
(2003) 03 KL CK 0147

In the High Court Of Kerala

Case No : W.A. No's. 1132 and 1140 of 2002

Muhammed alias A.P. Bappu Haji

APPELLANT

Vs

The Secy to Govt. and Others

RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 KLJ 851

Hon'ble Judges : K. Thankappan, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : R. Ramadas, for the Appellant; P.K. Shakkeela (GP) and Sivan Madathil, for the Respondent

Judgement

Mr. Justice Cyriac Joseph, J.—These two writ appeals arise from a common judgment in O.P.Nos. 10304 and 10442 of 2001. Hence these appeals are being disposed of by a common judgment. W. A.No. 1132 of 2002 is against the decision in O.P.No. 10304 of 2001 which was partly allowed by the learned Single Judge. The appellant is the petitioner in the original petition.

2. W.A.No. 1140 of 2002 is against the decision in O.P.No. 10442 of 2001 which was allowed by the learned Single Judge. The appellant is the second respondent in the original petition.

3. The facts in brief are as follows: Mr. Muhammed alias A.P.Bapu Haji who is the petitioner in O.P.No. 10304 of 2001 and the second respondent in O.P.No. 10442 of 2001 is the Manager of Crescent High School, Adakkakundu in Malappuram District. Mr.P.J.Varkey who is the 5th respondent in O.P.No. 10304 of 2001 and the petitioner in O.P.No. 10442 of 2001 is an High School Assistant in the said school. As per his order dated 7.2.1996 Mr.Mohammed the Manager placed the teacher Mr.P.J.Varkey under suspension for a period of 15 days pending enquiry into certain allegations of irregularities and misbehavior committed by the teacher. The request of the Manager for placing the teacher under suspension beyond the period of 15 days was allowed by the District Educational Officer,

Malappuram as per his order dated 19.2.1996. Hence as per his order dated 20.2.1996 the Manager extended the suspension of the teacher until further orders. As per the memo of charges issued to the teacher the charges against him were:

- (a). He was absent unauthorisedly from 11th December, 1995 to 7th February, 1996.
- (b) He signed and marked his attendance on 7.2.1996 without the permission of the head of office after his unauthorised absence till then.
- (c) He did not accept the memo dated 15.12.1995 sent by registered post by the Headmaster. He also denied to acknowledge the same when it was served on him when he visited the school on 5.1.1996. This amounted to insubordination and misbehavior.
- (d) He manhandled a girl student of Xth standard on 8.12.1995 and this caused the parents and other guardians to come to the school on protest and caused unrest among the students.
- (e) While acting as teacher he severely and cruelly punished boys and girls in such a manner unbecoming of a teacher and this made the parents submitting a mass petition to the Headmaster.
- (f) He signed the attendance register and marked his attendance on 7.2.1996 without the permission of the Headmaster and when the Headmaster questioned him he tampered the marking whereas the Headmaster alone is competent to make corrections in the attendance register. He repeated the same irregularity on 8.2.1996 also.
- (g) He insulted the Manager when he questioned his indecent behaviour towards the Headmaster, the teachers, parents and students.
- (h) He refused to acknowledge receipt of the suspension order served on him by the Manager on 7.2.1996 through the Peon.
- (i) He used to threaten the Headmaster and other teachers and to abuse them with vulgar words.
- (j) He instigated the students to turn them against the headmaster, staff and management and thus caused unrest among the students.

As part of the disciplinary proceedings against the teacher, the District Educational Officer, Tirur conducted an enquiry and found that all the charges levelled against the teacher were proved. However, he observed that the first charge required some humanitarian consideration as the teacher was admitted in the hospital at that time and had requested to excuse him for the lapse on his part. After considering the enquiry report of the District Educational Officer, Tirur the Manager issued a notice to the teacher proposing to dismiss him from service and calling upon him to submit his explanation, if any, within 15 days. Though

the teacher submitted his reply to the said notice of the Manager, the Manager as per his letter dated 30.1.1999 requested the Deputy Director of Education, Malappuram to grant sanction under Rule 74 of Chapter XIV-A of the Kerala Education Rules (hereinafter referred to as the "KER") to dismiss the teacher from service. Thereupon the Deputy Director of Education, Malappuram passed an order dated 10.12.1999 directing the Manager "to impose some other lesser punishment by reinstating Sri.Varkey in service within a month". In the said order the Deputy Director of Education held that though the allegations levelled against the teacher had been proved beyond doubt he did not feel that the allegations were grave enough to impose a major penalty like dismissal from service. Challenging the said order of the Deputy Director of Education, Malappuram the Manager filed a revision petition before the Government under Rule 92 of Chapter XIV-A of KER. The said revision petition was disposed of by the Government as per G.O.Rt.No.1405/00/G.Edn. dated 6.4.2000. In the said order the Government noted that all the charges made against the teacher were proved beyond doubt in the enquiry conducted by the District Educational Officer," Tirur and that the charges were very grave and serious and not at all expected from a responsible teacher and that being a teacher he should have been role model to the pupils and others. However, the Government held that the charges proved against the teacher did not attract the extreme penalty of dismissal from service. Considering the gravity of the offence committed, the Government imposed on the teacher the punishment of barring two increments with cumulative effect and directed to reinstate the teacher in service. Challenging the said Government order the Manager filed O.P. No. 14188 of 2000 which was disposed of by this Court on 24-5-2000 quashing the Government order and directing the Government to take a fresh decision on the revision of the Manager after giving him an opportunity of being heard. Against the judgment in O.P. No. 14188 of 2000 the teacher filed W.A. No. 1221. of 2000 which was disposed of by a Division Bench of this Court on 23-11-2000 directing the Government to hear and dispose of the revision petition after giving notice to all parties concerned. In compliance with the direction in the judgment in W.A. No. 1221 of 2000 the Government heard all the parties concerned and issued G.O. Rt. No. 848/01/G. Edn. dated 2-3-2001. In the said order dated 2-3-2001 the Government, after considering the matter in detail, concluded that only the charge of manhandling a girl student was proved and that the teacher should be punished for that charge. The Government held that the punishment of removal from service proposed by the Manager was not commensurate with the gravity of the offence. According to the Government the threat of the parents to withdraw their children if the teacher was allowed to continue in service could not be a reason for removing the teacher from service. Hence the Government modified the punishment proposed by the Manager and awarded a punishment of barring increments with cumulative effect for two years. The Government also directed that the period of suspension should be treated as eligible leave." Challenging the said Government order dated 2-3-2001 the Manager filed O.P. No. 10304 of 2001. The teacher also filed O.P. NO. 10442 of 2001 praying for a direction to the

Manager to reinstate the teacher in service as per the Government order dated 2-3-2001. Both these writ petitions were heard together and were disposed of by the learned Single Judge on 8th April, 2002.

4. In the judgment in O.P. No. 10304 of 2001 filed by the Manager the learned Single Judge found considerable force in the contention of the learned counsel for the Manager that the Deputy Director of Education under Rule 74 or the Government under Rule 92 has power only to grant or refuse sanction for imposing the punishment proposed by the Manager and that they have no power to suggest any alternate penalty. The learned Single Judge also found that in this case both the Deputy Director and the Government had declined to grant sanction to impose the punishment of dismissal from service. The learned Single Judge held that there was nothing wrong in the said decision of the statutory authorities. According to the learned Single Judge having regard to the charges proved against the delinquent, the view taken by the Deputy Director and the Government was perfectly a plausible view and that it could not be said to be perverse or one which no man in his sense would take. So the learned Single Judge rejected the challenge against the decision of the Deputy Director and the Government that the teacher need not be dismissed from service. At the same time the learned Single Judge accepted the contention of the learned counsel for the Manager that the Deputy Director and the Government had no power to impose an alternate penalty. Accordingly, the learned Single Judge modified the impugned orders and directed that the manager will be free to take a fresh decision as to what should be the penalty to be imposed on the delinquent employee. Since the learned Single Judge upheld the view of the statutory authorities that no major penalty was warranted in the facts of the case it has been clarified by the learned Single Judge that the Manager will be free to impose only one of the minor penalties provided under Rule 65 of Chapter XIV-A of KER.

5. In the judgment in O.R No. 10442 of 2001 filed by the teacher the learned Single Judge directed that the teacher shall be reinstated in service by the manager within two weeks from the date of receipt of a copy of the judgment and that the period of suspension shall be regularised in accordance with law. It was also directed that the teacher would be deemed to be in service from the date he reported for duty in the school pursuant to the Government order dated 2-3-2001. The Deputy Director of Education was directed to take a decision on the claim of the teacher for salary from his date of reporting to the school in accordance with law after hearing the teacher and the Manager. It was also directed that in case it was found that the teacher was kept out of service unnecessarily by the Manager the salary, if any, ordered to be paid to him may be recovered from the Manager by the Deputy Director of Education in accordance with law.

6. Aggrieved by the decision of the learned Single Judge in the above mentioned two original petitions the Manager of the School has filed these two writ appeals.

While admitting the writ appeals interim orders were passed by this court staying the direction regarding reinstatement of the teacher in service pending disposal of the appeals.

7. In this case the disciplinary proceedings against the teacher had not culminated in the imposition of any penalty on the teacher. The dispute arose when the Manager sought previous sanction of the Deputy Director of Education under Rule 74 of Chapter XIV-A of KER to impose the penalty of dismissal from service. The Deputy Director of Education found that though the allegations had been proved against the teacher, they were not grave enough to impose a major penalty like dismissal from service and directed the Manager to impose some other lesser punishment. When the Manager filed revision before the Government under Rule 92 of Chapter XIV-A of KER, The Government not only agreed with the Deputy Director that the punishment of dismissal from service proposed by the Manager was not commensurate with the gravity of offence but also modified the punishment and awarded a punishment of barring of increments with cumulative effect for two years.

8. The main question that arised for consideration relates to the power of the competent authority under Rule 74 of Chapter XIV-A of KER while considering a request of the Manager for previous sanction to impose a penalty on the teacher and the power of the Government while dealing with a revision arising from an order passed by the competent authority under Rule 74 of Chapter XIV-A of KER.

9. Rule 74 of Chapter XIV-A of KER reads thus :

74. The penalty of compulsory retirement, removal or dismissal from service can be imposed by the Manager only with previous sanction of the Director, in the case of teachers in the graduate teacher's scale and Headmasters of Secondary Schools and Training Schools and of the District Education Officer in the other cases.

The power of the departmental authority under Rule 74 of Chapter XIV-A of KER is limited in scope. While exercising the power under Rule 74, the departmental authority is not sitting in appeal over the findings of the enquiry officer. It is not open to the departmental authority to consider the correctness of the findings in the enquiry report or to go behind the said findings. The departmental authority can only consider whether the penalty proposed by the manager is commensurate with the gravity of the charges proved in the enquiry. The gravity of the charges proved and the appropriateness of the penalty are relevant considerations while taking a decision under Rule 74. The departmental authority is not to act as a mere rubber stamp automatically granting previous sanction to the penalty proposed by the manager. At the same time, he cannot act as an appellate authority sitting in judgment over the disciplinary proceedings. The appropriateness of the penalty is an element germane to the question of granting or withholding previous sanction. The authority granting or refusing previous sanction must pay regard to the nature of the charges as well as the nature of

the penalty proposed to be inflicted on the delinquent teacher. Rule 74 operates as a check or restriction on the power of the Manager to impose major penalties like compulsory retirement, removal or dismissal from service. Even if previous sanction is given under Rule 74 and the proposed penalty is imposed on the teacher, the teacher has still got the right to file an appeal or revision against the order of the manager imposing the penalty. The right of the teacher to file appeal or revision is not affected by the fact that the penalty was imposed with the previous sanction granted under Rule 74. While exercising the power under Rule 74, the departmental authority can either grant or refuse the previous sanction to impose the penalty proposed by the manager, but he himself cannot impose or suggest to impose an alternate penalty. When previous sanction under Rule 74 is refused, the departmental authority can only direct the manager to reconsider the matter and take a fresh decision regarding the penalty to be imposed.

10. It is not disputed that a revision under Rule 92 of Chapter XIV-A of KER will lie against an order passed under Rule 74 of Chapter XIV-A of KER. Rule 92 reads thus :

92. Revision :- (1) Notwithstanding anything contained in these rules the Government, may on their own motion or otherwise, after calling for the records of the case, revise any order passed by a subordinate authority in respect of matters contained in this Chapter which is made or is appealable under these Rules :

(a) confirm, modify or set aside the order :

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(c) remit the case to the authority which made the order or to any other authority, directing such further action or enquiry as they consider proper in the circumstances of the case or,

(d) pass such other order as they deemed fit;

Provided that -

(i) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty provided that such representation shall be based only on the evidence adduced during the enquiry.

(ii) If the Government propose to impose any of the penalties specified in items (iv) to (viii) of Rules 65 on a case where an inquiry be held and thereafter on" consideration of the proceedings of such inquiry and after given the person concerned an opportunity of making any representation which he may wish to make against such penalty pass such orders as they deem fit.

Explanation :- For the purpose of this proviso and sub rule (2), the person concerned shall include the Manager of a School whose orders are sought to be

revised by the Government.

(2) Nothing contained in the proviso to sub rule (1) shall be deemed to require the Government to give an opportunity for personal hearing to the person concerned and it shall be sufficient if :-

(i) where the Government proposed to revise an order on their own motion, a copy of the grounds on which the order is proposed to be revised, or

(ii) where the Government propose to revise an order in pursuance of a revision petition filed by a party, a copy of the revision petition is furnished to the person concerned along with a notice requiring him to make representation, if any, in the matter in writing within a period specified in the notice and the Government pass final orders in revision after consideration of such representation.

The power of the Government under Rule 92 of the Chapter XIV-A of KER is wide in the sense than the Government may on their own motion or otherwise revise any order passed by a subordinate authority and may confirm, modify or set aside the order or impose penalty or set aside, reduce, confirm or enhance the penalty imposed by the order or remit the case to the authority which made the order or to any authority or pass such other order as they deem fit. Under Rule 92, if the order of the subordinate authority is erroneous, the Government can pass an order which the subordinate authority should have and could have legally passed in the case and confirm the order if it is proper. But in exercise of the power under Rule 92, the Government cannot pass an order which the subordinate authority could not have legally passed in the case. Hence in a revision arising from an order under Rule 74, the Government can only confirm or set aside the order and thereby grant or refuse sanction, but cannot alter the punishment. When the authority under Rule 74 does not have any power to alter the punishment, the Government cannot have such a power under Rule 92 while disposing of a revision arising from an order passed under Rule 74.

11. In the present case, the manager's request: for previous sanction to impose the penalty of dismissal from service was rejected by the Deputy Director of Education, Malappuram as per his order No. B4-5213/99 dated 10-12-1999 (Ext. P11 in O.P. No. 10304/01). In the said order, the Deputy Director of Education held that though the allegations levelled against the teacher had been proved beyond doubt in the enquiry conducted by the enquiry officer, the allegations were not grave enough to impose a major penalty like dismissal from service. Hence, the Deputy Director of Education directed the manager to impose some other lesser punishment. However, in G.O. (Rt) No. 848/01/ G. Edn. dated 2-3-2001 (Ext. P18 in O.P. No. 10304/01) the Government proceeded to consider the correctness of the findings in the enquiry report and concluded that only the charge of manhandling a girl student had been proved. In a revision arising from an order passed under Rule 74, the Government is not competent to consider the correctness of the findings in the enquiry report or to go behind such findings. The Government can only consider whether the penalty proposed by the

manager is commensurate with the gravity of the charges proved in the enquiry. Hence in this case the Government clearly exceeded its jurisdiction and power. In the order dated 2-3-2001, the Government modified the punishment proposed by the manager, and awarded a punishment of barring of increments with cumulative effect for two years. When the departmental authority under Rule 74 has the power only to grant or refuse previous sanction and does not have any power to award the punishment, in a revision arising from an order passed under Rule 74, the Government also has no power to award any punishment. The Government can only confirm or set aside the order passed by the departmental authority under Rule 74. granting or refusing previous sanction to impose the penalty proposed by the manager. The power to impose penalty on conclusion of a disciplinary proceedings is vested with the manager. Therefore the action of the Government in awarding the punishment was wrong and illegal. The decision of the manager imposing a penalty on the teacher may be revised and the punishment may be modified-by the Government under Rule 92. But, in the present case, the manager had not imposed any penalty. The disciplinary proceedings were only at the stage of seeking previous sanction to impose penalty. The Government appears to have approached the issue as if it was a revision against an order imposing a penalty. By modifying the punishment proposed by the manager and awarding a different punishment on the teacher, the Government infringed the right of the manager to impose penalty on the delinquent teacher on the conclusion of the disciplinary proceedings. Thus the Government Order dated 2-3-2001 is illegal is liable to be set aside.

12. At the same time, having regard to the findings in the enquiry report and the nature of the charges proved against the teacher and the nature of the punishment proposed by the manager, we are inclined to agree with the Deputy Director of Education, Malappuram that the allegations proved against the teacher are not grave enough to impose a major punishment like dismissal from service. In our view, the penalty proposed by the manager is not commensurate with the gravity of the charges proved in the enquiry. As rightly pointed out by the learned Single Judge, the view taken by the Deputy Director of Education is a plausible view and it cannot be said to be perverse or one which no man is his senses will take". The learned Single Judge was right in upholding the view taken by the Deputy Director of Education, Malappuram in his order dated 10-12-1999 and directing that the manager will be free to take a fresh decision as to what should be the penalty to be imposed on the delinquent employee.

13. In the Judgment, in O.R No. 10304 of 2001, while upholding the view of the statutory authorities that no major penalty is warranted in the facts of the case, the learned Single Judge has also held that the petitioner (Manager) will be free to impose only one of the minor penalties provided under Rule 65 of Chapter XIV-A of KER. It was argued on behalf of the manager that the learned Single Judge ought to have stopped with saying that the manager will be free to take a fresh decision as to what should be the penalty to be imposed on the delinquent employee and should not have restricted the power of the manager by directing

that the manager would be free to impose only one of the minor penalties-provided under Rule 65 of Chapter XIV-A of KER. Even though the departmental authority exercising the power under Rule 74 or the Government exercising the power under Rule 92 does not have the power to award or to direct to award a penalty different from the penalty proposed by the manager, the power of the High Court under Article, 226 of the Constitution of India is wide enough to mould the relief in a writ petition in such a way as to ensure that justice is done and injustice is prevented. Having regard to the fact that the teacher was under suspension from 7-2-1996 and considering the nature of the allegations proved in the enquiry against the teacher, the learned Single Judge was justified in directing that the manager will be free to impose only one of the minor penalties provided under Rule 65 of Chapter XIV-A of KER. The said direction of the learned Single Judge only means that the manager cannot impose on the teacher any of the penalties of compulsory retirement, removal or dismissal from service and that manager may impose any of the other penalties mentioned in Rule 65 of Chapter XIV-A of KER. In our view, in the facts and circumstances of this case, the said direction of the learned Single Judge is just and reasonable and does not call for any interference.

14. In O.R No. 10442/2001 filed by the teacher, the main prayer was for a direction to the manager and the Headmaster of the school to reinstate the teacher in service as per Ext. P5, G.O. Rt. No. 848/01/G. Edn. dated 2-3-2001 (Ext. P18 in O.P. No. 10304/2001). We have already held that the said Government Order is illegal and is liable to be quashed. The learned Single Judge erred in allowing the said Original Petition and issuing directions regarding reinstatement of the teacher, payment of salary and recovery of the salary from the manager. In our view, the teacher was not entitled to such directions in the said Original Petition. In the above circumstances, the Writ Appeals are disposed of with the following orders and directions:

(a) The judgment dated 8th April, 2002 in O.P. Nos. 10304/2001 and 10442/2001 is set aside to the extent it is inconsistent with this judgment.

(b) The Government Order, G.O.(Rt) No. 848/01/G. Edn. dated 2-3-2001 (Ext. P18 in O.P. No. 10304/2001 and Ext. P5 in O.P No. 10442/2001) are quashed.

(c) The decision of the Deputy Director of Education, Malappuram refusing to grant previous sanction to impose the penalty of dismissal from service is upheld.

(d) The manager of the school (appellant in both the Writ Appeals) is directed to reconsider the matter and pass appropriate orders in the disciplinary proceedings against the teacher Sri. P.J. Varkey within two months from the date of receipt of a copy of this judgment. The manager will not be entitled to impose any penalty of compulsory retirement, removal or dismissal from service. He will be free to impose any of the other penalties mentioned in Rule 65 of Chapter XIV-A of KER.

(e) The manager shall reinstate the teacher in service within two weeks from the date of receipt of a copy of this judgment.

- (f) While passing final orders in the disciplinary proceedings, the manager shall also pass appropriate orders regularising the period of suspension of the teacher.
- (g) This judgment will not preclude the teacher from resorting to the statutory remedies available to him against the final order to be passed by the manager in the disciplinary proceedings against him.
- (h) The parties are left to bear their own costs.