
(1996) 06 KAR CK 0004
In the Karnataka High Court
Case No : C.R.P. No. 2555 of 1992

Central Food Technological Research Institute Education
Society

APPELLANT

Vs

Mrs. Shanthi Gnanasundaram and Another

RESPONDENT

Date of Decision : 18-06-1996

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 6, 7, 8

Citation : (1996) ILR (Kar) 3338 : (1996) 7 KarLJ 184

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : V. Tarakram, for the Appellant; H.B. Narayan, for R-1, for the Respondent

Judgement

M.F. Saldanha, J.—Two issues of some consequence have been canvassed in this C.R.P. which is directed against an appellate order of the District Judge and Educational Appellate Tribunal, Mysore dated 20.8.84 and Mis. Appeal No. 16/84. The petitioners, the Central Food Technological Research Institute Education Society at Mysore hereinafter referred to as the "Society" had run a school in which the first respondent, hereinafter referred to as the "respondent" was employed as a teacher with effect from 19.6.1978. She completed her probationary period and was thereafter confirmed and continued to work as a permanent teacher until the year 1984. It is the case of the respondent that the petitioners were obtaining signatures from the teachers on letters similar to their appointment letters to the effect that the school reserves the right to terminate the services after giving one month's notice from year to year. This is alleged as a circumstance of malafides as against the petitioners which I shall deal with subsequently. On 17.4.1984 the respondent was issued a memo or a letter of termination which stated that the institution desired to strengthen the mathematics department and that therefore her services have been terminated and she was given one month's salary in lieu of notice. In the month of May, the

respondent challenged the order before the appellate tribunal and the tribunal did not issue any interim stay of the operation of the order because it had already taken effect. Notice was issued to the school authorities. After the pleadings were complete, the Tribunal was of the view that it was quite unnecessary to record any evidence because there were no disputed facts and the learned Judge heard the parties and decided the dispute. The principal contention of the society was that the Tribunal lacked the necessary jurisdiction to entertain the dispute because this was not a matter covered by Rules 6 or 7 of the Karnataka Private Educational Institutions Act. It was contended that in keeping with the terms of employment that were agreed between the parties and as were recorded in the letter of employment that the society had a right to put an end to the service by giving one month's notice which in fact had been done and that in these circumstances it was a termination simpliciter. It was also contended that there was no stigma attached to the teacher concerned as a result of the action and that therefore, the Tribunal ought not to entertain the dispute at all. The subsidiary argument was that no allegations either of misconduct or negligence etc. were made against the employee which would necessitate the holding of a disciplinary proceeding and in this background that the society was fully justified in having terminated the services with notice. The appellant had refuted this position and the contention raised was that the action of termination would have to be considered as being one virtually of dismissal from employment and if this was the position, that the Rules 6 & 7 would come into operation because the action could not have been taken against the teacher without following the normal disciplinary procedures. The Tribunal held that it had jurisdiction to entertain the dispute and further held that the action of the society was improper and unjustified and therefore set aside the order dated 17.4.84 and directed that the teacher be reinstated with full backwages. That order was challenged before this Court through the present proceedings which were initially in the form of a Writ Petition. Subsequently, an application was made to this Court for leave to convert the petition into a Civil Revision Petition and on leave being granted the petition was renumbered and has now been treated as a Civil Revision Petition.

2. Mr. Tarakaram, learned Senior Counsel who represents the society has seriously assailed the impugned order on several grounds. In the first instance, he contends that the Tribunal has misdirected itself by holding that it had jurisdiction to entertain this dispute. In this regard, he draws my attention to the observations of the learned Judge wherein he has stated that the facts are not in dispute and that therefore there is no need to record any evidence. Learned Counsel submits that this necessarily implies that the Court had accepted that there was no dispute about the fact that this was a case of termination simpliciter which was what the society had pleaded. To be more precise, the society had acted in exercise of its powers which flow from the terms that were agreed to in the letter of appointment whereunder the teacher had agreed that her services may be terminated at any time with one month's notice. Learned

Counsel submits that once this position is agreed upon, that the Tribunal could only have recorded the finding that this was not a case where misconduct was alleged and which necessitated a disciplinary proceeding nor was it the case that such a proceeding was held and an adverse finding resulted and if neither was the case, that the Tribunal could not have exercised any powers having regard to the ambit and scope of Section 6 of the Act. In this regard, Learned Counsel has relied on two decisions, the first of them is a earlier decision of this Court reported in *M.V.R. RAM v. INDIAN INSTITUTE OF MANAGEMENT AND ORS.* 1981 (1) Kar.L.J. 559 wherein the Court, while construing these very provisions has held that where a termination of service was a termination simpliciter in accordance with the rights of the parties under the letter of employment, a appeal to the Tribunal is not maintainable. Learned Counsel has reiterated this position by relying on a decision of the Supreme Court reported in *The Principal and Others Vs. The Presiding Officer and Others*, where the Supreme Court had occasion to construe identical provisions in the Delhi School Education Act. The Court held that the termination simpliciter of service of one of the teachers was manifestly incompetent. In view of this position, Learned Counsel has submitted that the entire order of the Tribunal would go for want of jurisdiction.

3. The learned Advocate who appears on behalf of the respondent-teacher has contested this position. He submits that the observations of the learned Judge on the facts are not in dispute and would only mean that there was no dispute between the parties with regard to the sequence of events that led to the filing of the appeal but that the interpretations thereof was widely divergent. The society contended that it was a termination simpliciter whereas the teacher contended that it was punitive in nature which could not have resulted in termination except after following the procedure as prescribed by Sections 6 & 7 of the Act. More importantly, the learned Advocate submits that the legal position is not as settled as the petitioners learned Advocated has made it out to be. In this regard, he relies heavily on a Division Bench decision of this Court reported in *NEELAKANTIAH v. R.M. DESAI* 1979 (1) Kar.L.J. 98. In that case, the Division Bench of this Court held that a termination of service of a teacher by giving her one month's advance on the ground that owing to closure of a section, the post was surplus was appealable u/s 8 of the Act and that the Tribunal should entertain the appeal against the order of termination. The respondents learned Advocate has reiterated his submission by relying on a decision of the Supreme Court reported in *EXECUTIVE COMMITTEE OF VAISH DEGREE COLLEGE, SHAMLI AND ORS. v. LAKSHMINARAIN AND ORS.* AIR 1976 SC 888 wherein the Supreme Court while dealing with an action in relation to a contract of service had occasion to lay down the salutary principle that even in cases of termination, that the action must conform to the procedure as prescribed by law. As regards the decision of the learned Single Judge of this Court reported in 1981 (1) Kar.L.J. 559 to which I had occasion to refer, on which the petitioners learned advocate places strong reliance, it is pointed out by the respondent's Learned Counsel that the learned Single Judge had distinguished the Division Bench decision of

this Court referred to by me supra on the ground that the Division Bench. It was in conflict with the decision of the Supreme Court reported in *The Principal and Others Vs. The Presiding Officer and Others*, which had not been brought to the notice of the learned Judges who constituted the Division Bench and that in any event, the decision of the Supreme Court prevailed over the Division Bench decision of this Court. As regards this aspect of the matter, it is very necessary to reconcile the correct position. A careful examination of the facts in the Delhi School Case indicates that the Supreme Court was dealing with a situation wherein a teacher had been given 3 months notice of termination of service. What is important is that the notice was served on the teacher on 8.8.1975 informing him that his services would not be required from 8.11.1975. The advance salary for the remaining period was also given. The Supreme Court held that on the facts of that case, the appeal to the Tribunal was not maintainable. It is very necessary to take into account the difference between the two situations because the Supreme Court was dealing with a case in which advance notice was given whereas in the present instance, no such advance notice was given but the action was immediate and simultaneous. To my mind, therefore, that could make all the difference in construing the nature of the action and therefore the decision is distinguishable. It was on account that the decision applied, that the learned Single Judge in 1981 upheld the view that the Tribunal was not having jurisdiction and distinguished the earlier Division Bench decision of this Court. To my mind, the correct position would be to follow the earlier Division Bench decision which unequivocally lays down that in such situations the Tribunal could exercise jurisdiction. It is not as though the Tribunal would always have jurisdiction but in a given set of circumstances the jurisdiction of the Tribunal would not be barred.

4. On the facts of the present case, the short point that requires to be considered is whether the petitioners are right in contending that the action was a termination simpliciter or whether it must be construed as a punitive step. Learned Counsel who represents the petitioners has demonstrated to me, quite apart from the rights of the parties and the position in law, that if the services of the employee teacher were not required for any reason, that there is no obligation or compulsion on the part of the society to continue her services indefinitely and that therefore, without making any allegations or accusations against her if her services were terminated, that the action is beyond question. On the other hand, respondent's learned advocate has submitted that the petitioner was under probation for a year and it is only because her services were satisfactory, that she was thereafter continued in a permanent position. Further more, he demonstrates that if it is the petitioners case that the teacher was not incompetent and that she has not misconducted herself under any circumstances, the termination of service must be held to be punitive action would have to be rendered absolutely arbitrary. He has seriously attacked the ground adduced namely that the society desired to strengthen the mathematics department because he submits that there is nothing on record to show that this

teacher was wanting in skills during her tenure of six years and he also draws my attention to the fact that immediately thereafter the society has advertised for another teacher and appointed that person. The submission canvassed is that the school desired to get rid of an old employee and employ a new person and that this action itself was mala fide because this is precisely what is alleged against the school management that they have jeopardised the careers of teachers by removing them from their services and making new appointments from time to time. It is in this background that the learned advocate submitted that the Court will have to see the manner in which the services were terminated and in the absence of any justification whatsoever construe the action as a punitive one. In the situation if the action is to be justified, the normal procedure of issuing a show cause notice and holding an enquiry was essential and since this was not done, the order would have to be set aside.

5. I have recounted the various circumstances and situations on which the Learned Counsel presented their arguments in favour of their respective contentions. One fact stands out namely that the action was abrupt and immediate. The second fact that stands out is that there was absolutely no justifiable reason for having terminated the teacher's services and the situation gets even worsened by the fact that it was not as though the teacher was surplus or that her services were not required because they have immediately advertised and reappointed a teacher in her place. In this background therefore, the Court will have to look at the real complexion of the action and the irresistible conclusion that emerges is that the order was punitive and that consequently, it would have to be set aside on the ground of non-compliance with the provisions of Sections 6 & 7.

6. The petitioners learned advocate has submitted with regard to the question of relief granted by the Tribunal that neither reinstatement nor the payment of back wages should have been ordered in the peculiar facts and circumstances of this case. The petitioners have placed on affidavit the fact that the respondent - teacher was employed as a teacher and later as a Head Mistress in a certain other institution and the Learned Counsel submits that she was not put to any prejudice in so far as she was employed gainfully elsewhere and is continuing to do so. This position has not been disputed by the respondent and therefore the statement goes uncontroverted. The petitioner Learned Advocate submitted that in this background it cannot even be argued that the respondent has suffered any monetary loss and that therefore the order of the tribunal to reinstate her with full backwage was unjustified. He had submitted that it would be extremely harsh to the petitioner if at this late point of time after the lapse of so many years, the petitioners were to be ordered to reinstate the respondent - teacher because in the first instance it would mean that at this stage some other teacher would have to be displaced. Secondly, he submitted that over a decade has elapsed now and that the petitioners would be subjected to huge monetary penalty merely because of the pendency of the proceeding for such a long length of time. The respondent's learned advocate submitted that he has no

instructions to the effect that his client is gainfully employed elsewhere and he contended that in any event, since the removal was unjustified, that his client is entitled to be reinstated in her old school in the position to which she would have reached at this stage and as a necessary consequence she must be paid the backwages.

7. The Courts have considered situations of this type and the various decisions in service law are to the effect that neither reinstatement nor payment of back wages are to be mechanically awarded dehors the special facts and circumstances of a case. It is true that under normal circumstances if the order of termination is quashed or set aside that reinstatement must follow. There are however exceptions to this rule particularly if a long period of time has elapsed and the circumstances have changed and to my mind therefore having regard to the fact that the teacher is otherwise employed in the position of a Head Mistress, it would not be desirable or in the interest of her career to insist on an order of reinstatement. On the contrary, in my considered view such an order is contra indicated.

8. The question arises as to whether the order for payment of backwages should be sustained and if so up to what point of time. Here again, the law is to the effect that an employee would have to be compensated by payment of backwages where it is demonstrated that the employee has suffered monetary loss. In the present instance, there is no such evidence and one does not know whether the respondent was drawing a higher or a lower salary. If the respondent was earning less, a fair order would have been that the petitioner society should compute the difference and pay it to her. That however would lead to a cumbersome dispute. In my considered view since the action of the petitioners has been held to be unfair and since it has been set aside, it would be equally open to the Court to quantify the prescribed amount and direct the petitioners to pay of her dues. That amount should be in consonance with the rules of fairness. To my mind, the order passed by the Tribunal for payment of backwages should be modified and the petitioner society is directed to quantify the overall salary last drawn by the respondent and to pay her the equivalent of two years salary in full and final settlement of her claims.

9. The petition partially succeeds. The order of the Tribunal is accordingly modified as indicated above. The petitioner shall however pay to the respondent the costs of this proceeding.