courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 14/09/2026

(1986) 09 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 3765 of 1982

Management of Sri Siddaganga Training College — APPELLANT

Vs

Shivanna — RESPONDENT

Date of Decision : 03-09-1986

Acts Referred:
Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 6, 6 (1)

Citation : (1986) 09 KAR CK 0004

Hon'ble Judges : Doddakale Gowda, J

Bench : Single Bench

Advocate : B. Veerabhadrappa, for the Appellant; V.C. Brahmarayappa, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Doddakale Gowda, J.—By impugned order, dated 11th December 1981, second respondent has set aside the order made by petitioner on 30-9-1975 dismissing first respondent from service.

2. Main contention of Sri B. Veerabhadrappa, Learned Counsel for petitioner, is that Educational Appellate Tribunal (hereinafter referred to as the ''Tribunal'') instead of setting aside entire order, should have recorded a preliminary finding as to whether there were any irregularities in the conduct of enquiry and/or whether enquiry is vitiated due to non-compliance of rules governing conduct of enquiry or principles of natural justice. It is only after recording a preliminary finding regarding such irregularity, management could have been called upon to establish charges and employee could have been called upon to disprove the same.

3. Relevant portion of finding of Tribunal reads thus :--

"It will be seen that admittedly no charge as such has been framed against the appellant in this case.... The said committee proceeded to conduct enquiry by

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/management-of-sri-siddaganga-...

perusing the records without issuing any notice to the appellant."

Further on at para 6 of the order, it is held thus :--

"It will therefore be seen that at no stage of the proceedings, charges were framed against the appellant giving him the particulars of the alleged misconduct on his part and he was never called upon to state whether he admits the charge framed against him or desired an enquiry to be held against him in respect of the said charges. I am unable to accept the submission made on behalf of the respondent by his Counsel Sri K. Srikantaiah that ''High Lights of Enquiry'' mentioned in the last part of the said report of the enquiry committee amounts to a framing of charges against the appellant."

Finding at last portion of the order reads thus :--

"Framing of a charge is a condition precedent for taking action u/s 4(2) of the Act of 1973 or u/s 6(1) of Act of 1676. While it is true that the charges necessarily need not be framed in the manner mentioned in the Code of Criminal Procedure, the charge framed must be clear and specific and must bring home to the knowledge of the employee against whom enquiry is sought to be held, the accusations against him. Secondly he must be given an opportunity after he has received charges to state as to whether be admits those charges framed against him or he desires an enquiry to be held in respect of the said charges.... "

Ultimately Tribunal has held that procedure required u/s 6 regarding framing of articles of charges itself has not been followed.

4. It is necessary to extract 6(1) of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 :

"Termination of service and procedure for imposing penalties :- (1) No employee shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges and where it is proposed after such inquiry to impose on him such penalty, until he has been given a reasonable opportunity of making representations on the penalty proposed, but only on the basis of the evidence adduced during such inquiry."

Undisputedly, no charge is framed; enquiry includes framing of articles of charges, invite explanation from delinquent official, if any; conduct enquiry, if necessary providing opportunity to produce both oral and documentary evidence and opportunity of cross-examination, to record finding whether charges are proved or not, receive explanation against proposed punishment and so on.

5. This Court in the President, Goldeo Vally Education Trust, Oorgaum, Kolar Gold Fields v. The District Judge and Educational Appellate Tribunal, Kolar and Ors. ILR 1979 Kar 526 after formulating four contingencies indicated procedure to be followed by Tribunal. They are :-

(1) Where the management has not held the enquiry or does not claim the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/management-of-sri-siddaganga-…

benefit of the enquiry even if it had been held :

(2) Where the enquiry held by the management is found to be defective ;

(3) When the enquiry held by the management is found valid ; and

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

There is no consideration of what should happen, in case, there is no charge. Hence, reliance placed on this decision in support of the contention that Tribunal should have proceeded with the enquiry from the stage at which infirmity has occurred without setting aside the order in its entirety, is of no help.

6. Section 6 extracted above contemplates that delinquent official should be informed of the charges and given a reasonable opportunity to make representation in respect of those charges. If management is not satisfied with explanation offered, it is at liberty to hold an enquiry in the manner provided therein. If any defect has occurred ''during the conduct of enquiry i.e., after framing of articles of charges, management can be provided with opportunity to establish charges and likewise, delinquent official to disprove the same. Existence of charge is a sine qua non to hold ah enquiry. As in the instant case there is no charge as such, there remained nothing for Tribunal to hold an enquiry.

7. Sri B. Veerabhadrappa, learned Counsel for petitioner, contended, if Tribunal can hold an enquiry, it can also frame charge, receive explanation and decide whether charge is proved or not, I am afraid, if such contention is accepted, it will lead to disastrous result.

8. In order to get this insurmountable hurdle, learned Counsel for petitioner, contended that order of dismissal itself constitutes a charge and Tribunal can hold an enquiry on that basis. Committee appointed to hold an enquiry has elicited answers by interrogation and report is based on answers given by delinquent official. Imposition of punishment is the final conclusion of employer. Punishment may be based on a sole ground or on various grounds. Conclusion is reached on evidence already placed on record. In the absence of communication of articles of charges framed by authority competent to initiate proceedings, Tribunal cannot proceed to hold an enquiry on the basis of the final order treating it as a charge. This contention would run counter to the scheme of the Act. Hence, it is not possible to accept the plea.

9. No merit. Writ Petition is dismissed. Rule discharged.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/management-of-sri-siddaganga-…