
(2014) 11 KL CK 0209

In the High Court Of Kerala

Case No : Writ Appeal No. 1564 of 2012 and W.P.C. No. 20989 of 2010

State of Kerala

APPELLANT

Vs

O. Seema

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Citation : (2014) 4 KHC 941 : (2015) 1 KLJ 27 : (2015) 1 KLT 68

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J; A.K. Jayasankaran Nambiar, J

Bench : Full Bench

Advocate : Joe Kalliath, Govt. Pleader, Advocate for the Appellant; M.V. Bose, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—The writ appeal is filed against an interim order dated 13/04/2012 passed in I.A. No. 5688 of 2012, by which the learned single judge, relying upon the judgment in Shuja Baby and Others Vs. State of Kerala and Others, , which interpreted Rule 12 of Chapter XXIII of Kerala Education Rules (for short "KER") had directed the Assistant Educational Officer (for short "AEO") to consider the claim of the petitioners and to pass appropriate orders within a specified time.

2. The judgment in Shuja Baby (supra) was approved by a Division Bench of this court in the judgment dated 13/08/2008 in Writ Appeal No. 1326 of 2008.

3. The Division Bench, consisting of one among us, noticed that the Division Bench in W.A. No. 1326/2008 has only approved the judgment in Shuja Baby (supra) without a detailed consideration of Rule 12 of Chapter XXIII of KER. Hence, by order of reference dated 21/11/2012, the matter was placed before the Full Bench of this Court and this Full Bench is constituted for hearing and disposal of the above reference. Paragraphs 8 and 9 of the Reference order reads as under:

"8. On a perusal of the judgment of the learned Single Judge and the unreported

decision of the Division Bench, we are of the opinion, consideration of Rule 12 of Chapter XXIII of KER was not gone into in detail by the earlier Division Bench and not discussed anything in respect of Rule 12. It simply approved the judgment of the learned Single Judge. In other words, the interpretation of Rule 12 made by the learned Single Judge was confirmed by the Division Bench. The three visits contemplated under Rule 12 of Chapter XXIII are with reference to the strength of the student on sixth day, re-verification known as second visit and re-visit after approval of an application by the Government for such re-visit, provided the circumstances referred to in Rule 12 are applicable. Therefore, ultimately the strength of the students found on these three visits whether uniform or not-uniform would decide the approval of the additional divisions depending upon the strength noticed in three visits as contemplated under Rule 12.

9. Therefore, we are of the opinion, there has to be re-look into the interpretation of Rule 12. Hence the matter has to be referred to Larger Bench for consideration in the light of above observations."

4. Before proceeding further, we may state the facts of the case in brief:

"(a) Writ appeal is filed by the respondents in the writ petition. The writ petition is filed by the respondents herein who are referred hereinafter as the petitioners. The appellants are referred as the respondents.

(b) The petitioners challenged Exts. P2, P4 and P8 and sought for a direction compelling the respondents to regularise the service of petitioners 1, 2 and 3 from 15/07/2004 and that of the 4th petitioner from 01/06/2005 and for other consequential reliefs. Petitioners 1 to 3 were appointed on 02/07/2001 and the 4th petitioner on 01/06/2005 in a school. During the academic year 2003-04 there were 11 divisions. The teacher strength was 12 along with one post of Headmaster.

(c) In respect of the academic year 2004-05, after conducting a visit on 23/06/2004, the Assistant Educational Officer (for short "AEO") by Ext. P1 order dated 28/06/2004 allowed to have 11 divisions as in the previous year. According to the petitioners, on the basis of some bogus complaints, the super check cell visited the School and conducted inspection on 23/07/2004. They conducted a second visit on 17/02/2005 and found reduction in students strength and by order dated 14/07/2005, the Director of Public Instructions (for short "DPI") by Ext. P2 order revised the staff fixation order and reduced three divisions and three posts of UPSC's and one post of LG Hindi teacher, reducing the teacher strength to 8.

(d) In respect of the year 2005-06, the AEO issued orders retaining all the 11 posts of teachers as per Ext. P3 order dated 13/07/2005. However, when the order dated 14/07/2005 was passed reducing the post of teachers to 8, the manager requested for higher-level verification. On that basis, the DEO conducted inspection and recommended for teachers strength as 9. The manager

requested for a higher-level verification which was granted by the Government as per order dated 22/03/2006 produced as Ext. P5. When a visit was conducted on 30/03/2006, it was found that the student strength was sufficient for 11 divisions. Ext. P6 is the said report dated 30/03/2006.

(e) Manager preferred a revision and the Government dismissed the same as per order dated 20/11/2009 produced as Ext. P8. The orders passed by the educational authorities and the Government are challenged.

(f) It is inter alia contended that the school had sufficient student strength warranting 11 divisions. The student strength was reduced during super check cell visit on account of certain reasons which was not taken into consideration by the authorities. Pointing out the irregularity in the reports and the consequent reduction in teacher strength, the writ petition was filed seeking the reliefs as prayed for.

(g) Counter affidavit was filed by the 4th respondent AEO supporting the stand taken by the Government. It is contended that though 11 divisions were sanctioned as per order dated 28/06/2004, on visit by the super check cell it was observed that there was notable shortfall in the number of students present in the school on both the days of the visit, that is on 23/07/2004 and 17/02/2005. Based on the report of super check cell, the DPI reduced three divisions, one each in standards 5 to 7 and the second post of L.G. Hindi teacher. In the meantime, staff fixation order dated 13/07/2005 was released, in which 11 divisions were sanctioned for 2005-06. On receiving DPI's order dated 14/07/2005, the staff fixation order for 2005-06 was revised by order dated 07/04/2006 since only eight divisions existed during 2004-05. In order to sanction more divisions and posts for 2005-06, higher-level verification was proposed which was conducted on 01/02/2006. The said visit report indicated that nine divisions were allowable. Another higher level verification was conducted by the DEO on 30/03/2006 and the students strength was verified. During the said visit, though there was sufficient students strength for 11 divisions, the same was not allowed by the Government as the strength on the basis of a revisit following Government direction cannot be taken for granting a new division over and above the divisions and posts sanctioned in the previous year."

5. We heard Sri. Joe Kalliath, the learned Government Pleader for the appellants and Sri. Vinod Madhavan, the learned counsel appearing on behalf of the petitioners. The learned Government Pleader made specific reference to Rule 12 of Chapter XXIII of KER and submitted that though a further verification is contemplated at the instance of the Government by which re-fixation can be done, Rule clearly indicates that such a re-fixation shall not enable granting of additional divisions. According to the learned Government Pleader, such a provision in the Statute being in existence cannot give rise to any ambiguity or anomaly to the rule. It is argued that additional divisions can be sanctioned only if the first visit indicates sufficient student strength to grant additional divisions.

In such circumstances, verification will be done by the concerned educational authorities and if they are satisfied regarding the student strength, additional divisions can be confirmed. The revisit at the instance of the Government is only to ensure that the divisions are not reduced from the earlier year. According to the learned Government Pleader, the Rule contemplates three different stages of verification and each stage has its own purpose which has been completely ignored by the learned Single Judge in *Shuja Baby* (supra) and the Division Bench in W.A. No. 1326 of 2008 had not considered the scope and effect of Rule 12 of Chapter XXXIII of KER in its proper perspective.

6. On the other hand, it is argued on behalf of the petitioners that the Rule is ambiguous, in so far as when the Government directs a revisit and permits re-fixation after such re-visit, it is in addition to the verification already done by Educational Officer and in case of necessity to grant additional divisions by the educational authorities and when power is given to refix the student strength, there is no reason to deprive grant of additional divisions. He fully supports the view taken in *Shuja Baby* (supra) and the judgment in W.A No. 1326 of 2008.

7. In *Shuja Baby* (supra), a learned Single Judge, relying upon Rule 12 of Chapter XXIII of KER observed that there is a clear ambiguity in Rule 12 as it stands now. Therefore Rule 12 is liable to be read down and it was declared so. That was a case where 49 class divisions existed during the year 1998-99. In the first visit, the student strength justified 52 class divisions. In the first higher-level verification, the student strength was reduced corresponding to 49 divisions. A second higher-level verification was conducted and it was noticed that the student strength for 52 class divisions were available. It was found that an anomalous situation had arisen in the case. The learned Judge held that the very purpose of second higher-level verification is to ascertain whether the verification conducted on the sixth working day could be accepted. It is further observed that if, after the second higher-level verification, even it is found that the student strength of first visit is approved, the very object of permitting second higher-level verification would become meaningless, which cannot be the object of the Rule. Paragraphs 6 to 8 of the judgment are relevant which reads as under:

"6. In view of the decision I am inclined to take in these Original Petitions, I do not think it necessary to decide the question of the validity of the Rule. I am of opinion that the Rule should be read down to mean that if in a second higher level verification the effective student strength was found to be more than what has been fixed in the first visit, such additional class divisions sanctionable more than as per the first visit alone can be denied to the school. In other words, if the student strength fixed on the sixth working day warranted more than the existing class divisions for the previous year and in the second higher level verification student strength is more than that in the first visit, then only the student strength as per the first visit (on the 6th working day) can be taken into account, and only the additional divisions sanctionable as per the second higher level

verification alone can be denied as per R.12. According to me, otherwise, it would lead to a totally illogical results.

7. In this case there were already 49 class divisions during the year 1998-99. In the first visit on 7.6.1999 the student strength justified 52 class divisions. In the first higher level verification the student strength was reduced corresponding only to 49 divisions, which was the same as for the previous year. In the second higher level verification on 1.9.1999 the original student strength on 7.6.1999 was restored. Now the anomalous situation arises thus. If in the first higher level verification on 2.8.99 the student strength was found to be equivalent to 52 class divisions, then 52 class divisions could have been allowed. If that be so, it defies logic as to how if the second higher level verification justifies 52 divisions, only those divisions as per the previous years staff fixation alone can be sanctioned. Further, since for the previous year there were 49 class divisions and as per the first re-visit on 2.8.1999 also class divisions were 49, if the Rule permitted only 49 divisions, even if in the second higher level verification three more could have been granted, then the whole exercise of conducting a second higher level verification itself, which has been permitted by the Government, would be a totally futile exercise. The very purpose of second higher level verification is to ascertain the verification conducted on the 6th working day is correct. If after being found the same to be correct after second higher level verification, additional class division cannot be sanctioned, then the very object of permitting second higher level verification would become totally meaningless which cannot be the object of the Rule.

8. Further, the very scheme of the KER for having staff strength commensurate with the student strength as per the teacher-student ratio fixed. If, as a matter of fact, student strength justified a particular staff strength, there is no logic in denying such staff strength to the school. The very object of the Kerala Educational Act and Rules is to provide for the better organization and development of educational institutions in the State, providing a valid and comprehensive service throughout the State. The very object of the Act and Rules is to better the standards of education in the State. That being so, an interpretation commensurate with the said object is to be adopted in case of ambiguities. I am satisfied that there is a clear ambiguity in R.12 as it stands now. I am of opinion that what the rule wanted to convey is that if in a revisit the student strength was more than what was originally fixed on the 6th working day of the academic year, then the staff strength as eligible as per the student strength on the sixth working day alone would be sanctioned. The last sentence of R.12 can only refer to a situation whereby during the inspection on the 6th working day, the student strength warranted class divisions only as in the previous year and on higher level verification student strength was more warranting additional divisions. The purpose of higher level verification is to verify the correctness of the verification on the 6th working day and if on such higher level verification the student strength is more such additional student strength cannot be taken into account since the student strength as on the 6th

working day is the real student strength applicable for staff fixation. The Rule is, therefore, liable to be read down accordingly. I declare so."

8. The judgment in *Shuja Baby* (supra) was followed in another judgment of the learned Single Judge in W.P.C. No. 9352 of 2007. An appeal was filed against the said judgment before the Division Bench as W.A. No. 1326 of 2008. The Division Bench, by judgment dated 13/08/2008, held that since the judgment in O.P. No. 18651/2000 (*Shuja Baby*) was relied upon by the learned Single Judge and there was no appeal against the said judgment, there is no reason to interfere in the case. That was a case in which, during the academic year 2005-06 the school had 13 divisions with 14 teachers and Headmaster. During the first visit for 2006-07, it was found that there were 562 students which warranted 14 class divisions. In a higher-level verification, it was found that the student strength was only 457 which warranted 12 divisions. At the instance of the Manager, a re-verification was conducted. It was again found that the student strength warranted 14 divisions. Division Bench held at paragraph 2 as under:

"2. It is the contention of the appellant that under Rule 12 of Chapter XXIII KER on the basis of re-verification, staff fixation cannot be changed. But in the original verification conducted on the sixth working day of the year, there was 562 students warranting 14 divisions. Therefore, even applying the ratio based on the appellant's contention, 14 divisions are warranted in the school. The learned Single Judge only followed the ratio in the judgment in O.P.18651/2000. The above judgment was not appealed against."

9. The principle underlying statutory interpretation is well settled. The Supreme Court in *State of Gujarat and Another Vs. Hon'ble Mr. Justice R.A. Mehta (Retd.) and Others*, held at paragraphs 96 to 98 as under:

96. In the process of statutory construction, the court must construe the Act before it bearing in mind the legal maxim *ut res magis valeat quam pereat* which means it is better for a thing to have effect than for it to be made void i.e. a statute must be construed in such a manner so as to make it workable. Viscount Simon, L.C. in *Nokes v. Doncaster Amalgamated Collieries Ltd.* stated as follows: (AC p. 1022)

"... if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

97. Similarly in *Whitney v. IRC* it was observed as under: (AC p. 52)

"... A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

98. The doctrine of purposive construction may be taken recourse to for the

purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. "The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative." The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and "to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico". The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide *M. Pentiah v. Muddala Veeramallappa*, *S.P. Jain v. Krishna Mohan Gupta*, *RBI v. Peerless General Finance and Investment Co. Ltd.*, *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, SCC p. 754, para 118, *UCO Bank v. Rajinder Lal Capoor* and *Grid Corpn. of Orissa Ltd. v. Eastern Metals and Ferro Alloys.*)"

10. Now let us refer to Rule 12 of Chapter XXIII of KER, which reads 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 finalising 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 finalised 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-r. (2) of R.4 of Chap. VI and the strength of the staff shall be refixed accordingly, If found necessary, Government may direct the Educational Officer to re-visit and re-fix 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 re-visit is made by the Educational Officer or the Higher Verification Officer or the Super Check Officer following 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."

Rule 12 contemplates three visits or verifications by educational authorities as follows:

"(i) The first visit is by the Educational Officer. It is intended to fix the strength of teaching staff once in a year after finalising the number of divisions based on the effective strength of the class as on the sixth working day from the reopening date in June.

(ii) In case, after the verification by the Educational Officer, if it is found that additional divisions or additional staff are found necessary, a further verification of strength by the District Educational Officer (for short "DEO") or the Deputy Director (Education) shall be done and final orders of fixation of staff shall be issued thereafter.

(iii) The Government may if found necessary, and in the event of natural calamities like flood, outbreak of epidemics or other special reasons like agitations, strikes, accidents, death of prominent persons in the locality etc. on the request of Headmaster, direct the Educational Officer to revisit and re-fix 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."

11. Rule further provides that when such a revisit is made by the Educational Officer, Higher Verification Officer or Super Check Officer, following the directions of the Government, the effective strength shall be worked out on the basis of the strength verified on revisit made by such officers and orders shall be passed by the Educational Officer or DPI, but they shall not grant a new division that was not in the staff fixation in the previous year.

12. The visit therefore contemplated for fixing the staff strength is done in the first visit itself which is by the Educational Officer on the sixth working day after the school re-opens. If it is found that the school requires additional divisions and additional staff, the report in regard to the first visit shall be subject to further verification of strength either by the DEO or DDE. Thereafter, final orders will be passed. Therefore, further verification of student strength is required to be made by DEO or DDE, only in cases where the first visit proves sufficient student strength for accommodating additional divisions and more teachers.

13. The rule also contemplates a revisit as directed by the Government where it is found that there was undue shortage in attendance of students on the date of visit by the Educational Officer, or Higher Verification Officer or the Super Check Officer due to various reasons. Super check enquiry is conducted as per rule 16 of Chapter XXIII of KER. Further it is stated that when such a revisit is made by any of the authorities following the directions of the Government the effective strength shall be worked out on the basis of the strength verified on revisit made by the officers concerned and orders shall be passed, ""but not granting a new division that was not in the staff fixation in the previous year."

14. The learned Single Judge, while considering *Shuja Baby* (supra), proceeded on the basis that there was an ambiguity in the Rule. It is held that the purpose of second higher level verification is to ascertain whether the verification conducted on the 6th working day is correct and thereafter, if strength is found to be correct and additional class division cannot be sanctioned, the very object of permitting second higher level verification would become totally meaningless which cannot be the object of the Rule. The second higher level verification referred by the learned single judge is with reference to the revisit at the instance of the Government. It is further held that when the object of the Act and Rules is to better the standards of education in the State, an interpretation commensurate with the said object is to be adopted. The learned Judge opined that if in revisit the student strength was more than what was originally fixed on the 6th working day of the academic year, then the staff strength as eligible as per the student strength on the sixth working day alone would be sanctioned. With reference to the last sentence of R.12 it is held that the same can only refer to a situation where during the inspection on the 6th working day, the student strength warranted class divisions only as in the previous year and on higher level verification student strength was more warranting additional divisions. It is further observed that the purpose of higher level verification is to verify the correctness of the verification on the 6th working day and on such higher level

verification the student strength is more such additional student strength cannot be taken into account since the student strength as on the 6th working day is the real student strength applicable for staff fixation.

15. We do not think that we can subscribe to the above view in *Shuja Baby* (supra). As far as the first visit is concerned, it is termed as the 6th day visit by the concerned Educational Officer. The officer may find that there has been an increase or decrease in the student strength or it might be the same. If there is decrease in the student strength or it is the same as previous year, orders can be issued straightaway by the Educational officer. If there is increase in the student strength warranting additional divisions or additional staff, then a further verification of student strength is contemplated. This is necessary only for the purpose of enabling the Educational Officer to grant additional divisions and re-fix staff strength. As far as the revisit as per Government directions are concerned, it is done only under special circumstances and when there is undue shortage in attendance on the 6th day visit by the Educational Officer or Higher Verification Officer or Super Check Officer due to certain specified reasons. In such an event, the effective strength shall be worked out on the basis of the strength verified on such revisit made by Officers concerned and orders shall be passed by the Educational Officer or DPI. There might be instances when, during the 6th day visit itself it is found that the student strength warrants a reduction in number of divisions and staff strength. The revisit at the instance of the Government only enables the Department to find out the effective student strength and sustain the divisions as that of the previous year. It is not intended to increase the number of divisions from the previous year. Increase in the number of divisions from the previous year depends only on the further verification to be made either by the DEO or DDE. If they decide to give additional divisions and staff, the school can proceed accordingly. If they find that the student strength does not justify additional divisions, the matter ends there, subject to the right of appeal etc.

16. A situation may arise that during further verification by DEO or DDE it is found that the student strength does not warrant additional divisions but rather warrants a reduction of divisions and consequent reduction in staff strength. In such cases, the Headmaster can request the Government for a revisit as contemplated under the latter part of the rule. A similar situation may arise after super check inspection as well. In that event the student strength considered will be the strength verified on such revisit. But the rule does not indicate that additional division will be granted on the basis of the student strength so obtained, but further the rule clearly provides that new division that was not in the staff fixation of previous year will not be granted. In other words, there cannot be a revisit at the instance of the Government to enable the school to get additional divisions from the previous year. The revisit at the instance of the Government is only to sustain the divisions of the previous year. Therefore, as far as the revisit as per directions issued by the Government is concerned, the whole intention of the statute is to ensure that the student strength is enough to accommodate the teachers that existed during the previous year. When the Rule

making authority clearly indicates that a new division which was noting the staff fixation in the previous year will not be granted after the re-visit by the officers as per Government directions, the rule has to be given its meaning.

17. It is a well settled principle of statutory interpretation that all the provisions of a statute has to be given a meaning. As held in Justice R.A. Mehta (supra) the provision of the statute must be so construed as to make ineffective and operative. Chapter XXIII of KER has prescribed rules relating to fixation of teacher strength in departmental and aided schools. It depends upon the number of divisions which is based on the effective student strength. Several methods are adopted by the Government to ensure that correct particulars are furnished. Therefore rules have been framed for conducting inspection by the Educational officers, Super check cell etc. Since the Government, being the paymaster has to keep control on appointment of teachers, it is all the more necessary for the Government to ensure that staff fixation is done only on the basis of student strength and that too on the 6th day visit. The revisit at the instance of the Government and that too under special circumstances is only to ensure that there is no reduction in staff strength and the said revisit is not for increasing the staff strength from that of previous year. Hence we do not think that there is any ambiguity to rule 12 which warrants reading down the rule as held in Shuja Baby (supra).

18. The Division Bench in W.A. No. 1326 of 2008 has merely approved the judgment in Shuja baby (supra) for the reason that no appeal was filed against the said judgment. There was no consideration of the scope and effect of Rule 12 of Chapter XXIII KER.

19. From the discussion made above, we are of the view that Shuja Baby (supra) and the judgment dated 13/08/2008 in Wane. 1326/2008 do not lay down the correct law and are to be over ruled.

20. The learned counsel for the writ petitioner argued that the last limb of Rule 12 is void. No such contention is raised in the writ petition and hence we do not think that the said question requires to be considered at this stage.

21. Coming to the facts of the case, only 8 divisions were allowed as per the staff fixation order. A revisit at the instance of the Government found student strength for 11 divisions, which apparently cannot be allowed in view of the last limb of rule 12 of Chapter XXIII of KER. In view of the above findings the writ appeal has to be allowed and the impugned order is set aside.

Accordingly we answer the reference as under:

"(i) The law laid down in Shuja Baby and Others Vs. State of Kerala and Others, and the judgment dated 13/08/2008 in W.A. No. 1326 of 2008 are over ruled.

(ii) It is declared that Rule 12 of Chapter XXIII KER does not enable the educational authorities to automatically sanction additional divisions based solely on the revisit done at the instance of the Government.

(iii) Writ appeal is allowed setting aside the order dated 13/04/2012 in I.A. No. 5688 of 2012 in W.P.C. No. 20989/2010.

The Registry shall place W.P.C. No. 20989/2010 before the learned Single Judge for hearing.