

(2008) 07 KL CK 0077

In the High Court Of Kerala

Case No : Writ Petition (C) No. 543 of 2008 M

Valsala J.

APPELLANT

Vs

The Corporate Manager, All CSI Schools in Malabar and
Wayanad

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

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

Kerala Education Rules, 1959 — Rule 67, 67(1), 67(8), 67A(8)

Citation : (2008) 3 ILR (Ker) 716 : (2008) 3 KLJ 99 : (2009) 2 SLR 522

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : V. Rajendran, for the Appellant; K.B. Arunkumar, Babu Joseph Kuruvathazha, C.P. Sivadasan Nair and T.B. Remani, GP, for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—The petitioner, while working as Sanskrit Teacher in B.E.M.U.P. School, Thrikkederi, Ottapalam under the corporate management of the first respondent, was placed under suspension by the first respondent, Manager, as per Ext.P5 order dated 17.12.2007, for a period of fifteen days from 18.12.2007. The Assistant Educational Officer refused to approve the order of suspension. The Assistant Educational Officer passed Ext.P6 order dated 28.12.2007, holding thus:

...During the investigation the charges against the delinquent teacher was not established by the Corporate Manager.

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In the above circumstances there is valid ground for suspension of Smt. J. Valsala, Skt. Teacher, BEMUP School, Trikkateri. The request of the manager to keep the teacher away from work deserves no consideration. Hence I direct you to reinstate Smt. J. Valsala, Skt. Teacher in service forthwith. This order is issued under Rule 67(8) of Chapter 14 KKER.

(in the above quoted portion of the order, there is evidently an error and the word "no" is omitted in the first sentence in the last paragraph).

2. The Manager filed Ext.R1 (d) revision dated 31.12.2007 before the Government, challenging Ext.P6 order passed by the Assistant Educational Officer. On the same day of filing of Ext.R1(d) revision, the Manager passed Ext.P7 order, keeping away the petitioner from duties for a period of 15 days from 2.1.2008 to 18.1.2008 or until final decision in the pending disciplinary matter, which ever is later. The operative portion of Ext.P7 order reads as follows:

5. Under the above circumstances, I am of the view that in the public interest and in the interest of justice, this teacher is required to be kept away from the duties pending departmental enquiries owing to the gravity of offences alleged to have been committed by her for a further period of fifteen days w.e.f. 2.1.08 to 16.1.08 (both days inclusive) or until final decision in the pending disciplinary matter, which ever is later, all subjected to further orders of the Government, wherein, I do hereby pass orders to effect the above extension of "Suspension" under the powers vested in me as per KER.

Reference No. 1 in Ext.P7 is Ext.P6 order dated 28.12.2007 passed by the Assistant Educational Officer, Ottapalam. Ext.P7 order is under challenge in this Writ Petition filed by the Teacher.

3. Ext.R1 (d) revision filed by the Manager was dismissed on 29.4.2008. The Manager filed W.P.(C) No. 14915 of 2008 challenging that order. When that Writ Petition came up for hearing, the Manager submitted that he would re-admit the teacher to duty in compliance with the directions issued by the Assistant Educational Officer and the Government. The said Writ Petition was disposed of by Ext.R1(h) judgment dated 26.5.2008.

4. The question involved in this Writ Petition is whether the Manager has jurisdiction to pass an order like Ext.P7. The jurisdiction of the Manager to suspend a teacher is contained in Section 12 of the Kerala Education Act and Rule 67 of Chapter XIV A of the Kerala Education Rules. Sub-section (2) of Section 12 of the Kerala Education Act provides that no teacher of an aided school shall be dismissed, removed or reduced in rank by the Manager without the previous sanction of the officer authorised by the Government in this behalf, or placed under suspension by the Manager for a continuous period exceeding 15 days without such previous sanction. Sub-rule (1) of Rule 67 of Chapter XIVA of the Kerala Education Rules empowers the Manager to place a teacher under suspension in the three contingencies mentioned therein, viz., (a) when disciplinary proceedings against him are contemplated or are pending or (b) when a case against him in respect of any criminal offence is under investigation or trial or (c) when the final orders are pending in the disciplinary proceedings if the authority considers that in the then prevailing circumstances it is necessary, in public interest that the teacher should be suspended from service. Sub-rule (8) of Rule 67 of Chapter XIVA of the Kerala Education Rules mandates that the

Manager shall report the matter of suspension to the Educational Officer on the same day on which the order of suspension was passed. The Educational Officer shall thereupon make a preliminary investigation into the grounds of suspension. Sub-rule (8) of Rule 67A of Chapter XIV A of the Kerala Education Rules reads as follows:

(8) Where the orders of suspension is made by the manager he shall on the same day report the matter together with reasons for the suspension to the Educational Officer and where the suspension is in respect of Headmaster of Secondary School and Training school such reports shall be sent to the Deputy Director (Education) also in addition to the Educational Officer. The Deputy Director (Education) if the suspension is in respect of Headmaster of a Secondary school of Training school and the Educational Officer in other cases shall thereupon make a preliminary investigation into the grounds of suspension. If on such investigations the authority is satisfied that there was no valid ground for the suspension he may direct the manager to reinstate the teacher with effect from the date of suspension and thereupon the teacher shall forthwith be reinstated by the manager. If the teacher is not actually reinstated the teacher shall be deemed to have been on duty. It shall then be open to the Department to disburse the pay and allowance to the teacher as if he were not suspended and recover the amount so disbursed from the manager. If on such investigation it is found that there are valid grounds for such suspension beyond 15 days if necessary. The authority mentioned above shall pass orders permitting the suspension or otherwise within said 15 days.

5. The Assistant Educational Officer passed Ext.P6 order dated 28.12.2007 in exercise of his power under Sub-rule (8) of Rule 67 of Chapter XIVA of the Kerala Education Rules. The Assistant Educational Officer directed the Manager to reinstate the teacher forthwith. When the Assistant Educational Officer has exercised jurisdiction under Rule 67(8) of Chapter XIV A of the Kerala Education Rules and directed the Manager to reinstate the teacher in service, there cannot be any jurisdiction vested in the Manager to exercise his power of suspension under Rule 67(1) of Chapter XIV A of the Kerala Education Rules or u/s 12(2) of Kerala Education Act. Section 12(2) of the Kerala Education Act and Rule 67(1) of Chapter XIV A of the Kerala Education Rules empower the Manager to place a teacher under suspension for a limited period. His power is circumscribed by the limitation contained in Rule 67 of Chapter XIV A of the Kerala Education Rules. Once the matter is reported to the Educational Officer and the Educational Officer has declined permission to place the teacher under suspension beyond fifteen days, the Manager retains no power either to extend the period of suspension or to continue the order of suspension or to keep the teacher under suspension till the disposal of the revision filed by the Manager against the order passed by the Educational Officer or till final decision in the pending disciplinary proceedings. Such a jurisdiction is not contemplated at all in the Kerala Education Rules. In this case, the Manager acted absolutely without jurisdiction in passing Ext.P7 order. Ext.P7 order is liable to be quashed and I do so.

6. In the result, the Writ Petition is allowed. Ext.P7 order dated 31.12.2007 passed by the first respondent, Manager, is quashed. The petitioner would be entitled to all the consequential benefits including arrears of salary and continuity in service.