**IN THE HIGH COURT OF****KERALA**

W.P. (C) No. 17811 of 2008

Decided On: 24.03.2011

Appellants: **Abdul Jabbar. T.**
**Vs.**
Respondent: **Director of Public Instruction & Ors.**

**Hon'ble Judges/Coram:**K.T. Sankaran, J.

**.**

**JUDGMENT**

**K.T. Sankaran, J.**

1. The question involved in this Writ Petition is whether a teacher working in an aided school can be placed under suspension by the educational officer invoking Section 12A(2) of theKerala Education Act on the ground that investigation of a criminal case against him is going on. The petitioner is working as Junior Hindi Teacher (FT) in Mangad A.U.P. School in Kozhikode District. The petitioner was placed under suspension as per Ext.P1 order dated 16.4.2008 on the ground that investigation in Crime No. 102 of 2008 of Balussery Police Station registered against him was in progress. Ext.P1 order shows that the crime was registered on a petition filed by the wife of the petitioner alleging that she was harassed and assaulted, both mentally and physically, by the petitioner demanding more money and gold ornaments. The information regarding the crime and continuation of the investigation was furnished by the Sub Inspector of Police, Balussery to the Deputy Director of Education, Kozhikode, as per letter dated 13.2.2008. Ext.P1 also shows that the Deputy Director of Education, Kozhikode, as per letter dated 31.3.2008 addressed to the Assistant Educational Officer, directed the latter to place the petitioner under suspension invoking the power under Section 12A of the Kerala EducationAct and to refer the matter to the Manager for further action. On receipt of the letter from the Deputy Director of Education, the Assistant Educational Officer passed Ext.P1 order dated 16.4.2008 placing the petitioner under suspension. Ext.P1 is under challenge in this Writ Petition.

2. Sri. Mohammed Nias C.P., learned counsel for the petitioner, submitted that Ext.P1 order is contrary to Section 12A of the Kerala Education Act. It is submitted that before passing the order of suspension, the authorised officer should have intimated the Manager as envisaged under the proviso to Section 12A of the Kerala Education Act and since the statutory mandate has not been complied with, Ext.P1 order is liable to be quashed. The counsel submitted that the Educational Officer has no jurisdiction to invoke the power under Section12A of the Kerala Education Act on the ground that investigation in a criminal case is pending against the petitioner. The learned counsel also submitted that subsequent to the filing of the Writ Petition, the petitioner was acquitted in the criminal case finding that there is no evidence to show that he committed the offence. It is submitted that before the criminal court, the wife of the petitioner stated in clear terms that she was not harassed in any manner by the petitioner. The mother-in-law of the petitioner also deposed the same before the criminal court.

3. The learned Government Pleader, on the other hand, contended that the proviso to Section12A of the Kerala Education Act only governs sub-section (1) thereof and it is not applicable to a case of suspension under sub-section (2) of Section 12A of the Act. The learned Government Pleader also relied on clause (v) of Chapter XIII of the Kerala Education Rules to support Ext.P1 order. The learned Government Pleader also submitted that sub-rules (1) and (2) of Rule 67 of Chapter XIVA of the Kerala Education Rules do not control the wide power given to the Government or the officer authorised by the Government to invoke the power of suspension under Section 12A of the Kerala Education Act. The learned Government Pleader contended that the Writ Petition is not maintainable as the petitioner has an effective alternative remedy of appeal under Rule 79 of Chapter XIVA of the Kerala Education Rules.

4. Section 12A of the Kerala Education Act and sub-rules (1) and (2) of Rule 67 of Chapter XIVA of the Kerala Education Rules are relevant for the purpose of considering the contentions raised by the parties. These provisions are extracted below:

12A. 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 teacher concerned and give the manager a reasonable opportunity of taking disciplinary action; and

(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.

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.

(2) The Government or an officer authorised by the Government under section 12A of the Act may suspend a teacher of an aided school:-

(a) When any disciplinary proceedings are proposed to be taken against him or

(b) when disciplinary proceedings are pending against him.

5. Section 12A of the Kerala Education Act contains a non-obstante clause with reference to Sections 11 and 12 of the Act. Section 11 of the Act provides for the powers of the Manager to appoint teachers. Section 12 provides that the conditions of service of teachers in aided schools, including conditions relating to pay, pension, provident fund, insurance and age of retirement, shall be such as may be prescribed by the Government. Sub-section (2) of Section12 states 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, or placed under suspension by the Manager for a continuous period exceeding fifteen days without such previous sanction. Sub-section (1) of Section 12A of the Act is subject to such rules as may be prescribed. Sub-section (1) of Section 12A of the Act empowers the Government or such officer not below the rank of an Educational Officer to take disciplinary proceedings against a teacher of an aided school and to impose upon him the penalties specified in the Rules. Sub-section (2) of Section 12A of the Act empowers the Government or the officer authorised under sub-section (1) to suspend a teacher of an aided school. Such power of suspension would be available when disciplinary proceedings is proposed to be taken against the teacher under sub-section (1) or when such disciplinary proceedings are pending. To invoke the power of suspension under sub-section (2) of Section 12A of the Act, either of these conditions must be present. The proviso to Section 12A stipulates that the Government or the authorised officer may intimate the Manager regarding the circumstances requiring disciplinary action against the teacher concerned and give the Manager a reasonable opportunity of taking disciplinary action. Clause (b) of the proviso makes the position clear that the Government or the authorised officer would be entitled to take appropriate disciplinary action against the teacher only if the Manager fails to take appropriate action. On a reading of sub-sections (1) and (2) of Section 12A of the Act and the proviso there under, it is clear that the proviso governs only sub-section (1) and it does not govern sub- section (2). The power to suspend a teacher contained in sub- section (2) of Section 12A of the Act is not subject to the conditions to be fulfilled as provided in the proviso. The proviso would apply only in the case of taking disciplinary proceedings as provided in sub-section (1) of Section 12A of the Act. The power to suspend a teacher stands on a different footing and it is not necessary for the Government or the officer authorised to wait till the Manager fails to take appropriate action as provided in the proviso.

6. In Janardhana Nayak v. D.P.I. (1978 KLT SN 75 Case No. 63), it was held that the proviso to Section 12A of the Act has no application to sub-section (2) thereof. Section 12A of the Act does not require that suspension should be only after giving the Manager a reasonable opportunity. Rule 67(2) of Chapter XIVA of the Kerala Education Rules also indicates this. In Abdurahuman v. DEO, Badagara ( : 1997(1) KLT SN 64), Geethakumari and others v. Director of Public Instruction and others (1984 KLT 800) and P.P. Sreedharan v. AEO, Pappinisseri ( : 1974 KLT 53) the same view was taken.

7. In view of the above legal position, the contention raised by the petitioner that before passing the order of suspension, intimation should have been issued to the Manager and he should have been given an opportunity to take action, is unsustainable.

8. Rule 67 of Chapter XIVA of the Kerala Education Rules deals with suspension. Sub-rule (1) thereof provides for the power of the Manager to place a teacher under suspension. That power can be exercised by the Manager in the three contingencies mentioned in clauses (a) to (c) to sub-rule (1) of Rule 67. Sub-rule (2) of Rule 67 deals with the power of the Government or an officer authorised by the Government under Section 12A of the Act to suspend a teacher of an aided school. Such power can be on the grounds mentioned as clauses (a) and (b) in sub-rule (2). Sub-rules (1) and (2) of Rule 67 provide different grounds for suspension of a teacher by the Manager and the Government or the authorised officer. It is true that clause (a) of sub-rule (1) and clauses (a) and (b) of sub-rule (2) are almost similar. But, clause (b) of sub-Rule (1) of Rule 67, which gives power to the Manager to place a teacher under suspension when a case against him in respect of any criminal offence is under investigation or trial, is conspicuously absent in sub-rule (2). A combined reading of sub-section (2) of Section12A and sub-rule (2) of Rule 67 makes the position clear that the power of the Government or an officer authorised by the Government under Section 12A to suspend a teacher of an aided school does not extend to a case where a criminal offence is under investigation or trial against a teacher. Such power is not conferred on the Government or the authorised officer but it is specifically conferred only on the Manager. In the present case, the order of suspension was issued only on the ground that investigation in a crime registered against the petitioner was going on. That is not a ground at all for the Government or the officer authorised by the Government to issue an order of suspension invoking the power under sub- section (2) of Section 12A of the Kerala Education Act. The contention put forward by the learned Government Pleader that sub- rule (2) of Rule 67 does not control to its full extent the power of the Government or the officer authorised under subsection (2) of Section 12A of the KeralaEducation Act, is not sustainable. The grounds mentioned in sub-section(2)of Section 12A to suspend a teacher are: (1) When any disciplinary proceeding is proposed to be taken against him under sub-section (1) of Section 12A; or (2) When such disciplinary proceedings are pending. The same grounds are mentioned in sub-rule (2) of Rule 67 of Chapter XIVA of theKerala Education Rules. No grounds other than the grounds mentioned in sub-rule (2) of Rule 67 of the Kerala Education Rules are provided under sub-section (2) of Section 12A to enable the Government or the officer authorised to suspend a teacher of an aided school. In Kunhiraman v. The Assistant Educational Officer  : 1973 KLJ 834, it was held that sub-rule (2) of Rule 67 of Chapter XIVA of the Kerala Education Rules does not confer any power on the Government or any officer of the Government to suspend a teacher on the ground that a criminal case is pending against the teacher concerned.

9. For the aforesaid reasons, the conclusion is inevitable that the Assistant Educational Officer had no power or jurisdiction to place the petitioner under suspension on the ground that a crime registered against him by the police was under investigation. Ext.P1 is completely without jurisdiction and, therefore, it is liable to be quashed. The learned Government Pleader contended that the petitioner could very well challenge Ext.P1 order in appeal under Rule 79 of Chapter XIVA of the Kerala Education Rules. Under Rule 79 of Chapter XIVA KER, a teacher is entitled to file an appeal against the order of suspension and appeal lies to the authority to which the authority which made the order is immediately subordinate. There is no dispute that an appeal lies under Rule 79 of Chapter XIVA KER. Sri. Mohammed Nias, learned counsel appearing for the petitioner contended that Ext.P1 order was issued by the Assistant Educational Officer as per the direction issued by the Deputy Director of Education and the letter issued by the Deputy Director of Education is specifically referred to in Ext.P1 order. The learned counsel submits that in such circumstances, the remedy of an appeal is not an effective alternative remedy and it is only illusory. The immediate superior officer is the District Educational Officer and under normal circumstances, the District Educational Officer will not pass an order contrary to the directions issued by the Deputy Director of Education, based on which the order of suspension was issued. I accept the submission made by the learned counsel for the petitioner and hold that the existence of an alternative remedy is not an effective alternative remedy barring the exercise of jurisdiction under Article 226 of the Constitution of India. Moreover, when an order passed by the authority is absolutely without jurisdiction, existence of an alternative remedy is not a bar to the exercise of power under Article 226 of the Constitution of India.

10. There is an additional favourable circumstance in favour of the petitioner. He was tried for the offences alleged against him under Sections 323, 406, 506(ii) and 498A of the Indian Penal Code. The wife and mother-in-law of the petitioner were examined before the criminal court They stated in clear terms that the petitioner did not harass his wife and he never misappropriated her gold ornaments or demanded money or ornaments. The criminal court acquitted the petitioner on the ground that there is no evidence against him to find him guilty. When the Writ Petition came up for admission, an interim order of stay was granted and it was extended until further orders later. The order of suspension did not take effect and now the very substratum on which the order of suspension was based, has vanished.

For the aforesaid reasons, the Writ Petition is allowed and Ext.P1 order is quashed.