

(2014) 10 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No. 25941/2014 (S-RES)

C.S. Jayalakshmi

APPELLANT

Vs

The Town Mahila Samaj (R)

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Limitation Act, 1963 — Section 4, 5

Citation : (2014) 10 KAR CK 0065

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : A. Madhusudhana Rao, Advocate for the Appellant

Judgement

Ram Mohan Reddy, J.—This is most unfortunate case of the petitioner being misguided to approach the Educational Appellate Tribunal, Chickmagalur under Section 94 of the Karnataka Education Act, 1983, ("the Act" for short) for the relief of extension of service from age 58 to 60 on the basis of the Government.. Order permitting such extension to teachers in the service of government aided educational institutions. Section 94 of the Act reads thus:

"94. Appeals-(1) Any teacher or other employee of a private educational institution who is dismissed, removed or reduced in rank may within three months from the date of communication of the order prefer an appeal to the Tribunal.

(2) The provisions of Sections 4 and 5 of the Limitation Act, 1963, shall be applicable to such an appeal.

(3) If, before the date of commencement of this Act, any teacher or other employee has been dismissed, or removed or reduced in rank or his appointment has been otherwise terminated and any appeal preferred before that date-

(a) by him against such dismissal or removal or reduction in rank or termination;
or

(b) by him or by the Governing Council against any order made in any appeal referred to in clause (a.) is pending before any officer, such appeal shall, notwithstanding anything in sub-section (1), stand transferred to the Tribunal, if he makes an application in that behalf to such officer.

(4) The Tribunal shall dispose of the appeal filed under sub-section (1) or transferred under sub-section (3) after giving the parties the opportunity of being heard.

(5) In respect of an order imposing a penalty other than those specified in sub-section (1) of Section 92, on any teacher or other employee, an appeal shall lie to the Competent Authority within three months from the date of communication of the order imposing such penalty.

(6) The Competent Authority shall dispose of an appeal preferred under sub-section (5) after giving the parties the opportunity of being heard.

(7) An appeal against an order of the

Competent Authority under sub-section (6) shall lie within the prescribed period to the Tribunal, whose decision shall be final."

"92(1). Dismissal., removal., etc - (1) Subject to such rules as may be made in this behalf, no teacher or other employee of a private educational institution shall be dismissed, removed or reduced in rank except.-

(a) in accordance with the conditions of service governing him;

(b) after an inquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the said charges, and where it is proposed after such inquiry to impose on him such penalty, it may impose such penalty, on the basis of the evidence adduced during such inquiry:

Provided that this sub-section shall not apply to temporary employees or to the dismissal, removal or reduction in rank of a teacher or other employees on the ground of misconduct which has led to his conviction on a criminal charge involving moral turpitude."

2. A Learned Single Judge, interpreting Section 94 of the Act in Dr. B.N. Vadiraja Vs. Dr. Mumtaz Ahmed Khan and others, , observed "that the said Section makes it clear that only against an order of dismissal, removal or reduction in rank passed against any teacher or other employee of a private educational institution, an appeal is maintainable and the said appeal is to be filed within three months from the date of communication of the order. There is no scope to grant the above relief of declaration of probation period or direction for payment of leave salary, release of increments and arrears of salary, sanction of T.A. and D.A. etc., by the appellate tribunal constituted under the Act and the orders passed by the employer in 1 respect of the above matters cannot be challenged in an appeal. The order passed which is referred to in sub-section (3) of Section

96 of the Act must be one relating to the order of dismissal, removal or reduction in rank as contemplated under the provisions of Section 94 of the Act."

3. In that view of the matter, petitioner, having attained the age of superannuation of 58 years, her retirement from service does not fall within the nomenclature- removal, dismissal or reduction in rank and therefore, Section 94 has no application.

4. The Karnataka Educational Institutions (Certain Terms and Conditions of Service of Employees in Private Unaided Primary and Secondary and Pre-University Educational Institutions) Rules, 2005, brought in force w.e.f. 13.01.2006 makes no reference to the age of retirement, though provides for minimum number of posts, educational qualification and conditions of "service of employees. Rule 3(a) provides that educational qualifications for recruitment to the various posts in the educational institutions shall be the same as those applicable to the corresponding category of posts in Government educational institutions, while clause (b) states, where the salary of employees in the educational institutions namely, the unaided Primary, Secondary and Pre-University educational institutions shall not be less than the minimum of the basic of the scale of pay of the corresponding post held by an employee in a Government educational institution and shall be disbursed through Account payee cheques drawn in favour of such employee. Rule 4 provides for leave", Rule 5 over the "schedule of employment" and Rule 6 states that "educational institutions shall not compel an employee to give resignation letter either at the time of appointment or subsequently, while Rule 7 provides for "appeal" against the order of the competent authority under the said Rule to be filed before the Tribunal within 90 days.

5. Regard being had to the conspectus of the provisions of the Rules not providing for age of retirement as 58 years or 60 years, however according to the learned Counsel for petitioner, the State Government issued circular instructions in respect of enhancement of age of retirement from 58 to 60 years for all its employees and employees of aided institutions. Since the circular is not made applicable to unaided institutions in one of which petitioner served, coupled with the fact that the Rules are not amended by the State Government incorporating age of retirement, no appeal lies under Rule 7 in the matter of not extending the benefit of enhancement of age of retirement from 58 to 60 years as has been done in Government aided institutions.

6. Therefore, the appeal EAT No. 2/2013 filed by the petitioner invoking Section 94 of the Act was unavailable and the Tribunal, without noticing the provision of law, being incompetent, entertained the appeal to pass the order dated 17th September 2013 in EAT No. 2/2013, Annexure-G issuing directions to the educational institution to reconsider the case of the petitioner either to re-instate her in to service until she attains the age of 60 years or pay compensation, after framing appropriate Rules and Regulations and after approved by the State Government.

7. As a consequence the order dated 14.3.14 Annexure-"M" of the Educational Appellate Tribunal discussing Ex. Case No. 251/13 stating that the order dt. 17.9.13, Annexure "G" is not an executable order, cannot be found fault with.

8. It is a fact that one of the conditions of service of petitioner when appointed during the year 1980 in the unaided educational institution was that she would retire at age 58. That condition of service when not changed by enhancement of two years so as to enable the petitioner to continue till 60 years of age, no Court could have extended the benefit more so in the absence of a Rule or amendment to the aforesaid Rules.

9. Petitioner on an earlier occasion filed W.P. No. 13072/2012 for the relief of extending her services from age of 58 to 60 years, whence a learned Single Judge, by order dated 08th August 2012, Annexure-E dismissed the petition observing thus:

"11. Sub Rule 4 of Rule 3 of the Karnataka Educational Institution (Control of Private Educational Institutions) Rules, 1999 stipulates that the Governing Council of private educational institutions to adhere to and act in accordance with the provisions of the Act, the Rules and Orders made or instructions given by the head of the Education Department. Further Sub-Rule 2(a) and (g) of the Karnataka Education Institutions (Recognition of Primary and Secondary Schools) Rules, 1999 stipulates that every registered institution shall abide by the Act, Rules and the conditions imposed by the competent authority from time to time. Therefore, the Government is competent to amend the Act, Rules or issue orders extending the age of superannuation of employees in unaided institutions from 58 years to 60 years. The Government of Karnataka to consider making Rules or amending the existing Rules or to issue orders in this regard."

10. The learned Single Judge followed the decision of a Division Bench in State of Karnataka vs. Dr. Halesh and others ILR 2012 KAR 545, that in the matter of age of superannuation of University teachers, it was Central Government to clarify that in the event any State Government were to decide to increase the age of superannuation to 65 years effective for all College Teachers, the financial burden of the faculty already in harness would be shared by the Central Government to the extent of eighty percent of the additional expenses on salaries and further held thus: "Courts must function within the parameters delineated for them by the Constitution. Courts neither legislate nor prescribe policy."

11. Petitioner aggrieved by the order of the learned Single Judge is said to have filed W.A. No. 5109/2012, whence a Division Bench, by order dated 02nd January 2013, Annexure-F, at paragraph 4 observed that though the appellant therein was disentitled to maintain a writ petition challenging the termination of service on the ground of superannuation on attaining 58 years of age. The Division Bench without noticing the provisions of law, recorded a finding that the appellant has an alternative and efficacious remedy of filing an Appeal, have the doctrine of sub silentio applies. In other words, a finding rendered without

noticing the provisions of law. The order of. the Division Bench cannot be considered as an authority and hence not a precedent, but is rendered per incuriam.

12. It is no doubt true that petitioner claims parity with that of aided educational institutions in the matter of age of retirement and if that is so, it is open for the petitioner to make a representation to the State Government invoking Section 133 of the "Act" for necessary direction to the unaided educational institutions and if such a representation is made, there is no reason to believe that the State would not consider the same and pass orders in accordance with law. Reserving such liberty, this petition challenging the order dated 14th March 2014 in Ex. Case 251/13 rejecting the plea of the petitioner that the order dated 17th September 2013 in Education Appeal No. 2/2013, Annexure-G, is not an executable order, does not call for interference. Petition is accordingly rejected.