
(2004) 02 KL CK 0046
In the High Court Of Kerala
Case No : O.P. No. 5460 of 1995 (Y)

Sali George

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Kerala Education Rules, 1959 — Rule 12(4), 15

Citation : (2004) 2 KLJ 469 : (2004) 2 KLT 1051

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : Jose J. Mathaikal, for the Appellant; D. Renu (GP), for the Respondent

Final Decision : Dismissed

Judgement

A.K. Basheer, J.—Can the educational authorities under the Kerala Education Act and Rules reduce the number of class divisions and cancel the post of School Assistant in an Aided School in midstream during the academic year? This is the short question raised by the petitioner in this Original Petition. A brief reference to the essential facts is necessary to consider this issue. The petitioner is stated to be working as Lower Primary School Assistant in the aided school under the management of respondent No. 3. She states that she is a Rule 51-A claimant as provided under Chapter XIV-A of the Kerala Educational Rules.

2. By Ext. P1 proceedings of the Asst. Educational Officer, Thodupuzha dated July 30, 1993, the staff strength and class divisions in St. Peter's U.P. School for the academic year 1993-94 were fixed. The staff fixation was done by respondent No. 2 after visiting the school on June 28, 1993. Two divisions were sanctioned for Standard III since it was found that the roll strength was 52. But later it was reported by the Headmaster of the school that three students from Standard III had left the school after obtaining Transfer Certificates. Consequently, a re-visit was held by the Educational Officer concerned. On verification of the roll strength in Standard III, it was found that there were only 49 students. The relevant

records were also persued by the Educational Officer. He was satisfied that the Headmaster of the school had purposefully admitted three students from another school to increase the roll strength at the time of his first visit in order to get an additional division in Standard III. After staff fixation, these three students were given Transfer Certificates to rejoin their previous institutions. Therefore the Educational Authority was of the view that the division and staff strength in the school had to be refixed. The Manager, Headmaster and the teacher who was likely to be affected (petitioner) were afforded an opportunity of being heard. It was thereafter that Ext. P2 order dated January 31, 1994 was issued by respondent No. 2 abolishing one of the two divisions in Standard III. It was further ordered that one post of LPSA be cancelled and the juniormost teacher in the primary section be removed from service. A revision petition was filed by the Manager of the school (respondent No. 3) before the Government against the above order. The Government, by Ext. P5 order dated January 28, 1995 upheld the order of the Asst. Educational Officer. The contention of the Manager that the Educational Officer had no statutory right or authority to reduce one division in Standard III and also to cancel one post of LPSA in the school for the academic year 1993-94 was rejected. In this Original Petition the prayer is to issue a writ of certiorari to quash Exts. P2 and P5 orders. There is a further prayer for a declaration that the petitioner is entitled to continue in service in the school and to get salary as Lower Primary School Assistant with effect from June 7, 1993 onwards.

3. In the counter affidavit filed by respondent No. 2, it is contended that Ext. P2 order was passed strictly in accordance with the provisions contained in Rule 15 of Chapter XXIII K.E.R. It is further stated that at the time when the Educational Officer visited the school for staff fixation, there were 52 students in Standard III. Therefore, two divisions were sanctioned in Standard III for the academic year 1993-94. Later, the Headmaster of the school had reported that three students from Standard III had left the school. A "re-visit" was held on December 22, 1993. It was found that the roll strength in Standard III had come down to 49. Therefore, the number of divisions in Standard III had to be reduced. Accordingly, one division was reduced. On the reduction of division, the number of LPSA had also to be reduced. It was, thus, that Ext. P2 order was issued reducing the number of divisions as well as the staff strength. It is also stated that the re-visit was held as per the directions issued by the Director of Public Instruction in his letter No. SC (1) 84052/93 dated 23-11-1993. Exts. P2 and P5 orders were stoutly defended by respondent No. 2.

4. I have heard learned counsel for the petitioner and learned Govt. Pleader.

5. The trust of the argument of the learned counsel for the petitioner is that the provisions contained in Rule 12(4) of Chapter XXIII K.E.R. have been violated while passing the impugned orders. It is submitted that Rule 12(4) mandates that no re-visit or refixation shall be done after 31st December of the academic year. It is contended that in this case, Ext. P2 order was passed on January

31,1994. In fact, the re-visit and re-fixation had to be completed on or before December 31, 1993.

6. Yet another contention raised by the petitioner is that there is violation of Rule 12C(3) of Chapter XXIII K.E.R. The above sub-rule provides that any order by the District Educational Officer or the Deputy Director of Education as the case may be, revising the fixation orders shall not be passed unless an opportunity is given to the person who is affected thereby. Such orders shall take effect from the date of the order. In this case, respondent No. 2 had directed in Ext. P2 order that the cancellation of one division and one post of LPSA shall take effect from August 12,1993. This, according to the learned counsel, is in clear violation of the statutory mandate contained in Rule 12C(3).

7. I am not inclined to accept both the above contentions in view of Rule 15 of Chapter XXIII K.E.R. to which I will refer a little later.

8. It is not in dispute that at the time of original fixation of the staff strength, there were 52 students on the roll in Standard III. It is also admitted by the petitioner and the Manager that the roll strength had come down to 49 immediately after the order of staff fixation was issued. Even according to the management, three students had obtained Transfer Certificates and left the school. Though it was contended by the management that these three students had left the school due to change of residence, it was found by the Educational authorities that it was not so. Ext. P2 order clearly shows that the Asst. Educational Officer had taken the statements of the three students in question in the presence of the head teachers of the schools concerned. It was revealed that initially, Transfer Certificates were issued to these students from their "parent schools" to the school under respondent No. 3 before the visit made by the Educational Officer to fix the division and staff strength. Immediately after the order of staff fixation was issued, these 3 students got a transfer back to their parent school. The names of these students have been specifically mentioned in Ext. P2 order. The Educational Officer had passed Ext. P2 order after hearing the Manager, the Headmaster and also the petitioner who was likely to be affected. It is revealed from the impugned order that a detailed enquiry was conducted after making the re-visit. Relevant records were also perused and verified. The Educational Officer had also visited the parent school to which the three students were transferred. Thus, it was clearly established that respondent No. 3 had managed bogus admission of three students with a view to boost the roll strength in order to get an additional division and staff in the school.

9. The crucial question is whether there was violation of the statutory mandates in Rule 12(4) and 12C(3) of K.E.R.

10. It is true that in Rule 12(4) it is provided that the Government may direct the Educational Officers to make a "re-visit" to any school and to re-fix the strength of teaching and non-teaching staff "if substantial number of pupils have obtained Transfer Certificates and left the school". It is stipulated in Rule 12(4) that no re-

visit or re-fixation shall be done after 31st of December each year. This stipulation is apparently incorporated with a view to ensure that there is no uncertainty about the strength of the staff in the school. Similarly the predominant objective is that the curriculum of the school for the academic year is not affected in any manner.

11. Rule 12(4) contemplates or envisages a normal situation where the effective strength of a division or divisions is likely to be diminished due to some unavoidable reason. There may be substantial reduction in the number of students if several of them leave the institution after obtaining Transfer Certificates for genuine reasons. In such an eventuality the mandate in Rule 12(4) that the "re-visit" or refixation shall be done before 31st December of the academic year is undoubtedly irreconcilable and inviolable.

12. But the situation will be totally different when Rule 15 of Chapter XXIII comes into play.

R. 15. Notwithstanding anything contained in these rules, if Educational Officers are satisfied for valid and sufficient reasons to be recorded in writing that the fixation of staff strength was obtained by bogus admission or attendance or by fraud or mis-representation, and the like the Educational Officers shall be competent to refix the staff strength at any time during the course of the year:

Provided that no order under this rule shall be issued without notice to the parties who are likely to be affected thereby

(emphasis supplied)

13. The above rule starts with a non-obstante clause. Thus it gives an overriding effect to all other contrary provisions in the Rules in Chapter XXIII. The rule postulates that the Educational Officers shall be competent to refix the staff strength "at any time during the course of the year" if the staff strength was obtained "by bogus admission or attendance or by fraud or misrepresentation and the like". The only rider is that the officers shall be satisfied, for valid and sufficient reasons to be recorded in writing, about such act of fraud, misrepresentation or bogus admission of students.

14. In this case, the educational authorities have concurrently found, on facts, that the manager and the Headmaster had obtained the order of staff fixation by fraudulent and dubious methods. It is evident from the records that fraud had vitiated the entire proceeding of staff fixation by which the management (respondent No. 3) had tried to derive an undue advantage. The school authorities had used innocent young children to achieve their deceitful object. It is nothing but criminal deception. The perpetrators of such acts of fraud do not deserve any sympathy. Strictly speaking, the petitioner who got the appointment as a teacher in the school pursuant to the above fixation order, might have been innocent. But she cannot be permitted to hold a post which has no legal or procedural sanctity and existence.

15. In view of the overriding effect of Rule 15 to Rule 12(4) in the KER, it is not open to the petitioner to contend that the revised staff fixation order issued after December 31, 1994 is not legally valid. If it is proved that the original order of staff fixation was obtained by fraud, misrepresentation, etc. and also by means of bogus admission, the educational authorities are competent to refix the staff and division strength even beyond December 31 of the year concerned. Such orders can be passed "at any time during the course of the year." Therefore, the contention of the petitioner in this regard is repelled.

16. The next contention raised by the petitioner is that the order of refixation is in violation of Rule 12C(3) of KER. It is urged that the authority was not entitled to make the order retrospective in operation.

17. In Rule 12C(3) it is provided that any revision of fixation order shall take effect from the date of the order. It is pointed out by the learned counsel that the impugned order (Ext. P2) was passed by the Assistant Educational Officer on January 31, 1994. But it was directed in the order that the abolition of the post of Lower Primary Assistant would take effect from August 12, 1993. It is contended that an order under Rule 12-C cannot be passed with retrospective effect.

18. But it is to be noted that Rule 12C deals with scrutiny of staff fixation by higher officers. The District Educational Officer or the Deputy Director of Education is bound to scrutinise all orders passed by their subordinate officers in the primary school and High School respectively. Rule 12C refers to scrutiny of original orders of fixation. What is contemplated under the Rule is a routine scrutiny of the orders of fixation passed by subordinate officers. It is true that Rule 12C(3) provides that scrutiny by higher officials shall take effect from the date of order. But the said sub-rule cannot be made applicable in the case on hand since the order impugned is not an order passed invoking the power of scrutiny. It is an order of refixation passed under Rule 15 of Chapter XXIII K.E.R. Such an order can be passed "at any time during the course of the year." In that view of the matter, there is no substance in the contention raised by the petitioner. A perusal of Exts. P2 and P5 orders clearly reveals that all the affected parties including the petitioner were heard. The relevant records were scrutinised by the authorities meticulously. Reasons in support of the orders were recorded satisfactorily. The orders were passed after complying with all the rules and regulations, and in particular, all principles of natural justice. I have no hesitation to agree with the findings of the educational authorities. In the above view of the matter, there is no illegality, or irregularity in the orders impugned. There is no merit in the contention raised by the petitioner that Exts. P2 and P5 orders are bad in law and vitiated.

Having regard to the entire facts and circumstances, I am satisfied that the Original Petition is liable to be dismissed. I do so. No costs.