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**(1963) 09 KAR CK 0006**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 3 of 1963**

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| M. Uma Shenoy              | Vs | APPELLANT  |
| State of Mysore and Others |    | RESPONDENT |

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**Date of Decision :** 18-09-1963

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Madras Educational Rules — Rule 12J

**Citation :** AIR 1967 Kar 93

**Hon'ble Judges :** G.K. Govinda Bhat, J;B.M. Kalagate, J

**Bench :** Division Bench

**Advocate :** K.R. Karanth, for the Appellant; T. Radha Krishna, High Court Government Pleader and V. Krishna Murthy, for the Respondent

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## Judgement

Kalagate, J.—The petitioner, a teacher in the Canara High School, Urva, Mangalore, challenges the order of the second respondent, dated 26th October, 1962 and also the order of the third respondent, dated 15th November 1962, in the following circumstances:

2. The petitioner was employed as a teacher by the third respondent on certain terms which are embodied in the agreement, Ext. A, dated 5th December 1952, entered into between them. While she (petitioner) was thus working as a teacher, an incident took place on 5th December 1961. According to the third respondent, the Headmaster asked her to go to VIII Standard B for substitution work for the first period but she did not go there and also refused to sign what is called the "book of substitution work". The Headmaster, therefore, asked her to explain her conduct within 24 hours why the matter should not be reported to the Manager for disciplinary action. The petitioner, it appears, did not comply with the requirement of the Headmaster whereupon he reported the incident to the Manager who, in turn, issued a notice to the petitioner on the 11th of December 1961 informing her that he had received a report from the Headmaster complaining against her conduct and bringing to her notice that her

action was not an isolated one but was a calculated one amounting to gross insubordination. She was also told that an inquiry would be held into her conduct and she was directed to give her explanation by the 14th December 1961 to the charges as per Ext. C appended to it. She was further informed that she had been kept under suspension.

3. The petitioner submitted her explanation on 12th December 1961 challenging the correctness of the report made by the Headmaster. The manager held an enquiry and submitted a lengthy report to the Managing Committee or the School authority on 31st December 1961, in which he has not only considered the incident reported but also taken into consideration many other events which were not the subject matter of the charges and has come to the conclusion that during the entire course of her tenure in the school, the petitioner has been a nuisance and a very difficult person to be handled. He considered that her continued presence in the school as a teacher was very harmful and he, therefore, recommended her dismissal.

4. The Managing Committee considered the report of the Manager at its meeting hold on 9th January 1962, and accepting it found the petitioner guilty of the charges framed against her and resolved that she should be dismissed from the staff of the Canara High School Urva, with effect from 11th December 1961. This decision was duly communicated to the petitioner.

5. The petitioner preferred an appeal to the Director of Public Instruction in Mysore, Bangalore, against the decision of the Managing Committee under Instruction 7 issued under Rule 12(j) of the Madras Educational Rules read with paragraph 10 of the agreement entered into between herself and the school authority. This appeal was considered and disposed of by the Additional Joint Director (I), as could be seen from Ext. L. dated 23rd May 1962, in which he has stated that the Management should re-consider its decision and take the petitioner back to duty with a warning, giving her another chance.

6. The third respondent preferred an appeal to the first respondent who felt a doubt as to whether such an appeal was competent to it and, therefore, asked the second respondent by its letter, dated the 19th July 1962, to report as to whether the appeal was competent to it. The second respondent, however, passed an order, dated the 26th October 1962, at Ex. Q, dismissing the petitioner's appeal holding that the action of the Management in terminating her services was legal. However, he directed the Management to modify the order of punishment "as termination of services instead of as "dismissal"- A copy of this order has been forwarded to the Secretary to the Government, Education Department, Bangalore, with reference to his letter dated the 19th July 1962. This order was also communicated to the third respondent, who, as could be seen from Ex. R, dated the 15th November 1962, gave effect to it, by amending its earlier resolution of 9th January, 1962. It is these two orders of the second and third respondents that have been challenged by the petitioner in this petition.

7. Mr. Karanth, appearing for the petitioner, contends that the order of the 2nd respondent, dated 26th October 1962, is without jurisdiction and, therefore, the consequential order of termination of the petitioner's service by the third respondent is equally illegal and must be quashed.

8. Mr. V. Krishna Murthy, appearing for the third respondent sought to support the order of the second respondent, dated 26th October 1962, contending that it is an order passed by him as a domestic tribunal and, therefore, it is not amenable to the jurisdiction of this Court under Article 226 of the Constitution; in other words, he states that this being the decision of a domestic tribunal, this Court has no jurisdiction to interfere with it under Article 226 of the Constitution.

9. He then contended that the order dated 23rd May 1962 passed by the Additional Joint Director (I) is without jurisdiction and consequently, void, and therefore the second respondent was competent to deal with the appeal of the petitioner de novo.

10. It was further contended that the petitioner's services cannot be thrust on the management and that if there is a breach of any of the terms of the agreement, then it is a matter for the civil Court to decide and not one for interference by this Court under Article 226 of the Constitution.

11. Before I proceed to consider the respective contentions of the parties, I would like to state that there is no dispute between the parties that they are governed by the terms of the agreement and also by the Madras Educational Rules. It is also not disputed that the latter are not statutory rules. Thus the dispute between them has got to be resolved with reference to the various terms of the agreement and the Madras Educational Rules and also the instructions issued under Rule 12(j) of Chapter III of the said Rules.

12. Paragraph 7 of the agreement reads thus :

"(1) That the school authority shall have the power to terminate the services of the said teacher when she becomes a permanent member of the staff of the said school

(a) without notice for any or all of the following reasons : -

Wilful neglect of duty; serious misconduct; gross insubordination; mental unfitness, suspension or cancellation of teacher's certificate by the Director of Public Instruction under the Madras Educational Rules and

(b) With three months' notice or three months' salary in lieu thereof for the following reasons :--

Incompetence, retrenchment, physical unfitness, or any other good cause;

Provided that -

(i) the school authority shall not terminate the services of the said teacher whether summarily or otherwise without informing her in writing of the grounds

on which they intend to take action and giving her what in their view is a reasonable opportunity, for stating her case in writing, and before coming to a final decision, shall duly consider her statement and if she so desires give her a personal hearing. ..."

Then paragraph 10 is a material one, whereunder it is provided;

"That in the event of either party to this agreement failing to observe the terms thereof, the aggrieved party shall have a right to represent to the Director of Punjab Instruction/Divisional Inspector who shall pass suitable orders in the matter and the order of Director/Divisional Inspector shall be final and binding on the parties."

13. Thus it could be seen from paragraph 7 (b)(i) that the school authority could not terminate the service of the petitioner without holding an enquiry as stated therein. It is in pursuance of this requirement that the Manager held the enquiry and submitted his report to the school authority for taking necessary action. Under paragraph 10, if any of the parties to the agreement fails to observe the terms, then the aggrieved party shall have a right to represent to the Director of Public Instruction.

14. Now it will be relevant at this stage to refer to instruction 7 which, as I stated, is issued under Rule 12(j) of Chapter III of the Madras Educational Rules. According to this instruction, the appellate authority competent to dispose of an appeal under paragraph 10 of the agreement shall be hereunder:

"Director of Public Instruction-Appeals from, or in respect of, persona holding the posts of Headmasters, Headmistresses, L.T. Assistants....."

There is no dispute that the petitioner is a L. T. Assistant. Therefore what is contemplated in paragraph 10 of the agreement is that a right to represent to the Director of Public Instruction means, an appeal to him under instruction 7 of the instructions issued under Rule 12(j) of Chapter III of the Madras Educational Rules. It is in pursuance of paragraph 10 of the agreement read with instruction 7 that the petitioner presented an appeal to the Director of Public Instruction in Mysore, Bangalore. It is in these circumstances we have got to decide the validity or correctness of the respective contentions urged on behalf of the petitioner and the respondents.

15. I shall first deal with the first contention of the learned counsel for the third respondent that the order dated the 26th October 1962 passed by the Director of Public Instruction is of a domestic tribunal and that this Court has no jurisdiction to interfere with it under Article 226 of the Constitution. The argument is that though the Director of Public Instruction is a public authority, yet the parties to the agreement chose him as an arbitrator to decide the dispute between them. This argument is based on paragraph 10 of the agreement and also on instruction 7 of the Madras Educational Rules. In other words, it is contended by the learned counsel that the parties to the agreement decided that the Director

of Public Instruction should be the authority whom they should approach for decision in case of violation of any of the terms of the agreement. This, it is stated, read with instruction 7, is a power which the Director of Public Instruction has to exercise as an appellate authority. Further it is stated that though he is a public authority, yet he is selected by the parties to the agreement as an arbitrator and so he is to act not under any statutory provisions, but only as provided by the terms of the agreement and instruction 7 referred to above. In other words, it is stated that though the Director of Public Instruction is a public authority, yet as the agreement and the instructions are not statutory provisions, it must be presumed that the Director of Public Instruction is acting only as a chosen arbitrator of the parties. If so, it is contended that any order passed by him in such circumstances is not amenable to the jurisdiction of this Court under Article 226 of the Constitution.

16. We are unable to accede to this argument since, in our opinion, it must be held that the order dated 28-10-1962, of the Director of Public Instruction has been passed by him as a public authority.

17. The reasons for our decision are twofold. Firstly when the Director of Public Instruction, acting under the instruction issued under Rule 12(j) of the Madras Educational Rules appearing under Chapter III thereof, deals with an appeal under instruction 7 of the above Rules, it is clear that he is so acting as a public authority. He could not have disobeyed instruction 7 and refused to hear the appeal without being guilty of the violation of the instructions of the Department which he could do if he were to act in his individual capacity in pursuance of the agreement between the parties. In our opinion, therefore, when the Director of Public Instruction disposes of the appeal under Instruction 7, he does so only as a public authority.

18. Then, secondly, the parties have proceeded on the basis that the Director of Public Instruction in Mysore, Bangalore is a corresponding authority to the Director of Public Instruction, Madras, who is to exercise his powers under the Madras Educational Rules and also the instructions, to resolve any dispute between the parties, and unless he is a corresponding public authority, the parties could not have approached him.

19. It is further to be seen that the third respondent never questioned that the Director of Public Instruction in Mysore, Bangalore, is not a corresponding authority to the Director of Public Instruction, Madras. In fact, it accepted the position that the Director of Public Instruction in Mysore, Bangalore, is the corresponding authority to dispose of the appeal under Instruction 7 read with paragraph 10 of the agreement and, as such, preferred an appeal to the Government. The record further discloses that even a petition was filed to review the order of the Additional Joint Director (I). Thus, in our opinion, both the petitioner and the third respondent have accepted the position that the Director of Public Instruction in Mysore, Bangalore is the corresponding authority to the Director of Public Instruction, Madras, and, as such, the third respondent cannot

now say that the Director of Public Instruction in Mysore, Bangalore, is not a corresponding authority who could dispose of the appeal under instruction 7.

20. Therefore, in our opinion, the Director of Public Instruction in Mysore, Bangalore, while dealing with the appeal of the petitioner, has to deal with it as a public authority and consequently any order passed by him as such public authority is amenable to the jurisdiction of this Court under Article 226 of the Constitution. Accordingly, we hold that the order passed by the Director of Public Instruction in Mysore, Bangalore, is an order passed by him as a public authority and not as a domestic tribunal and, therefore, this Court has jurisdiction to consider the validity of that order under Article 226 of the Constitution.

A considerable portion of the argument was expanded by the learned counsel for the third respondent on the assumption that the order of the Director of Public Instruction is that of a domestic tribunal and that this Court has no jurisdiction to deal with it. In our opinion, even if it is to be held that the Director of Public Instruction in Mysore, Bangalore, has acted as a domestic tribunal, yet we are not sure that the contention of the learned counsel for the third respondent that this Court has no jurisdiction to interfere with his order, is correct. Our powers under Article 226 of the Constitution are much wider and even in respect of an order passed by a domestic tribunal, this Court could exercise its powers under Article 226 of the Constitution in a proper or a fit case to correct such an order if it is found that such a correction is necessary (vide *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, . *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*,

21. However, since we are resting our decision on the finding that the order of the Director of Public Instruction in Mysore, Bangalore, is an order passed by him as a public authority, and as such it can be corrected in the exercise of our powers under Article 226 of the Constitution if we find that it is passed without jurisdiction, we do not think it necessary to consider the various decisions cited by the learned counsel for the third respondent to support his contention that a decision of a private arbitrator is not amenable to our jurisdiction under Article 226 of the Constitution.

22. Our finding that the second respondent, viz., the Director of Public Instruction has, in deciding the appeal, acted as a public authority, leads us to the consideration of the question urged by the learned counsel for the petitioner that his order is without jurisdiction and, therefore must be quashed. This argument is found on paragraph 10 of the agreement between the parties read with instruction 7. I have already set out in detail the contents of paragraph 10 of the agreement. Under that paragraph, the decision rendered by the Director of Public Instruction shall be final and binding on the parties. The appeal having been heard under instruction 7 read with paragraph 10 of the agreement, if is clear that once an order is passed by the Director of Public Instruction, then it becomes final and conclusive between the parties.

23. Mr. Karanth contends that when the appeal was presented by the petitioner to the Director of Public Instruction, that appeal has been heard and disposed of by the Additional Joint Director (I) on 23rd May 1962. It is stated that though it is true that the order is passed by the Additional Joint Director (I), nonetheless it is final between the parties. In our view, this argument is well founded.

24. Mr. Krishnamurthy, however, appearing for the third respondent, contends that the Additional Joint Director (I) is not the same as the Director of Public Instruction and that the former has no authority to deal with an appeal since under instruction 7 it is only the Director of Public Instruction who can deal with and dispose of an appeal. It is to be noted that under the Madras Educational Rules, the Director of Public Instruction appears to be the only officer who is the head of the Department. But, in this State, besides the Director of Public Instruction, there are three other officers of co-ordinate power and jurisdiction. They are: the Joint Director the Additional Joint Director (I) and Additional Joint Director (II). All these are officers of coordinate power and jurisdiction, and it is not shown to us that the Additional Joint Director (I) could not exercise the power of the Director of Public Instruction.

25. Our attention was drawn to a document containing a statement showing the allocation of work among the Director of Public Instruction, the Joint Director of Public Instruction, the Additional Joint Director of Public Instruction (I) and the Additional Joint Director of Public Instruction (II). It is then argued that these officers are not the officers of co-ordinate jurisdiction or power since each is to do the work allotted to him. We are unable to agree with this contention.

26. All the work in the Office of the Director of Public Instruction which has been reallocated among the four officers is the work of the Department of Public Instruction and it could not have been reallocated among the Joint Director and the Additional Joint Directors unless they have got co-ordinate power or jurisdiction to deal with the work allocated to them. Therefore, in our opinion, the Director of Public Instruction and the three other officers are officers of co-ordinate power and jurisdiction.

Hence it could not be stated, that the source of power of the Additional Joint Director of Public Instruction is the allocation of work made to him. The Additional Joint Director (I), as already stated, is an authority with co-ordinate power and jurisdiction with that of the Director of Public Instruction. If so, the appeal of the petitioner disposed of by the Additional Joint Director (I), by his order dated 23rd May 1962, is with jurisdiction. Therefore, under paragraph 10 of the agreement between the parties, such an order is final and binding on the parties. There is no second appeal provided under the agreement.

27. The view which we have taken is also the view taken by this Court in Writ Petn. No. 583 of 1958 (Mys.) where a similar question arose on the interpretation of paragraph 10 of the agreement, and this Court held that once an order has been passed by a competent authority hi appeal under instruction 7

read with paragraph 10 of the agreement, that decision is final and the Director of Public Instruction or the Government has no competence to pass a second order. Therefore, in our opinion, the appeal having been once disposed of by the Additional Joint Director (I), the subsequent order passed by the second respondent on the same appeal on 26th October 1962 is clearly without jurisdiction and must be quashed.

28. Mr. V. Krishnamurthy then argued that the services of the petitioner cannot be thrust on the third respondent by asking it to take the petitioner back into service. It would be relevant to note that under paragraph 10 of the agreement, the parties to it have agreed that the decision of the Director of Public Instruction shall be final and binding on them. Further, the terms of the agreement empower him to pass suitable orders while disposing of the appeal. The Additional Joint Director (I) has passed suitable order and we see no reason why the parties to the agreement should not be bound by that order when they have themselves agreed that such an order shall be final and binding on them. Therefore there is no question of the petitioner being thrust on the management. The third respondent is bound to give effect to the order dated 23rd May 1962.

29. Then it is also contended that this is not a matter which could be dealt with by this Court under Article 226 of the Constitution since the various terms of the agreement have got to be construed and also there is no point of law involved in it. Now it cannot be disputed that this Court, while acting under Article 226 of the Constitution, has power to correct not only the mistakes of law apparent on the face of the record but also the illegal exercise of jurisdiction. The second respondent has exercised a Jurisdiction, which he had none, in passing the order dated the 26th October 1962. If so, this Court is competent to quash his order as being one without jurisdiction.

30. Thus, for the reasons stated above, we allow this writ petition and quash the order, dated the 26th October 1962, passed by the second respondent, and also the consequential order passed by the third respondent, on 15th November 1962.

31. Petitioner is entitled to the costs of this petition, and we direct that the third respondent shall pay the same to her; Advocate's fee Rs. 100.

G.K. Govinda Bhat, J.

32. I agree.

33. Petition allowed.