

(1990) 11 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1866 of 1989

Carmel High School

APPELLANT

Vs

The District Educational Officer and Others

RESPONDENT

Date of Decision : 16-11-1990

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 101, 79
Andhra Pradesh Recognised Private Educational Institutions (Control) Act, 1975 —
Section 3

Citation : (1991) 1 ALT 412

Hon'ble Judges : P. Venkatarama Reddi, J; Jagannadha Rao, J

Bench : Division Bench

Advocate : M. Panduranga Rao, for the Appellant; The Government Pleader for Respondent Nos. 1 and 2 and E.V.S.S. Acharyulu, for the Respondent

Final Decision : Allowed

Judgement

Jagannadha Rao, J.—This writ appeal is preferred against the judgment of the learned single Judge in Writ Petition No. 6304 of 1984 dated 18-7-1989. By that judgment, the writ petition was dismissed. The appellant is the Carmel High School, Kalyani Khani, Adilabad district and was the writ petitioner. The writ petition was filed for the issue of a writ of certiorari quashing the order of the Deputy Educational Officer, Lusettipet, Adilabad district dated 12-3-1984.

2. The facts of the case are as follows :-The appellant is a School established in 1963 in Adilabad district at Kalyani Khani. The 3rd respondent, Sri Bhaskara Sharma, was appointed as a teacher in the appellant-school on 13-6-1983 for the period upto 24-4-1984. His services came to an end on 24-4-1984 by efflux of time. It appears that the 3rd respondent-teacher made a representation to the 2nd respondent (Deputy Educational Officer, Luxettipet) seeking continuance as teacher and on that basis, the 2nd respondent purported to exercise power u/s 3 of the A.P. Recognised Private Educational Institutions (Control) Act (A.P. Act 11 of 1975) and held that the termination of the services of the 3rd respondent with

effect from 24-4-1984 was without prior approval of the competent authority under the Act and was, therefore, illegal. The 2nd respondent, therefore, directed the appellant-management to withdraw the notice of termination and permit the 3rd respondent to join duty. It was this order that was assailed in the writ petition.

3. The 3rd respondent did not file any counter before the learned single Judge. But on the basis of submissions made by the learned counsel for the 3rd respondent, the learned single Judge dismissed the writ petition. The learned single Judge held that even if A.P. Act 11 of 1975 is repealed by the date of the impugned order of the 2nd respondent dated 12-3-1984, Section 79 of the new Act viz., Act 1 of 1982 required that no teacher shall be dismissed, removed or reduced in rank except in accordance with the procedure prescribed under the Act and the rules made thereunder and that in this case when the appointment was for a regular vacancy, it must be construed that the appointment made was for a regular vacancy ; that it could not have been terminated except in accordance with the procedure prescribed in Section 79 of Act 1 of 1982 and that inasmuch as the said procedure was not followed, the termination was invalid. The learned Judge further observed that it is not the case of the management that the termination was by way of misconduct.

4. Coming to the second question whether the management had power to terminate the services of the 3rd respondent in terms of the contract of employment, the learned Judge held that so long as service is governed by the provisions of the Act and the rules, the conditions in the statute have to be followed. So far as the contention that the appellant was a minority institution was concerned, the learned Judge observed that there was no evidence to show that it was a minority institution and that even if it was a minority institution, it had to follow the procedure laid down in A.P. Act 1 of 1982. On this basis, the writ petition was dismissed. It is against this judgment that the management has filed this writ appeal.

5. In this appeal, it is stated by the appellant that Section 79 of A.P. Act 1 of 1982 is not attracted to the facts of the case; that A.P. Act 11 of 1975 was not in force at the relevant time when the impugned order was passed; that the termination was valid in view of the terms of the contract; that the learned Judge erred in holding that the appointment of the 3rd respondent is to be construed as a regular appointment; that the appellant is a minority institution and that it has absolute power to terminate the services of such teachers.

6. We have heard the learned counsel for the appellant, Sri M. Pandu-ranga Rao, and the learned counsel for the 3rd respondent, Sri E.V.S.S. Acharyulu.

7. When it was pointed out that the 3rd respondent did not choose to file any counter affidavit before the learned single Judge, the learned counsel for the 3rd respondent, Sri Acharyulu, requested for time to enable his client to file a counter in the writ appeal. For that purpose, we have adjourned the matter on

more than one occasion. In fact, at the stage of admission of this writ appeal on 6-2-1990, time was granted for filing a counter. Though the appeal was admitted nearly 9 months back, no counter is filed even till today. We are, therefore, disposing of the appeal on the basis of the material available and the contentions of the learned counsel on both sides.

8. It may be noticed that the 3rd respondent was appointed as a teacher for the period 13-6-1983 to 24-4-1984. The appointment order itself mentions that the date of expiry of appointment was 24-4-1984. Two months before the expiry of the period i.e. on 22-2-1984 the appellant informed the 3rd respondent by way of a letter stating that as intimated in the order of appointment, the services of the 3rd respondent will stand terminated on 23-4-1984. This was described as a statutory notice of two months. Thereafter, the A.P. Teachers' Federation submitted a representation to the 2nd respondent on 27-2-1984 and the 3rd respondent also appears to have made a representation to the 2nd respondent.

9. It was on the basis of the above said representations that the 2nd respondent passed the impugned order on 12-3-1984 setting aside the order of the termination in exercise of his powers u/s 3 of the A.P. Recognised Private Educational Institutions (Control) Act, 1975.

10. The above said Act of 1975 was repealed by Section 101 of the A.P. Education Act, 1982 (A.P. Act 1 of 1982). u/s 79 of the later Act, it is stated that no teacher or member or the non-teaching staff employed in a private institution shall be dismissed, removed or reduced in rank except after an enquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

11. The learned Judge proceeded on the basis that the impugned order of termination amounted to one or other of dismissal, removal or reduction in rank as provided in Section 79 of the new Act of 1982 and on that premise proceeded to apply the proviso to that section, which reads as follows :-

"Provided that no order of dismissal, removal or reduction in rank shall be passed under this Sub-section against an employee other than an employee of a minority educational institution, without the prior approval of such authority or officer as may be prescribed for different classes of private institutions.

Provided further that the management may prefer an appeal against any order of the officer or the authority causing approval under this Sub-section to such authority or officer and within such period as may be prescribed."

12. The learned Judge unfortunately failed to notice that the above said proviso was not then part of Section 79 of the new Act of 1982, but was introduced only by way of an amendment under A.P. Act 27 of 1987. Therefore, at the relevant time when the order of termination was issued on 22-2-1984 by the management, neither the old Act of 1975, which required sanction of the competent authority, was in force nor was the proviso to Section 79, which

required such sanction, on the statute book. Therefore, even assuming that the appellant is not a minority institution, still there is no provision in the relevant Act requiring approval of any competent authority for such termination. Such a condition was imposed by the legislature much later by A.P. Act 27 of 1987.

13. Further, we may point out that there is no material placed before the court by the 3rd respondent to establish that the appointment was a regular appointment.

14. During the course of arguments, reference was made by the learned counsel for the 3rd respondent to Section 83 of A.P. Act 1 of 1982. That section deals with "retrenchment of employees". It states that "where retrenchment of any employee is rendered necessary by the management or competent authority consequent on any change relating to education or course of instruction or to any other matter, such retrenchment may be effected with the prior approval of the competent authority or the next higher authority, as the case may be". There is no plea nor material before us to show that there was any retrenchment consequent on any change relating to education or course of instruction or to any other matter. We have already stated that the 3rd respondent has not filed any counter either in the Writ Petition or before us.

15. For the aforesaid reasons, the Judgment of the learned Single Judge is set aside and the Writ Petition is allowed as prayed for.

16. The Writ Appeal is allowed. No costs.