
(2006) 02 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 16010 of 2003

K. Shankar

APPELLANT

Vs

The Director, Pre-University Education and Others

RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Karnataka Education Act, 1983 — Section 130, 2 (19), 2 (27), 3

Citation : (2006) 2 KarLJ 364

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Srinivasan, for B.B. Bajendtri, for the Appellant; S.N. Murthy, for Respondent-3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a person who was employed in a private aided institution and who, it appears, was aggrieved by certain action on the part of the management, who it appears, displaced the petitioner from being the head of the department of Chemistry, by allowing fourth respondent to function as such.

2. Petitioner, it appears, had preferred an appeal purported to be u/s 130 of the Karnataka Education Act, 1983 (for shorty "the Act"), before the first respondent and the grievance of the petitioner is that inspite of the matter being pending before the Appellate Authority for quite sometime, the appeal has not been disposed of and therefore has sought for issue of a writ in the nature of mandamus to direct the first respondent to dispose of the appeal expeditiously.

3. While Sri Srinivasan, learned Counsel for the petitioner submits that there is no reason for the Appellate Authority in not disposing of the appeal for a long time when the petitioner is without any remedy and therefore a writ of mandamus is justified, Sri L.K. Srinivasa Murthy, learned Additional Government Advocate appearing for the first respondent submits that there is no appeal filed

or pending before the first respondent as is averred in the writ petition and the question of disposing of a non-existent appeal does not arise. Alternative submission is that the appeal of this nature does not lie u/s 130 of the Act to the Appellate Authority, as the order which is sought to be made subject-matter is not passed either by an officer or Competent Authority, but the management of the institution-a private body.

4. While Sri Srinivasan, learned Counsel for the petitioner, joins issue with the first submission and asserts that the appeal had been preferred etc. Irrespective of this position, the second objection raised on behalf of the first respondent appears to be quite sound. The Act does not contemplate filing of an appeal u/s 130 of the Act to the Appellate Authority against orders passed by a private management. The appeal can only be against an order passed by an officer or authority under this Act. The Act does not define private management as either an officer or an authority and on the other hand expressly defines private educational institution u/s 2(27) of the Act, which reads as under:

"Private Educational Institute" means any educational institution imparting education referred to in Section 3, established and administered or maintained by any person or body of persons, but does not include an educational institution.-

(a) established and administered or maintained by the Central Government or the State Government or any local authority or any other authority designated or sponsored by the Central Government or the State Government;

(b) established and administered by any University established by law;

(c) giving, providing or imparting only religious instruction, but not any other instruction; or

(d) imparting instruction for which there is no approved syllabi or course of studies or Government or University examinations.

The Act also defines the Managing Committee u/s 2(19).

5. It is obvious that the private management by whose action the petitioner is aggrieved is neither an officer nor an authority within the meaning of these expressions as then occur u/s 130 of the Act and therefore the appeal itself was not in order. If the appeal is not in order, there is no question this Court issuing a mandamus to compel the authority to consider an incompetent appeal. Writ of mandamus cannot be issued.

6. While the writ petition is dismissed, it is open to the petitioner to workout his remedies elsewhere in accordance with any other provision or before some other forum in accordance with law.