

(1997) 12 KL CK 0011
In the High Court Of Kerala
Case No : W.A. No. 862/90

Manager, St. Francis High School

APPELLANT

Vs

The Deputy Director (Edn.) and Others

RESPONDENT

Date of Decision : 10-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Education Rules, 1959 — Rule 2, 2(4), 2(5), 5A, 7

Citation : (1998) 1 KLJ 365

Hon'ble Judges : T.V. Ramakrishnan, J; A.S. Venkatachala Moorthy, J

Bench : Division Bench

Advocate : E. Subramani, for the Appellant; Jose Thettayil, Government Pleader for Respondents 1 and 2 and P. Sankarankutty Nair, for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkitachala Moorthy, J.—The above appeal has been filed by the unsuccessful Petitioner in O.P. No. 1449 of 1989 against the order of dismissal of O.P. by a. learned Single Judge on 22nd August 1990.

2. It would not be necessary to traverse through the entire facts of this case in detail in view of the nature of issues that arise for consideration by this Court.

3. The Deputy Director of Education, Trichur taking the view that the Manager, St. Francis High School (Boys and Girls), Mattom, the Appellant herein, miserably failed to carry out the departmental instructions, i.e. the failure to order reinstatement of Smt. P.B. Sobha, Smt. P.N. Komalavally and Smt. C.R. Annamma, and retention of some Ors. without observing the subject requirements as per the rules in Kerala Education Rules, issued a show cause notice dated 5th July 1988 setting out the charges and calling upon the Appellant to send a reply within 15 days from the date of receipt of the notice. The relevant portion in the said show cause notice may be usefully extracted here:

In short, instead of ordering the reinstatement of Smt. P.B. Sobha and Smt. P.N. Komalavally with effect from 15th July 1981 and Smt. C.R. Annamma from 1st December 1981 you have deliberately disobeyed and delayed the implementation of the departmental orders issued from time to time. So it is decided to proceed with disciplinary action against you for the gross violation of departmental orders as contemplated in Rule 7 of Chapter III K.E.R. for the various charges mentioned above. If you have anything to offer as a reply to the show cause notice, you are allowed 15 days time from the receipt of this notice. If nothing is heard from you within the time limit suitable action will be proceeded in the matter without further notice.

4. The Appellant sent a detailed reply dated 28th July, 1988 to the said show cause notice setting out his case and requesting the Deputy Director of Education "to set aside the charges against the then Manager and quash the charges in the light of the explanation offered". In the said explanation he has stated that he took over charge as Manager only with effect from 19th March 1988 and that Rev. Fr. Antony Ainikkal was the Manager when the retrenchment and retention of the Petitioners in the O.P. took place in 1981-82.

5. The Deputy Director of Education, Trichur after considering the explanation to the show cause notice passed Order dated 16th December 1988 which has been marked as Ext. P-4 to the effect that the Manager may not be proceeded against, as the Manager responsible for the irregularities has since quitted the office as manager and a new Manager has taken charge as such. Taking that view the Deputy Director passed the following order:

But the above course of action will not be a bar for the 2nd Respondent to go on with question of payment of salary to the Petitioners in conformity with the directions in the said judgment. He will see that the claims for salary of the three Petitioners based on the directions in the judgment are settled urgently and the amount of salary so paid to them is recovered from the amount of maintenance grant due to the Manager, St. Francis High School (Boys and Girls), Mattom, or otherwise with the approval of the authority competent in this regard.

6. The Appellant filed O.P. No. 1449 of 1989 on the file of this Court under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records leading up to Ext. P-4 of the first Respondent and quash the same to the extent of directing recovery from the maintenance grant due to the Petitioner, as Manager of St. Francis High School (Boys and Girls) and further restraining the Respondents from ordering any recovery from the amount of maintenance grant due to the Petitioner as Manager of the said school pursuant to Ext. P-4 order of the first Respondent.

7. Before the learned Single Judge the Appellant/Petitioner mainly raised two fold contentions, (1) that the Deputy Director is not competent to pass an order withholding the amount from the maintenance grant and (2) that Ext. P-4 order has been passed in violation of the principles of natural justice.

8. The learned Single Judge while dealing with the first point held that the Deputy Director has power to pass the impugned order in the light of Rule 5A of Chapter XXVIII of the Kerala Education Rules which enables all Educational Officers to make deductions from maintenance grant of the amounts of pay and allowances paid to teachers irregularly appointed overlooking the legitimate claims of seniors and other amounts. In short the learned Single Judge held that Rule 5A is sufficient answer to the first contention raised by the Manager. So far as the second contention is concerned, the learned Single Judge held that even though the notice to show cause only proposed imposition of penalty of disqualification of the Manager under Rule 7 of Chapter III, the order which was passed was one of withholding amounts from the maintenance grant is not in violation of the principles of natural justice, as the notice to show cause explained all details of Manager's delinquency and as the previous Manager Fr. Antony Ainikkal had changed and it was the present Manager Fr. Jacob Chirayath who gave a detailed reply to the show cause notice and that he knew all the facts and in fact he had given a detailed reply and that being so it is not as if he would have had anything else to say even if the proposed punishment was one of withholding amounts from the maintenance grant. On the basis of these findings the learned Single Judge dismissed the Original Petition.

9. Aggrieved by the judgment of the learned Single Judge the Petitioner in the O.P. filed the above appeal. Before this Court also the learned Counsel reiterated the said two contentions.

10. The first question for consideration is whether the Deputy Director of Education is competent to pass the impugned order.

11. Chapter XXVIII of the Kerala Education Rules deals with payment of maintenance grant to aided schools. Rule 2 of the said Chapter reads as follows:

2. The Director of Public Instruction or the Joint Director of Public Instruction may, notwithstanding anything contained in these Rules, refuse or withdraw the whole grant or any portion thereof at his discretion for violation of any of the provisions of the Act or the Rules thereunder or for any other reasons that may be specified by Director of Public Instruction or the Joint Director of Public Instruction.

Rule 2(4) of Chapter I of the Kerala Education Rules defines the term "Director" as:

"Director" means the Director of Public Instruction, Kerala or such other Officer or Officers who may from time to time be appointed by the Government in exercise all or any of the powers of the Director of Public Instruction.

It could be seen from the above rules that they specifically empower the Director of Public Instruction or the Joint Director of Public Instruction or any officer appointed to exercise all or any of the powers of the Director of Public Instruction only to pass an order refusing or withdrawing grant either in whole or in part. As

far as the present case is concerned the impugned order has been passed admittedly by the Deputy Director. This Court asked the learned Government Pleader appearing for the State to find out from the Director of Public Instruction as to whether the Deputy Director of Education has been delegated with the powers for withholding the maintenance grant. The learned Government Pleader produced before us a correspondence from the Director of Public Instruction dated 29th November 1997 by way of answer to our query. In the said letter it has been specifically stated as under:

The powers, of the D.P.I. is not delegated to Deputy Director of Education as meant in Rule 2(4) in Chapter I of the K.E.R. The power for withholding maintenance grant is not delegated to the Deputy Director of Education as per Rule 2 Chapter XXVIII of K.E.R. Only the D.E.O./A.E.O. are competent to withhold or make deduction of maintenance grant.

Hence the Deputy Director has no authority to invoke the Rule 2 of Chapter XXVIII of the Kerala Education Rules and pass the impugned order.

12. Is there any other provision under which the Deputy Director can pass the impugned order would be the next aspect for consideration. The learned Single Judge has relied on Rule 5A of Chapter XXVIII of the Kerala Education Rules to sustain the impugned order. Rule 5A of Chapter XXVIII reads thus:

The Educational Officers shall be competent to make deductions of any of the amount specified below by an order in writing from the maintenance grant sanctioned to the Manager under Rule 5;

(a) amounts objected by the Accountant General and the Department at the time of audit of accounts;

(b) amount of pay and allowances paid to teachers and non-teaching staff irregularly appointed, overlooking the legitimate claims of Ors. .

The term "Educational Officer" has been defined in Rule 2(5) of Chapter I as:

"Educational Officer" means the District Educational Officer or the Assistant Educational Officer having immediate inspectional and administrative control over the school within his respective jurisdiction. The term shall also include any Officer to whom the duty of inspection for specific purposes has been entrusted by competent authority.

13. So a perusal of the above said rules would only show that an order making deduction of any of the amounts specified in the said Rule 5A can be passed by the District Educational Officer or Assistant Educational Officer or by any officer to whom the duty of inspection for specific purposes has been entrusted by competent authority. In fact in the letter of the Director of Public Instruction dated 29th November 1997 to the learned Government Pleader referred supra, it is clearly stated:

There is no notification conferring the powers of Educational Officer to Deputy

Director of Education. The Deputy Director of Education is not the Educational Officer.

Hence the Deputy Director has no authority to exercise powers enumerated in Rule 5A of Chapter XXVIII of the Kerala Education Rules.

14. Hence we hold that the Deputy Director has no power or authority to pass the impugned order Ext. P-4 dated 16th December 1988.

15. Coming to the second point raised by the Appellant herein, namely that there is violation of principles of natural justice in passing the impugned order, we are of the considered opinion that there is great force in the submission of the counsel for the Appellant. As already seen, the show cause notice issued by the Deputy Director called upon the Appellant to show cause as to why disciplinary action against the then Manager for gross violation of departmental orders as contemplated in Rule 7 of Chapter III of the Kerala Education Rules for the various charges mentioned should not be taken. No explanation was called for in the said show cause notice as to why the maintenance grant should not be withheld. But however, now in the impugned order the Deputy Director has taken the view that the Manager responsible for the irregularities has since quitted the office as Manager, passed an order to the effect that the salary should be paid to the three named teachers and the same has to be recovered from the amount of maintenance grant due to the Manager, St. Francis High School, Mattom. Thus it could be seen that inasmuch as the show cause notice has not called for objections or explanation from the Appellant for withholding the maintenance grant, the Deputy Director has erred in passing the impugned order withholding the maintenance grant. Certainly there is violation of the principles of natural justice. The view taken by the learned Single Judge that the Appellant was aware of all facts and he has given a detailed explanation cannot in any way justify the violation of the principles of natural justice.

16. In this view of the matter we are of the considered opinion that the impugned order is liable to be quashed and accordingly the same is quashed. However, we make it clear that it is open to the authorities to take such further action that may be permissible as per the relevant Act and Rules and equally it will be open to the Appellant to raise all the defences that are available to him in law.

The Writ Appeal is allowed as above.

The Xerox copy of the correspondence dated 29th November 1997 (Fax Message) from the Director of Public Instruction, Thiruvananthapuram to Sri Jose Thettayil, Senior Government Pleader, Advocate General's office, Ernakulam and produced by the learned Government Pleader appearing for the State before this Court shall be taken on the file in this case.