
(2013) 11 KL CK 0092
In the High Court Of Kerala
Case No : W.P. (C) No. 28892 of 2013

Sumathy

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 2 KLT 888

Hon'ble Judges : C.T. Ravikumar, J

Bench : Single Bench

Judgement

C.T. Ravikumar, J.—The petitioner was working as Headmistress in Elayidom B.V.L.P. School, Nadapuram in Kozhikode District. She was placed under suspension as per Ext. P3 order dated 14.11.2012. Aggrieved by the continued suspension the petitioner moved Ext. P8 application seeking review of the suspension under R. 67(9) of Chapter XIV-A of the Kerala Education Rules (for short "the KER"). Aggrieved by the delay in the matter of its consideration the petitioner moved W.P. (C) No. 28022 of 2012 and the same was disposed of by this Court as per Ext. P9 judgment with a direction to the 3rd respondent to consider and pass appropriate orders on Ext. P8 application. Consequently, Ext. P10 order was passed. This Writ Petition has been filed challenging Ext. P10 order whereby the request of the petitioner was declined and the 4th respondent was directed to complete the disciplinary proceedings initiated against the petitioner expeditiously and also with certain findings touching the allegations, as well. Apart from the grievance against Ext. P10 the petitioner has also another grievance regarding the failure on the part of the respondents in granting the benefits flowing from Ext. P1. According to the petitioner, the respondents have complied with the directions in Ext. P1 to certain extent by granting approval to her appointment as headmistress and at the same time they have failed to disburse the consequential benefits payable to the petitioner by virtue of Ext. P1. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader.

2. The learned Government Pleader submitted that in terms of the directions in Ext. P10 order, the fourth respondent completed the enquiry and submitted a report to enable the fifth respondent to conclude the disciplinary proceedings in accordance with law. It is further submitted that subsequent to its receipt, the fifth respondent proposed to impose the penalty of removal from service on the petitioner. However, the same was declined to be approved by the third respondent on the ground that the proposed punishment is disproportionate to the gravity of the offence proved against the petitioner. I am of the view that those aspects are relevant and noteworthy only to the extent they reveal the non-finalisation of the disciplinary proceedings. In case the disciplinary proceedings ultimately culminate in imposition of any penalty on the petitioner it can be subjected to further scrutiny in appropriate proceedings in case the petitioner desires to resort to such proceedings.

3. In this case I am of the considered view that despite such submission, as noticed hereinbefore, consideration of one important question became essential. The question that crops up for consideration is whether while exercising the powers under R. 67(9), Chapter XIV-A of the K.E.R., the authority could enter into any finding with respect to the charges leveled against the delinquent teaching staff or make any observation relating the same? In other words, the question is whether Ext. P10 is ultra vires the provisions under R. 67(9), Chapter XIV-A, K.E.R. As noticed hereinbefore, in this case, the petitioner was placed under suspension as per Ext. P3 and what the petitioner sought for as per Ext. P8 was its review. This Court as per Ext. P9 judgment directed the third respondent to consider and pass appropriate orders on Ext. P8 and Ext. P10 was passed in its purported compliance. But the question is whether Ext. P10 can be said to be an order passed in invocation of the powers under R. 67(9) of Chapter XIV-A of the K.E.R. For a proper consideration of the aforesaid question it is inevitable to look into the real purport and intent of R. 67(9) of Chapter XIV-A, K.E.R. R. 67 of Chapter XIV-A of the K.E.R. deals with suspension of teachers. In fact, at the time of introduction of the Kerala Education Rules the Managers had no power to suspend a teacher without previous permission from the Department. The rule was then amended with effect from 1.7.1961 by notification published in Gazette dated 30.5.1961 empowering Managers to place a teacher under suspension for 15 days. Thereafter, as per notification published in Gazette dated 2.2.1965 the existing rule was replaced and still later based on the decision of a Full Bench of this Court in Assistant Educational Officer v. P.R. Mamoo (1968 KLT 556 (F.B.)) a new set of rules was introduced as per Gazette notification dated 10.3.1970. The new sub-rule (9) was then amended as per G.O.(P) 17/78/G.Edn. dated 4.2.1978 published in Gazette dated 14.3.1978. As per the said amendment brought in by Government order dated 4.2.1978 review of suspension contemplated where aided school teacher/teachers continued under suspension for a period exceeding one year. The explanatory note which admittedly did not form part of the notification indicated the general purport as hereunder:-

This Government have decided to subject cases of suspension of aided school teachers who continue under suspension for a period exceeding one year to a review by an Officer immediately superior to the Officer who issued the permission to place the Officer under suspension beyond 15 days. Such a review would be necessary to decide whether there is need or justification for continuance of suspension or whether they could be restored to duty without prejudice to the disciplinary action started against the delinquent officers. The present amendment is intended to achieve this purpose.

(emphasis added)

A perusal of the explanatory note would reveal that such a review would be necessary to decide whether there is need or justification for continuance of suspension or whether they could be restored to duty without prejudice to the disciplinary action started against the delinquent officers and that the amendment is intended to achieve the said purpose. Later, the words "six months" have been substituted in place of "one year" as per G.O.(P) No. 43/80/G.Edn. dated 26.3.1980 published in Gazette dated 22.4.1980. The new sub-rule (9) of R. 67 reads thus:-

67(9). Cases where teachers suspended by Managers are continuing under suspension for a period exceeding six months have to be reviewed and decision taken soon as to whether they should continue to be under suspension or not. The review shall be conducted by an Officer immediately superior to the Officer who issued permission to place the Officer under suspension beyond 15 days. In cases where the suspension is ordered by the Government or an Officer authorised under S. 12A of the Act such review shall be conducted by the respective authority or any authority higher than the one which issued the order of suspension. The review contemplated under this sub-rule will not apply to cases of suspension in pursuance of criminal proceedings in a Court or detention or as a prisoner for debt where sub-rule (3) of R. 67 and R. 67A apply.

(emphasis added)

A scanning of the above sub rule would reveal that it also applies in cases when teachers suspended by Managers are continuing under suspension for a period exceeding six months and that it casts a power coupled with duty to be discharged when being called upon to exercise the same. In this case the petitioner was placed under suspension as per Ext. P3 order dated 14.11.2012 and Ext. P8 application filed by the petitioner under the aforesaid sub-rule is dated 25.5.2013. It is thus obvious that the order of suspension had been in force for more than six months when that application was moved. It is explicit from the wordings thereunder and also from the above extracted explanatory note that while reviewing such an order in exercise of the power thereunder the decision to be taken is to whether the concerned teacher/teachers should continue to be under suspension or not or whether they could be restored to duty without prejudice to the disciplinary action started against the delinquent

officers. Incontestably, that power can therefore be exercised only for the limited purpose of considering whether continued suspension of the concerned teacher is required or not. There cannot be any doubt with respect to the position that while considering such a question in invocation of the power under R. 67(9) of Chapter XIV-A of the K.E.R. the authority concerned is not vested with the power to consider charges levelled against the concerned teacher and to enter upon any findings or make observations touching the merits with respect to any or all of them. The power to initiate disciplinary proceedings is conceded primarily to the managers of aided schools and S. 12A of the Kerala Education Act and R. 75, Chapter XIV-A, K.E.R. empowers the Government and its officers to take disciplinary proceedings only if the concerned manager does not initiate action against a teacher under warranting circumstances despite intimation in that regard. At the same time, the power to conduct the enquiry is conceded to the competent departmental officers and the procedures for imposing major penalties are prescribed under R. 75 Chapter XIV-A, K.E.R. A scanning of the said rule would abundantly make it clear that an educational officer is called upon to enter findings on any charge levelled against a delinquent teaching staff only in his report submitted to the manager pursuant to an enquiry in accordance with the procedures prescribed and he is bound to disclose the grounds for the findings as well, in the report. At any rate, there is no provision at all in the K.E.R. empowering an educational officer to make findings in respect of any charges levelled against a delinquent teacher and are matters to be subjected to an enquiry under R. 75, Chapter XIV-A, K.E.R. Therefore, entering finding on a charge which is or which forms part of a charge in the enquiry under R. 75 while deciding the question whether the concerned teacher should continue under suspension or not, cannot be said to be intra vires the provisions under R. 67(9) of Chapter XIV-A, K.E.R. and in fact, it is ultra vires the said provisions. In this case, Ext. P10 was passed by invoking the power under R. 67(9), Chapter XIV-A, K.E.R. It is evident from Ext. P10 order itself that the enquiry against the petitioner was then pending before the 4th respondent. It is in the said context that sustainability or otherwise of Ext. P10 order as relates the 3rd respondent's observations about the charges levelled against the petitioner are to be looked into. Obviously, the 3rd respondent while considering the question whether continued suspension of the petitioner is called for or not ignored the pendency of the disciplinary proceedings before the 4th respondent and entered into certain findings/observations regarding the charges levelled against the petitioner. In the contextual situation it is only apposite to extract such findings or observations in Ext. P10 and they read thus:-

A perusal of the above extracted portion of Ext. P10 in the light of the provisions under R. 67(9) of Chapter XIV-A, K.E.R. would reveal that they were uncalled for and certainly outside the scope of the provisions under R. 67(9) of Chapter XIV-A of the K.E.R. There is no case for the respondents that those findings/observations are totally unrelated to the charges which the petitioner was facing in the enquiry. It is also to be noted that in respect of the disciplinary

proceedings initiated against the petitioner, the 3rd respondent may have to act as the appellate authority in case of a situation to prefer an appeal against the order of the disciplinary authority. In such circumstances, I have no hesitation to hold that the action on the part of the 3rd respondent in making observations and arriving at certain conclusions regarding the charges levelled against the petitioner vide Ext. P10 is unsustainable and ultra vires the provisions under R. 67(9) of Chapter XIV-A, K.E.R. In the said circumstances, Ext. P10 is set aside. Consequently, the 3rd respondent is directed to consider the question of review of Ext. P3 in accordance with the provisions under R. 67(9) of Chapter XIV-A of the K.E.R. and to pass appropriate orders in tune with the said directions in Ext. P9 judgment. It is made clear that this order will not affect the steps taken in the disciplinary proceedings initiated against the petitioner or its continuation and culmination in accordance with law. As regards the grievance of the petitioner regarding the failure to comply with the directions in Ext. P1 to disburse the consequential benefits even after granting approval to the appointment as Headmistress of the school there will be a further direction to the 4th respondent to consider the question of entitlement of the petitioner for salary and subsistence allowance in the light of Ext. P1. It shall be done expeditiously, at any rate, within a period of six weeks from the date of receipt of a copy of this judgment. After taking a decision on the entitlement of the petitioner appropriate consequential directions shall be issued by the 4th respondent to the 6th respondent and on receipt of such instructions necessary steps for disbursement of benefits, if any, flowing from such orders shall be disbursed to the petitioner within a further period of three weeks.