

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 4TH DAY OF JUNE 2021 / 14TH JYAISHTA, 1943

WA NO. 1375 OF 2020

AGAINST THE JUDGMENT IN WP(C) 6266/2020 OF HIGH COURT OF
KERALA

APPELLANT/WRIT PETITIONER:

THE MANAGER,
ZAMORIN'S HIGHER SECONDARY SCHOOL
CHALAPPURAM P.O. ,
KOZHIKODE-673 002

BY ADVS.
ANUROOPA JAYADEVAN
SMT.ANIMA M.
SHRI.ASHRUTH NASER

RESPONDENTS/RESPONDENTS 1 TO 3:

- 1 THE DISTRICT EDUCATIONAL OFFICER
KOZHIKODE, OFFICE OF THE DEO,
KOZHIKODE, PIN-673 001.
- 2 STATE OF KERALA
REPRESENTED BY THE SECRETARY,
GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM-695 001.
- 3 GIRIJAN K. ,

HST (HINDI) , UNDER SUSPENSION,
ZAMORIN'S HIGHER SECONDARY SCHOOL,
CHALAPPURAM P.O. , KOZHIKODE-673 002
(RESIDING AT SIVADHAM, ERAMANGALAM P.O. ,
BALUSSERY, KOZHIKODE)
R3 BY ADV SRI.MANU GOVIND

SRI . M . I . JOHNSON , SR . GOVT . PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
04.06.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

“C.R.”

JUDGMENT

Dated this the 4th day of June, 2021

Bechu Kurian Thomas, J.

By an order under Rule 67(8) of the Kerala Education Rules 1959, the 1st respondent directed the appellant to reinstate a teacher, after canceling an order of suspension. Though the appellant challenged the said order in the writ petition, the learned Single Judge dismissed the same against which this appeal is preferred.

2. Ext.P6 order issued by the 1st respondent was impugned in the writ petition. By Ext.P4, the appellant had placed the 3rd respondent-teacher under suspension on 13-02-2020 due to the registration of a crime. The 1st respondent cancelled the order of suspension by the order impugned in the writ petition. Finding that the suspension was imposed by Ext.P4 without considering any of the factual situations and without a preliminary enquiry, the 1st respondent, observed in Ext.P6 that, the alleged assault was not proved and that the frequent

initiation of disciplinary proceedings against the 3rd respondent without adhering to the Kerala Education Rules was also adversely affecting the smooth academic atmosphere of the school apart from creating headache to the department. On the above reasoning, the order suspending the 3rd respondent was cancelled.

3. The primary contention raised by the appellant was that the Manager can place a teacher under suspension at any time, as per rule 67(1)(b) of Chapter XIVA of the Kerala Education Rules, 1959 (for short 'KER') and that when a criminal case is registered against the teacher, the manager has the authority and discretion to suspend the teacher and further that when such an order of suspension is issued, the same could not have been interfered with by the 1st respondent. It was also pleaded that the correctness or otherwise of the allegations that led to the registration of a crime ought not to have been gone into by the 1st respondent while passing the order under Rule 67(8) of KER and also that the finding by the 1st respondent that the incident as alleged, had not occurred, was beyond the authority of the 1st respondent.

4. The learned single Judge on a consideration of the entire

factual situation that arose and after referring to the statutory provisions, concluded that the order suspending the 3rd respondent did not record the satisfaction of the manager and that it was necessary in public interest to keep the 3rd respondent under suspension. The learned Single Judge further observed that in a case where the crime was registered, the same by itself does not provide a ground for automatic suspension unlike in a case where there is detention and custody for a period exceeding 48 hours. After elaborate consideration of the factual situation arising in the case, the learned single Judge found that Ext.P6 does not warrant any interference and on the other hand, it was held that the appellant was duty-bound to reinstate the 3rd respondent in service.

5. The learned Senior Counsel Adv.K.Gopalakrishna Kurup duly assisted by Adv. Susy George Poothicote, vehemently contended that, the learned Single Judge failed to consider the statutory provisions in the correct perspective and that in the nature of the offence alleged against the 3rd respondent, the suspension was inevitable. It was also argued by the learned Senior Counsel that Rule 67 of Chapter XIVA of

KER was not properly appreciated by the learned single Judge. Relying upon the decision in **Meenakshi v. State of Kerala** (2020 (5) KLT 166), it was argued that the investigation contemplated under Rule 67(8) was not the same as the enquiry mentioned under rule 75 of Chapter XIVA of KER.

6. Adv. Manu Govind, the learned counsel for the 3rd respondent contended that the action of the appellant was tainted with malafides, especially since on an earlier occasion when proceedings were initiated against the 3rd respondent, the Government interfered and directed reinstatement. By Ext.R3(a) judgment, this Court confirmed the said order. The 3rd respondent was initially placed under suspension in the aforementioned instance from 20-08-2014, while the Government order was dated 04-08-2017. Even thereafter, when the management refused to reinstate the 3rd respondent, he was forced to approach this Court twice and it was only after Ext.R3(c) and Ext.R3(d) judgments and pursuant to Ext.R3(e) order dated 16-01-2020 that the petitioner could get reinstatement. Thus from 20-08-2014 till 16-01-2020, 3rd respondent was under suspension. According to the learned counsel,

the said reinstatement on 16-01-2020 infuriated the school authorities and within 10 days of reinstatement, i.e; on 27-01-2020, the 3rd respondent was again suspended. The said suspension order was interfered with by the 1st respondent. This paved the way for the next suspension order dated 13-02-2020 produced as Ext.P4. Order suspending the 3rd respondent was issued by the school authorities based upon a false criminal complaint filed at the behest of the manager himself, contended the learned counsel.

7. The learned Government Pleader supported Ext.P6 order and submitted that the same was issued in compliance with the provisions of Rule 67(8) of Chapter XIVA of KER and that the suspension order issued by the appellant on 27-01-2020 was found to be unsustainable and thereafter the same manager placed the said teacher under suspension from 13-02-2020 onwards. Referring to the past, it was pointed out that the very same manager had in fact placed the teacher under suspension from 20-08-2014 onwards on unproven charges and that the teacher was kept under suspension, without considering the Government Order to reinstate the teacher on 04-08-2017. It was

further stated that it was only on 16-01-2020 that the 3rd respondent could get actual reinstatement and that, after a preliminary investigation the 1st respondent found that all actions taken by the manager against the 3rd respondent were as a means of wreaking vengeance.

8. We have considered the rival contentions. A brief background of the case may be apposite in the context. The 3rd respondent is a High School Teacher (Hindi) and by order dated 27-1-2020, he was initially placed under suspension pending contemplation of disciplinary proceedings as per section 67(1)(a) of chapter XIVA of KER. Pursuant to an application dated 03-02-2020, seeking permission to continue the suspension, the 1st respondent, by order dated 10-02-2020 rejected the said application. While so, a crime was registered with No.54/2020 against the 3rd respondent on the basis of a private complaint filed by a student, alleging offence under sections 323, 341 of the IPC and section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015. On coming to know about registration of the crime, the 3rd respondent was placed under suspension by order dated 13-02-2020.

By letter dated 14-02-2020, the appellant reported the suspension to the 1st respondent and also sought an extension for the period of such suspension. The said application was rejected by Ext.P6, which was impugned by the manager in the writ petition.

9. For the purpose of reference, Rules 67(1), (3), and (8) are extracted as below:

67. Suspension: (1) *The Manager may at any time place a teacher under suspension*

(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.*

(3) *A teacher who is detained in custody on a Civil, Criminal or other proceedings for a period exceeding 48 hours, shall be deemed to have been under suspension during that period and he cannot draw his pay and allowance, other than subsistence allowance, allowable under the rule till the final termination of such proceedings.*

(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 or 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 allowances 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, permission may be given to the manager to place the teacher under suspension beyond 15 days if necessary. The authority mentioned above shall pass orders permitting the suspension or otherwise within said 15 days.”

10. A reading of the above provisions indicate that the prerogative of placing a teacher under suspension is that of the manager. Even under section 12A of the Act, the Government or the authorized Officer gets the power to suspend a teacher only when the manager fails to suspend the teacher. However, except for the cases covered under Rule 67(3), suspension is not automatic. To place a teacher under suspension as per rule 67(1), three conditions are required to be satisfied. They are (i) disciplinary proceedings are contemplated or are pending, (ii) when an investigation for a criminal offence against the delinquent is going on, and (iii) when final orders

are pending in disciplinary proceedings. An understanding of the scope, purport and object of Rule 67(1) of Chapter XIVA of KER will reveal that it is not sufficient that any of the aforesaid three conditions are available in a given case to suspend an employee. There is an additional requirement that in the prevailing circumstances, suspension of the teacher is necessary in public interest. To ignore the requirement of public interest in all the three conditions in the aforesaid Rule 67(1) would be doing prejudice to the intent and language of the said provision, and may amount to conferring unbridled, unguided, and absolute powers upon the manager to suspend a teacher. Thus public interest is necessary to suspend a teacher in all the three situations mentioned in Rule 67(1) of Chapter XIVA of KER.

11. However, once a suspension order is issued by the manager, he has to report under sub-rule (8) of rule 67 to the Educational Officer on the same day itself. Thus the Educational Officer comes into seisin of the order of suspension. Thereafter he conducts a preliminary investigation. If, after such an investigation, the Educational Officer is of the view that the suspension is justified, he can grant permission to

continue the suspension order beyond 15 days. On the other hand, if the Educational Officer is of the opinion that the order of suspension was not made on valid grounds, he can direct reinstatement of the teacher.

12. Rule 67(8) of KER contemplates a preliminary investigation to be carried out by the Educational Officer. The preliminary investigation, contemplated under the said sub-rule, is to satisfy the controlling officer about the necessity or need for suspending the teacher. It is a measure of protection against indiscriminate use of the power of suspension. At the said stage of preliminary investigation, the Educational Officer acting as the controlling officer is not required to go into the merits of the allegation. He can of course consider as a preliminary measure the validity of the grounds alleged and also appreciate whether the suspension imposed is as a means of victimization or imposed for other ulterior purposes. The scope of the said preliminary investigation is irrefutably limited and is intended only to find out whether there are any valid grounds for the suspension. A detailed investigation or enquiry is not contemplated under the said

provision. The detailed investigation will be part of the disciplinary proceedings. This court had occasion to deal with the nature of power exercisable under rule 67(8) of KER in the decision in **Sreedharan v. State** (1977 KLT 222) as well as in **Kurien v. AEO, Kolenchery** (1984 KLT 381). In the latter case, it was held that “ *As a matter of fact, it is only after the preliminary investigation the controlling officer can take a decision as to whether the approval sought for has to be given or not and to say that no enquiry or investigation should be conducted or made by the controlling officer would virtually mean that the provision contained in the sub-rule is made redundant*”.

13. In the instant case, Ext.P4 was the order of suspension issued by the manager. It does not record any reason for suspending the teacher except the information received about a crime registered against the teacher as Crime No.54/2020. There is no recording of satisfaction of the element of public interest in Ext.P4. The learned single Judge has held that from Ext.P4 it is clear that there was no satisfaction recorded by the manager that in public interest it was necessary to keep the teacher under suspension. We concur with the

said findings of the learned single Judge.

14. The investigation contemplated under rule 67(8) of Chapter XIVA of the KER is only preliminary and hence the observations made pursuant to such investigation, also, can only be preliminary. It is not conclusive or binding upon the disciplinary proceedings. Thus the finding of the 1st respondent in Ext.P6 that the alleged assault of a student was not proved can be treated only for the limited purpose of continuing the suspension of the teacher. The said observations shall not influence the disciplinary proceedings nor can it be used for any purpose in the criminal proceedings. The 1st respondent has taken a holistic view of the entire matter and also placed reference to the past conduct of the manager to arrive at the finding that the order of suspension is to be cancelled. The learned single Judge has found that the impugned order is justifiable. We cannot find fault with the said conclusion.

15. The order suspending a teacher, though not a punishment, still has certain repercussions as far as the teacher is concerned. It will also affect the smooth administration of the school, as well as the entire

administrative machinery of the education department. It is for this purpose that Rule 67(8) of KER provides for a reappraisal by the controlling officer, not only after every 6 months but even at the initial stage. The existence of public interest in suspending a teacher must therefore loom large. The judgment of the learned single Judge does not warrant any interference and hence the appeal is only to be dismissed.

The writ appeal therefore fails and is dismissed.

BECHU KURIAN THOMAS
JUDGE

S.V.BHATTI
JUDGE

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