
(2014) 08 KL CK 0059
In the High Court Of Kerala
Case No : Writ Appeal No. 989 of 2011

State of Kerala

APPELLANT

Vs

The Manager, A.U.P. School

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Citation : (2014) 08 KL CK 0059

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

Bench : Division Bench

Advocate : Viju Thomas, Government Pleader, Advocate for the Appellant; V.P. Seemandini, Senior Advocate and S. Karthika, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—This appeal is filed by the State of Kerala against the judgment dated 4.11.2011 in W.P(C) No. 15657/2004. The 1st respondent is the writ petitioner.

2. The writ petition is filed seeking to quash Ext. P5, an order issued by the Government by which directions were issued to pay the teacher Smt. C.J. Jolly John the salary for the period for which she had worked and further observing that the entire amount has to be recovered from the concerned Manager. The Director of Public Instruction/District Educational Officer was directed to take follow up action in the matter and consequently Ext. P6 is issued calling upon the petitioner to pay Rs. 5,65,256/- which is also impugned.

3. The Manager of the school being aggrieved by the observation made by the Government to recover the entire amount paid to the teacher, impugns the said order, inter alia contending that there is no provision under the Kerala Education Rules (KER) enabling the Government to impose such a penalty on the Manager and that the teacher was paid salary only as per the directions issued by the Court.

4. The facts involved in this case would disclose that Smt. Jolly John was appointed in the school managed by the 1st respondent herein as Physical

Education Teacher in a leave vacancy from 1.8.1989 to 4.10.1989 and from 4.8.1992 to 2.11.1992. Thereafter, she was appointed from 7.6.1993 in the post where a protected Physical Education Teacher was working and who retired from service on 30.6.1993. It is inter alia observed by the Government that since protected post ceased to exist with the retirement of the existing teacher, the post was abolished and therefore the appointment of the teacher was irregular. The appointment was not approved by the educational authorities in the absence of any sanctioned post. That apart, taking into consideration the student strength, a specialist teacher was inadmissible as per Rule 6B(2) of Chapter XXIII of KER.

5. The 1st respondent also contended that the teacher had challenged the appointment of the post by filing O.P. No. 4161/1994. An interim order was granted by this Court on 9.6.1994 directing the Assistant Educational Officer to issue appropriate direction to the Headmaster of the school to claim and disburse the salary due to such teacher for the period she had worked and until a final decision was taken in the original petition. Writ Appeal filed by the Government and its authorities as W.A. No. 887/1994 was also dismissed as per judgment dated 5th August, 1994. It is therefore contended that, it is by virtue of such interim order that the salary was being disbursed. The Original Petition was disposed of by a common judgment dated 31st January, 2003. It is therefore contended that the Manager is not responsible for payment of salary to the teacher and it was only on account of the interim order that such salary came to be paid. Hence, he has no responsibility to reimburse the amount paid to the teacher.

6. On the other hand, the Government, in their counter affidavit, has relied upon the Full Bench judgment in the case, wherein the Full Bench observed that the Government may recover the salary from the Managers. It was also observed that the final decision would be made by the Government on the representations made by the claimants/teachers.

7. It was therefore contended by the Government that when the Full Bench had permitted the Government to recover the salary paid to an unapproved teacher, they are entitled to recover the said amount from the Management and hence Ext. P5 was sustainable.

8. The learned Single Judge, however, observed that the permission granted by the Full Bench was to recover the amount if the same was permissible under law, which is clear from paragraph 41 of the judgment and there is no provision enabling the Government to recover any compensation from the Manager and Rule 7(4) of Chapter III KER does not warrant the situation as available under the facts and circumstances of the case and hence the learned Single Judge quashed Ext. P5 and Ext. P6.

9. It is aggrieved by the judgment of the learned Single Judge that this appeal came to be filed.

10. Heard the learned Government Pleader appearing for the appellants and the learned counsel for the respondent.

11. The learned Government Pleader made specific reference to the observation made by the Full Bench, especially the operative portion of the judgment, which reads as under:

The teachers who are found to have performed their duties are entitled to the salary for the relevant period subject to the condition that the Government may recover it from the Managements. This, by itself, would not, however, entitle the petitioners to claim the continuance of the posts or their service. The final decision in this behalf shall depend upon the order on their representations."

On this basis, it is contended that when the Full Bench had permitted the Government to recover the salary paid to the teacher from the Management, no further statutory provision is required to enable the Government to recover the said amount. But, as held by the learned Single Judge, paragraph 41 of the judgment cannot be ignored wherein the question whether the teachers were entitled to get the salary was considered. In that connection, the Full Bench observed as under:

"41. In case the teachers have continued on the posts, the action in not paying them salary is wholly arbitrary and unfair. A person who performs his duties is entitled to the payment of his salary. The dispute between the school and the state cannot result in denial of salary to the teacher. The payment, if not already made, the needful should be done without delay. However, it looks difficult to believe that the teachers would continue to teach for more than 14 years without getting their wages. In this situation, it appears fair to direct the competent authority to ascertain the factual position from the employees and the employers. In case it is found that the payment has not been made, the Government shall pay for the duration for which the incumbent had actually worked without getting the wages. However, it is clarified that it shall be entitled to recover, if permissible under law, from the Managements that had appointed the teachers or illegally allowed the incumbents to continue in position. It shall not, however, confer on the incumbents of the posts a right to claim continuance in service or of the posts held by them. The second question is accordingly answered in the above terms."

12. The question considered by the Full Bench was regarding the entitlement of the teachers for salary. According to the Full Bench, since they have worked for more than 14 years, they are entitled to get the salary. However, it was clarified that the Government will be entitled to recover the amount if permissible under law from the Managements, if they have illegally appointed and allowed the incumbents to continue in position.

13. The question is whether the teacher concerned has been working in the institution as permitted by the Management. Perusal of the records clearly indicate though appointment was made by the Management, this Court in O.P.

No. 4161/1994 has issued an interim direction to the Headmaster of the school to claim and disburse the salary to the teacher pending decision in the original petition. When interim directions were so given, which were confirmed in appeal, it will not be possible for the Government to take a stand that the management of the institution was responsible for permitting the teacher to continue in service. That apart, in the judgment dated 5th August, 1994 in WA. No. 887/1994, a Division Bench has observed that in respect of payment of salary after the date of the impugned order, ie. after 9.6.1994, the appellants were at liberty to seek orders in the original petition. But, it is clear that there was no modification to the said orders, whereas, as per order C-3172/94 dated 8.9.1994, the Assistant Educational Officer has given sanction to draw the salary in favour of the teacher till final judgment is passed in the original petition. Therefore, until a final decision was taken in the original petition, the 1st respondent Manager had no option other than to comply with the directions issued by this Court as well as by the appellant authorities. Under such circumstances, even on facts, we do not think that the appellants are entitled to seek recovery of the amount from the Manager.

14. That apart, the appellants do not have a case that any eventuality in terms of Rule 7(4) of Chapter III of KER has arisen in this case. A learned Single Judge in Vasudevan Namboodiri Vs. The State of Kerala and Others , after analysing the right of the Government to recover the amount from the management, has clearly found that unless there is non-observance of any of the contingencies specified under clauses (a) to (d) of Rule 7(4) of Chapter III of KER, the Government cannot impose any penalty or recover compensation from the Manager of the school. The observation in the judgment reads as under:

"So far as the Manager is concerned, even though there are many provisions under the K.E.R. compelling the Manager to obey the directions of the Government and also the consequences in cases of disobedience, no provision has been brought to my notice which enables the Government to recover the loss from the Manager suffered by it on account of the wrong staff fixation. The only relevant rule is sub-r. (4) of R.7 of Chap. III. It mentions the contingencies when the loss occasioned by the Government can be recovered, which are as follows:

"(4) In the case of a Manager who commits serious irregularities causing monetary loss to teachers/Government, the loss sustained by teachers/Government shall be recoverable from the Manager under the provisions of the Revenue Recovery Act for the time being in force as if it is an arrear of public revenue due on land, in the following cases, namely -

(a) Denial of appointment to a qualified thrown out teacher who has a rightful claim for re- appointment by virtue of his/her holding the post earlier under R. 51A Chapter XIV A.

(b) Denial of promotion to a teacher to any higher grade of pay under Rr. 43, 43B or 43C as the case may be, of Chap. XIVA, for denial of promotion to the

senior-most rightful claimant to the post of Headmaster under Rr. 44 or 45 or 45 A, of Chap. XIV-A, when the post becomes vacant disobeying the directions from the department and/or Government causing denial of all monetary benefits which he/she would have got, had the promotion been effected as per rules in time.

(c) Suspension of teachers, framing cooked up and/or frivolous charges, keeping them out of service beyond fifteen days disobeying the orders of re-instatement of such incumbents passed by the Deputy Director (Education) or by the Educational Officer concerned, as the case may be, after a preliminary investigation into the grounds of suspension under sub-r. (8) of R. 67, Chap. XIVA, depriving such incumbents of their salary for which they would have been entitled to had they been reinstated by the Manager in compliance of the orders issued by the officer concerned.

(d) Making of irregular appointments and getting them approved by the Educational Officers concerned by furnishing false information/declaration by the Managers regarding the claimants, under R. 51 A, Chap. XIV A."

Thus, no other circumstances are prescribed in the Rules, enabling the Government to recover the loss suffered by the Government."

We do not find any reason to differ from the view taken in the aforesaid judgment. Under such circumstances, we do not think that the appellants have raised any grounds warranting interference with the judgment of the learned Single Judge.

Accordingly, the writ appeal is dismissed.