

(2006) 07 KL CK 0055
In the High Court Of Kerala
Case No : W.A. No"s. 450 and 570 of 2006

Radhamma

APPELLANT

Vs

Thulasi Bai

RESPONDENT

Date of Decision : 04-07-2006

Acts Referred:

Kerala Education Rules, 1959 — Rule 67, 75, 75(9)

Citation : (2006) 3 KLT 909

Hon'ble Judges : K.P. Balachandran, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : Philip M. Varughese, S. Shyam and N.K. Karnis, for the Appellant;
K.R.B. Kaimal, B. Unnikrishna Kaimal, K.K. Chandran Pillai, S.K. Mohammed
Sajeer and Waheed Babu, Government Pleder, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The first among these two Writ Appeals is by the Manager of an aided school, the second respondent in the Original Petition. The second is by a teacher who might be affected by the implementation of the judgment in that Original Petition.

2. The Writ Petitioner, the first respondent in the Writ Appeals, while working as Headmistress was placed under suspension on 2.9.02, on the basis of certain allegations as contained in Ext.Pl. This suspension was allowed to be continued beyond 15 days as enjoined in Rule 67 Chap.XIV-A KER, as per Ext.P4 order of the Deputy Director, the first respondent in the Writ Petition. Challenging the suspension order as well as Ext.P4 the writ petitioner approached earlier, in O.P.No. 34944/02, which resulted in Ext.P5 judgment. In Ext.PS, This court directed expedite completion of the formal enquiry and finalisation of the disciplinary proceedings. As the incumbent was a Headmistress the formal enquiry in a disciplinary proceedings as enjoined in Rule 75 Chap. XIV-A KER had to be conducted by the Deputy Director. The Deputy Director, said to be in compliance with Ext.P5, conducted an enquiry in a manner as chosen by him and

drew up Ext.P6 proceedings. Taking Ext.P6 as a report of enquiry, the appellant/ Manager proposed a punishment of reduction to the lower rank. Ext.P7 show cause notice was issued on the writ petitioner with this proposal. When the show cause notice was served, the writ petitioner approached This court contending that in order to serve a show cause, not only there was no formal enquiry at all nor an enquiry report. There was no proper compliance of Ext.P5, she contended. During the pendency of the said Original Petition, Ext.P9 final order in the disciplinary action was passed. Thereupon the Writ Petition was amended incorporating challenge against Ext.P9 as well.

3. The learned single Judge considered the case, heard the parties on either side in the Writ Petition and quashed Ext.P6 proceedings of the Deputy Director and Ext.P9 order of the Manager and directed reinstatement of the teacher as principal. In the meantime, on the basis of Ext.P9 order, the writ petitioner had already joined duty in the reverted post. In W.A. No. 570/06, the manager contends that merely because the Deputy Director had misconducted himself in holding an enquiry as directed in Ext.P5, the disciplinary proceedings shall not come to an end and the manager shall not be found fault with.

4. In W.A.No. 450/06 filed by the teacher, who is now occupying the post of Headmistress, it is contended that she had already acquired a vested right to hold that post. The writ petitioner joined duty in the reverted post in implementation of Ext.P9 order of punishment. In such circumstances even if the enquiry has been found faulty and the consequential order imposing penalty thus being unsustainable, she cannot displace the appellant teacher, it is contended.

5. It is further submitted by both the appellants that there is no illegality in the enquiry conducted by the Deputy Director and the consequential order of punishment passed as per Ext.P9 by the appellant manager.

6. That the writ petitioner was placed under suspension on 2.9.02 is not disputed and that a disciplinary proceeding had been initiated by serving charge memo is also not disputed. In O.P.No. 34944702 the teacher had impugned the suspension order as well as its continuance. This fact is also not disputed. Though no relief regarding suspension had been granted to the writ petitioner, while disposing O.P.No. 34944/02, This court thought it fit to issue a direction to expedite the disciplinary proceedings so that the suspension can come to an end one way or other. Accordingly, in Ext.P5 a time frame of two months had been fixed to finalise the disciplinary action. This is also not disputed.

7. The disciplinary action can be finalised only after conducting a formal enquiry as envisaged under Rule 75 Chap. XIV-A KER. The delinquent being a Headmistress, necessarily, the formal enquiry has to be conducted by the Deputy Director, the first respondent in the Writ Petition. A reading of Ext.P6 reveals that the Deputy Director had gone to the school for conducting an enquiry and that he had obtained statements from 7 persons and the writ petitioner and came to his own conclusion that, though some allegations are convincing, the manager

and the teacher had to settle the suspension case at any rate within 3 months from the date of that order. Ext.P6 is dated 14.2.2003. It is referring to this Ext.P6, that Ext.P7 proceedings has been issued by the manager in the form of a show cause notice to revert her to the post of an Assistant Teacher. The writ petitioner replied, showing cause against the proposal in Ext.P8. Finally Ext.P9 order has been passed imposing the penalty of reduction to the post of Assistant Teacher. A reading of Ext.P7 show cause notice reveals that, that notice had been issued based on the alleged finding of guilt stated to be contained in Ext. P6. That means the manager, the appellant in W.A. No. 570/06 had taken Ext.P6 as an enquiry report.

8. Enquiry report can be drawn by an inquiring authority, after conducting a formal enquiry as envisaged in Rule 75 Chap.XIV-A KER. For that, the witnesses in support of the charges have to be examined and the delinquent has to be given an opportunity to cross examine the said witnesses. Ext.P6 does not reveal that such proceedings had been conducted with due opportunity to the delinquent to cross examine any of the persons from whom the Deputy Director collected statements. More over, Rule 75(9)(vi) reveals that the report of inquiry shall contain finding on each of the charges leveled against the delinquent concerned with supporting reasons for the findings. Ext.P6 does not contain any finding at all on any count of the charges, much less the supporting reasons. Necessarily, there was no proper enquiry. There was thus no report of an enquiry to enable the manager to proceed further by issuing a show cause notice and thereafter to impose a penalty. It was in the above circumstances the learned single Judge had quashed Ext.P6 as well as consequential order Ext.P9. Necessarily the finding of the learned single Judge that there was no enquiry to call one so, and to impose a punishment, was perfectly justified.

9. In this regard the contention of the appellant in W.A. No. 450/06 who now occupies the post of Headmistress-Principal has to be considered. She assumed charge as Headmistress on retirement of the prior incumbent. The prior incumbent was posted as Headmistress in the vacancy occurred due to the suspension of the writ petitioner on 2.9.2002. Necessarily, neither the predecessor of the appellant teacher nor the appellant teacher hold a lien in the post. She can only be termed as a temporary appointee in the suspension vacancy. The suspension had come to an end when the petitioner has been reverted and reinstated as Assistant Teacher. When the reversion is unsustainable because of the fault in the enquiry report, necessarily the reinstatement survives. There cannot have a deemed suspension as there was no order of dismissal, removal or compulsory retirement from service. So the situation in this case will not come within Sub-rules 4 or 5 of Rule 67 Chap.XIV-A KER. So, the reinstatement shall be to the post from which she had been placed under suspension. Necessarily, the direction of the learned single Judge to reinstate the writ petitioner to the post of Headmistress can in no way be found unsustainable.

10. The contention of the Manager that, he shall be allowed to continue the disciplinary action need not be dealt with because, the learned single Judge is not seen to have restrained the Manager, in any way. He can deal with it in accordance with law and as law permits.