

(1968) 07 KL CK 0020
In the High Court Of Kerala
Case No : O P. No. 2702 of 1966

The Manager, S.M.S.N.H.S. Vaikom

APPELLANT

Vs

The State of Kerala and others

RESPONDENT

Date of Decision : 05-07-1968

Acts Referred:

Kerala Education Act, 1958 — Section 11, 12, 12(2)

Citation : (1968) KLJ 859

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

Bench : Single Bench

Advocate : K. Velayudhan Nair and K.J. Joseph, for the Appellant; S. Easwara Iyer Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.K. Mathew, J.—In this writ petition, the petitioner, the manager of the school in question, challenges the validity of Ex. P-6 order dated 11-10-1965 passed by the Regional Deputy Director of Public Instruction, the 2nd respondent. This order was confirmed by the Government in revision (Ex. R-1). The facts leading to this petition are: The 4th respondent was the headmaster of the school. He was placed under suspension by the petitioner on 3-6-1961, pending enquiry into certain charges against him and the matter was reported to the District Educational Officer, the 3rd respondent. The 3rd respondent made a preliminary enquiry into the charges and gave permission to the petitioner to continue the 4th respondent under suspension pending enquiry into the charges. The charges against the 4th respondent were found proved by the 2nd respondent. Ex. P-1 is the enquiry report and it was sent to the petitioner for taking appropriate action in accordance with the provisions of Chapter 14 A of the Kerala Education Rules, hereinafter referred to as the Rules. As the charges were grave and found proved, the petitioner proposed to dismiss the 4th respondent. He therefore issued notice to the 4th respondent to show cause why he should not be dismissed. The 4th respondent put in an explanation. After considering the

explanation, the petitioner came to the conclusion that the 4th respondent should be dismissed from service. For imposing the punishment, the petitioner requested for sanction of the 2nd respondent under Rule 74 of Chapter 14A of the Rules. The 2nd respondent by Ex. P-2 dated 28-12-1964 suggested that reversion of the 4th respondent as a High School Assistant for a period of six months would be an adequate punishment and directed the imposition of that punishment. The petitioner made a representation to the 2nd respondent against this direction, wherein he contended that the 2nd respondent has no authority to propose a lesser punishment. But the 2nd respondent insisted upon the petitioner carrying out his direction in Ex. P-2 and told him that if he does not comply with the direction within ten days proceedings will be started against him under Rule 7(1) of Chapter 3 of the Rules (Ex. P-3). The petitioner then sent a letter to the 2nd respondent reiterating his contention that the 2nd respondent has no jurisdiction to order him to comply with the direction in Ex. P-2. Thereafter, the 2nd respondent framed charges against the petitioner for not complying with the direction (Ex. P-4). The petitioner submitted his explanation (Ex. P-5). Then the 2nd respondent passed an order on 11-10-1965 requiring the petitioner again to show cause why he should not be declared unfit to be the manager of the school (Ex. P-6). The petitioner filed a revision before Government questioning Ex. P-6 but government dismissed the revision. Ex. R-1 is a copy of the order dismissing the revision. There after, the 2nd respondent issued Ex. P-8 to the petitioner again asking for explanation why he should not be declared unfit to be the manager of the school. The question for consideration is whether the 2nd respondent had jurisdiction to issue the direction in Ex. P-2. It was contended on behalf of the respondents that under Rule 74 of Chapter 14A of the Rules, the petitioner cannot dismiss the headmaster of the school without the previous approval of the 2nd respondent as the power of the Director of Public Instruction to grant or withhold approval to the proposal has been delegated to him. But what Ex. P-2 has done is not to withhold approval for the punishment proposed by the manager, but to direct the manager to impose a different punishment. The power to dismiss a teacher, including a headmaster, is vested in the manager (see Section 12 (2) of the Kerala Education Act and the Full Bench ruling of this Court in Writ Appeal Nos. 206 & 207 of 1966). It is contended on behalf of the respondents that Section 12(2) does not negate the power of the Educational authorities to dismiss a teacher or headmaster as the sub-section only enables the manager to exercise the power and does not exclude the power of government to frame rules vesting the power in the educational authorities, and that under Rule 77(2) of Chapter 14A of the Rules, if a higher authority has imposed or declined to impose a punishment, the manager, a lower authority, shall have no jurisdiction to proceed in respect of the same case. Rule 77(2) runs as follows:

Where in any case a higher authority has imposed or declined to impose a penalty, a lower authority shall have no jurisdiction to proceed in respect of the same case.

2. In the judgment in O.P. Nos. 1688 & 1903 of 1965, 3 Co. 7. b. (1594) had occasion to consider the question whether the rule making authority can vest the power of dismissal or suspension in the educational authorities. I decided that the Kerala Education Act did not visualize the vesting of this power in any other agency and that the power, if vested in any other agency by the rulemaking authority, would be destructive of the power exclusively conferred On the manager by Section 12 (2) of the Kerala Education Act. This is what I said in the judgment in the above O.Ps.

I think the Act recognized and affirmed the power of the manager to appoint teachers in aided schools subject to the rules and conditions laid down by the Government.....The underlying purpose of the Legislature in enacting sections 11 and 12 was to put restrictions upon the exercise of the power of appointment, dismissal or suspension by the Manager. It was not contended that the power was exercised by any agency other than the manager, when the Act came into force. There is no provision in the Act visualizing the vesting of the power in any other agency. Then, why not I presume that the purpose of the Legislature was to recognize and affirm the power as the exclusive power of the manager but subject to restrictions.

Section 12(2) standing by itself is susceptible of the construction that the power of the manager to dismiss or suspend is not exclusive. It was to negative this argument that I resorted to the historical background and said that before the Act came into force the power was exercised only by the manager, and referred to the mischief resulting from the unbridled exercise of the power, and pointed out that "the remedy which the Legislature has resolved and appointed to cure the disease" was to put restrictions upon the exercise of that power. That resort to the background of the pre-existing law is relevant in such circumstances in the construction of a statute has long ago been laid down in Heydon's¹ case, where all the Barons of the Exchequer declared:

That for the sure and true interpretation of all statutes in general...four things are to be discerned and considered:

- (1) What was the common law before the making of the Act.
- (2) What was the mischief and defect for which the common law did not provide.
- (3) What remedy the Parliament had resolved and appointed to cure the disease of the Commonwealth.

The Supreme Court has followed the rule of interpretation laid down in Heydon's case in *Bengal Immunity Co. v State of Bihar* AIR. 1955. S. C. 661.

Suppose a manager refuses to impose the punishment of dismissal proposed by an educational authority, can the manager be proceeded against for violation of a lawful order by the educational authority? I think not. Suppose a manager insists upon dismissing a teacher, can the educational authority say no and direct the imposition of a lesser punishment and take proceedings against the manager for

not implementing the direction of the educational authority? I would answer in the negative. Again, suppose a manager proposes a punishment, say reduction in rank, but the educational authority insists upon dismissal, what is to happen? If rule 77(2) is valid, the punishment of dismissal must be imposed. But then, which is the authority which imposes the punishment of dismissal? Surely not the manager. Yet, u/s 12(2) of the Kerala Educational Act, the power of dismissal is vested only in the manager. The power to impose restrictions on the power of the manager does not mean that the power itself can be arrogated. Rule 77(2) in so far as it gives the educational authorities the power to impose the punishments which is vested in the manager by Section 12(2) may not be consistent with that Sub-section. I think, the Full Bench ruling (1968 K. L. 606.) in Writ Appeal Nos. 206 & 207 of 1966 has decided that the power of manager in this behalf is exclusive. I therefore hold that rule 77(2) should not stand in the way of adjudicating upon the rights of the parties in this case, as it is repugnant to Section 12(2) of the Kerala Education Act.

I quash Ex. P-6 and P-8 and also the order of government Ex. R 1 and allow the writ petition. In the circumstances, there will be no order as to costs.