

(1994) 10 KAR CK 0004
In the Karnataka High Court
Case No : C.R.P. No's. 482 and 1346 of 1993

Ansa Anthony

APPELLANT

Vs

Management of St.Anne's Girls High School

RESPONDENT

Date of Decision : 28-10-1994

Acts Referred:

Constitution of India, 1950 — Article 30 (1)
Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 6

Citation : (1994) ILR (Kar) 3656 : (1995) 4 KarLJ 369

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : H. Subrahmanya Jois, for the Appellant; F.L.F. Alvares, for the Respondent

Final Decision : Allowed

Judgement

Mohan Kumar, J

1. These Revision Petitions challenge the Order dated 13.1.1993 passed by the Educational Appellate Tribunal, Bangalore, in M.A.EAT.No. 16/86. C.R.P.No.482/93 is filed by the aggrieved teacher, hereinafter referred to as the appellant, and C.R.P.No. 1346/93 is filed by the respondent-Management. For the sake of convenience, the parties will be referred to as the appellant and the Management.

2. The brief facts of the case is as follows:

The appellant was appointed as an Assistant Teacher in one of the schools under the Management, i.e., St.Anne's Girls High School, Ulsoor, on 15.7.1985. Her appointment was approved by the competent authority on 26.7.1985. She applied for maternity leave on 16.1.1986 and, according to her, it was sanctioned on 1.2.1986. While she was still on leave, the Management issued an order on 22.2.1986, terminating her services for the reasons stated therein, to take effect

from 1.3.1986. This order has been challenged by the appellant before the Tribunal, contending inter alia, that the same is illegal and is contrary to the Grant-in-Aid Code, that she has been appointed against a permanent vacancy and her appointment is neither temporary nor was she a probationer, that she was not given any opportunity to rebut the charges framed against her nor was she heard before her services were terminated, that no enquiry was conducted before imposition of the punishment of termination and hence, the order passed violates the provisions of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (hereinafter referred to as "the Act") and the principles of Natural Justice. She also contended that the various allegations made in the order of termination, regarding the discharge of her duties as teacher are all incorrect and untrue. The statement in the order that her service is temporary is also not correct.

3. The Management filed detailed statement of objections. Their main contentions are that it being an Institution maintained and administered by a minority community, the Act does not apply and the Tribunal has no jurisdiction to entertain the appeal. It is also alleged that the relationship between the appellant and the Management is contractual in nature and she had no right to the post. The approval by the Department will not confer any special right on the appellant. It was also contended that her discharge of duty was wholly unsatisfactory and not conducive for the Institution, that there were several complaints against her work, that her attitude towards other teachers was indifferent, that she did not know how to maintain the Attendance Register, that her work was unsatisfactory, that in spite of repeated oral advice to improve and written memo, she did not improve and offered only lame excuses, that maternity leave was not granted to her and that due to her unauthorised absence, the Management had to employ another teacher temporarily, that the interim arrangement showed that the poor handling by the appellant and hence the Management had no other alternative but to terminate her services, which is in accordance with the provisions of the Grant-in-Aid Code. It is also the case of the Management that no enquiry need be conducted as the Management had to act in paramount interest of the Institution and could not afford to experiment as no aspersions had been cast on the appellant. The termination order will not cast any stigma and that her appointment itself was subject to satisfactory discharge of duty, and therefore, the termination is a discharge simpliciter.

4. The Tribunal by order dated 6.7.1987 held that the institution is a minority institution coming within the ambit of Article 30(1) of the Constitution of India. It further proceeded with the appeal and after trial, has entered the following findings:

(i) The appellant was appointed against a permanent vacancy and that her appointment was not temporary;

(ii) That the Management cannot terminate the services of the appellant invoking Rule 52, Note 2, Sub-rule (iii) of the Grant-in-Aid Code and the exercise of that

power is bad;

- (iii) That the termination of the services of the appellant is a punitive measure;
- (iv) The order terminating the services of the appellant had not been preceded by any enquiry or finding regarding the charges;
- (v) No opportunity was given to the appellant to substantiate her case before her services were terminated;
- (vi) The grounds mentioned in the order of termination is not reasonable to attract a punitive punishment of termination;
- (vii) That in the light of the various Decisions cited before it, even if the institution be a minority institution, its rights to administer are subject to the provisions of the Act;
- (viii) That the termination of services of the appellant violates the guarantee u/s 6 of the Act;
- (ix) That there is no evidence to show that maternity leave was refused by the Management as alleged;
- (x) That the salary of the substitute appointed in the place of the appellant when she proceeded on maternity leave was paid by the appellant;
- (xi) That the termination order casts stigma on the appellant;
- (xii) That the termination order is issued without an enquiry and hence, is illegal and violative of Section 6 of the Act;
- (xiii) That in the light of the allegations made against the appellant by the Management, she cannot be ordered to be reinstated;
- (xiv) That it is not shown that the appellant was employed elsewhere during the period she was out of employment; and
- (xv) That in lieu of reinstatement, the appellant be awarded a sum on Rs. 60,000/-

5. Against the order declining the order of reinstatement, the appellant has filed CRP.No.482 of 1993, while the Management challenges the award of compensation in lieu of reinstatement in C.R.P.No.1346/93.

6. Before considering the various contentions urged by the respective Counsel, I should advert to a serious contention urged by the Management to the effect that it being a minority institution, the Act does not apply and the appeal cannot be entertained nor can the appellant claim any right conferred under the Act. The further contention is that on the basis of the finding entered by the Tribunal on 6.7.1987 that the Management is a minority institution, it should have applied the law then in force and the appeal should have been dismissed as not maintainable. In other words, the law that declared in Frank Anthony Public

School Employees" Association Vs. Union of India (UOI) and Others, should not apply to the facts of the case as the rights of the parties should be deemed to have been crystallised as on the date of the institution of the proceedings. The contention is urged relying on the observations made in the Decision in Atma Ram Mittal Vs. Ishwar Singh Punia, and the Decision in Hegde and Golay Limited Vs. State Bank of India, I am afraid that the principles laid down in those Decisions do not apply to the facts of the case. Those Decisions were considering cases in relation to certain statutes which created some special rights and which rights while pending the legal proceedings were lost due to lapse of time. It was in such a background the Court held that the rights of the parties be viewed as on the date of initiation of the proceedings. In this case the said principles have no application. For it has to be borne in mind that a Judicial Decision only declares and does not make or change the law. If so, when the law was declared in the Decision reported in Frank Anthony Public School Employees" Association Vs. Union of India (UOI) and Others, (rendered on 8.11.1986) then it would have been the law of the land even on the date of filing of the appeal. It means, this law controls and decides the rights of the parties. Hence, the contention of the Management does not merit any consideration.

7. Ex.R-5 is the order of appointment which has been approved by the Commissioner of Public Instruction. It does not state that the appointment is against a temporary post. That is nothing on record produced by the Management to sustain their contention that the appellant was posted against a temporary post. If she was not appointed against a permanent post, the Management could have certainly produced documentary evidence to show the same. The Management has failed to do so. If so, the Management cannot invoke the provisions of the Grant-in-Aid Code referred to in the order of termination and terminate the services of the appellant. Hence, the power invoked is a non-existent power. The Management, therefore, has necessarily conform to the requirement of Section 6 of the Act. The finding of the Tribunal in this behalf, i.e., the appellant was holding a permanent post, does not, therefore, call for any interference.

8. There is no case for the Management that they have conducted any enquiry with respect to the allegation against the appellant or disclosed to the appellant the allegations against her or disclosed the materials in the possession of the Management to the appellant relying on which the inferences against the appellant were drawn before the order of termination is issued. The termination order reads thus:

"With reference to the above subject, I hereby inform you that I am not satisfied with your work right from the beginning of your appointment dated 15th July, 1985, which has been initially approved by the Joint Director of Public Instruction, New Public Office, Bangalore, vide Memo No. E.7(G)APT.29/85-86, dated 26th July, 1985.

Several times I have spoken to you personally regarding your incomplete notes

of lessons, shabby maintenance of the class attendance register and other things. Many students have complained that you have never shown any interest to clear their doubts, especially in mathematics. Children find it very difficult to understand your lessons due to your fast way of teachings. Even I had complaints from parents also. Your individual class marks register was found incomplete.

Three days you have marked the attendance of the students VIII.E without writing their names in the register for the month of September, 1985. When I questioned you, you told me that you did not know whether to write the students names every successive month. Further the memos issued to you dated 13th August, 1985, 7th January, 86 and 17th January 1986 will speak of your unsatisfactory and careless work. Your explanation dated 17th January 1986, for my Memo No. 19/85-86 will clearly show how indifferent and inefficient teacher you are.

As per the Grant-in-Aid Code Rule 52, Note 2(iii) which say "The services of a temporary teacher may be terminated by the Management at any time without assigning any reason". Hence your services will be terminated with effect from 1st March 1986."

The statements here are nothing but findings of guilt entered against the appellant. Various circumstances are relied on to come to the said findings which probably the appellant could have defended. These findings are arrived at even without any enquiry whatever admittedly. And the stand taken by the Management before the Tribunal is that no enquiry is necessary as they do not want to experiment and they were acting in the paramount interest of the Institution. Admittedly, no opportunity was given to the appellant to be heard before the order was passed nor her explanation called for. The Tribunal is, therefore, correct in holding that the termination is punitive in nature. It is also correct when it held that the order is clearly illegal and void and is in violation of the provisions of Section 6 of the Act.

9. Now, the finding of the Tribunal to the effect that the punishment imposed is not commensurate with the charges, has to be affirmed. Admittedly, the charges referred to in the order of punishment are not so serious in nature to demand the extreme punishment of termination from service. The same is clearly disproportionate to the allegations made. The finding of the Tribunal in this behalf is also affirmed.

10. There is one more dispute regarding the granting of maternity leave. The Management has not produced any documents to show that her application for maternity leave was rejected. It would have been easy for the Management to produce documentary evidence in this behalf. Besides, Ex.P-2 letter shows that the appellant was on maternity leave and that in her place another teacher by name Prathibha was working and the appellant was paying the salary of the said teacher who was appointed in her leave vacancy. The finding in this behalf of the

Tribunal has, therefore, only to be accepted. The Management not only did not pay the salary of the appellant, but has also gained an advantage of not paying the salary of the leave substitute as well!

11. The next question is regarding the relief to be granted to the appellant. The Tribunal has found that the termination of the services of the appellant is punitive in nature, that the punishment is disproportionate to the charges alleged, that no enquiry whatever was conducted before passing the order, that the Management had violated the principles of Natural Justice and the termination was contrary to Section 6 of the Act, that the appellant was not gainfully employed elsewhere and that the Management acted arbitrarily in terminating the service. If these are the findings, then the consequential direction should have been to reinstate the appellant. But the Tribunal in this behalf has observed as follows:

"The learned counsel for the appellant prayed that the appellant should be reinstated in service with full back wages. It is the contention of the respondent throughout that they are not , satisfied with the teaching standards of the appellant and that she is not suitable to hold the post. The appellant joined the respondent's institution on 15.7.1985 and she did not work even up to the end of one academic year there; She has gone on leave from 1.2.1986. She has worked there only for 7 months. The document Ex. Rule 2, the memo book containing the memos Exts. Rule 2(a), Rule 2(b) and Rule 2(c) shows that the respondent was not satisfied with the standard of her work and even after the explanation offered by the appellant under Ex.R-1 dated 17.1.1986 they were not satisfied. According to them, the appellant had not maintained notes of lessons and deficiencies in her service came to light when a substitute teacher in her place was appointed in their institution...."

The above circumstances and the fact that another teacher has been appointed in the place of the appellant has been relied on by the Tribunal to deny reinstatement.

12. At the outset it has to be stated that the denial of reinstatement on the above basis may not be legal. The Tribunal itself has held that the finding on the charges are unilateral without hearing the appellant or granting an opportunity and have been entered without any enquiry. It is also held that the order is vitiated by violation of the principles of Natural Justice. If that be so, the Tribunal cannot rely on the very same finding in the impugned order to deny the relief of reinstatement. It is the finding of the Tribunal that the punishment is disproportionate to the charges. If that be so, the same charges cannot be made a ground to decline reinstatement. The order of the Tribunal declining the grant of the relief of reinstatement cannot coexist with the finding of the Tribunal as regards the validity of the order of termination.

13. The Tribunal further states that the relationship between the Management and the appellant is strained. At para-17 the Tribunal states thus:

"...In the instant case, the appellant's services are terminated on the ground that she has not completed the notes of lessons, there was shabby maintenance of class attendance register and many students had complained that she had never shown any interest to clear their doubts shown in mathematics, the children found it very difficult to understand her lessons due to her fast way of teaching and there were complaints from parents also. There is also an allegation that her individual class marks register was found incomplete and the work has been unsatisfactory and careless. In these circumstances, the relationship between the parties is certainly strained and it may not be possible for the appellant to work with all enthusiasm in the institution if the appellant were to be reinstated. So, in my view, it was not proper to order for reinstatement. It is proper that she should be compensated for the illegal termination of her services."

The above conclusion clearly means that the Tribunal is finding that the allegations against the appellant by the Management (which is unilateral and as noticed by the Tribunal without making known the basis of the allegations to the appellant) are true and has to be accepted at least for the purpose of declining reinstatement.

14. I am afraid these premises of the Tribunal to decline reinstatement cannot be legally sustained. When once it finds that the finding on the charges were entered even without issuing a show cause notice to the appellant or even without an enquiry and is against all principles of Natural Justice, then the said order is a nullity for all purposes. The allegation made in such an order cannot be made use of by the Tribunal for any purposes much less for the purpose of reinstatement for disallowing the relief prayed for by the appellant. The Management cannot found any right to resist the claim for reinstatement basing on non est order. Further the Tribunal itself has found that the Management had no power to terminate the services of the appellant invoking the provisions of the Grant-in-Aid Code referred to in the order of termination. It means, termination made is by invoking a non-existing power. The order of termination is hence void on this short ground as well. If so, none of the allegations in the order of termination can be made use of by the Tribunal to deny the relief of reinstatement. Besides, when the order of termination is set aside on the ground that it was a void order and is passed without enquiry and against all principles of Natural Justice, then the appellant should have been deemed to have continued in service throughout. She would, therefore, be entitled to full back wages as well. This has also been wrongly dented by the Tribunal. The order of the Tribunal calls for interference to this extent.

15. In the result, C.R.P.No.482/93 is allowed. The appellant will be reinstated with full back wages. In the event, the Management declines to reinstate the appellant, then she will be entitled to be paid full back wages due to her till 1.12.1994 and in lieu of reinstatement: she shall be paid a sum equivalent to 50% of the total emoluments that she would have earned had she continued in

service till the age of superannuation, reckoning the monthly emoluments that would have been payable to her as on 1.12.1994 on reinstatement as basic figure to arrive at the quantum of 50%. For compliance with the order, time is granted upto 1.12.1994. There will be no order as to costs.

16. The conduct of the Management is far from desirable. The appellant was not paid her salary from the time she availed of maternity leave. It is in evidence that she in fact paid the teacher appointed in her leave vacancy. After having benefited in all this manner, they have taken the unfortunate stand in these proceedings. Hence, C.R.P.No,1346/93 is dismissed with costs. Advocate's fee Rs. 750/-.