
(2006) 02 KL CK 0042

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22477 of 2005

Valsala Bai

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Kerala Higher Secondary Education State Service Rules, 2001 — Rule 3, 4

Citation : (2006) 2 KLT 1

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

Bench : Single Bench

Advocate : Siby Mathew, A.A. Mohammed Nazir, Philip J. Vettickattu, V. Lakshmi and Shijimol M.C, for the Appellant; K.G. Bhaskaran, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.K. Denesan, J.—Petitioner was the Principal of a Higher Secondary School before she retired from service on 31.5.2005. Ext. P1 charge memo was served on her by the fourth respondent Deputy Director of Education, Pathanamthitta. This was followed by Ext.P2 order dated 27.5.2005 passed by the second respondent placing the petitioner under suspension. Petitioner retired from service on 31.5.2005 while under suspension.

2. Ext.P2 order of suspension was challenged by the petitioner before this Court and as per Ext.P3 judgment dated 1.6.2005 this Court directed the Government to consider the appeal filed by the petitioner against Ext.P2. Ext.P4 is the order passed by the Government disposing of the appeal as per G.O dated 12.7.2005. According to the Government the appeal was liable to be rejected. However it is to be noted that there is no reference to the main contention taken by the petitioner that neither the fourth respondent nor the second respondent has jurisdiction to proceed against the Principal of a Higher Secondary School in disciplinary action. Ext.P4 order rests on findings without taking note of the main contention raised by the petitioner.

3. Counsel for the petitioner submits that the petitioner had taken up the specific contention that she was not guilty of the allegations made against her. She had also been contending that the third respondent was the competent authority to issue memo of charges or to place her under suspension even if it is assumed for argument sake that disciplinary proceedings are warranted against the petitioner.

4. A counter affidavit has been filed on behalf of the second respondent justifying the action taken by respondents 2 and 4 as also Ext. P4 order passed by the Government rejecting the appeal filed by the petitioner. In the counter affidavit also there is no satisfactory answer to the grounds raised by the petitioner touching the jurisdiction of respondents 2 and 4 to pass the impugned orders.

5. I have heard Mr. Siby Mathew, counsel for the petitioner and Mr. K.G. Bhaskaran, Government Pleader appearing for the respondents.

6. Petitioner was posted as Principal of Govt. High School Kadamanitta as per order dated 11.1.2005. Ext. P7 is the extract of that order. It is evident from Ext.P7 that the appointing authority of the petitioner is the third respondent, Director of Higher Secondary Education. Appointment to the post of Principal is governed by the provisions contained in the special rules viz., Special Rules for the Kerala Higher Secondary Educational State Service published as per notification dated 16.4.2001. The post of Principal is category No: 1. Under Rule 3 of the aforesaid special rules this post has to be filled up by promotion from category No:2 and by transfer from qualified Headmasters of the High Schools in the Kerala General Education Services. Rule 4 of the aforesaid rules speaks about the appointing authority wherein it is stated that the appointing authority in respect of category (1) shall be the Government and in respect of category (2) shall be the Director of Higher Secondary Education. Under the scheme of these rules neither the Deputy Director of Education nor the Director of Public Instruction comes into the picture. They are neither the appointing authority nor the disciplinary authority in respect of the categories mentioned under these rules.

7. A Full Bench of this Court in Varghese v. Deputy Director of Education 2000 (2) KLT 109 had occasion to examine the jurisdiction of the Deputy Director of Education to take disciplinary action against teachers of Higher Secondary Schools and it has been held that the appointing authority alone will have the power to initiate disciplinary action. Since the teacher involved in the case before the Full Bench was the Higher Secondary School Teacher of an aided private school, Full Bench held that the power to take disciplinary action was vested in the Manager of the School until special rules are framed by the Government regulating the method of appointment and other service conditions of the teachers of the Higher Secondary Schools. Now that the special rules have been framed and the appointing authorities have been specifically mentioned in those rules, there cannot be any doubt that neither the Deputy Director of Education nor the Director of Public Instruction can initiate disciplinary action against the teacher of a Higher Secondary School including Principal of Higher Secondary

Schools.

8. Since the Director of Public Instruction has no disciplinary control over the petitioner, Ext.P2 order placing the petitioner under suspension is also without jurisdiction. Ext.Ext.P2 order of suspension and Ext.P4 order rejecting the appeal filed by the petitioner are unsustainable. Exts.P1 ,P2 & P5 were issued by incompetent authorities. Accordingly Exts.P1, P2, P4 and P5 are set aside. Since Ext.P2 order was issued without jurisdiction, petitioner shall be deemed to have been continuing in service from the date of Ext.P2 till the date of her superannuation from service i.e. 31.5.2005. Consequential benefits including arrears of salary due to the petitioner shall be worked out and paid to her within two months on production of a copy of the judgment. Terminal benefits due to the petitioner shall be calculated based on the average emoluments she is entitled to get in terms of the directions issued herein above. Writ Petition is allowed as above.