

(1998) 09 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 1051 of 1998

H.B. Kotresh

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Karnataka Education Act, 1983 — Section 131, 133
Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 3

Citation : (1998) 6 KarLJ 306

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri S.V. Narasimhan, for the Appellant; Sri V. Vidhya, High Court Government Pleader, for the Respondent

Judgement

1. The petitioner has preferred the present writ petition with a prayer to direct the respondents 1 to 3 to approve the appointment of the petitioner as Hindi Teacher in Sri Bommalingeshwara High School, Basavanakote, Chitradurga District and to direct the respondent 4-Soci-ety, which is running and managing the said School to pay his salaries which is due from 15-6-1993 till date with costs and interest.

2. Statement of objection has been filed on behalf of the respondent-State and its Officers-respondents 1 to 3. But despite service of notice to respondent 4-Education Society, no one has entered appearance and contested the reliefs claimed by the petitioner in the writ petition.

3. The respondent 4-Education Society is running two High Schools, namely, Sri Bommalingeshwara High School at Basavanakote, Chitradurga District and Sri Anjaneyaswamy High School at Alur. Both the schools have been recognised by the State Government and has been admitted to grant-in-aid from 25-8-1988 and 9-7-1989, respectively.

4. It appears that because of the death of Hindi Teacher in Sri

Bommalingeshwara High School, the vacancy was notified inviting the application from eligible candidates. The Notification was published in "Kannada Prabha" daily newspaper on 13-5-1993. Pursuant to the said advertisement, the petitioner applied to the said post and after interview by the selection committee, on 14-6-1993 he was issued with an appointment letter dated 15-6-1993 (Annexure-C). According to the petitioner, since the date of appointment he is serving in the school as Hindi Teacher, but he has not been paid any salary till this date by the Management.

5. As it appears from the additional statement of objections filed on 31-8-1998 on behalf of the State Government, the Government has not approved the salary grant in respect of the petitioner on the ground that the 4th respondent-Education Society has given appointment to the petitioner by violating the reservation policy. Since the 4th respondent-Education Society has not entered appearance and contested the said stand of the Government, therefore, I am not in a position to express any opinion with regard to that issue. But then if the respondent-State Government and its Officers are right in their stand that the institution has violated the reservation policy applicable to the institution, then, in my opinion, they ought to have initiated appropriate proceedings for cancelling the grant itself, instead of leaving the things half way, thus allowing defaulting institutions to enjoy the grants-in-aid which flows from the public fund carrying with it public duty of following Government's reservation policy.

6. So far as the petitioner's claim regarding approval of his appointment and securing of his salary is concerned, in my opinion, this issue has no bearing or relationship with the 4th respondent-Education Institution's claim to get salary grant in respect of the teachers appointed by it. The right of securing grant-in-aid by an institution and the obligation of paying salaries to the teachers appointed by the Management of such institutions have to be kept in separate compartments since these rights and obligations are not interdependent. The Management cannot deny the salary to the teachers appointed by it on the ground that the Government for one or the other reason, may be good or bad, has not released the salary grants. It will be presently seen that the obligation of the Management to pay the salary flows from statutory provisions which are mandatory in nature, the non-compliance whereof amounts to an offence and is punishable in accordance with the provisions now contained in Karnataka Education Act, 1983.

7. Section 3 of the Karnataka Private Educational Institutions (Disciplinary and Control) Act, 1975 (in short "the Education Institution Act"), empowers the State Government to make model Rules requiring its adoption by the private Institution. Pursuant to the said provisions made under the said Act, the State Government has framed the Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978, (in short "the Rules"). After coming into force of the Karnataka Education Act, 1983 with effect from 1-6-1995, though the Private Institutions Act stands repealed as per Section 146(1) of the

Education Act, but the Rules framed thereunder have been saved as per sub-section (3) thereof as if those have been made under the corresponding provisions of the Education Act.

8. Rule 6 of the Rules provides for the method of recruitment. As per sub-rules (1), (3) and (4) of Rule 6, which are relevant for the said purpose reads as under:-

"(1) Any appointment arising for a period of more than three months in any Institution shall be made by selection from among persons who had applied in pursuance of an advertisement in newspapers:

(2) Provided that an employee in one Institution may be appointed in another Institution under the same or different Management in accordance with rules approved by Government in respect of each category of Institution.

(3) The selection committee shall select and recommend in the order of merit a panel of three names eligible for appointment to each post.

(4) The Board of Management shall make the appointment in the order of merit out of the panel containing the names recommended by the selection committee".

9. From a reading of the above provisions it is quite clear that for validity of the appointment made by the Private Management, the approval of the Government or its Officers is not a statutory condition. In the said view of the matter, the appointment of the teacher in the school in question has the statutory sanction establishing the relationship of employer and employee between the 4th respondent and the petitioner.

10. Having reached the above conclusion, Rule 5 of the Rules becomes immediately operative, which reads thus:-

"Scale of pay.--The scale of pay of an employee of an institution shall not be lower than the scale of pay of an employee of a corresponding post in the Government Educational Institution".

11. Section 89 of the Education Act, provides for pay and allowances of Teachers and other employees, which reads thus:

"The pay and allowance of persons employed in the recognised private institutions shall be paid on or before such day in every month, in such manner and by or through such officer or Authority as may be prescribed".

12. Therefore, there is an absolute obligation on the part of the Management of the Institution to pay the salaries to the teachers employed by it as per scale of pay of an employee of the corresponding post in the Government Educational Institution. Against any violation by the management, of the above noticed statutory obligation regarding payment of salary to its employees, Sections 131 and 133 of the Education Act provide remedies to the persons like the petitioner for approaching the Government with their grievances pertaining to non-payment

of salaries by the Private Educational Institution.

13. Therefore, in my opinion, keeping in view the facts and circumstances of the case, it will be more advisable on the part of the petitioner to immediately approach the Government under the aforesaid provisions, in order to seek appropriate relief. Accordingly, it is directed that if the petitioner approaches the Authority concerned within 5 weeks from today, then the application filed by the petitioner should be duly considered after giving notice to the Management of the Educational Institution concerned and decide the same in accordance with law within three months thereof.

14. With the aforesaid observations and directions, the present writ petition is disposed of.