

(2007) 01 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 20698 of 2005

K Gopal, Siddappa Begar C.P. Ed., S. Gopalakrishna and N.
Ramakrishna Reddy

APPELLANT

Vs

The Management of SRK Education Society (R) and The State
Government

RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Citation : (2007) 1 KCCR 797

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S. Vasantha Kumar, for the Appellant; D.S. Ramachandra Reddy, for R1 and Sheela Anish, Aga, for the Respondent

Judgement

N.K. Patil, J.—These four petitioners, assailing the correctness of the common order dated 1.3.2005 passed by the 3rd respondent in proceedings bearing Nos. 51/2004, 50/2004, 49/2004 and 48/2004 (ED 310:SEW:2004) vide Annexure-D, as the same is illegal and invalid and to allow the respective petitions filed by them with all consequential benefits including monetary benefits, have presented this writ petition.

2. The grievance of the of the petitioners as made out by learned Counsel appearing for petitioners in this petition is that, petitioners-1 to 4 were appointed by the first respondent-Management on 26.9.1992, 26.9.1992, 01.10.1991 and 30.9.1991 respectively and they have been prevented from continuing their service as teachers in the first respondent-Management from the academic year 1998-99 onwards. These petitioners have requested the first respondent-Management to pay the arrears of their salaries. The same is neither considered nor accorded sanction for payment of their salaries. Therefore, they are constrained to issue a legal notice through their counsel on 3.12.2003 vide Annexure-A. To that notice, they have received reply from the counsel representing the first respondent-Management on 18.12.2003 vide Annexure-B.

Thereafter, these petitioners have filed petitions before the third respondent on 7.7.2004 in Nos. Nos. 51/2004, 50/2004, 49/2004 and 48/2004. Those petitions had come up for consideration before third respondent on 1.3.2005. The third respondent after hearing learned Counsel appearing for both the parties and after perusing the materials available on file, has dismissed the said petitions by a common order dated 1.3.2005 vide Annexure-D, on the ground that, in view of the Notification issued by the Government dated 15.10.2004 bearing No. ED:241:SEP 2004, petitioners are not entitled to redress their grievance by seeking pay-scale and other allowances from the date of their appointment, till their services were terminated and also petitioners have not produced any records to show that they have served under the first respondent -Management upto 1997 and there is an inordinate delay in redressing their grievance by way of filing those petitions under the provisions of Education Act. Being aggrieved by the impugned common order passed by the 3rd respondent on 1.3.2005 as referred above, petitioners felt necessitated to present the instant writ petition.

3. The principal submission canvassed by learned Counsel appearing for petitioners is that, the impugned order passed by 3rd respondent is liable to be set aside at threshold on the ground that, the reasoning assigned by the third respondent with reference to the Government Notification and that, the said notification is not applicable to the facts and circumstances of the case as made out by the petitioners therein. In spite of learned Counsel appearing for petitioners placing reliance on the judgment of this Court in the case of S.S. Anand and Ors. v. The Management of Mahatma Gandhi Vidya Peeta (regd.) and Anr. disposed of on 27th January 1998 (in W.P. No. 20612-20650/1997), the only reason assigned by the 3rd respondent for rejecting those petitions is that, in view of the Government Notification dated 15.10.2004, petitioners are not entitled for any relief. To substantiate his submission, learned Counsel appearing for petitioners has placed reliance on Rule-5, which pertains to Scale of Pay and submitted that, as per the said Rule, the scale of pay of an employee of an Institution shall not be lower than the scale of pay of an employee of the corresponding post in Government Educational Institution". But the same has not been looked into or considered by the 3rd respondent. Further, he submitted that, these petitioners have not suppressed any material facts before the authority and they have specifically pointed out in Paragraph-4 of the memorandum of petition that, petitioners have been prevented by the Management even from signing the attendance register and work in the school from the academic year 1998-99 onwards and also specifically contended that, they apprehend that the Management might have misused the blank paper on which their signatures were obtained at the time of initial appointment given involuntarily. Therefore, he submitted that, third respondent being the competent authority, without conducting proper enquiry has passed the impugned order, taking into consideration the Notification dated 5.10.2004 which is applicable only prospectively from the date of giving effect by way of an order by the Government and not retrospectively. Therefore, he submitted that, the impugned

order passed by the competent authority is liable to be set aside.

4. Per contra, learned Counsel appearing for first respondent, interalia contended and substantiated the order passed by the 3rd respondent. To substantiate his submission, at the outset, he submitted that, writ petition filed by the petitioners is liable to be rejected at threshold, as they are not entitled to invoke the extra ordinary jurisdiction under Article 226 of Constitution of India to seek any relief, on the ground that, they have intentionally and deliberately suppressed the material facts before the competent authority and also before this Court. Further, learned Counsel appearing for first respondent submitted that, these petitioners have issued legal notice on 3.12.2003 vide Annexure-A specially stating that, they have been prevented from working about two years back and from signing the attendance register, whereas, they have taken the ground in the memorandum of petition filed before the 3rd respondent that, they have been prevented from signing the attendance register from the academic year 1998-99 onwards. Further, he has taken me through the objections filed by the first respondent -Management, and submitted that, as per Annexure-R1 to R5, petitioners-1 to 3 have resigned on 1997 and 4th petitioner has resigned in the year 1998 and the same has been accepted and in turn, petitioners-1 to 3 are working in different schools and so far as 4th petitioner is concerned, he is doing his business. But this fact has been intentionally and deliberately suppressed by the petitioners in the memorandum of petitions filed before the competent authority and before this Court also. Therefore, he has submitted that the persons who approach this Court, they must approach with clean hands by disclosing the true facts and therefore, in view of the suppression of material facts, petitioners do not deserve to seek any relief at the hands of this Court. Further, learned Counsel appearing for first respondent submitted that, there is an inordinate delay in filing the petitions from 1998 to 2004 and the said delay has not been explained satisfactorily and therefore, the competent authority has rightly rejected the petitions on the ground of delay and laches also. Therefore, he submitted that, writ petition filed by the petitioners is liable to be dismissed as devoid of merits.

5. I have heard learned Counsel appearing for petitioners, learned Counsel appearing for first respondent and learned Additional Government Advocate appearing for respondents-2 and 3.

6. After having heard learned Counsel appearing for both the parties and after careful perusal of the impugned order passed by the 3rd respondent vide Annexure-D and taking into consideration the rival contentions urged by both the parties, the only point that arises for consideration in this writ petition is as to:

Whether the impugned order passed by the 3rd respondent is sustainable in law?

7. After careful perusal of the impugned order passed by the 3rd respondent, it is manifest on the face of the order that, 3rd respondent has committed an error, much less material irregularity in passing the order dismissing the petitions filed

by petitioners on the sole ground that, as per the Government Notification dated 15.10.2004 bearing No. ED/241/SEP/04, the petitions filed by the petitioners are not entertainable and they are not entitled for any relief prior to issuing the said notification also. Another reason given for dismissing those writ petitions is that, petitioners themselves have agreed that they worked in the first respondent-Management till 1997 and they have resigned from their service. Thereafter, after the lapse of nearly six years, they have submitted those petitions and there is a delay in filing those petitions. The said reasoning given by the competent authority for rejecting those petitions is not sustainable, for the reason that, the Notification issued by the Government dated 15.10.2004 is only prospective in nature and not retrospective in nature. Further, it is significant to note that, petitioners have specifically placed reliance on the judgment of this Court in the case of S.S. Anand as referred above, except making a stray reference, no consideration as such is coming forthwith in the said order. Further, it is pertinent to note that first respondent has filed detailed objections and produced several documents to substantiate that, petitioners are not entitled to seek any relief in those petitions. But there is no whisper regarding the stand taken by the first respondent-Management in the impugned order. It shows beyond reasonable doubt that, 3rd respondent has not conducted enquiry in strict compliance with the mandatory provisions of the Education Act and proceeded to pass the order on hyper technical ground. When the petitioners have made out their case and first respondent has filed objections, the 3rd respondent ought to have evaluated the entire materials at threadbare and after taking into consideration the stand taken by both the parties, might have proceeded to pass the order, as to whether the Government Notification dated 15.10.2004 is applicable retrospectively or prospectively. But nothing is coming forth in the impugned order. Therefore, in view of non conducting the proper enquiry and not affording sufficient opportunity to the petitioners by the 3rd respondent before passing the impugned order, which is contrary to the relevant materials made available by both the parties, I am of the considered view that, at any stretch of imagination, the impugned order passed by the 3rd respondent is not sustainable and hence it is liable to be set aside.

8. For the foregoing reasons, the writ petition filed by the petitioners is allowed in part.

The common order passed by the 3rd respondent dated 1st March 2005 in proceedings bearing Nos. 51/2004, 50/2004, 49/2004 and 48/2004 (ED 310:SEW:2004) vide Annexure-D, is hereby set aside.

The matter stands remitted back to the 3rd respondent for reconsideration afresh, with a direction to take appropriate decision in accordance with law, after affording reasonable opportunity to the petitioners and first respondent-Management and dispose of the same, with reference to the relevant materials made available by both the parties, as expeditiously as possible, at any rate, within six months from date of receipt of the copy of this order.

All the contentions urged by both the parties in this writ petition are left open.
With these observations, writ petition filed by the petitioners stands disposed of.