

(2004) 03 KL CK 0042
In the High Court Of Kerala
Case No : W.A. No. 857 of 2003

State of Kerala

APPELLANT

Vs

Jayasree

RESPONDENT

Date of Decision : 10-03-2004

Acts Referred:

Kerala Education Rules, 1959 — Rule 12, 12(2), 12C(2)

Citation : (2004) 2 ILR (Ker) 249 : (2004) 2 KLT 98

Hon'ble Judges : N.K. Sodhi, Acting C.J.; K.K. Denesan, J

Bench : Division Bench

Advocate : Roy Chacko, Government Pleader, for the Appellant; R. Rajasekharan Pillai, P. Haridas, T.K. Latheef, K.R. Sukumara Pillai and P.C. Saji, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, Ag.C.J.

1. Jayasree K.N. (hereinafter referred to as the petitioner) was appointed a Drawing Teacher in Seethathodu High School, Seethathodu, Pathanamthitta (for short the School) with effect from 1.6.1992. By order dated 19.8.1992 the District Educational Officer, Pathanamthitta fixed the staff strength of the School for the academic year 1992-93 and created one additional post of a Drawing Teacher in the pay Scale of Rs. 845-1570. On a scrutiny of the staff fixation, the Deputy Director (Education) by his order dated 30.1.1993 (copy of which is Ext.P3 on the record) abolished the newly, sanctioned post of the Drawing Teachers against which the petitioner had been appointed. Before passing the order a notice was issued to the Manager of the School and also to the petitioner who was the affected teacher to show cause why the post should not be abolished. The Deputy Director found that the School was having six Divisions in Standard VIII and five Divisions in Standard IX and that one period had been allotted to the Art subject Music/Drawing in Standard VIII and one period for the subject Music/Drawing/Craft & Sewing in Standard IX. He concluded that the

availability of the periods for the Group Music/Drawing in the School were only 8 1/2 and that there was already a Music Teacher working in the School and, therefore, the sanction of an additional post of a Drawing Teacher in the School without sufficient number of periods for the subject was not proper. This power was exercised by the Deputy Director: under Sub-rule (2) of Rule 12C in Chapter XXIII of the Kerala Education Rules (for short the Rules). Feeling aggrieved by the order dated 30.1.1993, the Manager of the School filed a petition under Rule 12F of the Rules before the State Government and the same was dismissed. A communication dated 24.3.2001 was received by the Manager of the School (copy of which is Ext.5 on the record). The State Government informed the School that since the total number of periods available to Arts group was only 8 1/2, a post of a Drawing Teacher could not be sanctioned in addition to the existing post of a Music Teacher. The abolition of the post of the Drawing Teacher in the School from the year 1992-93 was approved. Not satisfied with the orders of the Deputy Director (Education) and the State Government (Exts. P3 and P5), the petitioner filed O.P.No. 21910 of 2001, which came up for hearing before a learned Single Judge. Reference was made to Rule 12C of the Rules which provides for scrutiny of staff fixation by higher officers. The Deputy Director (Education) is required to scrutinize all orders passed by the District Educational Officer in regard to fixation of staff strength in High Schools and he may revise such of the orders as are found necessary. The Rule further provides that the revision orders shall be passed before the end of August every year and a copy of every such order shall be forwarded to the Director and the Manager/Head Master of the School. Since the order revising the staff strength in the School had not been passed before the end of August 1992 the learned Single Judge concluded that the same was contrary to the provisions of Sub-rule (2) of Rule 12C of the Rules and therefore, illegal. He accordingly quashed the order dated 30.1.1993 and also the communication dated 24.3.2001 received from the State Government affirming the order passed by the Deputy Director. It is against this order that the present appeal has been filed u/s 5 of the Kerala High Court Act.

2. We have heard learned counsel for the parties and are of the view that the appeal deserves to succeed. Rule 12 and 12C which are relevant for our purpose may be noticed at this stage. The relevant parts of these rules read as under:

"12. Strength of teaching staff:- Subject to the availability of accommodation the strength of teaching staff in each school shall be fixed by the Educational Officer in accordance with the above general provisions, once a year after finalizing the number of divisions based on the effective strength of the class as on the 6th working day from the re-opening date in June. The strength shall be verified by the Educational Officer by paying surprise visits to the Schools. A further verification of strength by the District Educational Officer, in the case of fixation of staff strength in Lower Primary and Upper Primary Schools, and by the Deputy Director (Edn.) in the case of High Schools, shall be done wherever additional divisions or additional staff are found necessary, after the verification by the Educational Officer concerned. In such cases the final orders of fixation of staff

shall be issued only on the basis of such re-verification of strength. The actual attendance on the date of visit of the Educational Officer plus 5 per cent roll strength for absentees not exceeding the roll strength of the each class alone shall be reckoned as the effective strength of the school for fixing the number of divisions and the strength of staff. The staff sanctioned by the competent authority during the previous year shall continue till the 14th of July of the succeeding year. The fixation of staff shall be finalized by the Educational Officer not later than the 15th July every year or such other date as may be fixed by the Director from time to time for the purpose. The strength of standard one as on the 6th working day after Vijayadasami Day shall be reviewed having regard to the provisions under Sub-rule (2) of Rule 4 of Chapter VI and the strength of the staff shall be refixed accordingly, if found necessary. Government may direct the Educational Officer to re-visit and refix the strength of teaching staff in schools where there has been undue shortage in attendance of pupils on the date of visit of the Educational Officer or the Higher Verification Officer or the Super Check Officer due to natural calamities like flood, outbreak of epidemic, or other special reasons like agitations, strikes, accidents, death of prominent persons in the locality etc. Requests for re-visit should be accompanied by a certificate issued by the Headmaster explaining the reasons for the fall in attendance and the veracity of the reasons adduced should ordinarily be supported by a report of the Tahsildar within whose jurisdiction the school is situated, or the Medical Officer in charge of the nearest Government medical institution, as the case may be. When such a revisit is made by the Educational Officer or the Higher Verification Officer or the Super Check Officer folio wing the directions of the Government, the effective strength shall be worked out on the basis of the strength verified on re-visit made by the Educational Officer or the Super Check Officer, as the case may be, and orders shall be passed by the Educational Officer or the Director of Public Instruction respectively, but not granting a new division that was not in the staff fixation in the previous year.

12C.- Scrutiny of staff fixation by higher officers:-

(1) The District Educational Officer shall scrutinize all orders passed by the Assistant Educational Officer in regard to fixation of staff strength in Primary Schools and may revise such of the orders as are found necessary. Such revision orders shall be passed before the end of August every year and forward copy of such orders to the Deputy Director (Education) and the Manager/Headmaster.

(2) The Deputy Director (Education) shall scrutinize all orders passed by the District Educational Officer in regard to the fixation of staff strength in High and Training Schools and may revise such of the orders as are found necessary. Such revision orders shall be passed before the end of August every year and forward copy of such orders to the Director and the Manager/Headmaster. The Deputy Director (Education) shall also verify the correctness of the fixation orders of the Assistant Educational Officer and the revision orders of the District Educational Officer relating to atleast 10 per cent of the Primary Schools within his

jurisdiction before the end of September every year and may revise such of the orders as are found necessary. Copies of such orders passed shall be forwarded to the Director/Manager/Headmaster.

(3) xxx xxx xxx"

The argument of the learned State Counsel is that Rule 12C(2) which provides for the time within which an order of scrutiny is to be passed by the Deputy Director is not mandatory and that even if an order is passed after the end of August in any year the same would not be invalid merely on that ground. He also referred to the circular dated 4.8.1992 issued by the Government of Kerala wherein the time limit for finalizing the staff fixation of aided schools for the academic year 1992-93 had been extended till the end of November 1992. It was contended that in view of this extension granted by the State Government the scrutiny had to take some reasonable time thereafter and, therefore, the order of scrutiny passed by the Deputy Director on 30.1.1993 cannot be said to be invalid. The learned counsel for the petitioner, on the other hand, urged that the provisions of Rule 12C(2), as observed by the learned Single Judge, are mandatory in nature and there is a purpose for which the time limit has been fixed in Rule 12C(2). The argument of the learned counsel is that since the order of scrutiny was passed in January 1993 the same was illegal and had to be quashed.

3. From the rival contentions advanced by learned counsel for the parties, the short question that arises for our consideration is whether the time limit fixed in Rule 12C(2) within which the Deputy Director is required to pass the order of scrutiny is mandatory and whether such an order if passed after the end of August in any year would be illegal on that ground.

4. A reading of the relevant part of Rule 12 which has been reproduced hereinabove would show that the fixation of staff is to be finalized by the Educational Officer not later than the 15th of July in each year after fixing the number of divisions based on the effective strength of the class on the sixth working day from the reopening of the school in June. Sub-rule 2 of Rule 12C makes it incumbent on the Deputy Director to scrutinize all such orders passed by the District Educational Officer in regard to the fixation of staff strength in High Schools and he may revise such of the orders as are found necessary. This revision is required to be completed/finalized before the end of August every year and a copy of the order is required to be forwarded to the Director and the Manager or the Headmaster of the School. The time limit fixed by the rule making authority indicates that such fixation should normally be finalized at the earliest within the time prescribed but it does not mean that if for any reason administrative or otherwise the scrutiny of the staff fixation is delayed and not completed by the end of August in a year, the same cannot be done thereafter. There could be several administrative reasons due to which it may not be possible to complete the staff fixation within the time prescribed in Rule 12 and, therefore, its scrutiny would also take some more time thereafter. The staff

fixation is to be finalized by the Educational Officer by paying surprise visits to the schools. The Rule also contemplates that a further verification of the strength by the District Educational Officer could be done wherever additional divisions or additional staff are found necessary after the verification by the Educational Officer concerned. In such cases final orders of fixation are issued on the basis of such re-verification. All this may sometimes be not possible within the time prescribed and, therefore, if any delay is caused in the staff fixation or in its scrutiny by the Deputy Director, it would not vitiate the same. When a Rule prescribes the time within which a duty shall be performed strict or rigid adherence to the time factor is normally not insisted upon by the courts and, therefore, the courts hold that such prescriptions are only directory in nature. We are, therefore, of the view that the provisions in Rule 12C(2) as to the time limit are only directory and, therefore, if an order of scrutiny is passed after the end of August in any year the same shall not be illegal merely on that ground. In *The Remington Rand of India Ltd. Vs. The Workmen*, the learned Judges of the Apex Court were construing the provisions of Section 17(1) of the Industrial Disputes Act, 1947 which provides for the publication of an award within 30 days. It was held that the provision insofar as its publication is concerned is mandatory but the time of 30 days prescribed was only directory and that an award published beyond the period of 30 days would not be invalid. As already observed, a provision fixing a time within which a public officer or authority has to act in performance of a duty generally means that the statute considers it reasonable for the officer or authority to act within the said period and if that period expires it does not make the act illegal unless the statute or the rule provides for the same. In this view of the matter, we have no hesitation in holding that the requirement of an order of scrutiny to be passed before the end of August each year is only directory in nature and will not make the order of scrutiny illegal merely because it was passed thereafter. The question posed hereinabove is answered in the negative. In the result, it has to be held that the order dated 30.1.1993 passed by the Deputy Director is not illegal merely because it was passed after August 1992. The State Government was right in upholding the same. In this view of the matter the finding recorded by the learned Single Judge that the orders were invalid because they had been passed beyond the time prescribed in Rule 12C(2) of the Rules cannot be sustained.

5. As regards the merits of the order dated 30.1.1993 this Court cannot examine the same in view of the findings recorded therein to the effect that the additional post of a Drawing Teacher was not justified for want of sufficient number of periods in the subject concerned. The claim for salary if made by the petitioner shall be considered by the respondents in accordance with law.

6. For the reasons recorded above the appeal is allowed, the judgment of the learned Single Judge set aside and the orders of scrutiny dated 30.1.1993 passed by the Deputy Director (Education) and that of the State Government are affirmed O.P.No. 21910 of 2001 stands dismissed with no order as to costs.