KERALA HIGH COURT

Chandrasekharan Nair

Vs

Secretary to Government of Kerala

(M Ansari, C.J. T Raghavan and M M Nair, JJ.)

22.12.1960

JUDGMENT

Raghavan, J.

1. These writ petitions are all by Managers of Aided Elementary Schools in the Malabar area, with the exception of O. P. No. 617 of 1958, wherein a teacher has also joined as the 2nd petitioner. But at the time of hearing the learned Advocate of the petitioners in O. P. No. 617 of 1958 has agreed to treat the petition as one by the 1st petitioner alone, who is the Manager of the Upper Primary School Payyoli. So that all these petitions are by Managers of aided elementary schools and the question involved in them is regarding the effect of the Rules for the grant of recognition and aid to Elementary schools and the nature and scope of the powers of the Officers of the Educational Department and the Government in hearing appeals against orders arising from those Rules.

2. In O. P. No. 467 of 1957 the 4th respondent, who was a teacher in the Nemmeni Aided Lower primary School, Kollengode, tendered his resignation On 30th August, 1954, on the strength of which the Manager of the said school terminated his serviced. Thereafter there was an enquiry by the Deputy Inspector, Kollengode Range, and also by the District Educational Officer, Palghat. The 4th respondent contended that he did not resign but, on the strength of an undated resignation letter obtained from him by the Manager at the time of his in service in the school, he was sent away the Manager himself putting the date 30th August, 1954. On enquiry the District Educational Officer held that there was no sufficient ground to hold that the resignation letter was either false or invalid for the reason alleged by the 4th respondent. Thereupon the 4th respondent filed an appeal to the Divisional Inspector of Schools, Coimbatore, which was also rejected. Subsequently, on 18th November, 1957, the writ petitioner received communication of the proceedings of the District Educational Officer, Palghat, dated 14th November, 1957, enclosed a copy of the Government proceedings dated 13th September, 1957. By these latter proceedings the Government had directed the petitioner to reinstate the 4th respondent in the

school forthwith. The petitioner has filed the writ petition to quash the Government Proceedings marked Ext. C and the proceedings of the District Educational Officer marked Ext. B.

3. In O, P. No, 62 of 1958 the Manager of the Panniackrussi West Elementary School, now called the Pamiackurussi West Lower Primary School, prays for the quashing of the proceedings of the Director of Public Instruction, Trivandrum, dated 9th November 1957, evidenced by Ext. A, by a writ of certiorari or other appropriate writ. The petitioner alleges that in his school there were normally 5 classes and 5 teachers working therein and when an additional class was opened, the 4th respondent was appointed as a temporary teacher in the institution on 8th October, 1952. In the beginning of 1955, he was given notice of termination of his services from 1st June of the year, from which date the divisional class was not expected to function. Tile 4th respondent appealed to the District Educational Officer, Palghat and again to the Divisional Educational Officer, Kozhikode and both the appeal and the second appeal were dismissed. But the District Educational Officer, Palghat directed the writ petitioner to re-appoint the 4th respondent in the next vacancy that might arise in the institution. The petitioner did not comply with this direction and finally the District Educational Officer, Palgbat, started proceedings against the petitioner under Rule 14 of the Rules for the grant of recognition and aid to Elementary Schools. Notice was issued to the petitioner to show cause why action should not be taken against him under Rule 14 on the ground that the strength of the school was being deliberately kept low by him. The petitioner filed his explanations and finally on 22nd July 1957 the District Educational Officer, Palghat, framed three charges against the petitioner; the charges being (1) disobedience of Orders of constituted authority, (2) deliberately keeping down the strength with the ulterior motive of not appointing the 4th respondent and (3) doing harm to the cause of education in the locality by attempting to circumvent the orders of the District Educational Officer to appoint the 4th respondent. To these charges the petitioner submitted his explanations and ultimately on 9th November, 1957 the Director of Public Instruction. Trivandrum, passed orders under rule 14 declaring the petitioner unfit to be the manager of any recognised school in the State. The writ petition is to quash this order.

4. As we have already indicated, the Manager of the Vilayathur Elampilad Upper Primary School Payyoli, and an assistant teacher in the same institution have filed O. P. No. 617 of 1958; but the petition is treated only as one by the Manager. In this case the Manager suspended the 4th respon-dent, who was a teacher, with effect from 15th February, 1956. Thereafter an enquiry by the Deputy Inspector of Schools, Perambra followed, in which it came out that the 4th respondent had been convicted by a court of law. For this reason and on other charges he was discharged from service with effect from 1st April, 1956 and a substitute was appointed in his place. Subsequently the petitioner was served with a copy of the proceedings of the Director of Public Instruction, Trivandrum, dated 29th March, 1958, directing the petitioner to reinstate the

4th respondent. This is Ext. A.

The petitioner did not comply with the request as, according to him, such compliance would lead to difficulties, as a substitute had already been appointed in the place of the 4th respondent. Therefore the petitioner filed his explanation and further correspondence followed. Finally the District Education Officer, Kozhikode passed Ext. D proceedings dated 6th May 1958 directing the petitioner to reinstate the 4th respondent within 10 days of the receipt of the same and threatening departmental action if the order was not complied with. Some further correspondence also followed, with which we are not concerned in this writ petition, the petition being for the issue of a writ of certiorari or other appropriate writ to quash the two proceedings dated 29th March and 6th May, 1958, i.e., Exts. A and D.

5. The petitioner in O. P, 672 of 1958 is the Manager of the Kornangod Lower Primary School in Alathur Taluk. The institution was started in 1957 and was granted temporary recognition up to 31st May 1957. Thereafter the management of the institution was transferred to one Samuel, who later on dispensed with the services of five teachers in the institution. The aforesaid five teachers entered the premises of the school and created trouble and therefore Samuel filed a suit for injunction against them, which was decreed. The teachers, on their part, filed an application before the Deputy Inspector of Schools, Palghat, and the said Officer directed Samuel to reinstate them.

The Officer also conducted an enquiry and, as a result and in pursuance of the enquiry, the District Educational Officer, Palghat, issued an order dated 5th August, 1957 directing Samuel to reinstate the said five teachers within ten days of the receipt of the order. In the meantime the petitioner had already filed an application On 11th March, 1957 for the extension of recognition of the institution and at the time, when the District Educational Officer passed his order dated 5th August 1957 the petitioner's aforesaid application dated 11th March 1957 for extension of recognition was still pending. After the order of the District Educational Officer dated 5th August 1957, Samuel filed O. P. No. 316 of 1957 in this court and the same was disposed of by a learned Judge of this court. The order in the said O. P. runs thus:

"The petitioner wants this court to direct that order be passed on his petition dated 11-3-57. It is admitted that no order has been specifically passed On that petition and the learned Government Pleader submits that he will instruct the District Educational Officer, Palghat to pass orders on the said petition.

In view of this the petition is not pressed and is hereby dismissed with freedom reserved to the petitioner to move this court afresh, if so advised at a later stage".

Thereafter the petitioner, having waited for a few weeks and having found that no orders were passed on his petition for extension of recognition, has filed the present writ petition on 15th October, 195Y to quash the same order of the District Educational Officer, dated 5th August 1957 which was sought to be quashed in O. P. No. 316 of 1957.

6. Now we come to the last case of the batch, i. e., O, P. No. 693 of 1958, In this case the Manager of the Aided Maplah Lower, Primary School, Perumpadappu dismissed a teacher in the institution, who is the 2nd respondent in the petition, on 15th March 1958, with effect from 15th June 1958. Thereafter the District Educational Officer, Irinjalakuda, issued an order on 5th June 1958 directing the petitioner to withdraw the notice of termination of services of the teacher. Complying with the said order the petitioner put off the date of termination of services from 15th June to 5th July 1958.

An enquiry by the District Educational Officer followed and finally the petitioner was directed to reinstate the teacher. Though the petitioner had terminated the services of the teacher on 5th July |1958, he allowed him to re-enter service in the institution on 30th July, 1958 and the 2nd respondent has thus been continuing in service thereafter. The petitioner alleges that such re-entertainment in service was to avoid further complications and was only by way of obedience to the departmental orders, reserving to himself the right of further remedies and his present writ petition is to quash the order of the District Educational Officer dated 17th July 1958 directing him to reinstate the 2nd respondent in service in the institution.

7. There are two sets of rules relating to Elementary Schools in the Malabar area and these two sets are issued in two parts. The rules in the 1st part are professedly framed under the Madras Elementary Education Act, 1920 whereas the rules contained in Part II, headed "Rules for the grant of recognition and aid to elementary Schools", do not profess to he made under any statute and we are only concerned, in these cases, with the rules in Part II. The nature of these rules came up for consideration before a Division Bench of this court in Joseph Valaniangalam v. State of Kerala, 1958 Ker LT 233: (AIR 1958 Kerala 290) and this court held that the rules contained in Part II were mere executive directions having no statutory basis. Our learned brother Raman Nayar, J. delivering the judgment of the Division Bench observed as follows:

"For the Grant-in-aid Code and the Educational Rules no statutory origin is claimed, but it is said that the rules relating to Elementary Schools which provide for recognition of, and aid to such schools arc statutory rules made under Section 56 of the Madras Elementary Education Act. Now these rules are in two parts. Part I which is headed "Rules framed under the Madras Elementary Education Act, 1920", arc doubtless statutory rules made under that Act, but they say nothing about recognition or aid. These matters are dealt with in Part II which is headed, "Rules for the grant of Recognition and aid to Elementary Schools," and which does not purport to have been

made in exercise of any statutory power. The learned Advocate General contends that the rules in Part II are mere executive directions having no statutory basis, and we consider that this contention is correct."

We are in agreement with this view.

8. We would now consider some of the rules in Part II. Chapter 1 contains the rules for the recognition Of Elementary Schools and Chapter 2 deals with rules for aid to such institutions. This latter chapter deals with teaching grant, maintenance grant etc. and the scale, assessment, determination etc. of such grants. Chapters 3 and 4 provide for grants for buildings and play-grounds and grants for furniture, books and appliances respectively. In the cases before us, we are concerned with one or two of the rules in Chapter 1. Rule 13 contains several clauses and sub-clauses and it deals with the qualifications and conditions of service of teachers, the power of the management to terminate their services and several such, allied subjects. Rule 13 (2) (vii) with which we are more specifically concerned in these cases, is in the following terms:

"The Management and the teachers have a right of appeal against the orders arising from these rules and the appeal shall be disposed of by the District Educational Officer. A second appeal shall lie with the Divisional Inspector of Schools. An appeal shall be valid only if it is made within a-period of two months from the date of the Order against which the same is preferred".

Another rule, to which also reference will have to be made, is Rule 14, which runs thus:

"The Director of Public Instruction may, after dug enquiry, declare a teacher to be unfit for employment in a recognised school. He may likewise declare a person to be unfit to be the Manager or Correspondent of a recognised school."

In at least two of these cases before us, i.e., O. P. Nos. 467 of 1957 and 617 of 1958, the effect and scope of Rule 13 (2) (vii) came up for consideration. In the former the teacher, whoso services were terminated, appealed to the District Educational Officer and thereafter from the decision of the said officer to the Divisional Inspector of Schools. The said appeal and the second appeal were rejected. The teacher seems to have subsequently, appealed to the Government and the Government seem to have passed the impugned proceedings, by which the writ petitioner was directed to reinstate the dismissed teacher. The learned advocate of the petitioner raised two contentions before us against the impugned proceedings.

The first was that the Government had no power to pass the said proceedings and the second, that even if the Government had such power, the Government had not complied with the principles of natural justice, by issuing a notice in the appeal to the petitioner and thus giving him an opportunity to be heard before an order was passed against him. The learned Government

Pleader contended, on the other hand, that, since Rule 13 (2) (vii) was only an executive direction and had no statutory basis, the petitioner had no legal right to compel the Government to comply with it. nor was the Government bound to follow the procedure laid down in the said rule, for, the rule was only an executive or administrative direction by the Government to their subordinate officers and the Government was competent to alter the rule at any moment they liked.

On the second objection, the learned Government Pleader argued that the Government passed the impugned proceedings after perusing and considering all the documents and evidence, available in the case and the Government was not bound to give the petitioner any opportunity for a personal hearing nor was the petitioner entitled to such a hearing, At any rate the learned Government Pleader contended further, the absence of a personal hearing did not infringe any rule of natural justice. It was also argued by him that a decision taken by the Government on an appeal by a teacher or the Management under these rules was not liable to be quashed by a writ of certiorari or any other writ under Article 226 of the Constitution.

9. Now we would examine these contentions. It may be that the Government have the power to frame or amend or even delete Rule 13 (2) (vii) or for that matter any other rule in Part II at any time. But that power should not cloud or confuse the issue. Once the Government have chosen to frame rules, they have to respect and comply with those rules until the rules are altered Or deleted. When the rules providing for the machinery and the procedure for appeals or revisions are in existence, the Government cannot ignore them and pick and choose some cases and decide them arbitrarily. They have to follow the rules as long as they are in force and their power to delete the rules should not cloud the issue of their obligation to respect the said rules. In this connection we would refer to a Full Bench decision of the Madras High Court in Nagarathnammal v. Ibrahim Saheb, AIR 1955 Mad 305. Balakrishna Ayyar, J., delivering the Judgment of the Full Bench, observed as follows:

"We are unable to subscribe to the view that where a rule already exists and provides for any specific matter, still when an individual case conies up before the Board, it is open to the Board, notwithstanding the existence of that rule, to decide that case in any manner it think fit, even in contravention of the existing rule. In other words, the Board cannot ignore the existing rule by treating the order made in that particular case as an amendment of the rule. That the Government or the Board has the power to amend the rule should make no difference; both are bound to dispose of the matters that conic up before them in accordance with the rules at the time in force on the subject."

His Lordship observed further:

"We wish to emphasise the position, that the decision in any given case must be in accordance with the rules in force on the date of the decision. Otherwise the difference between what may be by way of analogy be called legislative (rule-making functions of the Board) and its judicial and quasi-judicial functions would be blurred and the door thrown open to charges of arbitrariness."

We would quote one more passage from this Judgment and it runs:

"Thus, while the Board has undoubted power to superintend and a power to frame rules and amend them from time to time in exercise of that power of superintendence, the Board is bound by those very rules when it acts as quasi-judicial tribunal and adjudicates on rights of parties founded on those rules. The rights of parties before the Board and the corresponding liability of the Board to decide questions before it in accordance with the rules no doubt issued by the Board itself, should not be confused with the right of the Board of frame or to amend rules."

We are in respectful agreement with the above view expressed by the Full Bench of the Madras High Court. In that case their Lordships were dealing with the power of the Board of Revenue and the Government to entertain revisions from the orders of District Collectors in the matter of appointment of Village Officers. Under the Standing Orders of the Board there was no right of revision provided against the orders of the District Collectors in such matters. Their Lordships held that in such cases though the Revenue Board could have amended or deleted the Standing Orders, as long as the orders were in force, the Board or, for that matter the Government had no power to hear revisions. The same principle applies to the Rules we are considering in these cases.

The Government having framed Rule 13 (2) (vii) regulating the right of appeal and second appeal, in matters arising under the rules in Part II, they cannot pass an order in any given case in any manner they think fit. They have to respect and follow the machinery and the procedure provided by the rule as long as the rule is in force. Therefore, the appeal or revision by the dismissed teacher to the Government was incompetent and consequently the Government had not power to pass the impugned order.

10. The second objection raised by the learned Advocate of the writ petitioner has also considerable force. The order of the Divisional Inspector of Schools, dismissing the second appeal of the teacher, could not be varied or interfered with to the prejudice of the writ petitioner without the writ petitioner being given an opportunity to be heard, not necessarily in person. It is only an elementary proposition that the principles of natural justice demand that, in a case like this the party to be affected by the order should be at least given notice of the appeal or revision before an order is passed against him. Even this minimum requirement does not seem to have been complied with in the present case, for, no notice appears to have Been issued to the writ

petitioner before the order of the Divisional Inspector was set aside and the impugned order passed against him. Therefore the objections of the writ petitioner have to be accepted.

11. Now we would advert to the contention of the learned Government pleader that the orders passed by the Government and the Officers of the Education Department under these rules are not amenable to the extra-ordinary jurisdiction of this court under Article 226 of the Constitution. The learned Government Pleader argued that the appellate authorities constituted by Rule 13 (2) (vii) and the Director of Public Instruction under rule 14 were not judicial or quasi-judicial tribunals, nor were they bound to bear a judicial or a quasi-judicial approach in deciding the questions before them and as such no writ of certiorari could issue to quash their orders.

12. One thing appears to be clear and that is that the District Educational: Officer and the Divisional Inspector of Schools acting under Rule 13 (2) (vii) and the Director of Public Instruction under Rule 14 are but domestic tribunals constituted by the said rules and they acquire their jurisdiction from, or are invested with jurisdiction by, the said rules. Since these rules have no statutory basis, these tribunals cannot be classed as statutory domestic tribunals, but can only be considered as contractual domestic tribunals. The said rules also indicate clearly that these tribunals have to bear a quasi-judicial approach in deciding the questions before them. In such cases it cannot be disputed that this court can interfere if the principles of natural justice are not complied with. In Halsbury's Laws of England, Vol. 9, p. 580, occurs the following passage:

"Where a domestic tribunal exercising quasi-judicial functions disregards any of the principles of natural justice, the court will interfere to protect the party aggrieved."

On this connection we would also refer, with advantage to one decision of the Madras High Court in Dr. Ramakamath v. Surgeon General, AIR 1951 Mad 227 where the learned Chief Justice observed:

"But it is now well established that the strict rules of procedure applicable to courts of law need not be followed by domestic and quasi-judicial tribunals. All that such a tribunal should do is to give an opportunity to the parties to state their case and to act Judicially and not arbitrarily."

Lastly we would Quote one passage from the judgment of Denning L. J., in Lee v. The Showmen's Guild of Great Britain, (1952) 2 Q. B. 329, which throws considerable light on this question. The passage is at p. 342 of the judgment and it reads:

"Although the jurisdiction of a domestic tribunal is founded on contract, express or implied, nevertheless the parties are not free to make any contract they like. There are important limitations imposed by public policy. The tribunal must, for instance observe the principles of natural justice. They must give the man notice of the charge and a reasonable opportunity of

meeting it. Any stipulation to the contrary would be invalid, They cannot stipulate for a power to condemn a man unheard.

Another limitation arises out of the well known principle that parties cannot by contract oust the ordinary courts from their jurisdiction.

They can of course agree to leave questions of law as well as questions of facts, to the decision of the domestic tribunal. They can, indeed, make the tribunal the final arbiter on questions of fact, but they cannot make it the final arbiter on questions of law. They cannot prevent its decisions being examined by the courts. If parties should seek, by agreement, to take the law out of the hands of the courts and put it into the hands of a private tribunal, without any recourse at all to the courts in case of error of law, then the agreement is to that extent contrary to public policy and void. ....."

The foregoing authorities make it abundantly clear that these orders are liable to judicial review if the canons of natural justice are not complied with.

In O. P. No. 617 of 1958 the 4th respondent admittedly did not file any appeal or second appeal as provided under Rule 13(2) (vii); but has straightway appealed to the Director of Public Instruction. As we have already indicated, the procedure laid down in Rule 13 (2) (vii) should have been followed by the 4th respondent and the Director of Publie Instruction had no right to hear any appeal or revision by the 4th respondent. It also appears that no notice of the appeal by the 4th respondent was issued to the petitioner and therefore the contention of the learned advocate of the writ petitioner, in this case also, has to be accepted.

13. Now we come to O. P. No. 62 of 1958. In that case the Director of Public Instruction passed the impugned order declaring the writ petitioner unfit to be the Manager of any recognised school in the State. Before the impugned order was passed the District Educational Officer framed charges ugainst the petitioner and the petitioner had filed his explanations or answers to these charges. It was thus complying with the canons of natural justice that the Director of Public Instruction passed the impugned order. Therefore it could not he reasonably contended that the order was bad. But it was urged that the Director of Public Instruction was biased and hence the order was not sustainable.

We are not impressed by this argument, as no such bias had been established in the case; but we are not also satisfied that the Director of Public Instruction could have passed under rule 14 such a sweeping order disqualifying the petitioner or declaring him unfit to be the Manager of any recognised school in the State, considering the wording of the said rule and also the fact that the rule had no statutory backing. Therefore, though we do not interfere in this case, we would make

it clear that the impugned order will not be a permanent disqualification on the petitioner.

14. In O. P. No. 672 of 1958 the counter-affidavit filed by the District Educational Officer discloses that final orders on the petition of the writ! petitioner dated 11th March 1957 were passed on 17th October, 1958 and before these orders could be communicated the present writ petition seems to have been filed. This court dismissed O. P. No. G16 of 1957 with the observation that the Government Pleader would instruct the District Educational Officer to pass orders on the petition dated llth March 1957. Now that orders have been passed on that petition, we fail to see how, even if the orders went against the petitioner, the impugned order, which was the subject matter of O. P. No. 316 of 1957, could be quashed in this petition, the previous petition having been dismissed.

15. Now we come to the last of these cases, O. P. No. 693 of 1958. In that case, the petitioner seems to have complied with the order impugned and in these circumstances the question of quashing the order does not arise.

16. In the result, we allow Writ Petition Nos. 467 of 1957 and 617 of 1958. In the former we direct the issue of a writ of certiorari quashing the two orders, Exts. B and C dated 14th November and 17th September, 1957 respectively the former by the District Educational Officer, South Malabar, Palghat, and the latter by the Director of Public Instruction, Trivandrum. In the latter case also we direct the issue of a writ of certiorari to quash the two orders, Ext. A dated 29th March and Ext. D dated 6th May 1958, the former by the Director of Public Instruction, Trivandrum and the latter by the District Educational Officer Kozhikode. The other three writ petitions, O. P. Nos. 62, 672 and 693 are dismissed. In the circumstances of these cases, we would direct the parties to bear their respective costs in all these writ petitions.