

(2007) 12 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 17826 of 2006

Manjula Kudligi

APPELLANT

Vs

The President, Bethony Educational Society, The Secretary,
Bethony Educational Society, The Head Mistress, Saint
Joseph's Orphanage High School and B.M. Chougule

RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Citation : (2008) ILR (Kar) 583 : (2008) 1 KCCR 483

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

Bench : Single Bench

Advocate : Party in Person, for the Appellant; P. D'Souza, for R1-3 and S.Z.A. Khureshi, AGA for R4, for the Respondent

Judgement

N.K. Patil, J.—Petitioner - party-in-person has sought for a direction, directing the respondents to reinstate the petitioner employee with all benefits and full payments of arrears of salary. Further, petitioner - party-in-person has questioned the correctness of the order dated 24th November 2006 on the file of the Member, Educational Appellate Tribunal and Principal District Judge, Belgaum in E.A.T. No. 5/1991 vide Annexure B. Petitioner has also sought for grant of exemplary cost to first respondent - Management for dismissing the petitioner, resulting in stigma on the character of the petitioner.

2. The undisputed facts of the case are that, petitioner - party in person, had earlier filed W.P. No. 17108/2005 assailing the correctness of the order dated 18th June 2005 passed by the Educational Appellate Tribunal, Belgaum in EAT. No. 5/1991 vide Annexure B to the said writ petition. The said writ petition had come up for consideration before this Court on 20th January 2006 and this Court, after considering the oral and documentary evidence and other relevant material available on file, allowed the writ petition filed by petitioner - party-in-person and quashed the impugned order therein i.e. order dated 18th June 2005 in EAT. No. 5/1991 vide Annexure B therein and directed the Educational Appellate Tribunal

to restore the appeal to its original file and issue notice to both the parties and thereafter decide the questions as to i) Whether the respondent/management establish the misconduct alleged against the petitioner, from the evidence adduced before the Tribunal? And ii) If the misconduct is proved, whether the penalty imposed is proportionate to the gravity of charges proved? After remand, the Tribunal took up the matter for consideration on 24th September 2006 and on the basis of the pleadings available on file, in obedience of the direction issued by this Court, after considering the written arguments submitted by the petitioner as well as Management, after framing necessary points for consideration and after appreciating the oral and documentary evidence and other relevant material available on file, has dismissed the appeal filed by petitioner. Being aggrieved by the impugned order passed by the Educational Appellate Tribunal, and Principal District Judge, Belgaum, passed in E.A.T. No. 5/1991 and seeking appropriate reliefs, as stated supra, petitioner herein felt necessitated to present the instant writ petition.

3. I have heard petitioner - party-in-person and learned Counsel appearing for respondents for considerable length of time.

4. After critical evaluation of the entire original records available on file and after going through the impugned order passed by the Member, Educational Appellate Tribunal and Principal District Judge, Belgaum dated 24th November 2006 vide Annexure B, it is manifest on the face of the said order that, the Appellate Tribunal has committed an error of law and material irregularity in proceeding to pass the impugned order contrary to the direction issued by this Court dated 20th January 2006 passed in earlier round of litigation in Writ Petition No. 17108/2005. It is significant to note that, the appeal filed by petitioner before the Educational Appellate Tribunal in E.A.T. (KPEI) Appeal No. 5/1991 on the file of the Member, Educational Appellate Tribunal at Belgaum had come up for consideration before the Predecessor of the Presiding Officer of the Educational Appellate Tribunal who passed the order on 13 February 2004 and the Educational Appellate Tribunal, after hearing both sides, has passed the order, setting aside the enquiry report submitted by the Enquiry Officer to the Management holding that, the same is vitiated in depriving the principles of natural justice to the appellant (petitioner herein). Further, it was held that, the Management was at liberty to adduce evidence before the Tribunal in support of the charges levelled against the appellant therein (petitioner herein) and the appellant (petitioner herein) to adduce the defence evidence, if any, so as to enable the Tribunal to record its own finding on the charges so levelled against the appellate therein (petitioner herein). Accordingly, the Educational Appellate Tribunal passed the order, setting aside the Enquiry Report submitted by the Enquiry Officer to the first respondent - Management in view of gross violation of principles of natural justice and for not affording opportunity to the petitioner and permitted the petitioner herein as well as the first respondent - Management to adduce their own evidence before the Tribunal alone to enable the Tribunal to record its own finding on the charges so levelled against the petitioner. When

such being the case, it is significant to note that, thereafter, the Educational Appellate Tribunal has slipped into an error in passing the impugned order vide Annexure B while categorically recording the statements at paragraph 19 of its order which reads thus:

19). It is also necessary to observe here that after my predecessor has passed the order on 13.2.2004, respondents have conducted the enquiry wherein appellant and respondents have led oral and documentary evidence, and then appellant was dismissed by R.1. Thereafter, appellant again challenged her dismissal by respondent.

The said reasoning given by the Educational Appellate Tribunal and the specific emphasis made by underlining the said portion is contrary to the order passed by the Predecessor of the Educational Appellate Tribunal dated 13th February 2004, vide Annexure A as referred above. Further, the Educational Appellate Tribunal has committed another grave error in recording its findings at paragraph 34 of its order, wherein it is stated that, since the respondents have concluded the enquiry and submitted to the Management and it has accepted the same on those findings and dismissed the appellant from service under such impugned order, the appellant's entire contention that respondent did not conduct a proper enquiry and no opportunity was extended to her to prove her case is not only considered by his predecessor, but also, to facilitate the appellant, the predecessor has directed the respondents to initiate and conclude the enquiry afresh by his order dated 13th February 2004 and it is also a fact that, thereafter, the respondents initiated the enquiry afresh to comply the characteristics of a "due enquiry" by issuing show cause notice, articles of charges, opportunity to the appellant to go through the respondent/Management's documents, and also to lead evidence and cross-examine the witnesses and hence, the characteristics of a due enquiry are proved by respondents and accordingly, this Tribunal has accepted the same and held that, the appellant did not prove her case in the enquiry constituted by respondents, and accordingly, appeal was dismissed. The said specific finding given by the Educational Appellate Tribunal at paragraph 34 of its order is contrary to the relevant material available on file and also contrary to the direction issued by the predecessor of the Educational Appellate Tribunal in its earlier order dated 13th February 2004 vide Annexure A referred above. Further, it is specifically referred by the Appellate Tribunal at paragraph 55 of its order that, the respondents in the written synopsis have narrated all the facts afresh and sought dismissal of the appeal since the enquiry conducted was in compliance of the Court order and the appellant was dismissed from service on such findings and reasoning in the Departmental Enquiry. After microscopic evaluation of the entire material available on file and after careful perusal of the order passed by the Educational Appellate Tribunal dated 13th February 2004 vide Annexure A, it can be seen that, the Tribunal has not remanded the matter to the Management to conduct a fresh enquiry, but the Appellate Tribunal has set aside the enquiry report submitted by the Enquiry Officer to the Management in toto on the ground of non

compliance of the principles of natural justice and reserved liberty to the petitioner as well as Management to adduce their oral and documentary evidence before the Tribunal alone in support of the charges levelled against the petitioner, so as to enable the Educational Appellate Tribunal to record its own finding on the charges so levelled against the petitioner. Therefore, when there is a specific finding by the predecessor of the Appellate Tribunal that, the evidence should be adduced before Tribunal itself, it is unfortunate and surprising to note the aforesaid reasoning given by the Appellate Tribunal in its order dated 24th November 2006, for dismissing the appeal filed by petitioner and the same is not sustainable. The Appellate Tribunal has proceeded to pass a lengthy order, which runs to more than 30 pages, contrary to the subject matter involved in the matter and proceeded to decide the same, contrary to the direction issued by this Court and also contrary to the oral and documentary evidence available on file. Therefore, I am of the considered view that, at any stretch of imagination, the impugned order passed by the Educational Appellate Tribunal vide Annexure B as referred above, cannot be sustained and hence, the same is liable to be set aside at the threshold itself.

5. Further, yet another reason as to why the impugned order at Annexure B is liable to be set aside is, in view of non appreciation of the oral and documentary evidence available on file, as specifically directed by this Court by its order dated 20th January 2006 passed in Writ Petition No. 17108/2005, particularly point No. 1 for consideration and also in the light of the order passed by the Predecessor of the Educational Appellate Tribunal dated 13th February 2004 in E.A.T. (KPEI) Appeal No. 5/1991 vide Annexure A. Further, after carefully going through the entire order at Annexure B, it can be seen that, the oral and documentary evidence have neither been considered nor referred to by the Tribunal except narrating the entire history of the case. Therefore, on this ground also, the order passed by the Educational Appellate Tribunal is liable to be set aside in view of non conduct of proper enquiry and for non consideration of the relevant material available on file, for non consideration of the earlier order passed by the Predecessor of Tribunal dated 13th February 2004 and for non compliance of the direction issued by this Court in W.P. No. 17108/2005 dated 20th January 2006.

6. In the light of the facts and circumstances of the case, as stated above, taking into consideration the factual and legal aspect of the matter, as stated supra, the writ petition filed by petitioner is disposed of as follows:

I] The impugned order passed by the Member, Educational Appellate Tribunal and Principal District Judge, Belgaum dated 24th November 2006 in E.A.T No. 5/1991 vide Annexure B is hereby set aside;

II] The matter stands remitted back to the Member, Educational Appellate Tribunal and Principal District Judge, Belgaum to consider the matter afresh and take appropriate decision in strict compliance of the direction issued by this Court on 20th January 2006 in Writ Petition No. 17108/2005 and also in the light of the order passed by the Predecessor of the Educational Appellate Tribunal dated 13th

February 2004 in E.A.T. (KPEI) Appeal No. 5/1991 vide Annexure A and dispose of the same, as expeditiously as possible, giving top priority, at any rate within a period of three months from the date of receipt of a copy of this order, after affording opportunity to the petitioner, the first respondent - Management and also the representative of the Government, taking into consideration the fact that, petitioner - party- in-person has been redressing her grievance since nearly two decades;

III] Petitioner and first respondent -Management are hereby directed to appear before the Member, Educational Appellate Tribunal, and Principal District Judge, Belgaum on 17th January 2008; and thereafter, the Tribunal, after hearing both parties on the dates of their convenience, shall proceed further in accordance with law, in compliance of the directions issued by this Court, as referred above.

7. Office is directed to return the Lower Court Records forthwith to the Member, Educational Appellate Tribunal, and Principal District Judge, Belgaum.