(1985) 09 KL CK 0021

High Court Of Kerala

Case No: O.P. No. 1404 and 3214 of 1981

The Corporate Manager and Another		APPELLANT
	Vs	
K.K. Cheriyan and Others		RESPONDENT

Date of Decision: Sept. 12, 1985

Acts Referred:

- Constitution of India, 1950 - Article 226, 30, 30(1)
- Kerala Education Act, 1958 - Section 8

Citation: (1985) KLJ 762

Hon'ble Judges: M.P. Menon, J

Bench: Single Bench

Advocate: K.C. John and K.K. John, for the Appellant; C.S. Rajan Thomas John and Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

M.P. Menon, J.

For having forged the signature of a teacher in a false application for advance from her Provident Fund, the Headmaster of an L.P. School belonging to the C.M.S. group of schools (corporate management) was proceeded against. As required by the provisions of the Kerala Education Rules, a due enquiry was conducted by the Regional Deputy Director of Public Instruction. He found the Headmaster guilty. Acting on the basis of the enquiry report, the management proposed to remove him from service, but after considering his representation, the final decision taken was to reduce him permanently as a P.D. teacher The teacher filed a revision before Government, against the imposition of the aforesaid penalty, under Rule 92 of Chapter XIV-A. The Government agreed with the management that the Headmaster was guilty and deserved punishment, but reduced the penalty to one of reduction as P.D. teacher for a limited period. The operative portion of the order (Ext. P8 in O. P. No.3214 of 1981) was in these terms:-

Having heard the arguments on both sides and perusing the records of the case including the file of the DPI Government do not find any procedural irregularity in this case. On merits also government do not find any reason to set aside the orders of the Manager in full. However in view of the fact that there has not been any misappropriation and in view of the fact that the possibility of appropriating by the Headmaster the loan amount mentioned to a teacher is also remote, the punishment of permanent reduction of rank is quite out of proportion to the gravity of the offence. Government in exercise of the powers conferred upon them under rule 92 Ch. XIV-A K. E. R. modify the punishment of the permanent reduction in rank to one of temporary reduction for the period from 21-11-1979 to 31-3-1981. Shri K. K. Cherian will accordingly be restored to his position as Headmaster with effect from the afternoon of 31-3-1981.

In O P. No. 3214 of 1981 filed by the teacher, his contention is that the revisional authority should have fully exonerated him. And in O P. No. 1404 OF. 1981 the management challenges the validity of the revisional order, and contends that there was no scope at all for any kind of interference with the penalty imposed.

2. It is difficult to find substance in the Headmaster''s contention that the A. E, O who was examined as a witness at the enquiry, and the R. D. D. P 1. who held the enquiry, were prejudiced or biased. Nor is there any force in the complaint, based on Ext. P3, that some records relevant for the enquiry were not handed over to him. The lady teacher concerned had given clear evidence that she had never applied for advance from the Provident Fund and that she had not signed the application which the Headmaster had admittedly forwarded to the higher authorities with a covering letter. This evidence was enough to sustain the finding at the enquiry, and all other technical contentions relating to its conduct have to be ignored, at least for the purposes of the present proceedings before this Court. The Headmaster should consider himself lucky that the Government was prepared to take a lenient view as regards the quantum of punishment. Absolutely no grounds have been made out by the Headmaster for interference under Article 226, and O. P. No. 3214 of 1981 has accordingly to bet dismissed.

3. The more difficult question is the one raised by the Corporate Manager of the schools as regards the scope of Rule 92 of Chapter XIV-A. It is argued that the Rule does not empower the Government to order reinstatement of a teacher removed or demoted from his post. In the context of a minority institution like the one on hand, a further contention is also raised that if the rule is interpreted so widely as to recognize a power in Government to pass all kinds of orders, including those virtually amounting to interference with the internal affairs of an institution, the rule will have to be declared inoperative in its application to minority institutions, in view of Article 30 of the Constitution.

4. Rule 92(1), in so far as it is relevant for the present reads: -

92. Revision:-(l) Notwithstanding any thing contained in these rules, the Government may, on their own motion or otherwise, after calling for the records of the case, revise any order passed by a subordinate authority in respect of matters contained in this Chapter which is made or is appealable under these Rules-

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(c) remit the case to the authority, which made the order or to any other authority directing such further action or inquiry as they consider proper in the circumstances of the case; or

(d) pass such other order as they deem fit;

5. Counsel relies on the Full Bench decision in Narayana Menon v. State (1974 KLT 714) where this Court expressed the view that the true repository of disciplinary power in the matter of aided school teachers is the manager himself, and that the power vested in the Government is intended only to safeguard public interest and not to justify every type of arbitrary interference. The real question in the case was whether Government was bound to hear the Manager, in proceedings under Rule 92, before modifying his decision in disciplinary matters. The Full Bench did not make any pronouncement on the amplitude of the powers conferred on Government under the clear language of clauses (b) and (d) of Rule 92(1); their lordships were more concerned with fairplay in procedure and rules of natural justice.

6. In Achuthan Pillai v. Appukutan Pillai & Others (1978 KLN 77) Namboodiripad J. said that the power to order reinstatement is not part of the Government''s revisional power under Rule 92(1), and observed:-

What is provided for in Rule 92 is a Revisional jurisdiction against an order passed by a subordinate authority which is made or is appealable under the rules What the Government can do while disposing of a revision under Rule 92 is to pass an order which the subordinate authority could have or should have legally passed in the case, if the order of the subordinate authority is erroneous or to confirm it, if it is a proper order. It shall not be forgotten that the Education Act and the Rules made thereunder are intended to place fetters on the authority of managers of aided schools in the matter of management of the educational institution. In the absence of statutory provisions, it is not possible on the part of the Government to interfere with any of the powers of the Manager in the matter of running his educational institution. Since the object of the Statute is to impose restrictions on the absolute powers of the manager, the restrictions are to be strictly construed. The educational authorities or for that. matter the Government itself can derive only such authority as are conferred on them by the positive provisions of the Act or the rules

thereunder. I am unable to read in Rule 92 of Chapter XIV-A of the Rules, the conferment of any power on the Government to pass whatever order it deems fit in cases of this kind, when it exercises the revisional jurisdiction conferred on them under that rule.

But a slightly different note was struck by Eradi J. (as he then was) in Velayudl an v. State of Kerala (1977 KLT 145) where it was said:-

''Firstly, the revisional power conferred on the Government under Rule 92 of Chapter XIV (A) of the Kerala Education Rules is very wide in its ambit and it specifically empowers the Government by clauses (a) and (d) to confirm, modify or set aside the order of the subordinate authority or to pass such other order as the Government may deem fit. It is clear on a reading of clauses (c) and (d) of Rule 92 that the Government is vested with the discretion to remit the case to the concerned subordinate authority directing such further action or enquiry as may be considered proner in the circumstances of the case or dispose of the matter at the Government level itself by passing such other order in the case as the Government deems fit. It is not therefore obligatory for the Government in all cases where they find that the order passed by the subordinate authority has to be set aside to remit the case to the subordinate authority for passing fresh orders. In appropriate cases, instead of adopting the course of remittal, the Government may itself decide the matter under clause (d).

The two approaches can of course be reconciled by thinking that in one case the emphasis was on the extent or ambit of the power under the Rule, and in the other, on the manner in which the power was to be exercised in the context of the whole statutory scheme.

7. The question here is about the manner of exercise. The penalty imposed by the Manager was one of permanent reduction of the Headmaster as a P.D. teacher. And the interference under Rule 92 was limited to modifying it to one of reduction for a specified period. On the language of clause (b) of Rule 92(1). Government was really competent to do so The case cannot be equated to others where Courts had had occasion to consider minority rights in the matter of choosing a Headmaster for its institution; here the Head of the institution was one chosen by the management itself. The only question was whether for the misconduct found against him, he should have been permanently or temporarily kept out of that office. So long as the right to administer does not involve a right to mal-administer, a power like the one conferred under Rule 92 has to be recognized, even in its application to minority institutions The scope of revisional power under the specific provisions of a statute cannot be one for one institution, and another for another institution. It seems to me that if the order impugned in this case cannot be interfered with in the case of a "majority institution", a different consideration cannot be applied in the case of minority institution.

8. The direction to ""restore" the Headmaster to his old post after 31-3-1981 was not strictly a reinstatement order as understood in Achuthan Pillai''s case (1978 KLN 77). Even if such a specific direction was not there, and the Government order had simply stated that the reduction in rank would operate only till 31-3-1981, the practical result would have been the same. When a teacher is dismissed by a management and that order is "set aside" under Rule 92 (1) (b). without any consequential direction regarding reinstatement, the legal position would be that the management would be bound to reinstate him. The mere incorporation of a direction to "restore the teacher here to the position of Headmaster on the expiry of the period of reduction does not. in my opinion, amount to an illegal exercise of power under Rule 92(1).

9. It is true that a Headmaster found guilty of forging the signature of a teacher as in this case should normally be pronounced as unworthy of that post, whether the post is in a majority institution or in a minority institution Rules of morality and ethics are certainly of considerable importance for the C. M. S. management, but they must be equally so for other educational institutions and even for the society in general. But it is well-known that the feeble restraints of morality and decency have not always been sufficient to resist the progress of that degenerate spirit which sacrifices lofty principles for indulgence, or to stem the tide of indiscretions flowing from poverty and inadequacy. On an examination of all the circumstances of the case the revisional authority thought that a temporary reduction from the post of Headmaster was sufficient to meet the ends of justice and probably also sufficient to reform the teacher concerned; and with the exercise of that kind of discretion, which cannot be confidently characterized these days as misuse of power under the statute, this Court will not be justified in interfering That the management here is a minority institution makes no difference.

10. There are observations in many decisions which, if their context could be ignored, would suggest that minority institutions stand totally outside the ordinary and are entitled to claim certain immunities under Article 30 (1). Dealing with this contention, Sivaraman Nair J. said, in a O. P. No. 3745 of 1983 and connected cases. recent decision :-

It is elementary that in our constitutional system, no statutory authority can claim such immunity from regulations as to be unreasonable and arbitrary. None of the constitutional rights or immunities including those relatable to Article 30(1) of the Constitution of India can bear an interpretation which enables the management of educational institutions belonging to the minority community to trample underfoot all its teachers Article 30 (1) of the Constitution did not create an island of unconstitutional and arbitrary power in favour of minority managements to be used unreasonably and whimsically against members of that community who happened to be teachers. The effect of Article 30(1) of the Constitution is not to deprive the members of that community or teachers of institutions belonging to them of the

right to equality or freedom from arbitrariness or caprice or whim of a State-aided and State-funded instrumentality. The right and immunity available under that article can be claimed and used only for the purposes for which such right and immunity were ensured by provisions in the Constitution. What the Constitution makers comprehended when the provisions for protecting the interests of the minority community were made could not have been the few institutional agencies to be given immunity from control so as to use that immunity even against the members of that community; but only to preserve the religion, culture and language of the minority community from authoritarian onslaughts of the majority communities. The minority community was given freedom to order the affairs of its educational institutions. It was not meant to be an instrument of oppression to be used against that community itself.''''

After an exhaustive study of the case law on the subject and apparently realizing that too rigid an adherence to the bond of precedents would stop the circulation of law''s life-blood, the learned Judge added:-

Legitimate expectations of an employee of a State-aided and State-funded institution, the whole of whose salary is paid by the State by virtue of the obligation under Sec. 8 of the Kerala Education Act as equal to the remuneration payable to the Government School teachers and whose service conditions are more or less equal to those of similar employees under the Government, is entitled, quite naturally, to expect the reward of advancement in service. Such rewards of service as promotion in their turn, fortunately, has not so far been held to de unattainable by teachers in minority educational institutions. If the continuance of a senior teacher does not far against the "temper and tone" of the institution, it passes my comprehension how that very teacher, when he becomes the seniormost, and a vacancy in the pivotal position of Headmaster arises, becomes unfit to guide the destinies of the institution, the furtherance of the temper and tons of which, he himself was, at least in part, responsible to create and foster. I am certainly aware there is likely to be exceptions, when a teacher, due to aberrations subsequent to his appointment, renders himself unsuitable for being appointed as the head of the institution. That happens not only in minority institutions, but in others as will. Rule 44. Chapter XIV-A of the K.E.R. does provide for exceptional situations like that, where an unfit senior can be superseded and a more fit junior can be appointed.

With respect, I agree with the indication that there are many situation under the Kerala Education Act and Rules where it would be idle to make a distinction between minority and majority institutions. It is no doubt true that had the Government upheld the management''s order in to. then also there would have been no justification for this court to interfere. Enough to say that the wide language of Rule 92, a disinclination to cut down its sweep by reference to the facts of one case only, and the restricted nature of my jurisdiction under Article 226 dissuade me from quashing Ext.P8 for any of the reasons urged on behalf of the management.

Both the Original Petitions are accordingly dismissed, but without any order as to costs.