

(2012) 02 KL CK 0053

In the High Court Of Kerala

Case No : WP (C) . No. 4400 of 2012 (Y)

The Correspondent, Snm Upper Primary School, Muthukulam

APPELLANT

Vs

The District Educational Officer Alappuzha-688 500, The Assistant Educational Officer, Haripad-688 071 and Harsha Kumar Junior Hindu Teacher (Under Suspension) Snm Upper Primary School Muthukuulam Residing at Sudhalayam Muthukulam South P.O., Muthukulam, Alappuzha-690 506.

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Citation : (2012) 02 KL CK 0053

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : P. Sreekumar and Sri. K.S. Manu Punukkonnoor, for the Appellant; Biju Meenattoor Sr. Government Pleader R1 and R2, Sri. V.A. Muhammed Advocate R3 and Sri. K.E. Hamza, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The challenge herein is restricted to the validity of Exhibit P7 notice whereby in connection with an appeal filed by the 3rd respondent, the District Educational Officer proposed to conduct an enquiry in the school on 23.2.2012 and the petitioner was asked to appear along with documents/witnesses. It was also informed that if the petitioner is not present as directed, then further action will be finalised on the premise that the petitioner has no explanation to offer. The learned counsel for the petitioner submitted that the District Educational Officer is acting only as an appellate authority. The school in question is an Upper Primary School. It is submitted that the disciplinary enquiry will have to be conducted by the concerned Educational Officer and at this stage the District Educational Officer cannot conduct a detailed enquiry under the guise of hearing of an appeal received from the 3rd respondent. The appeal filed by the 3rd respondent is available as Exhibit R3(g) produced along with the counter affidavit. The same is against the order passed

by the Assistant Educational Officer as per Exhibit P4. The said order is one passed under Rule 67(8) of Chapter XIV-A KER. The effect of the said order is that the period of suspension is continued beyond the expiry of 15 days, as permitted by the Assistant Educational Officer. Therefore, the disciplinary action against the 3rd respondent has not reached any final stage, namely the conduct of disciplinary enquiry as such going by Exhibit P4. The appeal is confined to the issue of suspension alone.

2. In that view of the matter, the District Educational Officer was not expected to conduct a detailed "enquiry", especially since the Assistant Educational Officer is the Officer concerned for conducting the disciplinary "enquiry".

3. Exhibit P7 is thus quashed.

4. The learned counsel for the 3rd respondent prayed that the appeal may be directed to be heard within a time frame.

There will be a direction to the District Educational Officer to take a decision on Exhibit R3(g) appeal filed by the 3rd respondent within a period of six weeks from the date of receipt of a copy of this judgment.

The Writ Petition is allowed as above.

5. Admit. Urgent notice.

6. Heard the learned counsel for the petitioner and the learned Government Pleader. The learned counsel for the petitioner submits that as an appellate authority, the District Educational Officer cannot conduct a separate investigation/enquiry and therefore the direction to the petitioner, as per Exhibit P7, to be present before the District Educational Officer in the school on 23.2.2012 at 11.30 a.m. along with documents/witnesses cannot be justified. What is challenged in the Writ Petition is the scope of such an investigation/enquiry by the District Educational Officer, who is only an appellate authority. It is stated that any such enquiry will prejudice either of the parties during the subsequent stage of the disciplinary enquiry.

In that view of the matter, there will be a stay as prayed for, for a period of two weeks.