

(2009) 10 KL CK 0028

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19878 of 2006

Rajeev, G. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Kerala Education Rules, 1959 — Rule 12, 12B, 12C, 12D, 12E

Citation : (2009) 10 KL CK 0028

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : J. Harikumar and Harikumar, S, for the Appellant; T.B. Remani, Government Pleader and Suman Chakravarthy, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The Petitioners are working as Teachers as well as Clerk in the L.V. High School, Pothencode. They are aggrieved by the order abolishing the post of the Petitioners in the academic year 1997-98. The Government confirmed the same, dismissing the revision petition filed by the Petitioners.

2. Ext. P-1 is the order dated 31-10-1997 of the 4th Respondent fixing the strength for the academic year 1997-1998. It was fixed after a visit by the District Educational Officer and after a higher level verification effected by the Deputy Director of Education. Accordingly, 35 class divisions were sanctioned and in accordance with the staff strength, the Petitioners' appointments were approved also.

3. A super check cell visited the school on 3-11-1997. By Ext. P-2 dated 22-5-1998 a show cause notice was issued by the second Respondent Director of Public Instruction. The notice contained various details regarding bogus admission and accordingly, it was proposed to abolish 12th division in Standard VIII and the consequent posts of one H.S.A. (core subject), one H.S.A.

(Malayalam), one H.S.A. (Hindi), one L.D. Clerk and one F.T.C.M. with effect from 15-7-1997. After submission of the reply by the Manager and after hearing parties, by Ext. P-3 it was confirmed. But while confirming the same, it was also ordered that the teachers who had worked against the irregular posts are entitled to their salary for the period they had actually worked. But the service rendered against these irregular posts from 15-7-1997 will not be counted for any service benefits such as leave, increment, vacation salary, etc.

4. By Ext. P-4, the representation filed by the Manager was dismissed by the Government. This was challenged in O.P. No. 10678/2000 which was disposed of with a direction to reconsider the matter in the light of the decision of this Court in Sali George Vs. State of Kerala and Others, and other Govt. Orders produced by the Petitioner. Again, the revision petition stands dismissed by Ext. P-5.

5. Heard Shri J. Harikumar, learned Counsel for the Petitioners and learned Govt. Pleader appearing for the Respondents.

6. Learned Counsel for the Petitioners submitted that the staff fixation was effected for 1997-1998 as ordered in Ext. P-I. The notice Ext. P-2 and Ext. P-3 order passed are after the conclusion of the academic year only in 1998 and therefore the same are beyond the time-limit fixed by the statute and cannot have any legal effect at all. Reliance is placed on the decision of this Court in Sali George Vs. State of Kerala and Others, .

7. Learned Govt. Pleader submitted that herein, Rules 12 and 15 of Chapter XXIII, K.E.R. will not apply and as far as the exercise of power under Rule 12 E(3) and Rule 16 of the said Chapter is concerned, the time-limit fixed under Rule 15 will not apply.

8. Relying upon the decision of this Court in W.P. (C) No. 8162/2009 which followed the decision in Sali George's case (supra), learned Counsel for the Petitioners submitted that the situation herein is identical.

9. A reference to the relevant Rules is therefore necessary. Rule 12 of Chapter XXIII deals with fixing of strength of teaching staff. Rule 12B provides that the orders of staff fixation shall take effect on the 15th of July every year. Rule 12C relates to scrutiny of staff fixation by higher officers. Therein also, provisions have been made to the effect that revised orders shall be passed before the end of August every year when it is exercised by the District Educational Officer against the orders passed by the Asst. Educational Officer. Sub-rule (2) provides a time-limit up to the end of August every year when the orders are passed by the District Educational Officer and the scrutiny is made by the Deputy Director of Education. Rule 12D relates to appeal against staff fixation. Rule 12E provides for revision by the Director of Public Instruction against the orders of the Deputy Director of Education. Sub-rule (2) provides that "no revision preferred under this chapter shall be entertained unless it is preferred within 30 days of the date of receipt of the order appealed against" and the first proviso confers power to condone delay also. Sub-rule (3) is important here, which is extracted below:

The Director may on his own motion or on the basis of the report of the authorised officer under Rule 16 including the evidence and other details, if any, collected by him or otherwise call for the records of the orders relating to fixation of staff strength issued by Subordinate Officers and revise the same.

10. Sub-rule 15 confers powers on the Educational Officers to refax the staff strength, if they are satisfied for valid and sufficient reasons that the same was obtained by bogus attendance or by fraud or misrepresentation. But it is provided therein that they shall be competent to refax the staff strength "at any time during the course of the year". Herein, obviously the Director of Public Instruction has exercised the power under Rule 12E(3) read with Rule 16. Rule 16 contains a non obstinate clause and it allows the officer authorised by the Government in this behalf to enter any school or any office under the Education Department, call for the relevant records and make enquiries to find out whether any irregularity has been committed in staff fixation. It is also provided that in the course of the said enquiry the authorised officer can inspect schools, verify the strength of pupils, check the area of class rooms, call for records from Headmasters, Managers and Educational Officers and do such other acts as may be deemed necessary. As soon as the enquiry is over, the authorised officer shall send a detailed report thereon to the Director of Public Instruction for appropriate action in the matter.

11. A Division Bench of this Court in *Beena v. State of Kerala* 2000 (2) KLT 545 examined the modalities under which the power under Rules 12E(3) and 16 of Chapter XXIII, K.E.R., have to be exercised. It was held thus in para 18:

Legislature has employed non obstinate clause in Rule 16 in order to see that the said Rule has overriding effect over other provisions of Chapter XXIII. A non obstinate clause is normally appended to a section or rule in the beginning with a view to give the enacting part of the section or rule an overriding effect over other provisions, or the Act or Rules contained in a statute. Rule 16 enables the Director of Public Instruction to take appropriate action in case he detects any irregularity on the basis of the report submitted by the authorised officer. While exercising powers under Rule 16 Director is not exercising any revisional power. Power is conferred on him so as to take appropriate action against the school authorities, which is not a revisional power. Power of revision of staff strength is specifically conferred on the Director under Rule 12E(1) against the orders of the Deputy Directors (Education). Rule 12E(3) also confers suo motu power on the Director or on the basis of report of the Authorised Officer under Rule 16, to revise staff fixation orders issued by the subordinate authorities.

12. It is important to notice that Rule 16 confers an overriding power. No particular time-limit is fixed in the rule itself for action under it. Unlike the powers of revision under Rule 12E(1), under Sub-rule (3) of Rule 12E also, the Director can suo motu exercise the power of revision on his own motion or on the basis of the report of the authorised Officer under Rule 16. No time-limit is fixed. Thus, there is no restriction to the effect that the said powers can be exercised

only during the academic year to which the staff strength stands fixed. The proceedings Ext. P-3 shows that the staff strength fixed was physically verified by the super check cell on 3-11-1997. Therefore, it is only in terms of the powers under Rule 16 that the report has been submitted by the super check cell. In such cases, the time-limit provided under Rule 15 need not apply.

13. In *Sali George Vs. State of Kerala and Others*, , Rule 15 of Chapter XXIII K.E.R. was interpreted and it was held that refixation order can be passed at any time during the course of the year.

14. Therefore, the situation available under the present case is totally different. In W.P. (C) No. 8162/2009 also, the question considered was under Rule 15 of Chapter XXIII. In that view of the matter, the question is whether the argument raised by the learned Counsel for the Petitioner could be accepted. As noticed already, there is no stipulation that the exercise of power under Rule 12E(3) read with Rule 16 should not go beyond the academic year concerned. What is being exercised is the power of revision by the Director of Public Instruction. Therefore, since the powers conferred and the provisions are different, the interpretation placed on Rule 15 of Chapter XXIII cannot be adopted herein.

15. Learned Counsel for the Petitioners further submitted that unless a reasonable time is fixed as available in Rule 15, the exercise of power can only be termed as arbitrary. The Petitioners have validly continued under the orders of approval and after the end of the academic year, the power cannot be exercised. Herein, two things are important. The order Ext. P-3 does not direct any recovery of salary paid to the Petitioners. The Government also has not directed any recovery of the amount from the Petitioners. The observation made therein is that it should be recovered from the persons responsible. The only stipulation in Ext. P-3 is that the service rendered in the irregular post from 15-7-1997 will not be counted for any service benefits such as leave, increment, vacation salary, etc.

16. As regards the merits of the matter, it is clear from Ext. P-3 that the entire details were verified by the super check cell. It was found that there had been bogus admission. These aspects have been confirmed by the Government also by Ext. P-5 order. The said findings being findings on questions of fact, cannot be interfered with in these proceedings. Learned Counsel for the Petitioners produced before me for perusal an order passed in revision dated 16-11-2000 issued by the Government in respect of Smt. T.K. Sarojini, Headmistress, Vaikkilasseri U.P.S., Kozhikode. Therein, the Government took the view that staff fixation of the year 1995-1996 which was refixed by the proceedings of the Director of Public Instruction dated 22-12-1998, even if the same is under Rule 12E(3) and Rule 16 of Chapter XXIII K.E.R., cannot be sustained. In fact, the said order has not been produced in the Writ Petition for enabling the Respondents to answer the same. Further, an order issued in the case of an individual school cannot be relied upon for interpreting the relevant provisions of the Rules in Chapter XXIII K.E.R.

17. In that view of the matter, the Writ Petition fails and the same is dismissed. It is made clear that the question considered herein is only in respect of the academic year 1997-1998 and this will not reflect upon the rights of the Petitioners for pursuing the matter for the subsequent years. No costs.