

(2008) 09 KL CK 0016
In the High Court Of Kerala
Case No : WP (C) No. 6135 of 2008 (E)

Shamna B.

APPELLANT

Vs

The Manager, Hemambika Sanskrit High School and Others

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Kerala Education Act, 1958 — Section 10, 11, 12, 12(2), 7
Kerala Education Rules, 1959 — Rule 3, 3(4), 67(1), 8, 8(1)

Citation : (2009) 1 KLJ 47

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : N.N. Sugunapalan and S. Sujin, for the Appellant; V. Chitambaresh T.C. Suresh Menon, Jibu P. Thomas, P.S. Appu and T.B. Remani, GP, for the Respondent

Judgement

Antony Dominic, J.—The issue raised in these writ petitions being identical, these writ petitions are disposed of by this common judgment.

2. The petitioner in W.P.C. No. 6135 of 2008 was appointed as U.P.S.A in the Kallekulangara Hemarnbika Sanskrit High School as per Ext.P1 order issued by the Manager of the school. In so far as W.P.C. No. 5770 of 2008 in concerned, the petitioner therein was also appointed as H.S.A. (English) as per Ext.P1 order of appointment, which was also issued by the Manager. The school is coming under the Hindu Religious and Charitable Endowments (Administration) Department and Ext.P2 proceeding was issued by the Commissioner, H.R. & C.E Department, Kozhikode on 25.01.2008 stating that in view of the complaints that were received, he was prima facie satisfied that the regularity and correctness of the matter needs to be enquired into and that the appointment of the petitioners shall be subject to the result of the enquiry proceedings. He called upon the Executive Officer, who is the Manager of the school, to produce the entire records of the selection process and posted the matter for further enquiry. Accordingly, notice was issued to the petitioner, Executive Officer, being the Manager and others and ultimately in Ext.P3 order in W.P.C. No. 6135 of 2008 (Ext.P4 in

W.P.C. No. 5770 of 2008), the Commissioner, H.R & C.E has entered the following finding:

Above facts leads to the following conclusion:

1. Selection process was biased and there was undue haste in issuing order and joining duty by the selectees.
2. Opportunity was denied to eligible candidates to participate in the interview which is an omission as stated by the Chairman of the interview board.
3. There is no record showing the criteria adopted for awarding marks vitiating the criteria selection.
4. Subject expert has not awarded any marks in the interview.
5. The selection has not been made in a transparent manner.
6. The Devaswom has sent the appointment order on 12.01.2008 under certificate of posting, which the selectees stated to have received on the same day by ordinary post even though they are residing 20 kms away.
7. The selection of teachers has been decided arbitrarily by the selection committee basing on consideration other than merit.

In the circumstances the whole selection process for appointment for the post of HSA and UPSA in Hemambika Sanskrit High School through the interview is hereby annulled with direction to conduct a fresh interview including all eligible candidates as per rules in public appointment and transparently. The criteria adopted shall be discernible from records. The Executive Officer is also directed to cancel the appointment order issued by him with immediate effect.

It is challenging Ext.P3 that these writ petitions have been filed.

3. The main contention that is raised before me is that the Commissioner who issued Ext.P3 has acted without jurisdiction and interfered with the appointment made by the Manager of the school, exercising powers under the provisions of the Kerala Education Rules. It is contended that though the Executive Officer of the H.R & C.E Department has been appointed as the Manager, once such appointment is made, his powers are regulated by the provisions of the Kerala Education Act and the Rules framed thereunder. According to the petitioners, if at all there is any cause for any proceeding or any action to be taken, the remedy available can only be under the Kerala Education Act and the Rules and Section 18 of the H.R & C.E Act on the strength of which Ext.P3 has been issued is totally inapplicable. It is also stated that pursuant to the orders of appointment referred to above, Manager had submitted proposal to the Controlling Officer being the District Educational Officer, Palakkad for approval and because of the proceedings issued by the Commissioner, the matter is still kept pending.

4. On the other hand, learned Government Pleader would invite my attention to Ext.R3(a), a scheme framed under the H.R & C.E Act in so far as the temple is

concerned, and which also delineates the powers of the Executive Officer who has since been appointed as the Manager, Reference is also made to Ext.R3(b), proceedings of the Commissioner, which provides for the manner in which selection and appointment is to be made. It is stated that the temple being governed by the H.R & C.E Act and the Manager being the Executive Officer, the facts disclosed misconduct committed by the Executive Officer and therefore, the Commissioner is well within his powers u/s 18 of the Act to issue the impugned order. It is on this basis that learned Government Pleader seeks to sustain Ext.P3....

5. It is true that the school comes within the purview of the H.R & C.E Act and the Executive Officer of H.R & C.E Department has been appointed as Manager of the school. The powers and responsibilities of the Manager are provided in the provisions contained in the Kerala Education Act and the Rules framed thereunder. Section 7 of the Kerala Education Act provides that any educational agency may appoint any person to be the manager of an aided school under the Act, subject to the approval of such officer as may be authorised by the Government in this behalf. Duties and responsibilities of the Manager are also enumerated in this provision. Rule 3 of Chapter III provides that management of every aided school may be vested by the Educational Agency in a person who shall be referred to as the Manager and who shall be responsible to the department for the management of the institution. Sub-rule (4) of Rule 3 provides that the Educational Agency shall be bound by the acts of the Manager.

6. Section 11 of the Act provides that subject to the rules and conditions laid down by the Government, teachers of aided schools shall be appointed by the managers of such schools from among persons who possess the qualification prescribed u/s 10. A perusal of the various provisions contained in the Kerala Education Act and the Rules framed thereunder would show that the Legislature has expressly conferred powers only on the Manager with regard to the management of the school. There is no provision in the rule providing for vesting of powers in any authority other than or in addition to the Manager.

7. In the context of an order of suspension issued by a Manager of an aided school, this Court had occasion to consider the extent of power wielded by the Manager in the decision in Mamoo v. Manager, Mooveri M.L.P School 1968 KLT 537. Paragraph 7 of the judgment, which is relevant in this context, reads as follows:

7. I think the Act recognised and affirmed the power of the manager to appoint teachers in aided schools, subject to the rules and conditions laid down by Government, and to dismiss, or suspend them subject to the restriction mentioned in the sub-section. Section 11 of the Act reads:

11. Appointment of teachers in aided schools:- Subject to the rules and conditions laid down by the Government, teachers of aided schools shall be appointed by the managers of such schools from among persons who possess

the qualifications prescribed u/s 10.

The power of appointment generally carries with it the power of dismissal. Here, it is not left to be inferred by mere implication. It is expressly provided in Sub-section (2) of Section 12. The underlying purpose of the legislature in enacting Sections 11 and 12 was to put restrictions upon the exercise of the power of appointment, dismissal or suspension by the manager. It was not contended that the power was exercised by any agency other than the manager, when the Act came into force. There is no provision in the Act visualising the vesting of the power in any other agency. Then, why not I presume that the purpose of the Legislature was to recognise and affirm the power as the exclusive power of the manager but subject to the restriction? If the object of the Legislature was that the manager alone is to have the power of appointment, dismissal or suspension, no doubt, subject to the restriction envisaged in the sub-section, is it competent for the rule making authority authorised to frame rules to carry out the provisions of the Act to frame a rule vesting concurrent powers in this behalf in any other Agency? I think not. The question is not whether the power of the manager to suspend u/s 12(2) can co-exist with the power of the educational authorities or Government under Rule 67(1), but whether the underlying purpose of the Legislature was to recognise and affirm the exclusive power of the manager in this behalf and put restrictions upon its unbridled exercise. If the paramount aim evinced by the Legislature was to recognise and affirm the pre-existing exclusive power of the manager in this behalf, a rule making authority cannot thwart it by a rule vesting the power concurrently in other agencies also. That will be repugnant to the legislative aim. The power cannot be wielded by a hand different from the hand recognised and affirmed by the Legislature. The theoretical possibility of the co-existence of this power in the abstract in diverse hands need not deter me in coming to this conclusion since the exclusive power in this behalf was in the manager when the Act was passed and a concurrent power was not intended to be given to any other agency by the Act. I think the policy of the Act was to affirm the pre-existing power of the manager in the matter of appointment, dismissal or suspension but subject it to the restrictions mentioned in the Act and not partition it among the manager, the educational authorities and Government, so that it may be exercised by all.

From this it is evident that the powers that are available to the Manager are to be exercised by him independently and that no other authority other than the Manager can interfere with the management of the school. If that be so, I cannot uphold the contention of the learned Government Pleader that the Commissioner, H.R & C.E Department has any power to interfere with the powers of the Manager appointed under the Kerala Education Act.

8. A reading of Ext.P3 shows that the Commissioner was exercising his power u/s 18 of the Act Section 18(1) of the Act provides that the Commissioner may call for and examine the records of any Deputy or Assistant Commissioner, of any Area Committee, or of any trustee not being the trustee of a math or a specific

endowment attached to a math, in respect of any proceeding under this Act to satisfy himself as to the regularity of such proceeding, or the correctness, legality or propriety of any decision or order passed therein. A reading of this provision makes it clear that the commissioner can initiate action in respect of any proceeding "under this Act" which means under the H.R & C.E Act. In this case the power exercised by the Manager is the power conferred on him under the Kerala Education Act and the Rules. Therefore, in my view, Section 18 of the H.R & C.E Act cannot be made.

9. That does not mean that everything that is done by the Manager including the appointments made by him, cannot be subjected to scrutiny by the authorities. This safeguard is provided in the Kerala Education Act itself. Rule 8 of Chapter XIV A deals with approval of appointment. Sub-rule (2) provides that the Educational Officer on receipt of the appointment order and other records mentioned in Sub-rule (1) may approve the appointment if it is in accordance with the provisions of the Act, the rules and orders issued by the Government or the Director from time to time. Therefore, the Educational Officer has a duty to satisfy himself that in the matter of appointment, provisions of the Act, Rules and orders issued by the Government and the Director have been complied with. This necessarily calls for an enquiry and in the process, it will be open to the Educational Officer to give notice not only to the Manager but also to the Commissioner and the appointees and the complainants whose names are mentioned in Ext.P3 and decide as to whether the appointment made by the Manager is a valid and deserving to be approved. Not only that even if the approval is granted, Rule 8A provides further remedy of revision to the Director. If at all there is any illegality, since these remedies are available to set at right, it cannot be concluded that action of the Manager is the final one. So much having said about the remedies under the K.E.R. I should also state that the protection extended to the Manager exercising powers under the K.E.R, does not provide him immunity from disciplinary action, if he misconducts himself. Therefore, if the Commissioner feels that the Executive Officer, while acting as Manager has disobeyed his orders, it is always open to him to proceed against him as is permissible in law.

10. Though the counsel for the petitioners have raised factual contentions on the correctness of the stand taken by the Commissioner in Ext.P3, in the nature of the finding that I have already arrived at, I do not think an adjudication on those factual issues is warranted, as otherwise, such findings will fetter the powers of the educational authorities.

11. Ext.P3 will therefore stand quashed. The District Educational Officer will take up the proposal for approval of the appointment of the petitioners submitted by the Manager with notice to all concerned and decide the matter in the light of the observations herein above.

The writ petitions are disposed of as above.