

(2006) 03 KAR CK 0022
In the Karnataka High Court
Case No : Writ Appeal No. 3692 of 2005

D. Jeevagan

APPELLANT

Vs

The Principal MEI Polytechnic and Others

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Karnataka Education Act, 1983 — Section 1 (3) (iv) (d-a), 130, 131, 94
Limitation Act, 1963 — Section 4, 5

Citation : (2006) 4 KCCR 2387

Hon'ble Judges : Cyriac Joseph, C.J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : A. Ram Mohan, for the Appellant; T. Sathyanarayana, C/R-1 to R/3 and A.N. Vanugopala Gowda, GA for R-4 and R-5, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—While the appellant was working as Head of Electronics and Communication Engineering Department of MEI Polytechnic, Bangalore, he was placed under suspension pending disciplinary action. On conclusion of the disciplinary proceedings, he was removed from service with immediate effect as per the order dated 29.11.1999 of the Chairman, Governing Council, MEI Polytechnic, Bangalore (respondent-2). Aggrieved by the said order of removal from service, the appellant filed an appeal before the Director of Technical Education u/s 130 of the Karnataka Education Act, 1983 (the Act, for short). Even though the management contended that the said appeal was not maintainable and that the appellant had to file an appeal u/s 94 of the Act before the Karnataka Education Appellate Tribunal, the Director of Technical Education held that the removal of the appellant from service without the prior approval of the Director was bad in law. The Director also sent a letter to the institution directing to take suitable action in the light of his decision. The said decision of the Director was challenged by the management before the Government by filing two revision petitions u/s 131 of the Act. The Government allowed the revision petitions and remitted the matter to the Director for reconsideration of the

appeal filed by the appellant. Thereafter the Director dismissed the appeal of the appellant as not maintainable. However, later the Director sent a letter to the management on 7/8th August 2001 directing that the appellant should be reinstated into service with all consequential benefits. When the management expressed its inability to reinstate the appellant in service, the Government of Karnataka by an order dated 3.12.2001 ordered to withhold all financial assistance payable to the institution under grand-in-aid. The said order of the Government was challenged by the management in W.P. No. 1058/02 on the ground that it was passed without hearing them. During the pendency of the said writ petition, the Director issued a show-cause notice dated 25.6.2002 directing the management to show cause why all financial assistance by the Government should not be stopped for disobeying the direction to reinstate the appellant. The management was allowed to withdraw the writ petition with liberty to file objections to the show-cause notice. Even though the management filed explanation to the show-cause notice, the Government and the Director passed orders directing to withhold grant to the institution under the grand-in-aid scheme on the ground that their direction to reinstate the appellant was disobeyed. The said orders were challenged by the management in W.P. No. 39016/02. In the said writ petition, only the Director of Technical Education and the state of Karnataka were impleaded as respondents. Though the respondents contended that the order of removal from service was bad in law as prior approval of the Director was not taken by the management, the said contention was rejected by the court on the ground that the Director himself was a member of the Governing Council of the institution and he had participated in the meeting of the Council which took the impugned decision and since he was a party to the decision, there was no need for seeking his approval before issuing the order removing the appellant from service. Accordingly the writ petition was allowed and the impugned orders passed by the Government and Director were quashed as per the judgment dated 12.2.2004. Thereafter the appellant filed R.P. No. 128/04 seeking review of the judgment dated 12.2.2004 in W.P. No. 39016/02. The said review petition was dismissed on 8.4.2004 observing that it is well settled that any observation made in the order sought to be reviewed would not be binding upon the review petitioner who was not a party to the writ petition. Thereupon the appellant through representation dated 29.4.2004 requested the Director to ensure that his earlier order dated 7th August 2001 is obeyed and implemented by the management and that he be allowed to work as Principal of the institution. Referring to the said representation of the appellant, the Director of Technical Education sent a letter dated 29.5.2004 (Annexure-T) the 2nd respondent which contained two directions, (1) to cancel the orders of suspension and termination and issue appropriate orders to reinstate him into service in the post from which his service was terminated; and (2) to sanction immediately from the management funds and pay him all consequential benefits such as salary and allowances, annual increments, promotions, etc. from the date of his suspension. Challenging the said Annexure-T order, the management and the Principal filed W.P. No. 22039/04 which was disposed of as per judgment

dated 6.10.2005 which is impugned in this writ appeal.

2. In the impugned judgment, the learned single Judge has held that since the appellant's services stood terminated, his remedy is to approach the Education Appellate Tribunal u/s 94 of the Act. The learned single Judge has also held that the authorities under the Karnataka Grant-in-Aid Code cannot exercise the power of the Education Appellate Tribunal by way of stoppage of assistance to private educational institutions. The learned single Judge has observed that the appellant can certainly raise all objections to his removal from service including non-approval in terms of his submission in the writ petition. The learned single judge quashed the impugned orders and liberty was reserved to the respondent-employee (appellant herein) to move the Tribunal for redressal of his grievance by raising all objections with regard to the legality of the order of removal from service. Not being satisfied with the above observations in the judgment, the 3rd respondent in the writ petition has filed this appeal.

3. In view of the provisions contained in Section 94 of the Act, we agree with the view taken by the learned single Judge that the remedy available to the appellant against his removal from service is to file an appeal before the Education Appellate Tribunal. It is clearly provided in Section 94 that 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. According to Sub-section (2) of Section 94, the provisions of Sections 4 and 5 of the Limitation Act, 1963, shall be applicable to such appeal. Hence even if there has been delay on the part of the appellant in filing the appeal u/s 94 of the Act, he is entitled to file an application for condonation of delay in filing the appeal. In view of the peculiar facts and circumstances of the case including the time consumed by litigation before the Director of technical Education, Government and the High Court, we have no reason to think that if any such application for delay is filed by the appellant, it will not be considered sympathetically by the Tribunal.

4. It is also necessary to observe that the Director of Technical Education was right in holding that the appeal filed by the appellant u/s 130 of the Act against the order of removal from service was not maintainable. Section 130 begins with the words "Save as otherwise provided in this Act" and it proceeds further to state: "any person or Governing council aggrieved by an order passed by an officer or authority under this Act may within the prescribed period, prefer an appeal to the prescribed appellate authority." Hence, in view of the provisions contained in Section 94 of the Act, an order dismissing or removing a teacher or other employee from the service of a private educational institution cannot be the subject matter of an appeal u/s 130 and it can only be the subject matter of an appeal u/s 94 of the Act.

5. Learned Counsel for the appellant contended that since the approval of the Director was not obtained before removing the appellant from service, the order of removal is nonest in law and that it has never taken effect and therefore the

Director was entitled to direct the management to reinstate the appellant in service. Such approval is required under Rule 8 of the rules annexed to Government order NO. ED 146 UPC 79 dated 3.10.1991. When the validity of the said rule was challenged before this Court in W.P. No. 17373/87, this Court held that the requirement of prior approval from the Department of Technical Education under Rule 8 bears relevance only for purposes of determining whether or not the institution is entitled to claim aid from the Government and violation of Rule 8 by an aided institution would be only on the pain of being denied aid under the Code. After explaining the consequences of violation of Rule 8 in the above manner, this Court observed that there is no conflict between the provisions of Rule 8 and the provisions of the Karnataka Private Educational Institutions Act or rules thereunder. Since the two operate in different spheres, both can co-exist. Therefore it is clear that even if the removal of the appellant from service was in violation of Rule 8, the Director of Technical Education was not competent or authorised to direct the management or the institution to reinstate the appellant in service. The only consequence that could follow was denial of aid to the institution. But the question of denial of aid to the institution was considered by this Court in W.P. No. 39016/02 and in the judgment dated 12.2.2004, it was held that since the Director was a party to the decision to remove the appellant from service, it was not necessary to seek his approval again and directed the Government to release grant to the institution. The judgment in W.P. No. 39016/02 was allowed to become final as the Director or the Government did not file any appeal against the said judgment. Therefore, the Government and the Director are bound by the judgment in W.P. No. 39016/02 as far as denial of grant to the institution is concerned and they cannot deny grant to the institution on the ground that the appellant was not reinstated in service.

6. However, we wish to observe that the view taken by this Court in W.P. No. 39016/02 regarding the requirement of seeking approval of the Director was in a writ petition to which the appellant was not a party. Therefore, the said judgment cannot stand in the way of the appellant contending before the Education Appellate Tribunal that the order of removal from service is bad in law for the reason that prior approval of the Director was not obtained. In the order passed by this Court in R.P. 128/04, it has been clarified that any observation in the order passed in W.P. 39016/02 would not be binding on the review petitioner (appellant herein). Hence if the appellant files an appeal before the Tribunal contending that the order of removal from service was bad in law for the reason that prior approval of the Director was not obtained, the Tribunal will be obliged to consider the contention of merits de hors the judgment in W.P. No. 39016/02.

7. Learned Counsel for the appellant contended that the Director was justified in directing the management to sanction funds for paying the appellant all consequential benefits such as salary and allowances, annual increments, promotions, etc. from the date of his suspension. The contention is on the assumption that the order of removal from service is nonest in law and therefore

the appellant should be deemed to be in service. But as far as the Director and the management are concerned, the question remains concluded by the judgment in W.P. No. 39016/02 in which the court held that it was not necessary to seek approval of the Director again. So long as the said judgment stands, it is not open to the Director to contend that the order of removal from service is nonest in law and hence the appellant should be deemed to be in service and that he should be paid from the funds of the management. At the same time, it would be open to the appellant to contend before the Tribunal that the order of removal from service is nonest in law and therefore he should be deemed to be in service and should be paid from the funds of the management. If such a contention is raised, it is for the Tribunal to consider the same in accordance with law and to take appropriate decision. We refrain from expressing any opinion on that aspect.

8. Learned Government Advocate incidentally raised a doubt whether the provisions of the Karnataka Education Act will apply to institutions like MEI Polytechnic, Bangalore, which is governed by the provisions of All India Council for Technical Education Act, 1987. The doubt is raised in view of the provisions contained in Section 1(3)(iv)(d-a) of Karnataka Education Act, 1983. According to Section 1(3)(iv)(d-a), the Act applies to all educational institutions and tutorial institutions in the state of Karnataka except insofar as matters pertaining to colleges and institutions that are dealt with in the AICTE Act, 1987. It only means that the provisions of the Karnataka Education Act will not apply to institutions governed by the provisions of AICTE Act insofar as matters which are dealt with in the AICTE Act. It is not in dispute that the AICTE Act does not contain any provision for resolution of disputes between employees and the managements or institutions in respect of dismissal, removal or reduction in rank. Therefore Section 94 of the Karnataka Education Act is applicable to the respondent institution despite the provisions contained in the AICTE Act.

9. Learned Counsel for respondents 1 to 3 contended that Rule 8 of the rules annexed to Government Order No. ED 146 UPC 79 dated 3.10.1981 is not applicable to their institution and that the one applicable to them are the rules appended to Government Order No. ED 55 TGL 64 dated 29.10.1966 issued by the Government of Mysore. However this contention is countered by the learned Counsel for the appellant on the basis of the circular bearing No. DTE 98 EST(4) 84 dated 19.2.1985 issued by the Director of Technical Education. We are not called upon to decide that issue in this appeal. It will be open to the parties to raise such contentions before the Tribunal if the appellant files an appeal before it and it is for the Tribunal to consider the contentions and take an appropriate decision in the matter.

10. The appeal is dismissed subject to the above observations.