

Jose Vs. State of Kerala

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Court : Kerala

Decided On : Aug-29-2002

Reported in : 2003(2)KLT210

Judge : K. Balakrishnan Nair, J.

Acts : Kerala Education Rules, 1959 - Rule 75

Appeal No. : O.P. No. 18106 of 1998

Appellant : Jose

Respondent : State of Kerala

Advocate for Def. : P. Nandakumar, Government Pleader,; Kurian George Kannanthanam and;

Advocate for Pet/Ap. : K. Jaju Babu, Adv.

Judgement :

K. Balakrishnan Nair, J.

1. The petitioner was a teacher of the third respondent's school. He challenges the penalty of compulsory retirement imposed on him. The brief facts of the case are the following:

2. The allegation against the petitioner was that he molested a girl student on 3.10.1990. This incident came to light on the basis of a complaint given by the father of the girl on 8.10.1990. The petitioner was served with a Memo of Charges on 7.12.1990 by the Manager. He was placed under suspension on 11.10.1990. The Manager being dissatisfied with the explanation offered by the petitioner, passed an order on 24.12.1990 for holding a formal enquiry.

3. The petitioner submits that even before such a formal motion is made by the Manager under the Rules, the Enquiry Officer - the District Educational Officer, started the enquiry as evident by Ext.P9 enquiry notice dated 6.12.1990. Even before issuing Ext.P9, the DEO secretly took the evidence of the victim on 27.11.1990. On 20.12.1990, nine witnesses were examined. The petitioner alleges that they were not examined in his presence. He was not given a chance to cross-examine them. Apart from that, no opportunity was given to him to examine witnesses from his side. The DEO submitted Ext.P10 Enquiry Report dated 14.2.1991 suggesting to impose a major penalty on the petitioner. The Manager by order dated 6.6.1991 imposed the penalty of compulsory retirement on the petitioner. The petitioner filed an appeal before the Director of Public Instruction which was allowed by Ext.PI order dated 14.1.1992. The Manager challenged the said order by filing an Original Petition before the Court. In the meantime, the DPI again re-heard the matter and passed Ext.P2 order dated 11.6.1994 affirming Ext.PI during the pendency of the Original Petition. Finally, the Original Petition was allowed quashing Ext.PI and remitting the matter to the DPI for fresh disposal in accordance with law after hearing both sides. The DPI by Ext.P3 dated 16.1.1997 dismissed the petitioner's appeal. The petitioner filed Ext.P4 revision dated 8.2.1997 before the Government. After hearing both sides, the Government issued Ext.P7 order dated 21.8.1998 affirming Ext.P3. The petitioner challenges Exts.P3, P7 and P10 on various grounds. The main ground of attack is that the enquiry is vitiated by non-compliance of the principles of natural justice, in as much as the witnesses were not examined in the presence of the delinquent. It is also submitted that the petitioner was not given a chance to examine his witnesses. The first respondent has filed a counter affidavit in which it is admitted in paragraph 4 that the petitioner was not allowed to cross-examine the witnesses.

4. The victim got herself impleaded as additional fifth respondent and has filed a counter affidavit stating that the allegation that the petitioner has molested her is incorrect. It is also stated that she and her parents happened to give that statement as insisted by the Manager.

5. The Manager did not file any counter affidavit. But the learned counsel appearing for him submitted that the Enquiry Officer in Ext.P10 has not relied on the evidence of other witnesses. She mainly went by the statement of the victim. He justifies the omission of the Enquiry Officer to permit the petitioner to cross-examine the victim as an act in public interest and supports the findings as justified on the facts of the case. The learned Government Pleader submitted that having regard to the nature of the allegations, it is not necessary to give the petitioner an opportunity to cross-examine the witnesses.

6. The enquiry against the petitioner was held as per the provisions contained in Rule 75 of Chap.XIVA KER. It specifically provides that the witnesses should be examined in the presence of the delinquent and he should be given a chance to cross-examine them. It is also provided that he should be given a chance to examine his witnesses. This irregularity committed by the Enquiry Officer is admitted by the first respondent in the counter affidavit. But, the learned Government Pleader relying on the decision of this Court in *George Roy v. Mar Athanasius College of Engineering* (1992 (1) KLT 94) submits that having regard to the nature of the allegations, the petitioner need not be given an opportunity to cross-examine. But the said case is one relating to misconduct from the part of students and the punishment imposed on them by the Principal. In the case of disciplinary action by teachers against students, observance of principles of natural justice is not insisted by Courts. It is for the reason that the teachers are exercising the powers of the parent on the student. So, in such cases, violation of natural justice is condoned. But, here is a case of disciplinary action against a teacher which is governed by defined procedure. Normally, any disciplinary action in violation of the Rules governing the same, is liable to be nullified. Here, the violation alleged goes to the root of the matter. The witnesses were examined behind the back of the petitioner. A reading of Ext.P10 would show that the Enquiry Officer has relied on various extraneous materials including gossips she

came across in the street to find the petitioner guilty. In Ext.P10, it is stated:

'The undersigned examined all the aspects of the case in detail with reference to the statements taken from the pupil in question and others referred to above.'

Apart from that, it is stated immediately before the heading 'FINDINGS':

'In the statements from the pupils and class mates of the victim, none of them is of opinion that the accused bears upright character suited to a teacher. The reactions of the local people and guardians regarding the case are also to be considered and given 'due weight.

The undersigned holds the view that the circumstances, and the statements, detailed above give sufficient evidence to prove that the accused is guilty of the charges.'

So, the contention of the learned counsel for the Manager that the Enquiry Officer only relied on the evidence of the victim, cannot be accepted.

7. In view of the above facts, it is held that the disciplinary action was taken against the petitioner in violation of the principles of natural justice/and also in violation of the mandatory provisions of Rule 75 of Chap.XIVA KER. Accordingly, I quash Exts.P3, P7 and P10. The petitioner is deemed to be continuing in service. But, this will not stand in the way of the competent authority to hold a fresh enquiry into the charges against the petitioner and finalise the disciplinary proceedings in accordance with law. It is declared that the petitioner will be entitled to get arrears of salary only from today. But, he will be given all consequential benefits notionally till today.

The Original Petition is allowed as above.