

(2014) 08 KL CK 0054

In the High Court Of Kerala

Case No : W.P. (C). Nos. 9442 and 11570 of 2012

M.R. Shyni

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Citation : (2014) 3 ILR 1028 : (2014) 3 KLT 806

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : K. Jaju Babu, M.U. Vijayalakshmi, Brijesh Mohan, Dhanya Chandran and M.V. Joseph, Advocate for the Appellant; M.R. Anison, K.P. Geetha Mani, P.A. Rinusa, Annie Jacob, Advocates and Rafeek V.K., Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—As these writ petitions involve a common issue, they are taken up for hearing together and disposed of by this common judgment. For the sake of convenience, the facts in W.P.(C).No.11570/2012 alone are narrated in this judgment.

2. The petitioner in W.P.(C).No.11570/2012 is the Manager of an Aided Upper Primary School which also has a Lower Primary Section. From 1976 onwards, there had been 14 divisions sanctioned in the School and this position continued till 2008-09. Pursuant to a one - day verification done in the School on 14.7.2009, one division in the Ist standard was reduced in the staff fixation order for the academic year 2009-10. While passing the said order, however, the 4th respondent did not consider the increased student strength in Vth standard by virtue of which an additional division could have been sanctioned. Thus, while the net result of the staff fixation should have been the reduction of one division in Ist standard and the increase of one division in Vth standard, the 4th respondent only took into account the reduction of one division in Ist standard and accordingly only 13 divisions were sanctioned for the academic year 2009-10. The petitioner filed an appeal against Ext.P2 order before the 3rd respondent.

That appeal was dismissed by the 3rd respondent vide Ext.P3 order on the ground that insofar as no higher level verification was done by the District Educational Officer, no additional division could be sanctioned by the 4th respondent. The 3rd respondent, however, directed that the junior most teacher in the School could be retained by operation of the 1 : 40 ratio which was introduced by the Government for the specific purposes of retaining teachers who faced retrenchment. This protection to the junior most teacher was subsequently taken away by the 3rd respondent vide Ext.P5 order dated 25.5.2011.

3. Aggrieved by Ext.P3 order of the 3rd respondent, to the extent it did not sanction the additional division in the Vth standard, the petitioner preferred a further revision before the 2nd respondent. The said revision petition also came to be dismissed by Ext.P4 order of the 2nd respondent wherein also, the stand taken is that the additional division could not be sanctioned on account of want of a higher level verification which was mandatory. Against Ext.P4 order of the 2nd respondent, the petitioner preferred a second revision before the 1st respondent. By Ext.P6 order, the 1st respondent confirmed the stand taken by the 2nd respondent in Ext.P4 order and accordingly it was held that, for sanctioning the additional division, a higher level verification is mandatory and insofar as the Manager had not taken any action for conducting a higher level verification, the additional division could not be sanctioned. It is relevant to note that against Ext.P6 order, the petitioner appears to have filed a further review petition before the Government and that came to be dismissed by the 1st respondent vide Ext.P7 order. Ext.P7 order is admittedly one that is passed without jurisdiction in view of the Full Bench decision of this Court in Anilkumar R. Vs. State of Kerala and Others, . The writ petition is filed by the petitioner Manager aggrieved by Exts.P6 and P4 orders to the extent the 1st and 2nd respondents have taken the stand that the additional division in Vth standard could not be sanctioned during the year for want of a higher level verification by the District Educational Authority.

4. The petitioners in W.P.(C).No.9442/2012 are teachers who have been affected by the decision of the Educational authorities in not sanctioning the additional division in Vth standard for the academic year 2009-10. The redressal of the grievance of the petitioners in that writ petition would depend upon the result of W.P.(C).No.11570/2012, namely, a decision on the issue as to whether the additional division in Vth standard in the said School can be sanctioned for the academic year 2008-09.

5. I have heard the learned senior counsel Sri.K.Jaju Babu appearing for the petitioners in W.P.(C).No.9442/2012, learned counsel Sri.M.R.Anison appearing for the petitioners in W.P.(C). No. 11570/2012 and also Sri.Rafeek.V.K. learned Government Pleader who appeared on behalf of the respondents in both the writ petitions.

6. After considering the submissions made on either side, I find that the sole

issue to be considered in these cases is whether a higher level verification as contemplated in Rule 12 Chapter XXIII of the Kerala Education Rules (hereinafter referred to as the "KER") was required, in the instant case, as a precondition for the sanction of an additional division in the Vth standard of the School for the academic year 2009-10. As already noticed in the facts, this is a case where, for the immediately preceding academic year 2008-09, the School under the management of the petitioner had been sanctioned 14 divisions covering Standards I to VII. Based on the one - day verification done for the academic year 2009-10, it was found that the students strength warranted the sanctioning of one division, in lieu of two, in standard I but three divisions, in lieu of two, in standard V. While this should, in normal circumstances, have been sufficient for the respondents to fix the staff strength for the said academic year by recording a division fall in standard I and a division gain in standard V, this was not done by the respondent authorities. The stand taken by the respondents in this case is that while a division fall in standard I would inevitably result on account of the students strength verification, the sanction of an additional division in standard V would require a higher level verification as mandated under Rule 12 of Chapter XXIII of the KER. To examine the correctness of the view taken by the 1st and 2nd respondents in Exts.P6 and P4 orders passed by them, it is necessary to notice the provisions of Rule 12 of Chapter XXIII of the KER. The said Rule is extracted hereunder:

"[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 pupils' 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 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 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 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. 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.]

Explanation - (1) For the purpose of fixing the number of divisions, rule 23 of Chapter VI shall be applied.

(2) Government may revise the date for reckoning the strength of the classes in any year if found necessary and the strength of the teaching staff shall be fixed in such an event on the basis of the number of divisions as on the date so fixed. the date so fixed shall be published in the Gazette.

(3) In calculating the effective strength, fractions of half and above shall be rounded off to the next higher integer and fractions less than half shall be ignored]

[(4) Notwithstanding anything contained in these rules the Govt. may if they are satisfied that the effective strength of any division or divisions in any school or schools generally is likely to have been diminished in any particular year by any reason whatsoever; the Govt. may direct that the Educational Officer may revisit and refix the strength of teaching and non teaching staff in schools from which according to the satisfaction of the Educational Officer concerned substantial number of pupils have obtained Transfer Certificates and left the school, provided that no such re-visit or refixation shall be done after 31st December each year].

7. It will be apparent from a reading of the said Rule that the fixation of the strength of teaching staff is, at the outset, subject to the availability of accommodation in the School. Secondly, the fixation of staff strength is to be based on a verification of the students strength as determined at the time of one - day verification done in the School. If, on the said verification, it is found that

the strength of the students is such that on an application of the relevant ratio of teacher : student, an additional division can be sanctioned in the School, then a higher level verification would have to be done prior to sanctioning of the additional division in the said School. The provisions of the Rule suggest that this higher level verification is for the purposes of ensuring that the School in question has the necessary infrastructural requirements so as to accommodate an additional division, in addition to the divisions that are already existing in the School in the immediately preceding academic year. It would also be necessary for the educational authorities to verify whether the strength of the students in the School, as such, would warrant the sanctioning of an additional division. In the instant case, it is seen that in the immediately preceding academic year 2008-09, a total of 14 divisions were sanctioned to the School in question. For the academic year 2009-10, while the students strength justified the reduction of one division in standard I, it also warranted the addition of one division in standard V. Had the students strength been the criteria for the sanctioning of divisions, it should have normally resulted in the reduction of one division in standard I and the increase of one division in standard V thereby retaining the same figure of 14 as the total number of divisions to be sanctioned for the School for the said academic year. The educational authorities, however, take the stand that while the reduction of one division in standard I would normally follow, from a verification of the students strength, the addition of one division in standard V would attract the provisions of Rule 12 of Chapter XXIII of the KER to the extent it mandates a higher level verification. I am of the view that this stand of the respondents is not justified on account of the express provisions of the Rule in question. The mandate of the Rule appears to be that a higher level verification would be required only if the net result of the verification process necessitates the sanctioning of an additional division, in addition to the divisions that were sanctioned to the School for the immediately preceding academic year. When examined in that light, the facts of the instant case would show that there was no additional division that was sought to be sanctioned for the academic year 2009- 10 in the petitioner's School. The requirement of a higher level verification was therefore not there in the instant case.

8. It may also be necessary to comment upon the stand taken by the respondents in Exts.P6 and P4 orders that the higher level verification was not done solely because the petitioner Manager had in a communication to the respondents authorities opined that such a higher level verification was not required. A reading of Rule 12 of Chapter XXIII makes it abundantly clear that the conduct of higher level verification is to be done by the educational authorities and does not depend upon any intimation or consent from the Manager of the School in question. Thus, if the circumstances warrant the conduct of a higher level verification, it is for the respondent authorities to do so without waiting for any consent or intimation from the Manager of the School.

9. In the light of what is stated above, Exts.P6 and P4 orders, of the 1st and 2nd respondents respectively, have necessarily to be quashed, and I do so.

Resultantly, the respondent authorities are directed to revise the staff strength in the petitioner's School for the academic year 2009-10 by taking into account both, the fall in one division in the Ist standard as also the gain of one division in the Vth standard. The status of the teachers in the School shall be determined based on this revised staff fixation and the monetary benefits due to them shall be worked out accordingly. The 4th respondent shall take steps in this regard within a period of two months from the date of receipt of a copy of this judgment. It is also made clear that the approval of the appointments of the 3rd and 4th petitioners in W.P.(C).No.9442/2012 will be done based on the steps taken by the 4th respondent as directed above.

The writ petitions are allowed as above.