

(1981) 11 KAR CK 0006
In the Karnataka High Court
Case No : WP 2588/76

Anathasevashrama Trust, Malladihalli

APPELLANT

Vs

H.C. Ramakrishna Rao and Another

RESPONDENT

Date of Decision : 30-11-1981

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 4

Citation : (1982) 1 KarLJ 484

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. A public charitable trust called "Anathasevashrama Trust" of Malladihalli, Holalkere Taluk, Chitradurga Dist. (hereinafter referred to as the Trust), among others, is running a residential college of physical education at Malladihalli (hereinafter referred to as the institution).

2. On 5-7-1969, the Trust appointed respondent No. 1 as a clerk in the said institution (Ext. A). While the petitioner was working as a clerk, the Trust by its memo No. 1474/70-71 dated 11-2-1971 (Ext. B) appointed him as a Physical Education Teacher (hereinafter referred to as the Teacher) in that very institution, from which date he was working in that capacity.

3. In Memo No. 618 dated 20-8-1974 (Ext. C) the Trust terminated the services of respondent No. 1 and another person by name Marthandappa, with whom we are not concerned in this petition. Against the said order of the Trust, respondent No. 1 filed an appeal on 18-11-1974 before the District Judge and Educational Appellate Tribunal, Chitradurga (hereinafter referred to as the Tribunal) under S. 6 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1973 (Kar. Act No. 21 of 1973) (hereinafter referred to as the 1973 Act) which was opposed by the petitioner on diverse grounds. On an examination of the contentions urged before it, the Tribunal by its order dated 5-3-1976 (Ext. D) has allowed the said appeal filed by respondent No. 1 and has made an order in these terms:

"The appeal is allowed and the order under appeal is set aside, and the appellant be taken on duty forthwith with retrospective effect. However, the respondent will have the liberty of either to take him as an Instructor, the post which he was working at the time of his termination or to give him his original post of II Division Clerk".

In this petition under Art. 227 of the Constitution, the Trust which is the petitioner has challenged the said order of the Tribunal.

4. Sri N. Govinda Bhat, learned counsel for the petitioner contends that the appeal filed by respondent No. 1 under the 1973 Act was not maintainable and the Tribunal had no jurisdiction to interfere with the order of the Trust. In support of his contention, Sri Bhat strongly relies on the ruling of the Supreme Court in *Principal v. Presiding Officer*, AIR 1978 SC 344 and a ruling rendered by Chandrakantaraj Urs, J., in *N.V.R. Ram v. Indian Institute of Management*, (1981) 1 Kar. L.J. 559.

5. Sri H. Subrahmanya Jois, learned counsel for respondent No. 1 sought to support the finding recorded by the Tribunal on the maintainability of the appeal.

6. The appeal filed by respondent No. 1 before the Tribunal was under the 1973 Act that was in force. But, by the time the appeal could be heard and decided that Act had been repealed and replaced by the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (hereinafter referred to as the 1975 Act). S. 16 of the 1975 Act provides that the appeals filed under the 1973 Act and pending as on the day the 1975 Act came into force shall be heard and decided under the said Act only as if the said Act had not been repealed in respect of pending proceedings. In this view, the appeal filed by respondent No. 1 has been rightly decided by the Tribunal under the 1973 Act.

7. The 1973 Act was enacted to provide for better discipline in and control over private educational institutions in the State that are recognised by Government. The Act for the first time sought to control the right of the managements of private educational institutions either aided or unaided but recognised, to terminate the services of their employees.

8. S. 4(1) of the 1973 Act declares that there shall be no termination of services of an employee working in a private educational institution except in accordance with the conditions of service governing him. S. 4(2) regulates the manner and method of dismissal, removal or reduction in rank of an employee working in a private educational institution. S. 4(1) comprehends every kind of termination and does not restrict it to termination in a disciplinary proceeding or a domestic enquiry that is regulated by the following sub-section viz., S. 4(2) of the 1973 Act.

9. S. 6 of the 1973 Act permits an appeal by an aggrieved employee against any order of the management relating to his termination either under sub-sec. (1) of S. 6 or his dismissal, removal or reduction in rank under sub-sec. (2) of the

same section. Whether the termination itself is in conformity with the service conditions of the employee is a matter that does not touch on the maintainability of the appeal, but is a matter that has to be examined with reference to the merits of the appeal filed by the aggrieved official.

10. Admittedly in the case of respondent No. 1 there was termination and, therefore, the appeal filed by him under S. 6 of the 1973 Act was maintainable before the tribunal. In my view, the enunciation made by Malimath, J., in *Malnad Educational Society v. Karnataka Educational Appellate Tribunal*, (1975) 2 Kar. L.J. 392, is also to the same effect. On the other hand, in the cases relied on by Sri Bhat, the Supreme Court or this Court were not examining the language of the 1973 Act and, therefore, those decisions based on the language of different enactments that came up before them, do not really bear on the point and assist him. I see no merit in this contention of Sri Bhat and I reject the same.

11. Sri Bhat next contends that the termination of respondent No. 1 was due to the abolition of the post and, there was no justification for the Tribunal to Interfere with the same on totally erroneous or irrelevant assumption of facts and law and the same is manifestly illegal. In support of his contention Sri Bhat strongly relies on the ruling of the Supreme Court in *N. Ramanatha Pillai v. The State of Kerala*, AIR 1973 SC 2641.

12. Sri Jois in supporting the order of the Tribunal contends that the Tribunal on a proper evaluation of facts has found that there was no abolition of post and that finding being on a question of fact, cannot be interfered with by this Court under Art. 227 of the Constitution.

13. In terminating the services of respondent No. 1 and another person, the petitioner has stated two reasons, the correctness of which was not rightly disputed by respondent No. 1. The two reasons set out by the petitioner are these:

(a) There is no sufficient workload for the excess staff.

(b) The strength of the college had abnormally gone down that year, resulting in bad financial conditions to the management to cope with the expenditure.

Before the Tribunal, as also before this Court, the Trust has asserted that the post held by respondent No. 1 had been abolished and his termination was due to the abolition of the post. But, in recording its findings, the Tribunal has totally failed to examine this aspect of the matter and has not recorded any finding on the same. Hence, no useful purpose will be served by referring to the reasons or the conclusions drawn by the Tribunal on various other matters that have no relevance to the crucial question that arises for determination.

14. On a reading of the order made by the Trust, the one and only conclusion that can be drawn is that the post held by respondent No. 1 had been abolished for the two reasons stated therein and that the services of respondent No. 1 had been terminated on that ground only and no other ground. Even the pleading of

the petitioner before the Tribunal as also before this Court fully supports that conclusion.

15. The management of a private educational institution which has the right to create a post has also the right to abolish a post. The power to create a post and abolish a post is a matter exclusively for the management to decide. In the creation of a post or in its abolition, the management may keep before it the guidelines that are issued by the Education Department or by the other Governmental authorities. But, those guidelines do not and cannot destroy the right of the management to abolish a post created by it.

16. In Ramanatha Pillai's case, AIR 1973 SC 2641, the Supreme Court dealing with the power of a sovereign Government to create and abolish a post, has observed thus:

"The first question which falls for determination is whether the Government has a right to abolish a post in the service. The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of Governmental policy. Every sovereign Government has this power in the interest and necessity of internal administration, The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public"

In my view, the principles enunciated by the Supreme Court in Ramanatha Pillai's case, AIR 1973 SC 2641, while dealing with the power of a Government, is also applicable to the right of the management of a private educational institution to create, continue and abolish a post created by it.

17. On the application of the principles enunciated by the Supreme Court in Ramanatha Pillai's case, AIR 1973 SC 2641, it was undoubtedly open to the petitioner to abolish the post and terminate the services of respondent No. 1 and there was hardly any justification for the Tribunal to interfere with the same.

18. In deciding whether the post should have been continued or not, the judgment of the management was absolute and final and the various circumstances like the increase in the income of the trust and other factors were totally irrelevant and should not have been taken into consideration in annulling the order of the management. Unfortunately the Tribunal without coming to grips and recording its finding on the crucial question on facts and law that arose for determination, has recorded its finding on irrelevant matters and has illegally interfered with the order of the Trust and, therefore, interference by this Court in exercise of its supervisory jurisdiction under Art. 227 of the Constitution, is called for.

19. When a post is abolished and the services of a person is terminated on such abolition, the same does not attract any stigma and does not require the management to comply with the requirements of sub-sec. (2) of S. 4 of the 1973

Act.

20. Before parting with this case, it is necessary to observe that respondent No. 1 joined the service of the institution as early as on 5-7-1969 and he had even been appointed to a superior post by the management evidently being satisfied about his suitability to that post. Before the Tribunal as also before this Court respondent No. 1 has urged that the post of a clerk to which he was initially appointed is still vacant and he is ready and willing to serve as a clerk. He asserts that if the management does not take a humanitarian attitude and accommodate him at least to the post of a clerk, it is well nigh impossible for him to secure an alternative appointment before any Government or any private management having regard to his advanced age of about 37 years as on to day and the same will cause untold hardship and misery to him and his family.

21. Even though I have upheld the power of the management to abolish the post of teacher and the termination of respondent No. 1, having regard to all the facts and circumstances of the case, it is a fit case for the management to explore the possibility of accommodating respondent No. 1, if possible to the very post he held prior to his termination or to the lower post of a clerk, which he held prior to his appointment as a teacher or any other suitable post that may be available in the Trust and thus relieve the immense hardship that is caused to him and his family but which this Court is not competent to alleviate. I have every hope that the Trust which is stated to be doing yeoman service in the area, will not stand on prestige and will come to the succour of respondent No. 1 exploring all such avenues as are permissible in its own limited sphere.

22. In the light of my above discussion, I hold that the order of the Tribunal is manifestly illegal and is liable to be quashed. I, therefore, quash the impugned order. But, I sincerely and fervently hope that the management will undoubtedly accommodate respondent No. 1 and relieve the immense hardship that is caused to him and his family.

23. Rule issued is made absolute. But, in the circumstances of the case, I direct the parties to bear their own costs.

24. Let a copy of this order be communicated to the petitioner within 15 days from this day.