

(1979) 12 KAR CK 0004
In the Karnataka High Court
Case No : WP 8371/79

B.M.S. Education Trust and Another	Vs	APPELLANT
Education App. Tribunal and Another		RESPONDENT

Date of Decision : 04-12-1979

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 7

Citation : (1980) 1 KarLJ 448

Hon'ble Judges : Chandrakantharaj Urs, J

Judgement

The above writ petition coming up for orders on the application made by the second respondent for vacating stay, by consent of counsel has been taken up for final disposal as the petitioner's counsel insisted upon a final hearing rather than an order on I.A. No. I. Therefore, the following Order:

This writ petition is filed by B.M.S. Educational Trust and by the Principal of B.M.S. College for Women challenging the legality and correctness of the order passed by the first respondent Educational Appellate Tribunal, Bangalore. The order of the Tribunal in question is impugned mainly on two grounds. Firstly, that the Tribunal had no jurisdiction to entertain the appeal and secondly on the ground that even if it had the jurisdiction the appeal was barred by time prescribed under S. 8 of the Karnataka Private Educational Institutions (Discipline and Control Act, 1975), (hereinafter referred to as the Act). The facts leading to the present petition may be summarised as follows:

Second respondent is an employee (under suspension) of the 2nd petitioner College, it is neither pleaded nor clarified by the learned counsel for the petitioners as to which of the two petitioners is the appointing authority in so far as the second respondent is concerned. However, it is conceded by Sri K.N. Chandrasekhar, learned counsel appearing for the petitioners are governed by Karnataka Civil Services Rules in so far as it relates to the matter of conditions of service while in the employment of the petitioners. It is not disputed by the

learned counsel for the second respondent. It has been the case of both the petitioners and respondents that their service conditions are governed by the Karnataka Civil Services Rules, even before the first respondent Tribunal.

On account of certain discoveries made by the second petitioner Principal by a memo issued on 31-3-1975, the second respondent was kept under suspension pending enquiry. No enquiry as such has commenced against the petitioner up to this date. After the suspension order was passed (a true copy is produced by the second respondent at Annexure-I to his statement of objections), the second respondent made repeated representations to the second petitioner as also to the first petitioner and thereafter to the Director of Collegiate Education, but with no success. The representations related to payment of subsistence allowance pending enquiry under rule 98 of the Karnataka Civil Services Rules (hereinafter referred to as the Rules). That the second respondent has not been paid subsistence allowance at all is admitted and also evidenced by annexure-3 to the statement of objections, which is a reply sent by the second petitioner through his counsel to the second respondent on the written representation made demanding payment of subsistence allowance on 14-3-1978. In the said Ex. "C" the reply by the counsel on behalf of the second respondent it is clearly stated that on account of certain criminal cases pending before the Chief Metropolitan Magistrate, Bangalore against the second respondent, he was not entitled to subsistence allowance. Aggrieved by the reply of the counsel as above, the petitioner under S. 8(1) of the Act filed an appeal inter alia, praying for a direction to the petitioners to pay the subsistence allowance for the period of suspension.

It is apparent from the impugned order of the Tribunal that substantially the same grounds which have been urged before this Court were also urged before the Tribunal.

On the basis of the pleadings before it the Tribunal framed the following questions for determination:

"(1) Whether the reply notice dated 21-3-1978 by their counsel amounts to an order of the respondents and whether an appeal is maintainable under S. 8(1) of the Act?

(2) Whether the appeal is barred by limitation?

(3) Whether the appellant is entitled to claim subsistence allowance during the period of suspension? If so, at what rate?"

As in this court, before the Tribunal it was contended that there being no order passed by the Principal refusing to pay the subsistence allowance, there was no cause of action accruing to the second respondent which would entitle him to prosecute an appeal before the Tribunal. The Tribunal in its order at para-8 has held that the reply through the counsel as per Annexure-3 dated 21-3-1978 being on instructions of the principal, (second petitioner herein), it should be

construed as his instructions having been carried out by the counsel and the same should be held to be the order passed by the Principal. I am in full agreement with the reasoning adopted by the Tribunal in coming to that conclusion that Annexure "C" reply by counsel on behalf of 2nd petitioner was an order communicated within the meaning of S. 7 of the Act. Sri Chandrasekhar, learned counsel for the petitioners has argued that S. 7 of the Act is not attracted even if this Court were to hold that the reply by the counsel dated 21-3-1978 was an order issued by the second respondent. S. 7 of the Act is as follows:

"Communication of orders.-Even order of the Board of Management terminating the Services of an employee or imposing a penalty or otherwise affecting his conditions of service to his prejudice shall be communicated in writing to the employee."

The learned counsel's argument is that withholding of subsistence allowance does not amount to changing the conditions of service. I am unable to see how by using the word "change" in place of the term "affecting" occurring in S. 7 above helps the case of the petitioners. Once it is conceded that the K.C.S. Rules apply, then we have to look at the rules to determine the conditions of service of the second respondent. When it is admitted that the Rules in question should govern the conditions of service, then Rule 98 of the Rules clearly provides for the payment of subsistence allowance while the enquiry is pending against the delinquent officer. This necessarily forms part of the conditions of service and if that subsistence allowance is not paid then there is a breach of the conditions of service which directly affects the second respondent. Once an order is made refusing to pay the subsistence allowance, then that order communicated through the counsel, is an order communicated under S. 7 of the Act, affecting his conditions of service. On the plain reading of that section 2nd respondent had a right to move the Tribunal for redress in terms of 3. 8(1) of the Act. Therefore, the learned counsel's argument that the respondent Tribunal has no jurisdiction is liable to be rejected.

The next point contended and argued is that the appeal before the Tribunal was barred by limitation inasmuch as the order of suspension was made on 31-3-1975 and the appeal was presented on 13-6-1978.

The argument is that the 2nd respondent should have preferred the appeal to the Tribunal within 3 months from the date of the order of suspension. The Tribunal rejected that contention on the ground that the grievance of the petitioner was not against the order of suspension, but on account of refusal to pay the subsistence allowance in accordance with the rule referred to above. No doubt nearly 3 years have been spent by the second respondent in running from pillar to post for payment of subsistence allowance. It is only as a final desperate measure; he issued a legal notice on 14-3-1978 demanding payment of subsistence allowance. He has also explained in the notice to the second petitioner as to why he was constrained to issue the notice through a lawyer. This

has not been referred to in the reply issued by the second petitioner through his counsel. On the other hand the only explanation before the Tribunal as well as before this Court is that criminal proceedings were pending.

Now it is well settled principle of law that pendency of criminal proceedings against the delinquent officer or employee will not in any way fetter the right of the employer to hold a domestic enquiry or a disciplinary enquiry in regard to the misconduct of the delinquent officer or employee. In any event, the pendency of the criminal proceedings cannot be considered so as to empower the petitioners to withhold the payment of subsistence allowance as if it was a punishment, even before the criminal proceedings had terminated one way or the other. The real grievance of the petitioner really commenced on the final refusal of second petitioner to pay the subsistence allowance through the letter of his counsel dated 21-3-1978 and the Tribunal was correct in arriving at the finding that the appeal was not barred by time.

In the course of hearing this case several other questions have come up for consideration. But I do not think it necessary in these proceedings to deal with those contentions raised on behalf of both the petitioners and second respondent .

The finding of the first respondent on the third point for consideration that the second respondent was entitled to 90% of salary from the date on which he was kept under suspension is correct though not accurate. The relevant rule, that is Rule 98 of the Rules, provides for payment 75% of the salary drawn by him if the enquiry is completed within one year and if not so completed at 90% after the lapse of one year. In the instant case, enquiry has not at all commenced even after lapse of 4 years. Therefore, I do not wish to disturb the rate of payment ordered though it is not accurate in the sense as pointed out by me above as the 2nd respondent has been put to great hardship and the petitioners have not questioned that inaccuracy in these proceedings.

This petition is liable to be dismissed with costs without issuing rule.

Advocate's fee Rs. 100/-.