

(1987) 03 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 1474 of 1987

Kalpatharu Vidya Samithi

APPELLANT

Vs

Educational Appellate Tribunal

RESPONDENT

Date of Decision : 05-03-1987

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 10 (4) (c) (i)

Citation : (1988) ILR (Kar) 701 : (1988) 1 KarLJ 324

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : H.S. Jois, for the Appellant; S. Vasantha Kumar, for R-2 and N. Devadas, HCGP for R-1 and 3, for the Respondent

Judgement

K.A. Swami, J.—In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for the following reliefs:-

"1) Call for the records relating to M.A. (E.A.T) No. 8/84 from the first respondent, peruse the same and set aside the order contained in para 32 of Annexure-A in so far as it directs the quashing of the order challenged in the said appeal and the directions issued to the petitioner regarding reinstatement and payment of salary etc., to the second respondent as arbitrary and devoid of jurisdiction.

2) Quash the communication contained in Annexure-C bearing No. DDCE.ROB. 113 TES 1/84-85 dt. 5-1-1987 vide Annexure-C as devoid of the authority of law."

The 1st respondent will be referred to in the course of this order as "Tribunal".

2. No doubt, the relief prayed for by the petitioner is somewhat unusually worded. If such a relief has to be granted, it becomes necessary to consider as to whether the order of remand in question is made in accordance with law or not. Consequently, the Court has to go into the correctness of the entire order itself.

3. The Tribunal has passed the following order:

"The appeal is allowed. The order under appeal is quashed, as the same had been passed without considering the representations made by the appellant as per Annexure-4 dated 14th August, 1982 and Annexure-VI dated 10-9-1984 which were made to the show cause notices issued to him by the first respondent after the 3rd respondent-Enquiry Officer had filed his report, as required by Section 6 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975.

The order has been quashed reserving the liberty of the first respondent to pass fresh order in accordance with law considering the representations made by the appellant.

The first respondent is directed to reinstate the appellant into the service immediately and pay the arrears of his salary and other monetary benefits according to Rules and without prejudice to the first respondent taking action against the appellant as per the liberty given to him.

Under the circumstances of the case, the parties are directed to bear their own costs."

4. The Tribunal, after recording the findings that the enquiry held was within the jurisdiction of the management; that no prejudice was caused to the appellant-respondent No. 2 herein; that the petitioner did not take into consideration the two representations made by the appellant-second respondent herein against the show cause notices issued to him as to why he should not be dismissed from service; has remitted the matter to the management for considering the representations and passing a fresh order. While doing so, it has also further ordered for reinstatement and payment of arrears of salary and other monetary benefits according to rules and without prejudice to the petitioner taking action against the second respondent.

5. Sri. H. Subramanya Jois, learned Counsel for the petitioner, submits that as per the provisions contained in Section 10 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (hereinafter referred to as the "Act") it is incumbent upon the Tribunal to consider the evidence on record including the two representations made by the second respondent and arrive at its own conclusion on the question as to whether the order of dismissal is justified on the evidence on record. It is further submitted that as the Tribunal has not considered the evidence on record and the representations, made by the 2nd respondent it has failed to exercise its jurisdiction, therefore, the order is vitiated.

6. On the contrary, Sri S. Vasantha Kumar, learned Counsel for respondent No. 2, submits that it is for the management to consider the representations made by the second respondent and as it has not considered those representations, the order of dismissal passed without considering those representations is not

sustainable in law, therefore, the Tribunal is justified in remitting the matter for fresh consideration. It is further submitted that the Tribunal is also not justified in holding that sufficient opportunity was given to the second respondent without taking into consideration the circumstances under which the second respondent could not participate in the proceedings and could not adduce evidence, therefore, the Tribunal ought to have afforded an opportunity to the second respondent to adduce evidence.

7. Sri. N. Devadas, learned Government Pleader, submits that having regard to the wordings contained in Section 10 of the Act, the Tribunal ought to have considered the evidence and come to its own conclusion.

8. Having regard to the aforesaid contentions, the points that arise for consideration are as follows:

(1) Whether the Tribunal can be held to have considered the appeal in accordance with the provisions contained in Section 10 of the Act?

(2) If not, what order?

Point No 1 :

9. I have been taken through the order of the Tribunal. It has not considered the evidence on the basis of which the Management has dismissed the second respondent from the service. This Court had an occasion to consider the scope of the power of the Tribunal under the Act in the case of the PRESIDENT, GOLDEN VALLEY EDUCATION TRUST, OORGAUM KOLAR GOLD FIELDS v. THE DISTRICT JUDGE & EDUCATIONAL APPELLATE TRIBUNAL, KOLAR AND OTHERS ILR 1979 (Kar) 526. The manner of exercise of power by the Tribunal has been stated in that decision as follows:-

"Now on the basis of the law laid down by the Supreme Court in the Workmen of Firestone Tyre & Rubber Co. of India Pvt. Ltd., (1) and Cooper Engineering Limited (2) relied on for the petitioners, as to the nature of power and jurisdiction of and the procedure required to be followed by, the Labour Court or the Industrial Tribunal, as the case may be, before whom a dispute relating to the imposition of penalty on an industrial worker by the concerned Management comes up for adjudication, I proceed to summarise the procedure required to be followed by the Educational Appellate Tribunals constituted under the Act, when an appeal is presented before the Tribunal by an employee against the Management of a private educational institution, as follows:

(1) Where Management has not held the enquiry or does not claim the benefit of the enquiry even if it had been held :

If the Management had imposed the penalty without holding the enquiry or even if any enquiry had been held, the management gives up the benefit of such enquiry and offers to prove the charges, the Management can offer to adduce evidence in support of the charges on the basis of which the penalty was

imposed, before the Tribunal, and the employee can adduce defence evidence and the Tribunal has the power and jurisdiction to come to its own conclusion on the appreciation of the evidence so adduced.

(2) Where the enquiry held by the Management is found to be defective:

If the Management claim to have held a valid enquiry and the employee challenges the validity of the enquiry, the Tribunal should, in the first instance, decide as a preliminary issue, the validity of the domestic enquiry. If it is found to be violative of rules, if any, regulating the proceedings or found to be violative of the principles of natural justice, the enquiry should be (sic). Thereafter the Tribunal should proceed to record evidence if offered to be adduced by the Management in support of the charges levelled against the employee, and the defence evidence, if any, adduced by the employee and to record its own findings on the charges.

(3) When the enquiry held by the Management is found valid:

In cases where the domestic enquiry held by the Management is found to be valid, the procedure that has to be followed thereafter is :-

(i) The Tribunal can proceed to reappreciate the evidence recorded in the domestic enquiry and can come to its own conclusion on the charges levelled against the employee; or

(ii) If the Tribunal considers that it is necessary to record further evidence, when either party offers to adduce evidence, the Tribunal should proceed to record the additional evidence and has the power and jurisdiction to record its independent findings on the charges taking into account the evidence adduced in the domestic enquiry as also the additional evidence adduced before it, by the parties.

Thus under all circumstances, the final satisfaction about the proof of the charges levelled against the concerned employee is that of the Tribunal and if the Tribunal comes to the conclusion that the Management failed to prove the charges on the basis of which the penalty was imposed, on the concerned employee, the Tribunal has to set aside the order imposing the penalty made by the Management.

(4) Power to reduce penalty even if charges are proved :-

After the Tribunal records its finding even in cases where the Tribunal comes to the conclusion that all or any of the charges levelled against an employee are established. Section 10(4) of the Act specifically authorises the Tribunal to examine as to whether the penalty imposed by the Management, is proportionate to the gravity of the charges or harsh and excessive. If the Tribunal is of the opinion that the penalty imposed is excessive, it is empowered to substitute any lesser penalty which in its opinion is commensurate to the gravity of the charges found proved."

10. It emerges from the aforesaid decision that in a case where no enquiry is

held or the management does not claim the benefit of an enquiry, if any, held by it, and offers to prove the charge/s, it will be a clear, case where the Tribunal has to record the evidence that may be adduced by both the parties and decide as to whether the charge/s is/are proved or not. However, in a case where the enquiry held by the Management is found to suffer from illegalities such as violation of the rules of procedure, principles of natural justice etc., if the Management offers to adduce additional evidence, the Tribunal is required to record the evidence so adduced by the Management as well as the defence and then decide as to whether the charge/s is/are proved or not. Even in a case where the enquiry held by the Management is found to be valid by the Tribunal, still, the Tribunal has to consider the evidence on record and in case it considers necessary to record further evidence and either party offers to adduce evidence, it is open to it to record additional evidence and consider the entire evidence on record and the circumstances established in the case and decide the question as to whether the charges levelled against the employee are proved or not. Thus, on the whole it is the Tribunal that has to be satisfied on the question as to whether the charges are proved or not. In case, the Management fails to adduce evidence, it is open to the Tribunal to decide the case on the basis of the evidence on record. It also further emerges from the aforesaid decision, and it is also clear from Section 10(4) (c)(i) and (ii) of the Act that even in the case of penalty, it is open to the Tribunal to modify or set it aside depending upon the findings it arrives at.

In addition to what emerges from the aforesaid decision, it is also very pertinent to notice that there is sufficient internal evidence in Section 10 of the Act itself which militates against an order of remand to be made by the Tribunal. Sub-section (4) of Section 10 of the Act, apart from stating that the Tribunal shall, for the purposes of disposal of the appeals under the Act, have the same powers as are vested in a Court of appeal under the Code of Civil Procedure, further states that the Tribunal, if, after taking such fresh evidence as it considers necessary, is satisfied from the material on record, it can either confirm or set aside the order of dismissal and direct reinstatement of the employee on such terms and conditions including payment of salary and other allowances from the date of dismissal till the date of reinstatement, costs, if any, as it thinks fit or give such other relief to the employee including awarding of lesser punishment in lieu of dismissal or removal as the circumstances of the case may require. Other matters provided in Section 10 need not be referred here because the same are not relevant to the point at issue.

By specifically providing clause (c) of Sub-section (4) of Section 10 of the Act, in addition to empowering the Tribunal with all the powers of the Court of appeal under the Code of Civil Procedure, the legislature has made it clear that normally, the Tribunal shall not take recourse to remanding the case to the management for fresh trial. The Power of remand and the power of admitting additional evidence are the normal powers of the appellate, authority. Therefore, if the Legislature was of the view that the normal appellate powers of remand could also be exercised by the Tribunal, it would have stopped at clause (a) of

Sub-section (4) of Section 10 itself. There was no necessity to provide clause (c) specifically directing the Tribunal to take such evidence as it considers necessary. The special provision contained in clause (c) of Sub-section (4) of Section 10 of the Act makes it abundantly clear that whenever the Tribunal is of the opinion that further evidence or fresh evidence is necessary in order to decide the question as to whether the charges levelled against the employee are proved or not, it has to record such evidence and normally not to remit the matter to the Management for holding fresh enquiry or for recording further evidence. By specifically providing for recording fresh evidence by the Tribunal, itself and deciding the case, finally, the Legislature has intended to convey that in the normal course, the case should not be remanded by the Tribunal. This is not to hold that the Tribunal cannot at all or has no power to remit for fresh enquiry. As the consequences of such a course results in great financial burden on the management if it is not an aided institution and on the State Exchequer if it is an aided institution, it should normally be avoided. In making such a provision in the Act, the Legislature has aimed at achieving great public interest in that once for all, the Tribunal will decide whether the order of dismissal has to be upheld or reversed or any lesser punishment may be imposed in lieu of dismissal or removal of the employee. In the event the Tribunal has to remand the matter in a case where the management has dismissed the employee, the order of dismissal has to be set aside; the result is the employee must be deemed to have been continued in service and the salary has to be paid to the employee from the date of dismissal till the date of reinstatement without taking any service from him and at the same time the enquiry will also be pending and that enquiry may again result in dismissal or any lesser punishment or it may exonerate him. Thus these consequences which will not be either in the interest of the Management or in the interest of the employee can very well be avoided and are avoided by making the Tribunal to decide the case once for all. Consequently, neither the employee will be put to any hardship nor the Management. Further, the uncertainty of the proceeding after the remand is also avoided. The public exchequer in the case of aided institutions and private Management in the case of unaided institutions are also not put to unnecessary expenditure and are not required to make payment of the salary without taking service from the employee. If the order of dismissal is affirmed by the Tribunal, it takes effect from the date the order of dismissal is passed by the management. Of course in the event the order of dismissal is set aside and reinstatement is ordered; the employee must be deemed to have been in service; therefore, all other consequences which would have taken place had there not been an order of dismissal would take place. That being so, the Tribunal ought to have considered the evidence on record and if on consideration of the evidence on record, it were of the opinion that further evidence was necessary to be recorded, it could have recorded such further evidence and decided the matter on the basis of the entire evidence on record. Hence, I am of the view that as the Tribunal has not considered the evidence on record, the order cannot be sustained.

11. There is also an ancillary question which arises out of the first point as contended by the learned Counsel for the second respondent that in the event of remitting the matter to the 1st respondent, for fresh consideration, the second respondent be provided an opportunity of adducing evidence. It is not necessary for me to consider this contention on merits in view of the submission made on behalf of the petitioner that it has no objection for permitting both the parties to adduce evidence. In view of the concession made by the Management there is no difficulty whatsoever to permit "both the parties to adduce evidence before the Tribunal. Accordingly, point No. 1 is answered in the negative and it is held that the order of the Tribunal is not in accordance with the provisions contained in Section 10 of the Act.

12. Point No. 2: The petition deserves to be allowed and it is allowed in the following terms:-

The order dated 4-9-1986, passed by the District Judge and Educational Appellate Tribunal, Tumkur, in Miscellaneous Appeal (EAT) No. 8/84, produced as Annexure-A, is quashed. The appeal now stands remitted to the District Judge and Educational Appellate Tribunal, Tumkur, with a direction to afford an opportunity to both the parties to adduce evidence on the charges framed against the second respondent herein and to decide the appeal a fresh in accordance with law and in the light of the observations contained in the Golden Valley's case ILR 1979 (Kar) 526 and in this order. In view of the fact that the order of the Tribunal is set aside, Annexure-C does not survive.

13. To avoid further delay in the matter the parties are also agreeable to appear before the Tribunal on a date fixed by the Court. Accordingly, the parties are directed to appear before the Tribunal on 2-4-1987. No notice need be issued by the Tribunal. The Tribunal is also directed to dispose of the appeal on or before the end of August, 1987.

14. It is also brought to the notice of the Court that pursuant to the order of remand made by the Tribunal, which is now set aside, the Management, has on consideration of the representations of the second respondent, dismissed him from service on 10-11-1986 which order is produced as Annexure-B. The second respondent has also filed an appeal before the Tribunal against that order being M.A. (EAT) No. 5 of 1987. In view of the fact that the original order of remand has now been set aside, the action taken by the Management pursuant to that order falls to the ground. Consequently, the order of dismissal becomes inoperative and the appeal pending before the Tribunal does not survive. It is open to the parties to have that appeal disposed of as having become infructuous.