

(2014) 06 KL CK 0116
In the High Court Of Kerala
Case No : W.A. No. 1260 of 2011

State of Kerala

APPELLANT

Vs

The Manager, M.T.M. Higher Secondary School

RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Citation : (2014) 3 KLT 23

Hon'ble Judges : Antony Dominic, J; Alexander Thomas, J

Bench : Division Bench

Advocate : Mohammed Shafi, Sr. Government Pleader, Advocate for the Appellant; Kurian George Kannanthanam, Sr. Advocate and Sri Tony George Kannanthanam, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—The respondents in W.P. (C) No. 5261/2010 are the appellants. The Writ Petition was filed by the respondent herein, the Manager of M.T.M. Higher Secondary School, Pampakuda, Ernakulam District, who was aggrieved by Exhibits P2 and P6 and the point raised for consideration depended on the interpretation of Rule 12 of Chapter XXIII KER. The learned single Judge on a detailed examination, accepted the contention of the respondent and disposed of the Writ Petition allowing the same. It is this judgment which is challenged before us.

2. We heard the learned Government Pleader appearing for the appellants and the learned senior counsel appearing for the respondent. Briefly stated, facts of the case are that in the School of the respondent, in compliance with the provisions of Rule 12 to Chapter XXIII KER, verification was conducted by the DEO on 09.07.2008. Based on the verification, he recommended for an additional division in standard V and two additional divisions in standard VII. As provided in Rule 12 mentioned above, a higher level verification was conducted by the Deputy Director on 27.11.2008. He verified the physical strength of the students available as on that date and disagreed with the recommendation of the DEO in

so far as one of the two additional divisions in standard VII are concerned. Manager's appeal was rejected by Exhibit P2 order of the DPI and that was confirmed by the Government by Exhibit P6 order dismissing Exhibit P3 revision. It was in these circumstances, this Writ Petition was filed.

3. Reading of the impugned orders would show that the basis on which the Deputy Director, who conducted the higher level verification, disagreed with the DEO was that the effective strength found by him on physical verification on 27.11.2008, did not entitle the respondent for such additional divisions. It is the correctness of this finding that came to be challenged before the learned single Judge. After an elaborate examination of the issue, the learned single Judge held that what Rule 12 of Chapter XXIII authorized the Deputy Director who conducted the higher level verification, was re-verification of the findings of the DEO who conducted initial verification on 09.07.2008 and not a fresh verification of the effective strength as on the date of re-verification.

4. Before us, referring to the words used in the Rule, the learned Government Pleader contended that what the Rule provided is a re-verification and therefore the scope of such re-verification is a fresh verification of the effective strength as on the date of re-verification. This contention of the learned Government Pleader will have to be answered with reference to the relevant portion of Rule 12 of Chapter XXIII itself. In so far as this case is concerned, the relevant part of the Rule reads thus:

12. Strength of teaching staff:- Subject to the availability of accommodation the strength of teaching staff in each school 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 pupil's strength of all schools, both Government and Aided Schools, shall be verified by the Educational Officer or Officers authorized by the Director in this regard by visiting the schools in the State on a single day fixed by the Director for staff fixation purpose. A further verification of strength at higher level by the District Educational Officer, in the case of fixation of strength in Lower Primary and Upper Primary Schools and by the Deputy Director (Education) in the case of High Schools shall be done wherever additional divisions or additional staff are found necessary, after the one day verification conducted by the Educational Officers or Officers authorized by the Director, in this regard. In such cases, the final orders on 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 authorized persons plus five percent of the roll strength, 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 July of the succeeding year. The fixation of staff shall be finalized by the Educational Officer not later than the 15th July every year. The strength of Standard I 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 be refixed accordingly, if found necessary.

5. A reading of this Rule would show that the pupils' strength of all schools, shall be verified by the Educational Officer or Officers authorized by the Director by visiting the schools in the State on a single day fixed by the Director for staff fixation purpose. It is also provided that a further verification of strength at higher level by the Deputy Director of Education in the case of High Schools shall be done, wherever, on verification conducted by the Educational Officers or Officers authorized by the Director, additional divisions or additional staff are found necessary. The Rule further provides that in such cases, final orders on fixation of staff shall be issued only on the basis of such re-verification of strength.

6. Rule also provides that the actual attendance on the date of visit of authorized persons plus five percent of the roll strength, not exceeding the roll strength of each class, alone shall be reckoned as the effective strength of the school for fixing the number of divisions and the strength of staff. These provisions of the Rule shows that strength of teaching staff shall be fixed, once in a year, after finalizing the number of divisions. Such fixation shall be based on the effective strength of the students in the class as on the 6th working day from the re-opening. This is based on the strength as verified by the Educational Officer or Officers authorized by the Director. In that verification, if it is found that additional divisions or additional staff are necessary, a higher level verification has to be conducted by the Deputy Director and final orders shall be passed only on the basis of such re- verification of strength. A close reading of the provisions contained in this Rule therefore shows that the scope and purpose of higher level verification by the Deputy Director is confirmation of the correctness of the findings of the Educational Officer or the authorized Officer, as the case may be, regarding the effective strength in the school as on the 6th working day from the re-opening of the school.

7. If that be so, in the higher level verification, all that the Deputy Director is expected to do is to find out whether the findings of fact arrived at by the Educational Officer or authorized Officers are correct or not and not to assess the strength afresh by verifying the physical strength as on the date of the higher level verification. In so far as this case is concerned, the Deputy Director has disagreed with the report of the DEO by conducting a physical verification by himself as on 27.11.2008, when he conducted the higher level verification. Such an exercise, as rightly held by the learned single Judge is beyond the scope of Rule 12 of Chapter XXIII KER and therefore the learned single Judge has rightly interfered in the matter. We do not find any justification to interfere with the judgment.

The appeal therefore fails and it is dismissed.