

(2013) 09 KL CK 0097

In the High Court Of Kerala

Case No : W.A. No. 1279 of 2013 in W.P.(C) No. 13779 of 2012. (Against the Judgment In WP(C) No. 13779 of 2012 of High Court of Kerala Dated 04-06-2013)

Parvathy Amma T.V.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2013) 4 KHC 94

Hon'ble Judges : Mr. K.M. Joseph and Mr. A. Hariprasad, JJ.

Bench : Division Bench

Advocate : Shri M.K Aboobacker, Government Pleader, for the Respondent Nos. 1 and 3; Sri. Mohan Jacob George, Advocate, for the Respondent No. 4; Sri. R.K. Muraleedharan, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. K.M. Joseph, J. - Appellant is the writ petitioner. The writ petition was filed seeking to quash Ext.P19 order passed by the 1st respondent.

2. Appellant/petitioner has approached this Court on the following allegations: Petitioner is the manager of Thaze Kalari U.P.School. She received various complaints against the 4th respondent who was a teacher. 4th respondent was suspended. The suspension was extended beyond 15 days after obtaining permission from the Educational Officer. Appellant decided to take disciplinary action against the 4th respondent. Ext.P2 memo of charges was served along with a show cause notice. The explanation of the 4th respondent was found unsatisfactory and hence appellant requested the Assistant Educational Officer to conduct an enquiry. On enquiry 4th respondent was found to be guilty of charges and which, according to the appellant, included sexual abuse at work place. The Assistant Educational Officer, however, directed the manager to award only minor penalty and to reinstate the 4th respondent. Appeal filed by the appellant against that order was allowed. That order was set aside by this Court in a writ petition

filed by the 4th respondent. Appellant/petitioner was allowed to file a revision under Rule 92 of Chapter XIVA of the Kerala Education Rules (hereinafter referred to as "the KER"). Revisional authority confirmed the order. Appellant challenged that order before this Court. By Ext.P11 judgment learned Single Judge dismissed the writ petition filed by the 4th respondent as withdrawn. As far as the writ petition filed by the appellant questioning the order of the Assistant Educational Officer directing the manager to impose minor penalty is concerned, it is interfered with and that part of the said order (Ext.P9) directing the appellant to impose only a minor punishment was quashed. Further the direction in Ext.P9 to reinstate the 4th respondent cancelling the suspension was apparently based on the opinion of the Assistant Educational Officer that the situation warrants only a minor punishment on the teacher it was found. Having found the teacher guilty of misconducts in a major penalty proceedings and having allowed the manager to continue suspension, the Assistant Educational Officer could not have decided to reinstate the teacher on the ground that he deserves only a minor punishment and it was for the appellant to decide that question also. That part of the order was also quashed. Appellant was directed to complete the disciplinary proceedings in accordance with the Sub-rule (8) of Rule 75 of Chapter XIVA of the KER as expeditiously as possible within a period of two months from the date of receipt of a copy of the judgment. Subsequently the proceedings were brought to its conclusion by the manager awarding punishment of compulsory retirement. According to the appellant, after 8 months, 4th respondent filed a revision before the Government invoking Rule 92 of Chapter XIVA of the KER. It is in the said order that the Government has proceeded to hold that the enquiry conducted by the Educational Officer was afflicted with illegality. Witnesses were examined without given an opportunity to the 4th respondent to cross-examine them. It is the further finding of the Government that when the punishment was proposed, copy of the enquiry report was not made available to 4th respondent. On the said ground Ext.19 order was passed by the Government by which the enquiry report and also the punishment came to be interfered with. It is the said order which is challenged by the appellant.

3. We heard the learned counsel for the appellant, learned Senior Counsel for the 4th respondent and also the learned Government Pleader.

4. Learned counsel for the appellant would contend that this is a case where Ext.P6 enquiry report was given. There was no case for the 4th respondent that there is violation of principles of natural justice in that the right of cross-examination was denied. It is only after 8 months of the imposition of punishment without preferring any appeal that the power under Rule 92 of Chapter XIVA of the KER was invoked. According to the learned counsel, it is not correct to say that the officer denied the right to cross-examine the witnesses. 4th respondent did not lay claim for cross-examination in spite of opportunity, it is pointed out. Still, further he would contend that the learned Single Judge though having agreed with the Government on this score has found that some other charges have to be enquired into and has left it open to the appellant to

move the authority for holding a fresh enquiry. In such circumstances, the judgment of the learned Single Judge is sought to be faulted on the score that the direction for reinstatement passed by the Government was not interfered with. According to the learned counsel for the appellant, there are serious charges among the charges in Ext.P2 and when a fresh enquiry is going to be held, at any rate, having regard to the said facts of the case the learned Single Judge ought to have directed that the 4th respondent need not be reinstated.

5. Lastly, the learned counsel for the appellant would also draw our attention to Sub-rules 4 and 5 of Rule 67 of the KER, which reads as follows:

"(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a teacher under suspension is set aside in appeal, revision or review under these rules and the case is remitted for further enquiry or action or with any other direction the orders of suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a teacher is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the authority on a consideration of the circumstances of the case decides to hold a further enquiry against him on the allegation on which the penalty of dismissal or removal or compulsory retirement was originally imposed the teacher shall be deemed to have been placed under suspension from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders."

According to the learned counsel, in view of Rule 4, since punishment of compulsory retirement has been interfered by the authority and the learned Single Judge has also permitted the appellant to move for fresh enquiry, Provisions in Rule 4 and also Rule 5 dictate the continuance of the suspension of the 4th respondent and there can be no question of reinstatement of 4th respondent.

6. Per contra, learned Senior Counsel for the 4th respondent would point out that it is not a case where despite opportunity being given to the 4th respondent, he did not avail of the opportunity to cross-examine the witnesses. On the other hand witnesses were examined, when the 4th respondent was not present. It is also pointed out that there is no statement in the report of the Educational Officer that despite having afforded the opportunity to cross-examine, the 4th respondent did not avail of such opportunity. As far as the question of enquiring into further charges, he would contend that the 4th respondent is a teacher having unblemished service for a period of 20 years. Controversy has been created, according to the learned counsel Senior Counsel, on account of the fact that the manager would have to take a decision on the question of appointment of head master and the manager wants to elbow out the 4th respondent. He

would refer to the charges to show that they are vague. As far as Sub-rules 4 and 5 of Rule 67 of the KER are concerned, it is submitted that they are not applicable to the facts and circumstances of the case. Learned Government Pleader also supported the order of the Government.

7. Learned counsel for the appellant would submit that the charges 16 and 17 are grave charges and they must be enquired into and when the enquiry is to be done, no doubt, even as ordered by this Court, it is a clear case where the teacher should not be reinstated. He would submit that the enquiry can be expedited and completed in two months and till such time, in the circumstances of the case, reinstatement must be kept in abeyance.

8. We are of the view that there is no merit in the contention of the appellant. This is a case where an enquiry was held on the basis of Ext.P2 memo of charges. The Education Officer, no doubt, found that the charges were proved. He, however, directed that a minor penalty alone shall be imposed. The manager and the teacher questioned such proceedings. The writ petitions came to be disposed of by Ext.P11 judgment.

9. On a perusal of the judgment, we find that though it is true that the challenge against Ext.P6 by the teacher was dismissed as withdrawn, it is on the basis that the teacher would have the liberty to challenge not only any punishment imposed on the basis of the enquiry and but also having the right to challenge the enquiry itself. Therefore, the appellant may not be justified in denying the 4th respondent the right to challenge the enquiry itself and the appellant may not be justified in having a case that the writ petition against Ext.P6 enquiry report was got dismissed as withdrawn.

10. Enquiry report in so far as it related to the direction to appellant to impose only a minor penalty was undoubtedly interfered with. This enabled the appellant to impose major penalty of compulsory retirement. But the same came to be questioned by the 4th respondent under Rule 92 of Chapter XIVA of the KER. Learned counsel for the appellant does not have a case that the teacher cannot challenge the enquiry report along with the punishment imposed. Therefore, when the challenge was considered by the Government, it is open to the Government to consider not only question of punishment but it is also open to the Government to consider the legality of the enquiry proceedings. The Government entered findings in this regard which we have adverted to. Learned Single Judge did not choose it fit to disagree with the proceedings of the Government. We must remind ourselves that the proceedings before the learned Single Judge was one of judicial review. Unless and until some illegality or unreasonableness as understood in law is made out, interference would be unjustified. There cannot be merit review of a statutory decision. We also note that the appellant has not made out a case on the score that the witnesses were examined in the presence of 4th respondent and he was afforded opportunity and he did not avail the same. Therefore, we can proceed on the basis that the enquiry conducted as reflected in Ext.P6 was faulted and could not stand the

scrutiny of the authorities or this Court.

11. It is after so finding that the learned Single Judge observed that there may be few charges which may have to be enquired into and left it free to the appellant to move the Government within 15 days. Learned Single Judge however did not choose to interfere with the direction to reinstate.

12. We have also perused the charges. Even according to the learned counsel for the appellant, there are few grave charges. In answer to our query as which would be the grave charges, learned counsel for the appellant points out charges 16 and 17. Learned Senior Counsel for the 4th respondent has pointed out that complainants therein are the close relatives of the manager. That apart, in the circumstances of the case and having regard to the charges as a whole, we do not think that we are persuaded to hold that the teacher should not be directed to be reinstated as was done by the Government in revision. Therefore, we are not inclined to agree with the contention of the learned counsel for the appellant that in the circumstances of the case, 4th respondent should not be directed to be reinstated.

13. Then there remains the question of impact of Rule 67 (4) and (5) of the KER. Rule 67(4) contemplates a situation where in an appeal or revision, the appellate or revisional authority set aside the punishment and remits the matter back for further enquiry. In this case, there is no scope for applying Rule 67(4) of the KER as such. This is a case where the Government on revision set aside the enquiry report and punishment and left the matter there. What is more it has expressly ordered the reinstatement of the 4th respondent. Government did not direct further enquiry. Quite clearly, Rule 67(4) is not attracted as ingredients of Sub-rules (4) and (5) are not fulfilled and as the case is not remitted for further enquiry or action. If at all there is a direction, it is quite inconsistent with the continuance of suspension as the direction is that he should be reinstated. Therefore, we see no scope for applying Rule 67(4) of the KER.

14. Passing on to Sub-rule (5) of Rule 67 of Chapter XIVA of the KER, that again contemplates a situation where the penalty of dismissal or removal or compulsory retirement imposed on a teacher is set aside or declared or rendered void in consequence of or by a decision of a court of law and the authority on a consideration of circumstances deciding to hold a further enquiry. Therefore, there are two indispensable requirements. In the first place, the penalties which are mentioned therein must be imposed on a teacher, must be interfered with by way of setting aside the same or declaring or rendering void on the basis of a decision of a court of law. In this case, the penalty or compulsory retirement imposed on 4th respondent has not been set aside or declared or rendered void on the basis of a decision of this Court. It was set aside on the basis of the decision of the statutory authority, viz., the revisional authority under Rule 92 of Chapter XIVA of the KER. Therefore, the indispensable requirement for invoking Sub-rule (5) of Rule 67 also is not present. There is a contention that what has happened in this case is that the learned Single Judge has directed or permitted

the appellant to do what ought to have been done by the revisional authority and therefore, this is a case where we should invoke Sub-rules (4) and (5) of Rule 67 of Chapter XIVA of the KER. We must remember that this is a case where by virtue of these provisions, the teacher is deemed to be in suspension despite the penalty being set aside. Such a provision must be strictly interpreted as it has the effect of taking away the right of the teacher. An order of deemed suspension after the penalty itself is interfered with is contemplated only when the elements of Sub-rules (4) and (5) of Rule 67 of Chapter XIVA of the KER are strictly fulfilled and there cannot be any scope for a *causis omissus* as we cannot contemplate a situation which is not intended by the rule maker having regard to the clear phraseology used in these provisions.

15. Therefore, we would think that there cannot be any question of permitting the appellant to draw support from Sub-rules (4) and (5) of Rule 67 of Chapter XIVA of the KER. We are of the view that the appellant has not made out any case at all for interference. Appeal fails. It is dismissed.

Lastly, learned counsel for the appellant made a request that the period of time within which the appellant is to seek holding of further enquiry may be extended. In the circumstances of the case, we are inclined to grant the said request. In the circumstances, we grant ten days time from today for making the request to the Government.