

(1992) 08 KAR CK 0015
In the Karnataka High Court
Case No : C.R.P. No's. 2342 and 2341 of 1990

Basavaraj Patil

APPELLANT

Vs

Hyderabad Karnataka Education Society

RESPONDENT

Date of Decision : 21-08-1992

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 6, 8

Citation : (1992) ILR (Kar) 2940 : (1992) 3 KarLJ 736

Hon'ble Judges : Kedambady Jagannatha Shetty, J

Bench : Single Bench

Advocate : Basava Prabhu Patil, for M. Mahabaleswar Gowda, for the Appellant;
B.S. Raikote, for the Respondent

Final Decision : Allowed

Judgement

Kedambady Jagannatha Shetty, J.—These two Revision Petitions are directed against the common order passed on 15-1-1990 in M.A.Nos.1 of 1988 and 2 of 1988 by the Educational Appellate Tribunal and District Judge, Raichur, dismissing the appeals of the petitioners.

2. Since both the Revision Petitions are filed against a common order passed by the Educational Appellate Tribunal and District Judge, Raichur, and common question of law and facts are involved, they are disposed of by a common order.

3. The facts in brief are that the petitioner, Basavaraj Patil in C.R.P.No.2342 of 1990 is an appellant in M.A.No.1 of 1988 and the petitioner, Sidramareddy in C.R.P. No.2341/1990 is an appellant in M.A.No.2 of 1988 before the Educational Appellate Tribunal and District Judge, Raichur. Respondent is common in both the Revision Petitions.

4. The petitioner Mr.Basavaraj Patil in C.R.P.No. 2342 of 1990 was appointed as F.D.C. in the Engineering College at Raichur run by the respondent, by its Order No.HKES/A8/EST/56/85-86, dated 14-11-1985 on the pay scale of Rs.630/- to

Rs.1,200/-. The order of appointment contained the service conditions as per the respondent's Service Manual 1978. The petitioner joined service and has been rendering service in the institution.

5. The petitioner Mr.Sidramareddy in C.R.P.No. 2341 of 1990 was appointed as S.D.C. in the aforesaid College by the abovesaid order on the pay scale of Rs.490/- to Rs.950/-. The appointment order contained the service conditions as per the respondent's Service Manual 1978. The petitioner joined service and has been rendering service in the institution.

6. Both the petitioners were required to undergo probationary period as per Probationary Rules in Chapter III of the Service Manual which are made applicable to the employees. By the order of the respondent-Management, dated 18-5-1987 the services of the petitioners during the probationary period are declared as successfully completed, viz., Basavaraj Patit on 22-11-1986 and Sidramareddy on 15-1-1987. Thus, the respondent-Institution declared the successful completion of probationary period of both the petitioners, by its order, dated 18-5-1987. As per Rule 12 of the Service Manual when once the probation is declared as successfully completed, the respondent-Management cannot dispense with the service. But, the respondent, all of a sudden dispensed with the service of the petitioners with immediate effect by its order, dated 20-4-1988. This order has been challenged by the petitioners by filing an appeal before the Educational Appellate Tribunal. The case of the petitioners is that under Rule 12 of the Service Manual, the respondent has no jurisdiction to dispense with the service after the probationary period being declared as successfully completed. The impugned order was not preceded by a notice as contemplated under Rule 13 of the Service Manual. The order also cannot be construed as an order of retrenchment because of the reasons that according to the staff pattern of the Engineering College, Raichur, there are 15 S.D.C. posts and as per Rule 18 an employee appointed, if for any reasons cannot be continued for want of vacancy to the category of the post to which he is appointed, the retrenchment shall be made taking the seniority into consideration in such category of posts shall be retrenched from service on the principle of "last come first go". It is the further case of the petitioners that no reasons are assigned in the impugned order. The petitioners were not given any opportunity and as such there is violation of principles of natural justice. When the petitioners have successfully completed the probationary period, the respondent-Management has no authority nor justified in removing them from service. The impugned order, on the face of, awarding a major penalty and as per the procedure laid down under Rule 14 no order imposing any major penalty shall be passed except in accordance with the essential elements of the procedure prescribed by the Government of Karnataka to regulate the adjudication of the major penalties, it is their further case, before the Appellate Authority, that the impugned orders are arbitrary and mala fide and it is not in accordance with Section 6 of the Act.

7. The respondent has resisted the case of the petitioners and filed objection statement denying all the allegations contained in the appeals filed by the petitioners and submitted that the petitioners -B.P. Basavaraju was appointed as F.D.C. and Sidramareddy was appointed as S.D.C. temporarily. In the order of appointment, it has been stated that the services are on temporary basis and terminable at any time without any basis. The provisions of Rule 9 of the Service Manual are not applicable to the petitioners. So, the question of declaration of successful completion of probation period in case of the petitioners does not arise at all. The order has been passed by the respondent stating that the petitioners have successfully completed the probationary period, due to the misrepresentation made by the petitioners, which is not in accordance with the Service Manual and is void ab initio. Rule 12 of the Service Manual is also not applicable to the case of the petitioners. No appeal will lie. Further, the impugned order does not come under the purview of Section 6 of the Act as it does not amount to passing of stigma on the petitioners nor it is a case of penalty. The order of dispensation of service is in accordance with the terms of the appointment order given to the petitioners.

8. On the basis of the respective contentions of the parties, the Appellate Authority has formulated the following issues for consideration:-

1. Whether the impugned order falls under the purview of Section 6 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975?
2. Whether the Tribunal has jurisdiction to entertain the appeal?
3. Whether the impugned order of dismissal is illegal and contrary to the principles of natural justice?
4. Whether the appellant is entitled to the reliefs sought for?
5. What order?

9. After considering the respective contentions of the parties and the material on record, the Appellate Authority has held issues Nos. 1 to 4 in the negative. It has held; "that since the appointments of the appellants to the respective posts is temporary one as per the conditions mentioned in their letter of appointment, termination of their service is a termination simpliciter. The termination of the appellants thus does not fall u/s 6 of the Act... The termination of the service of the appellants thus being a termination simpliciter in accordance with the rights of the respondents under the letter of appointment, no appeal is maintainable before this Tribunal u/s 8 of the Act.... and it cannot be said that the impugned order is illegal and contrary to the principles of natural justice." The appeals are dismissed. Hence, the Revision Petitions by the petitioners.

10. Mr. Basava Prabhu Patil, learned Counsel for the petitioners urged that the Tribunal has committed an error in acting with material irregularity in dismissing the appeals of the petitioners, on the mistaken notion that the order impugned does not fall within the purview of Section 6 of the Karnataka Private Educational

Institutions (Discipline and Control) Act, 1975. Since the petitioners are permanent employees the Tribunal ought to have held, that the order of termination has been passed by way of punishment, which amounts to, in fact, dismissal which is in violation of principles of natural justice. The petitioners had, in fact, at the time of termination of their services became permanent employees in accordance with Rule 12 of the Service Manual, and as such, the Tribunal ought to have held that the order of termination of services of the petitioners, were passed as a measure of penalty.

11. Mr. Raikote, learned Counsel for the respondent, has controverted the submissions of the petitioner's Counsel and argued that the Appellate Authority on proper consideration of the material on record has rightly come to the conclusion that the order of termination was in accordance with the terms and conditions of appointment given to the petitioners. The termination of services of the petitioners is termination simpliciter which is neither illegal nor it is in violation of principles of natural justice.

12. Let me consider the conflicting contentions of the parties.

13. There is no dispute that the services of the petitioners is governed by the Hyderabad Karnataka Education Society's Institutions" Service Manual (hereinafter referred to as the "Service Manual"). The respondent-Society after coming into existence framed Rules and Regulations. As per Rule 17(11), the Governing Council of the Society has been vested with the power to appoint and terminate and give promotions to its employees. The respondent-Society framed H.K.E. Society's Institutions" Service Manual, 1978. Chapter XIX of the Service Manual deals with Cadre and Recruitment Rules.

14. It is an undisputed fact that the respondent-Society by its order of appointment dated 14-11-1985, appointed petitioners Basavaraj Patil as First Division Clerk and Sidramareddy as Second Division Clerk, which reads as follows:-

"PROCEEDINGS OF THE PRESIDENT H.K.E. SOCIETY GULBARGA.

Sub, Engineering College Raichur - Appointment of Teaching and Non-Teaching staff.

PREAMBLE;-The Principal, Engineering College, Raichur, has submitted a list of the candidates (Teaching and Non-Teaching) selected by the Governing Council of the H.K.E. Society Gulbarga, in its meeting held on 20th and 21st August 1985, held at the Engineering College, Raichur for the appointments in Engineering College, Raichur. It is considered acceptable. Hence the following order is issued.

ORDER NO.HKES/A8/EST/56/85-86, DATED 14-11-85.

In view of the facts stated above the following candidates selected by the selection committee, are hereby appointed in the H.K.E. Society Engineering College, Raichur, with immediate effect, subject to eligible. Their services are on

temporary basis, terminable at any time without prior notice.

Their service conditions are governed by the H.K.E. Society's Service Manual 1978, laid down by the Management from time to time.

SI. No.

Name & Address

Post

Pay Scale

XXXXX XXXXX

XXXXX

4.

Basavaraj Patil S/o Sharanappa Gouda, Post Gaudadini Via: Kalamala,
Dist:Raichur.

F.D.C.

Rs. 630-1200/-

XXXXX XXXXX

XXXXX

18.

Sri Sidramareddy S/o Gurunathareddy, At & Post: Gogi Tq: Shahapur Dist:
Gulbarga

S.D.C.

Rs. 490-950/-

Sd/-PRESIDENT."

15. As per the Probation Rules, they were to undergo probation of one year from the date of joining the service. The respondent-Management by its order, dated 18-5-1987 declared the petitioner Basavaraj Patil has successfully completed the probationary period on 22-11-1986 and by the same order declared the petitioner Sidramareddy has successfully completed the probationary period on 15-1 -1987. The said order reads thus;-

HYDERABAD KARNATAKA EDUCATION SOCIETY GULBARGA

No.HKES/A7/Prob/RCR/87-88 Date 18-5-1987

PROCEEDINGS OF THE PRESIDENT H.K.E. SOCIETY GULBARGA

Sub : Declaration of the Probationary period.

PREAMBLE: The Principal, HKES's Engineering College, Raichur, in his letter No.939 dated 23-3-1987 and letter No.11 dated 18-4-1987 has submitted the proposals of the Teaching and Non-Teaching staff members of the College, for declaration of their probationary period. The Principal further reported that the services during the probation period as completed satisfactorily. Hence, the following order is issued:

ORDER

The services during the Probationary period of the following Teaching and Non-Teaching staff members working in the Engineering College, Raichur, are declared as successfully completed on the dates mentioned against each here under:-

Sl. No.

Name of the Employee

Designation

Date of completion of probationary period

From

To

9.

Basavaraj Patil

F.D.C.

23-11-85

22-11-86

12.

Sidramareddy

S.D.C.

26-11-85

15-01-87

for PRESIDENT."

However, after a lapse of nearly an year, the respondent- Management by its order dated 20-4-1988 dispensed with the services of the petitioners with immediate effect. The order reads as follows:-

HYDERABAD KARNATAK EDUCATION SOCIETY GULBARGA PROCEEDINGS OF THE PRESIDENT H.K.E. SOCIETY, GULBARGA

SUB : Dispensing with the services of the staff appointed in various institutions

under H.K.E. Society, Gulbarga.

PREAMBLE:The Governing Counsel in its meeting held on 7-3-1988 (item No.11) has resolved to dispense with the services of the persons shown below.

Hence, the following under is issued; ORDER NO.HKES/EST/A8/3/88-89, dated 28-4-1988,

In view of the facts stated above, it is hereby ordered that the services of the following persons working in various institutions of the H.K.E. Society, are dispensed with, with immediate effect:

SI. No.

Name of the Employee

Designation

Place of working

xxxxxx

xxxxxx

xxxxxx

3.

Basavaraj Patil

F.D.C.

Engineering College, Raichur.

xxxxxx

xxxxxx

xxxxxx

6.

Sidramareddy

S.D.C.

-do-

Sd/-

PRESIDENT, H.K.E. SOCIETY, GULBARGA,"

16, To appreciate the contentions of the parties, it is necessary and proper to refer to the relevant Rules in the Manual. In Chapter II "Permanent" is defined to mean, the post is permanent, the term of probation has been satisfactorily completed and confirmation of the employee in the post has been communicated

to him in writing, "On probation", which means the employee, while being appointed to a permanent post, or a temporary post is required to fulfil conditions of probation as prescribed in the Probation Rules before being confirmed in his appointment Temporary" means the employee is engaged specifically for fixed or limited period, on terms and conditions specified in his letter of appointment. Relevant Rules relating to the "Probation Rules" which comes under Chapter III reads as follows:-

"1. These Rules shall apply to all the employees appointed to probation of the Society"s institutions whether they work in the institutions or deputed for duty elsewhere to any other Institutions.

4. All employees of the institutions of the society shall be required to be on probation for a period of one year from the date of joining.

6. The period of probation will be extended by six months at the discretion of the Management, considering the report of the Head of the institution/Department.

8. At the end of extended period of probation, if the probationer"s work is reported to be unsatisfactory, his services may be dispensed with,

9. On successful completion of the probationary period it will be declared by the Management if the employee is found suitable by completing the probationary period and he shall be confirmed subject to availability of permanent posts, if there are no permanent posts he will be confirmed soon after the permanent post arises."

17. It is clear that the petitioners were selected and appointed by the respondent to the respective posts of F.O,C. and S.D.C, These were the permanent posts as per the Cadre and Recruitment Rules of H.K.E. Society"s Service Manual. As per the appointment order, their service conditions are governed by the Service Manual 1978, on their joining service. They were to undergo probation as per the Probationary Rules contained in Chapter III of the Service Manual and they had successfully completed the probationary period. It is urged by the petitioners Counsel that there is no dispute that the petitioners have successfully completed the probationary period. An order to that effect was also issued on behalf of the respondent-Management. Therefore, both the petitioners were entitled to be confirmed and there is no discretion left with the Appointing Authority. But the respondent"s Counsel referring to Rule 9 of the Service Manual has urged that the petitioners had completed the probationary period, they could be confirmed subject to the availability of the permanent posts. They cannot be held to have been confirmed in the absence of an order of confirmation. The respondent"s Counsel further argued that the appointment of the petitioners were only temporary and as such the respondent could dispense with their services without any notice at any time.

18. The Appellate Authority has on referring the Clause 4 of Chapter II of the Service Manual that the petitioners" appointments were temporary as contained

in the appointment order, their services could be dispensed with. The Appellate Authority has completely overlooked the appointment order of the respondent, the Appointing Authority. The petitioners were selected and appointed by the respondent stating that it was on temporary basis and their service conditions are governed by the Service Manual. It was not a temporary appointment within the meaning of Clause 4. The temporary appointment is where the employee is to be engaged specifically for a fixed or limited period on terms and conditions specified in his letter of appointment. In these cases, the perusal of the appointment order makes it very clear that the petitioners were selected and appointed to the existing permanent posts, stating temporary, their service conditions to be governed by the Service Manual. That is to say, to undergo probationary period leading to confirmation in the post. The appointments of the petitioners were not for a fixed or limited period, as such it cannot be construed that their appointments were temporary, merely because the word "temporary" is used in the appointment order. The temporary employee is defined differently in each Service Rules. As such, the definition of the Service Rules of each case will have to be applied. As noticed, the definition of "temporary" in the Service Manual of this case which brings in the difference between the two categories of appointments "Temporary Employee" means an employee who has been appointed for a fixed period. If the employee is appointed against the permanent post on probation, and on his satisfactorily completing the probation, he would be confirmed in the post as a permanent employee. It is seen that under Rule in Chapter III regarding Probation Rules, it envisages that the Probation Rules shall apply only to those employees appointed on probation viz., that the employee appointed against the permanent post will have to undergo probation period (as per the Cadre and Recruitment Rules). The temporary employee engaged for fixed period is not required to undergo probation. That being the case, it cannot be said that the petitioners who have been selected and appointed as per Cadre and Recruitment Rules of FDC and SDC who had undergone the probationary period, that appointment cannot be said as temporary appointment and their service could be dispensed with, without notice as if it were termination simpliciter.

19. The Appellate Authority has totally misconstrued the appointments of these two petitioners by the respondent- management as temporary and the respondent could terminate their service without notice.

20. It is argued by the respondents Counsel that the word "temporary" is used in the appointment letter and the respondents could dispense with the petitioners service. In my opinion, mere using such word in the appointment order does not make the petitioners' appointment as one of temporary, in view of their appointment against the permanent post and their condition of service governed by the Service Manual whereby they have undergone probation as required under the Cadre and Recruitment Rules. The posts of F.D.C. and S.D.C. were filled by the respondent as per the Cadre and Recruitment Rules which provides that the F.D.C. and S.D.C. required to undergo probation of one year. As such,

when the employee has successfully completed the probationary period, and the Appointing Authority so declares, the employees awaiting for the confirmation order as required under Rule 9 of the Service Manual. In that situation, the legal effect of that declaration is that they were entitled to be absorbed into permanent service, and pending formal confirmation their service is regular service. In support of this proposition the petitioners Counsel cited the Decision reported in *STATE OF ANDHRA PRADESH v. CHINNA REDDI* In that case:

The petitioner who was an Upper Division Clerk in the Collector's office, Guntur was on his application appointed as an Upper Division Clerk in the Andhra Secretariat Service which was in a higher scale of pay. He completed the probation in the latter service and was declared to be an approved probationer. Some time thereafter, he was reverted to his former post in the Guntur Collectorate and he therefore came to the High Court

1. *State of Andhra Pradesh Vs. Y. Chinna Reddi*, complaining that this amounted to reduction in rank within the meaning of Article 311, The High Court, on a consideration of the rules on the subject, came to the conclusion that under the relevant rules, an approved probationer can only be transferred to serve in a post borne on the same cadre or class and that he can be reverted only for want of vacancy. Although an approved probationer does not as such acquire the status of a permanent member of the service, the fact does remain that he awaits appointment as a full member of the service. It is in these circumstances that their Lordships held "that the reversion of the petitioner in that case amounted to a penalty/attracting the operation of Article 311."

21. It was thus argued by Mr. Basava Prabhu Patil, the learned Counsel for the petitioners, that even if it is held that the petitioners were not confirmed employee, the manner in which the order of termination was issued amounted, in fact and in law, to the dismissal of the petitioners. He further submitted that the petitioners have successfully completed the probationary period, and to that effect the respondent-Management has issued certificate in favour of the petitioners. The petitioners were serving in the respondent-Management for nearly three years. This shows that the petitioners have rendered satisfactory service during the relevant period. Mr. Basava Prabhu Patil, has rightly urged that in the circumstances like this, the termination of the petitioners' service especially they are approved probationers awaiting confirmation, clearly amounted to dismissal of the petitioners. In my view, the Decision of the Supreme Court in the case of the *STATE OF PUNJAB v. DHARAM SINGH*, supports the contention of the learned Counsel for the" petitioners. Para-5 of the said Decision reads:

"In the present case, Rule 6(3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended and an employee appointed or promoted to a post on promotion is allowed to continue in that post after completion of the minimum period of probation without an

express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication.

2. State of Punjab Vs. Dharam Singh, The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

22, The respondent's Counsel has submitted that the services of temporary and probationer can be terminated by a simple order of termination. In the instant case, the petitioners have completed the probation successfully as per the certificate issued by the respondent-Management, as such the question of termination of the temporary and probationer does not arise. The fact that the services of the petitioners were terminated after they rendered service for long and after successfully completing the probationary period, clearly indicated that this cannot be said to be termination simpliciter.

23. The contention of the respondent's Counsel that the order of dispensation of service is an order of termination simpliciter and as such, it does not fall within the purview of Section 6 of the Act entitling the petitioner to file an appeal u/s 8 of the Act. This contention of the respondent's Counsel is unacceptable for the reason that orders of termination of service of the petitioners were not an order of termination simpliciter. They were orders of removal of petitioners from service, which squarely falls within the ambit of Section 6 of the Act, and as such the appeal u/s 8 of the Act is maintainable by the petitioners. Section 6 of the Act provides that any employee aggrieved by an order of the Board of Management is entitled to prefer an appeal to the Tribunal, if the order is one of dismissal, removal or reduction or otherwise affecting his conditions of service to his prejudice.

24. In my opinion, this is not a case of simple termination, but a case of dismissal, and therefore, the orders are liable to be set aside.

25. In the result, these Revision Petitions are entitled to succeed and the same are allowed. The orders of the Appellate Authority, dated 15-1-1990 passed in MA Nos.1 and 2 of 1988 are set aside. The appeals Nos.1 and 2 of 1988 by the petitioners are allowed and the order of the respondent dated 28-4-1988 terminating the petitioners' services are set aside. It is declared that the petitioners should be treated as still continuing in service. Consequently, the petitioners should be reinstated, paid their pay and allowances for the period they were out of office and all the consequential benefits that flow from setting aside the order of termination dated 28-4-1988 passed by the respondent.

26. In view of the peculiar facts and circumstances of the case, no order as to costs.