government has narrated the crux of the petitioner's contentions. But the remaining paragraphs have been used up for directing

recovery of amounts from the manager. There is no finding whatsoever either way as to whether the enquiry complained of in Ext P-4 revision petition is valid or not, although it is stated that the revision petition is rejected. Therefore, Ext. P-9 cannot be considered as an order passed in Ext P-4 revision petition, although it purports to be so. As such, Ext. P-9 is clearly vitiated. Apart from that, as is clear from the references in Ext P-9, what was being considered is only the revision petition filed by the petitioner. The question of recovery of amounts paid to the teacher from the manager was not at all a subject-matter of the revision petition. No notice had been issued to the manager in respect thereof calling for his explanation as to why the said amount should not be recovered from the petitioner. As such, the finding in Ext P-9 regarding recovery of amounts from the manager is clearly unjustified and violative of principles of natural justice. Therefore, on all counts Ext. P-9 is liable to be quashed. I do so.

6. Evidently once Ext. P-9 order on Ext P-4 revision petition is quashed I should either enter a finding on the contentions of the petitioner in Ext. P-4 revision petition or direct the Government to reconsider the matter in accordance with law. I choose to remand the matter to the Government for reconsideration of Ext. P-4 revision petition in the right perspective by considering all the contentions of the petitioner as well as the teacher as to the validity of the enquiry and entering a specific finding as to whether the enquiry is valid or not.

7. In this connection, I intend to issue certain general guidelines for compliance by Educational Officers who conduct enquiries under Chapter XIV A of the K.E.R. against teachers and staff of aided schools at the request of the managers of such schools. From the cases in respect of disciplinary proceedings under the K.E.R. coming up before this Court, I find that the Educational Officers do not generally conduct enquiries under the K.E.R. in the right perspective. They do not generally conduct enquiries as is usually done in the case of Government school teachers under the Kerala Civil Services (classification, control and appeal) Rules. They just note down some statements from whoever is present at the time of enquiry and prepare an enquiry report. No proper examination of witnesses with opportunity to cross examine in compliance with principles of natural justice is done. The depositions of witnesses are not got signed by the witnesses and the parties. Other usual formalities for a valid enquiry as under the KCS (C.C.A.) Rules are not complied with, which is likely to prejudice either the manager or the delinquent. I am of opinion that the enquiry against an aided school teacher is nothing different from an enquiry against a Government School Teacher for misconducts alleged against him/her. Therefore, while conducting enquiries, the principles followed for conducting enquiries against Government servants should mandatorily be followed. The disciplinary proceedings against the aided school teachers are provided for in Rules 75 & 76 of Chapter XIV A of K.E.R., which read as follows:

75. Procedure for imposing major penalties.--(1) (a) Whenever a complaint is received or on intimation from the Authorised Officer as per Section 12 (A) is

recorded or on consideration of the report of investigation or for other reasons, the manager is satisfied that there is prima facie case for taking action against the teacher, definite charge or charges shall be framed and communicated to him with the statement of allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. The teacher shall be required to submit within a reasonable time to be specified in that behalf a written statement of his defence and also to state whether he desires to be heard in person. The teacher may on his request be permitted to peruse or take extracts from the records pertaining to the case for the purpose of preparing the written statement; provided the manager may, for reasons to be recorded in writing refuse him such access if in his opinion such records are not strictly relevant to the case or it is not essential in Public interest to allow such access.

After the written statement is received within the time allowed, the manager may, if he is satisfied that a formal enquiry should be held into the conduct of the teacher, order that a formal enquiry may be conducted.

(b) The Manager shall forward the records of the case with a request to the Deputy Director, (Education) in the case of Headmasters of High Schools and Training Schools or to the educational officers in other cases, that the formal enquiry may be conducted by that officer or any other officer not below the rank of an Assistant Educational Officer authorised by that officer or an officer of the department appointed by the Director or Government.

(c) The Manager shall also intimate the Government or the authorised officer as the case may be, the date of initiation of the disciplinary proceedings and also the date of passing final order, within 7 days from such dates.

(2) The Inquiring Authority may, during the course of inquiry, if it deems necessary, add to, amend, alter or modify the charges framed against the teacher in which case, the teacher shall be required to submit within a reasonable time to be specified in that behalf any further written statement of his defence.

(3) The teacher shall for the purpose of preparing his defence be permitted to inspect and take extracts from such official records as he may specify, provided that such permission may be refused, if for reasons to be recorded in writing, in the opinion of the Inquiring Authority, such records are not relevant for the purpose or it is against the Public Interest to allow him such access thereto.

(4) On receipt of the further written statement of defence under sub-rule (3), or if no such statement is received within the time specified therefor or where the teacher is not required to file a written statement under the said sub-rule the Inquiring Authority may inquire into such of the charges as are not admitted.

(5) The teacher may himself present his case before the Inquiring Officer and he may not be allowed to engage a legal practitioner for the purpose.

(6) The Inquiring Authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The teacher shall be entitled to cross examine witnesses examined in support of the charges and to give evidence in person and to have such witnesses as may be produced, examined in his defence. The person presenting the case in support of the charges shall be entitled to cross-examine the teacher and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witness on the ground that his evidence is not relevant or material it shall record its reason in writing.

Note.--If the Inquiring Authority proposes to rely on the oral evidence of any witness the authority should examine such witness in the presence of the teacher and give an opportunity to cross-examine the witness.

(7) The teacher may present to the Inquiring Authority a list of witnesses whom he desires to examine in his defence. The Inquiring Authority will normally request such witnesses to appear before him to give evidence. Where the witness to be examined is in any other teacher the Inquiring Authority will normally try to secure the presence of witnesses unless he is of the view that the witness's evidence is irrelevant or not material to the case under inquiry. Where the witness proposed to be examined by the teacher is any other person the Inquiring Authority will be under no obligation to summon and examine him unless the teacher himself produces him for examination.

(8) At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with the reasons therefor. If in the opinion of such authority the proceedings of inquiry establish charges different from those originally framed, it may record its findings on such charges provided that findings on such charges shall not be recorded unless the teacher has admitted the facts constituting them or has had opportunity of defending himself against them.

(9) The records of inquiry shall include:

- (i) the charges framed against the teacher and the statement of the allegation furnished to him;
- (ii) his written statement, if any;
- (iii) the oral evidence taken in the course of inquiry;
- (iv) the documentary evidence considered in the course of the inquiry;
- (v) the orders, if any; made in regard to the inquiry;
- (vi) a report setting out the findings on each charges and the reasons therefore.

(10) After the inquiry the inquiring authority shall forward the record of inquiry to the Manager.

(11) If the Manager is of opinion that any of the penalties specified in items (iv)

to (viii) of rule 65 should be imposed, he shall:

(a) Furnish to the teacher a copy of the report of the Inquiring Authority.

(b) Give him a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time which may not generally exceed one month such representation as he may wish to make against the proposed action provided that such representation, shall be based only on the evidence adduced during the inquiry.

(c) On receipt of the representation, if any and after taking into consideration the representation, final orders shall be passed by the manager imposing the penalty with the previous sanction of the competent authority.

(12) The procedure referred to above shall be conducted as expeditiously as the circumstances of the case may permit, particularly one against a teacher under suspension.

76. The procedure for imposing minor penalties.--(1) No order imposing any of the penalties specified in items (i), (ii) and (iii) of Rule 65 shall be passed except after (a) the teacher is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given opportunity to make any representation he may wish to make, (b) such representation if any is taken into consideration.

(2) The record of proceedings in such cases shall include:

(i) a copy of the intimation to the teacher of the proposal to take action against him;

(ii) a copy of the statement of allegations communicated to him;

(iii) his representation if any, and

(iv) the orders of the case together with the reasons therefor."

8. In effect, Rule 75 does contain all the said requirements for a valid enquiry to be conducted under that Rule. Therefore enquiries under Rule 75 should also be conducted in accordance with principles for conducting enquiries against Government servants. Normally such enquiries consists of first issuing a memo of charges, getting a written statement from the delinquent, forwarding of the papers to the Educational Officer (which are to be done by the manager) examination of witnesses cited by both sides with opportunity to the opposite side to cross-examine the witnesses, recording the deposition of the witnesses, getting signatures of the witnesses as well as the manager and the teacher in the depositions of witnesses as well as daily proceedings of the enquiry, hearing arguments on the evidence or accepting argument notes and preparing an enquiry report considering the evidence in the enquiry entering specific findings as to whether the charges levelled against the teacher are proved or not and forwarding the same to the manager. Although arguments have been advanced

both by the petitioner as well as the teacher as to whether the enquiry is valid or not, I am not inclined to go into the same in so far as I am remanding the matter to the Government for consideration of that question in accordance with law. But I make it clear that such consideration shall be strictly in accordance with the principles laid down noted above in respect of conducting disciplinary enquiries against teachers of the aided schools under Rule 75 of Chapter XIV A of K.E.R. I am not impressed by the contentions of the counsel for the teacher that in this case what is called for is only a proceedings under Rule 76 and not under Rule 75. Basically it is for the disciplinary authority to decide as to for what penalty the enquiry should be conducted and the role of the Educational Officer to conduct the enquiry and forward a report. In fact if the proceedings are to be under Rule 76 it is not necessary for the manager to forward the matter for an enquiry by the Educational Officer, since Rule 76 does not contemplate the same. It is settled law that the Manger is the disciplinary authority competent to impose punishment for misconduct on a delinquent teacher or staff although under Rule 75 he has to obtain prior sanction for imposition of punishment as contemplated under that Rule. As such the question of following the procedure under Rule 76 does not arise in this case since the manager has initiated proceedings under Rule 75 and the Educational Officer has conducted the enquiry also under Rule 75. The Government shall pass fresh orders on Ext. P-4 revision petition, taking into account the law as laid down above as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this judgment, after affording an opportunity of being heard to the petitioner as well as the 3rd respondent teacher. While doing so, the Government shall enter specific finding as to whether the Educational Officer had conducted the enquiry in accordance with the procedure explained above.

The Government shall forward copies of this judgment to all Educational Officers who have to conduct enquiries under Rule 75 of Chapter XIVA of KER with a direction to see that while conducting enquiries under Rule 75 they shall strictly follow the procedure explained above.

The Writ Petition is disposed of as above.