

(1997) 04 KL CK 0025

High Court Of Kerala

Case No: O.P. No. 3898/97 L

Abdurahiman

APPELLANT

Vs

District Educational Officer and
Others

RESPONDENT

Date of Decision: April 9, 1997

Acts Referred:

- Kerala Education Act, 1958 - Section 11, 12, 12A, 12A(1), 12A(2)

Citation: (1997) 2 KLJ 473

Hon'ble Judges: C.S. Rajan, J

Bench: Single Bench

Advocate: M. Vijayakumar and Santhosh, for the Appellant;

Final Decision: Dismissed

Judgement

C.S. Rajan, J.

The Petitioner was working as High School Assistant (Arabic) in the high school section of the 2nd Respondent, Pavandoor Secondary School. He was suspended by the 1st Respondent as per Ext. P-1 order. Ext. P-1 refers to a letter of the 2nd Respondent in which he requested the 1st Respondent to enquire into the allegations against the Petitioner and to take disciplinary action. It is further seen from Ext. P-1 that the 2nd Respondent requested the 1st Respondent to take disciplinary action instead of the Manager himself doing it.

2. Sri Vijayakumar, learned Counsel for the Petitioner argued that Ext. P-1 order is totally without jurisdiction in view of Section 12A of Kerala Education Act. Section 12A of the Act reads as follows:

Disciplinary powers of Government over teachers of aided schools:

(1) Notwithstanding anything contained in Section 11 or Section 12 and subject to such rules as may be prescribed, the Government or such officer not below the rank

of an Educational Officer, as may be authorised by the Government in this behalf, shall have power to take disciplinary proceedings against a teacher of an aided school and to impose upon him all or any of the penalties specified in the rules made under this Act.

(2) The Government or the Officer authorised under Sub-section (1), as the case may be, may suspend a teacher of an aided school when any disciplinary proceedings is proposed to be taken against him under that Sub-section or when such disciplinary proceedings are pending:

Provided that:

(a) before exercising the powers under Sub-section (1) the Government or the authorised officer as the case may be, may intimate the manager regarding the circumstances requiring disciplinary action against the teachers concerned and give the manager a reasonable opportunity of taking disciplinary action;

(b) if the manager fails to take appropriate action, it shall be open to the Government or the authorised officer to take appropriate disciplinary action against the teacher concerned.

Therefore, according to the learned Counsel, the department can suspend a teacher of an aided school only in a case where the manager fails to take action after giving him a reasonable opportunity of taking disciplinary action. Therefore it was argued that u/s 12A there was no power conferred on the educational authorities to initiate disciplinary proceedings at the request of the manager. According to the learned Counsel, in the absence of any intimation from the 1st Respondent to the 2nd Respondent to take disciplinary action, there was no occasion for the 2nd Respondent to take disciplinary action or any failure on the part of the manager to take disciplinary action.

3. At the first blush, it is possible to accept the above argument. But when we look into the section closely, it can be seen that the proviso (a) which authorises the departmental authorities to take action controls only the power of the departmental authorities u/s 12A(1). Sub-sections 1 and 2 of Section 12A operate in different fields. Sub-section 1 of Section 12A authorises departmental authorities to take disciplinary proceeding against a teacher and to impose him any of the penalties specified in the rules. Sub-section 2 of Section 12A gives the power to the department to suspend a teacher pending disciplinary proceedings. The proviso controls the power of the authorities to initiate disciplinary action restricting it to cases where the manager fails to take disciplinary action in spite of the intimation from the departmental officers. As far as the power to suspend is concerned, it is not controlled by the above proviso.

4. I derive sustenance for the above proposition from two Division Bench rulings of this Court. In the ruling reported in 1974 KLT 53, P.P. Sreedharan v. Assistant

Educational Officer, the Division Bench held as follows:

The power under Sub-section (2) of Section 12A to suspend a teacher of an aided school is dependent on only one factor; that a disciplinary proceeding must be proposed to be taken against the teacher. The proviso in terms does not qualify Sub-section (2) of Section 12A of the Act. On the other hand, by its wording, it limits its application to Sub-section (1) of Section 12A. It cannot be said that disciplinary proceedings are proposed against a teacher only in cases where action under Rule 75A has been decided upon by the Government or the officer authorised. The proposal would be there from the time it has been decided to intimate the Manager regarding the circumstances requiring disciplinary action. The fact that the option is given to the Manager to follow the procedure under Rule 75 does not mean, there had been no proposal to take disciplinary action by the Government or the authorised officer. It is unnecessary to have any more material than what the Government or the authorised officer had at the time they or he wrote to the Manager pointing out the circumstances that disciplinary action must be taken in order to posit that there was a proposal to take disciplinary action.

The above proposition was reiterated in a subsequent ruling of a Division Bench reported in 1984 KLT 800 Geethakumari v. Director of Public Instruction which held:

All that is required to attract the provisions of Sub-section (2) of Section 12A is that disciplinary proceeding must be proposed to be taken against the teacher. It would be wrong to construe that the proviso (a) to Sub-section (2) of Section 12A of the Act qualifies or controls Sub-section (2) of Section 12A of the Act. In terms, the proviso refers only to disciplinary proceedings under Sub-section (1) of that section, without making any reference to suspension when disciplinary proceedings were proposed to be taken or during the pending of disciplinary proceedings. There is no warrant for the view that the intimation should precede the order of suspension. The Government or the authorised officer, as the case may be, would be within its or his rights to pass an order of suspension, as soon as it was decided by it or him to intimate the manager regarding the circumstances requiring disciplinary action. There is nothing in the wording of Sub-section (2) of Section 12A which expressly or by necessary implication lays down that failure to comply with the requirements of the intimation in regard to the taking of disciplinary action by the manager, is a condition precedent to the exercise of power by the Government or the authorised officer under that Sub-section. The proposal would be there from the time it has been decided to intimate the Manager regarding the circumstances requiring disciplinary action. There is no fixed time within which intimation has to be given to the Management; nor is there any prescribed form in which the intimation has to be given.

Therefore it is not possible to accept the contention of the Petitioner. Ext. P-1 order of suspension is, therefore, quite valid and passed with authority. The original petition fails and it is dismissed.