

(1978) 04 KAR CK 0039
In the Karnataka High Court
Case No : WP 5048 of 1976

Dayashankara Dube

APPELLANT

Vs

The Educational Appellate Tribunal and Others

RESPONDENT

Date of Decision : 04-04-1978

Acts Referred:

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

Citation : (1978) 2 KarLJ 173

Hon'ble Judges : Rama Jois, J

Judgement

1. This is an unfortunate case where a teacher who has been removed from service by the management of a private educational institution which has attempted to deprive the petitioner of the statutory remedy available to him under S. 3 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1974, by not communicating the order in writing to the petitioner to the effect that he is removed from service.

2. The facts of the case are these: The petitioner was a Hindi teacher in Sree Maruthi Hindi Vidyasala, B.V.K. Iyengar Road, Bangalore. He was appointed in the first instance on 22-5-1971. After a short break Of service, he was appointed on a permanent basis by an order dated 19-10-1973 of the management, with effect from 9-4-1973. According to the petitioner, without issuing any written order of removal from service, the management turned him out from the institution on 15-2-1974 and prevented him from discharging his duties. In the circumstances, as there was no order of termination, the petitioner filed OS. No. 485 of 1974 before the Court of the First Munsiff, Bangalore, for a declaration that he should be continued in service of respondent 2 and for payment of salary. In the written statement filed in the aforesaid suit, the management-defendant raised an objection that the Civil Court has no jurisdiction as the matter squarely falls within the jurisdiction of the Educational Appellate Tribunal constituted under the Act. According to the petitioner, he approached the Civil Court for the reason that he could not approach the Educational Appellate Tribunal unless

there was a written order communicated to him under S. 7 of the Act by the management in view of the decision of this Court in *Malnad Education Society v. Karnataka Educational Appellate Tribunal*, (1975) 2 KarLJ. 392. However, in view of the objection raised by the management, the petitioner withdrew the suit and presented an appeal before the Educational Appellate Tribunal under S. 8 of the Act and also filed an application for condonation of delay as the period of three months had by then expired from 15-2-1974 on which date, according to the petitioner, he was turned out from service of the institution. The Educational Appellate Tribunal, by its order dated 23rd March 1976, on IA. No. 1, refused to condone the delay in presenting the appeal before it on the ground that his approaching the Civil Court was not bona fide and therefore, the period during which the suit was pending could not be excluded and the benefit could not be given for the purpose of condoning the delay under S. 5 of the Limitation Act. Consequently, the Tribunal also rejected the appeal preferred by the petitioner. Aggrieved by the said order of the Tribunal, the petitioner has presented this writ petition.

3. The management, by not communicating the order removing the petitioner from service, placed him in a dilemma. He could not approach the Educational Appellate Tribunal as there was no written order given by the management and he could not secure relief through the Civil Court, in view of the bar of jurisdiction created by the Act.

4. In my opinion, the Educational Appellate Tribunal should not have entertained the appeal or the IA. in view of the judgment of this Court in *Malnad Education Society's case*, (1975) 2 KarLJ. 392 as the management had failed to communicate the order in writing terminating the service of the petitioner, and without production of such an order, the Educational Appellate Tribunal could not entertain the appeal.

5. In this situation, what the petitioner should have done was to make a demand to the management to communicate the order of termination in writing as the management is obliged to do so under S. 7 of the Act. It is only after the management communicated such an order, the petitioner could have approached the Educational Appellate Tribunal. In other words, far from there being any question of delay, the petitioner's approach to the Tribunal was premature.

6. Sri L.S. Varadaraja Iyengar, learned Counsel for the petitioner, submitted that though no prayer has been made in the writ petition, a direction may be issued to the management to communicate the order terminating the service of the petitioner or removing him from service, as the case may be, as required of the management under S. 7 of the Act. No such relief can be given in this writ petition because, for the issue of writ of mandamus, the condition precedent is, a demand by the petitioner and refusal by the management, express or implied, to comply with the provisions of S. 7 of the Act.

7. In the circumstances, the writ petition is dismissed giving liberty to the

petitioner to make a demand to the management to communicate the order in writing terminating his service or removing him from service, as required under S. 7 of the Act. The petitioner is at liberty to approach the Educational Appellate Tribunal after such an order is communicated to him. If such an order is not communicated, the petitioner is at liberty to approach this Court for appropriate relief against the management.