

(1995) 02 KL CK 0030
In the High Court Of Kerala
Case No : O.P. No. 4598/93

Sukkore, K.P.

APPELLANT

Vs

Manager, Puthiyaparamba L.P. School and Others

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Kerala Education Rules, 1959 — Rule 12, 2A, 7

Citation : (1995) 1 KLJ 381

Hon'ble Judges : K.K. Usha, J

Bench : Single Bench

Advocate : M.P. Asok Kumar, for the Appellant; A.K. John, Government Pleader, for the Respondent

Judgement

K.K. Usha, J.—Petitioner challenges Ext. P-6 order passed by the 6th Respondent rejecting his representation for restoration of a full-time Arabic post in Puthiyaparamba L.P. School. The Petitioner has been working as an Arabic Teacher in the School of the 2nd Respondent in a leave vacancy from 2nd June 1986 onwards. His appointment was being approved till the academic year 1991-92. Ext. P-1 staff fixation order was issued by the 2nd Respondent for the academic year 1991-92 on the basis of verification of the strength of the School made by him on 2nd July 1991. The 2nd Respondent had found there were 28 muslim pupils in the School studying Arabic and by applying the provisions contained under Rule 2-A of Chapter XXIII of the Kerala Education Rules a full-time post of Arabic Teacher was sanctioned.

2. Thereafter the District Educational Officer, the 3rd Respondent, made a verification visit and finding that there were only 27 muslim pupils present in the School on the day of visit, issued Ext. P-2 notice to the Manager directing him to show cause why the post of an Arabic Teacher sanctioned under Ext. P-1 shall not be cancelled. It was mentioned therein that the effective strength is only 27. The roll strength of each standard was less than 10 and total of all the 4 classes was 28. Hence there was no scope for allowing 5 per cent random on visit

attendance for calculating effective strength. Therefore, sanction of Arabic post was irregular. After hearing the Manager, the 3rd Respondent issued Ext. P-3 order cancelling the post of Arabic Teacher in the School for the academic year 1991-92. The appeal filed by the Manager before the Deputy Director and before the Director of Public Instruction were also rejected under Exts. P-4 and P-5 orders. The Petitioner thereupon filed a revision before the Government, which was also rejected under Ext. P-6 order dated 29th December 1992.

3. It is contended on behalf of the Petitioner that the authorities had failed to apply the provisions contained under Rule 12 of Chapter XIII of the Kerala Education Rules while fixing the effective strength. According to the Petitioner, if 5 per cent is added to the total strength of the School as verified on the date of verification, the effective strength will be 28. If that be so, there is no necessity to abolish the post of Arabic Teacher.

4. It is contended on behalf of the respondents that there is no merit in the complaint of the Petitioner that the provisions contained in Rule 12 of Chapter XIII of the Kerala Education Rules were not applied in fixing The staff strength for the year 1991-92. But according to the Respondents, effective strength is to be calculated in respect of each standard and not on the total verified attendance in all standards taken together. Roll strength, verified attendance and effective strength as fixed on re-verification were as follows:

5. Rule 2-A of Chapter XXIII of the Kerala Education Rules reads as follows:

2A(1) In Lower Primary Schools, it Arabic is introduced in Standard I, a post of Arabic Language Teacher may be sanctioned if the number of Muslim pupils studying Arabic is not less than 10 and the post shall be allowed to continue. (If the strength of the Muslim pupils studying Arabic in Standard I continues to be not less than 10 or); if there is an average of 7 Muslim pupils in one Standard or an aggregate of 28 Muslim pupils in all the four Standards to study Arabic. The post shall be sanctioned either as part-time or full as per Rule 7.

In view of the above provision there must be 10 Muslim pupils studying in Standard I or the average of Muslim pupil in one Standard should be atleast(sic) 7 for having a post of Arabic Teacher. If one of the above two conditions is not satisfied it is sufficient that in all the 4 standards together there is an aggregate of 28 Muslim pupils to study Arabic. Going by the roll strength the 1st Respondent's School could satisfy the third test of having aggregate of 28 Muslim pupil in all the 4 Standards to study Arabic. But at the time of the second inspection the total number of pupils present in the School in all the 4 divisions together was only 27. The Petitioner's contention is that by applying the provisions contained under Rule 12 of Chapter XXIII, 5 per cent has to be added to the total aggregate of 27, which would make the aggregate of 28. Thus, the School will be entitled to one post of Arabic Teacher. The Respondents 2 to 6 do not take the stand that Rule 12 has no application, but according to them, 5 per cent can be added only to the strength of the particular class division and not to

the aggregate of all the 4 divisions together. On analysing the provisions contained under Rule 12, I find that the stand taken by the Respondents 2 to 6 is justified. The relevant portion of Rule 12 of Chapter XXIII reads as follows:

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 above provision gives a mandate that by adding to the actual attendance 5 per cent of roll strength fox-absentees the number shall not exceed the roll strength of each class. Thus it is clear that 5 per cent is to be added to the roll strength of each class and not to roll strength of the entire School. In a class division where the roll strength is 40 and on the day of inspection only 39 pupils were present by adding 5 per cent of the roll strength namely 2, the strength of the class cannot be fixed as 41. This is what is meant by the above provision in Rule 12. It cannot have a meaning that 5 per cent of the aggregate roll strength of all the 4 divisions has to be added to the aggregate number of pupils present in all the divisions on the date of inspection. In the light of the above interpretation, which I am inclined to give to the provision contained under Rule 12, I find that the effective strength assessed by the educational authorities is correct. Exts. P-3, P-4, P-5 and P-6 have been issued in accordance with law and they are not liable to be interfered with.

6. The Petitioner has a further prayer for issuing a writ of mandamus directing the Respondents to sanction a post of Arabic Language Teacher in the School of the 1st Respondent for the academic year 1992-93. This is a matter which he has to agitate before the educational authorities at the first instance before coming to this Court. Therefore, no relief is granted on this count to the Petitioner. But it is made clear that no view is expressed by this Court on the claim put forward by the Petitioner tor the academic year 1992-93.

In the result, the Original Petition stands dismissed subject to the above observations.