

(2021) 11 KL CK 0080

High Court Of Kerala

Case No: Writ Petition (C) No. 10545 Of 2013

Smt. Thresiamma Abraham

APPELLANT

Vs

Manager, Sacred Heart High
School Kanthallur, Idukki District

RESPONDENT

Date of Decision: Nov. 12, 2021

Acts Referred:

- Kerala Education Rules, 1959 - Rule 75, 75(1)(b)

Hon'ble Judges: C.Jayachandran, J

Bench: Single Bench

Advocate: Dr.George Abraham, Kaleeswaram Raj, Jacob E Simon

Final Decision: Allowed

Judgement

C.Jayachandran, J

1. The petitioner, who was the Headmistress of the Sacred Heart High School, Kanthalloor, Idukki, impugned Ext.P9 enquiry report of the District

Educational Officer, Kattappana, in the writ petition above referred. Ext.P9 enquiry report is in respect of an enquiry under Section 75(1)(b) of

Chapter XIV-A of the Kerala Educational Rules against one S.Paul Raj, a teacher of the said School, on the allegation that he misbehaved with the

students of Standards VIII, IX and X of the Tamil Division. Vide Ext.P9 report, the enquiry officer (D.E.O.) found that Sri.S.Paul Raj had behaved in

an unbecoming manner to the students and therefore, appropriate disciplinary action be taken against him. Simultaneous with the same, the D.E.O.

also found that the petitioner/Headmistress committed lapses in not initiating action against Sri.Paul Raj, although she received a complaint from a

student by name Sindhu of Standard VIII, Division A. On such premise, Ext.P9 report further directs the Manager to initiate necessary disciplinary action against the petitioner/Headmistress. The petitioner is aggrieved by the said direction. Although this writ petition is of the year 2013, no counter is seen filed either by the first respondent, Manager; or by respondents 2, 3 and 4, who are the D.E.O., D.P.I. and the Secretary to Government, General Education Department, respectively.

2. Heard the learned counsel appearing for the petitioner; the learned counsel appearing for the first respondent/Manager and learned Government Pleader appearing for respondents 2 to 4.

3. The learned counsel for the petitioner submits that in the instant enquiry report under Rule 75 of Chapter XIV-A of the K.E.R., the second respondent, D.E.O., grievously erred in making adverse observations against the petitioner and directing disciplinary action against her. The learned counsel further submitted that the subject enquiry was one against a teacher by name Paul Raj on the allegation that he misbehaved with certain girl students of Classes VII, VIII and IX. There was no allegation against the petitioner, who was the Headmistress of the school at the relevant time. No charge was framed against her. In such circumstances, the present observation about the latches on the part of the petitioner and consequent direction to take disciplinary action against her are wholly illegal, submits the learned counsel. According to the learned counsel for the petitioner, the observation and the direction above referred are beyond the scope of an enquiry under Rule 75 of Chapter XIV-A of the KER. The learned counsel finally points out that an order of stay of Ext.P9 enquiry report, insofar as it pertains to the petitioner, was in vogue all through out and that the petitioner had retired from service now, wherefore, no further action against her is neither feasible, nor warranted.

4. The learned counsel for the first respondent/Manager, submitted that the first respondent is duty bound as per Rule 81A to follow the directions of the D.E.O. in Ext.P9 enquiry report, which was not done only on account of the order of stay passed by this Court in the writ petition above referred.

Barring that aspect, the first respondent/Manager, has no separate or special interest in the matter, submits the learned counsel.

5. The learned Government Pleader submitted that the observation and the consequent direction against the petitioner is well within the limits, since the petitioner failed to initiate action against the teacher by name Paul Raj, despite an oral complaint received from a student by name Sindhu of Standard

VIII, Division A. According to the learned Government Pleader, the direction was only to initiate action against the petitioner/Headmistress only in

accordance with law, after issuing show cause notice and framing charge, and not otherwise.

6. Having heard the learned counsel appearing for the respective parties, this Court is of the opinion that this writ petition is to be allowed. This court

finds considerable force in the submission made by the learned counsel for the petitioner that the observation and the consequent direction made

against the petitioner are beyond the scope of an enquiry under Rule 75 of Chapter XIV-A of the K.E.R. Rule 75 deals with the procedure for

imposing major penalty. It contemplates that the Manager should frame a definite charge against the delinquent teacher, calling upon him/her to submit

a written statement of defence. After receiving such written statement, if the Manager is of the opinion that a formal enquiry should be conducted, the

Manager shall forward records of the case to the educational officer concerned in the case of a teacher, with a request to conduct a formal enquiry.

The procedure above referred is contemplated in Rule 75(1)(a) and (b) of Chapter XIV-A of the K.E.R. It is clear beyond the cavil of any doubt that

the scope of an enquiry under Rule 75, insofar as the educational officer is concerned, is only with respect to the charge framed against a teacher and

on the basis of his written statement of defence, coupled with the records pertaining to the attendant facts and circumstances. In the instant case,

admittedly, no charge is framed against the petitioner and no enquiry is contemplated against her. The subject enquiry was one against a teacher by

name Paul Raj on the basis of a specific charge framed and, therefore, an observation to the effect that the petitioner/Headmistress committed lapses

in not initiating action on the complaint of a student by name Sindhu and the consequent direction to initiate disciplinary action against her, can hardly

be countenanced in law, the same being beyond the powers and contemplation of an enquiry under Rule 75 of Chapter XIV-A of the K.E.R. Ext.P9

enquiry report, insofar as it pertains to the observation and direction against the petitioner is concerned, is liable to be interfered with on that count alone.

7. That apart, on facts as well, the finding is not seen established by adequate material on record, except a statement by the said student by name

Sindhu that she told her complaint against the teacher, Paul Raj, to the Headmistress. Barring the solitary statement of a student, there exists no

material to arrive at a finding against the petitioner/Headmistress, so as to warrant initiation of disciplinary proceedings. No other witness examined

have spoken to in that direction. None of the records, which forms part of the subject matter of the enquiry and which is produced in the writ petition,

would support such an allegation against the petitioner/Headmistress. Per contra, the records would indicate otherwise.

8. Finally, this Court takes stock of the fact that the petitioner had retired from the service on superannuation and, therefore, no further action is

possible as against her.

In the light of the above discussion, this Writ Petition is allowed quashing Ext.P9 enquiry report, to the extent it directs the first respondent/Manager to

take disciplinary action against the petitioner.