

(1999) 05 KAR CK 0005

In the Karnataka High Court

Case No : Regular First Appeal No. 151 of 1996

Mary Associates

APPELLANT

Vs

K.V. Padmalalitha

RESPONDENT

Date of Decision : 31-05-1999

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 11, 3, 8
Limitation Act, 1963 — Section 4, 5

Citation : (2002) 3 KCCR 1969

Hon'ble Judges : A.M. Farooq, J

Bench : Single Bench

Advocate : P.R. Ramesh, for the Appellant; K.V. Sivaprasad, for the Respondent

Judgement

A.M. Farooq, J.—This is an appeal filed by the Defendant in O.S. No. 77 of 1994 on the file of the learned Small Causes and Additional Civil Judge, Mysore, decreeing the suit filed by the Plaintiff/Respondent.

2. The brief facts of the case as found from the pleadings of the parties and the impugned judgment are as follows:

3. The Plaintiff/Respondent filed the suit claiming Rs. 1,28,236/- as arrears of salary due to her from the Appellant/Defendant. It is stated by the Plaintiff that she has worked as Assistant Mistress in the Defendant school from the year 1969. Her salary was not paid to her for the period from May 1990 to February 1991 and she had filed O.S. No. 519 of 1991 before the learned III Additional I Munsiff, Mysore, claiming salary for that period and subsequently, she has not been paid salary from then onwards. It is stated by her that she was to retire in March 1994 and she was suffering for non-receipt of salary from the Defendant.

4. The Appellant/Defendant filed the written statement contending that the Defendant-school is started and run by MARY's Association a registered society and the school caters to the educational needs of the backward people. The

school is run without the aid from the Government and no donation is collected by the school. That the school also charges very nominal fees to the students. While denying the averment made by the Plaintiff, it is the case of the Defendant that the Plaintiff was appointed as an Assistant Mistress in the year 1969 on a salary of Rs. 340/- and 800/- and her appointment was approved by the Education Department in 1982. That the Defendant has been paying the contractual salary to the Plaintiff and since the school caters to the need of the poor and no grant-in-aid is received, the Defendant was not able to pay the Government salary to its teaching staff. That the Plaintiff was trying to impose a new pay structure by filing the suit. That she can claim only the contractual salary. That the suit is filed with a view to circumvent the law which does not allow the Plaintiff to do what is prohibited by law. That the suit is not maintainable. That the salary bills have been prepared every month and the Plaintiff herself refused to receive the salary. That there is no cause of action and sought for dismissal of the suit.

5. On the above pleadings, the Trial Court framed the following issues:

- (1) Whether the Plaintiff proves that the Defendant is due of the suit claim towards her salary?
- (2) Whether the Plaintiff further proves that there is an agreement between herself and the Defendant in respect of her pay?
- (3) Whether the Defendant proves that the Plaintiff is not entitled for the suit-claim, apart from salary fixed by the Defendant-trust of Education?
- (4) Whether the suit is maintainable?
- (5) Whether the Plaintiff is entitled for the relief as sought for?
- (6) To what order or relief the parties are entitled?

Thereafter the Plaintiff gave evidence as PW-1 and examined the A.E.O. Siddaraju as PW-2. On behalf of the Defendant/Appellant, the Secretary of the school was examined as DW-1. The Trial Court on consideration of the evidence on record answered all the issues in favour of the Plaintiff and decreed the suit as prayed for by the Plaintiff with interest at 6% p.a. from the date of suit till realisation. That is the decree which is under challenge in this appeal.

6. Sri P.R. Ramesh, learned Counsel appearing for the Appellant contended that in view of the provisions of Sections 8 and 11 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 the suit is barred and not maintainable. The 2nd contention is that infact, the suit is one for creation of salary and the suit is not maintainable on that ground also. It is further contended that the Appellant/school is not a Government Aided Institution but, a private institution and therefore, the Plaintiff could not have asked for the Government Salary. The learned Counsel has also cited certain decisions which will be referred to in the course of this judgment.

7. There is no dispute between the parties that the Plaintiff worked as an Assistant Mistress i.e., as a teacher in the Appellant/School from the year 1969 and she retired from service in 1994. Her case is that from the year 1990 onwards she was not paid her salary which according to her is as agreed by the Appellant-school with the Education Department which has been spoken to by PW-2 who was the then Assistant Educational Officer.

8. The Trial Court while discussing the evidence on record has referred to Ex.P-2 which is the pay scale existing in the year 1982 the year of approval of the appointment of the Plaintiff in the Defendant/school. What is the salary payable during that period has been found in Ex.P-2. Ex.P-3 is the approval order. In his evidence PW-2 has stated that the teachers who are working in private schools whether it is aided or unaided are entitled to get the pay as per the scales mentioned in Ex.P-2. Ex.D-1 the approval order itself shows the pay scale which has to be fixed in respect of the Plaintiff. It is clear from Ex.D-1 that the management has agreed to pay the existing pay scale as mentioned in Ex.D-1. On the facts of the case, the Trial Court is therefore, justified in accepting the evidence of PW-1 and PW-2 and holding that from 1982 onwards there is an agreement between the Plaintiff and the Defendant through the Education Department to pay the salary as mentioned in Ex.D-1. Therefore, on appreciating the facts, I do not see that the Trial Court has committed any error.

9. The only question to be considered in this appeal and the arguments also addressed is on the question of law. According to the learned Counsel for the Appellant the suit is not maintainable in view of Section 8 read with Section 11 of the Act. Section 8 of the Act reads as follows:

Appeals.-(1) Any employee aggrieved by an order of the Board of Management may within three months from the date of communication of the order, appeal against such order to the Educational Appellate Tribunal constituted u/s 10. The provisions of Sections 4 and 5 of the Limitation Act, 1963 shall be applicable to such an appeal.

(2) Notwithstanding anything contained in sub-section (1) any employee aggrieved by an order of dismissal or removal made by the Board of Management at any time within one year before the date of commencement of this Act may also appeal against such order within three months from such date.

As could be seen from the above section, under sub-section (1) of Section 8 appeal lies against an order made by the Board of Management to the Educational Appellate Tribunal. In the case, there is no order made by the Board of Management of the Appellant/school. Non-payment of salary cannot be said to be an order made by the Board of Management. Even if there is dispute about the payment of salary which has been accrued, the matter falls under the ordinary civil law and not under the provisions of Section 8 of the Act. This is a simple suit claiming arrears of salary. Merely because the Defendant has disputed about the monthly salary as fixed by it, the said disputed cannot be said

to come u/s 8(1) of the Act. I am therefore, clearly of the view that the suit filed by the Plaintiff which is a clear suit for arrears of salary is maintainable.

Section 11 of the Act reads as follows:

Jurisdiction of Civil Courts barred: No Civil Court shall have jurisdiction in respect of any matter in relation to which the Educational Appellate Tribunal is empowered by this Act to exercise any power.

When the dispute in the suit does not fall u/s 8, the question of the power of the Educational Appellate Tribunal to entertain the appeal does not arise and the bar u/s 11 of the Act is not applicable.

10. Section 3 of the Act empowers the State Government to make model rules and adopt such rules on a private education institution and under sub-section (2) every private educational institution shall adopt the model rules and if it has got its own rule, it has to bring it in conformity with the model rules. It has to intimate the Government about the adoption of the model rules. Even if the education institution fails to adopt the model rules, under sub-section (4) of Section 3, there is a deeming provision and under the said provision, the model rules is deemed to have been adopted by the private educational institution. It is admitted in the evidence of RW-1 that on the approval of the appointment of the Plaintiff the educational authorities under the Act have given their approval with certain conditions especially regarding the payment of salary as contained in the approval order Ex.D1. The Appellant-institution never objected to the same at any time. Therefore, it has to be held that under the Act itself the Appellant-Defendant has agreed to pay the salary as contained in Ex.D1. When the evidence clearly show that the salary has already been fixed and approved by the Education Department, the question of any dispute arising as to what is the salary does not exist. The question involved is therefore the payment of salary which is admittedly not paid to the Plaintiff. It is not the case of the Defendant that the Plaintiff is not entitled for the arrears of salary from the year 1991 onwards.

11. The learned Counsel for the Appellant relied upon the judgment in State of Assam and Another Vs. Ajit Kumar Sharma and Others, to contend that the suit is not maintainable. That was a case in which the Respondent had filed a writ petition before the High Court against a private college which received grant-in-aid from the State of Assam. The teacher had applied for leave with pay for certain period which was granted by the Government and Governing Body of the College and thereafter he sought for re-joining which was also permitted. The Director of the Education Department refused to approve the resolution passed by the Governing Body approving the re-joining by the Petitioner. It is in that context, the Supreme Court held that it was not open to a teacher to insist that the Governing Body should not carry out the instructions. The instructions being executive instructions confer no right of any kind on teachers and they cannot apply to the High Court for a mandamus asking for the enforcement of the said

rules. If the college had accepted the instructions given by the Government, it is a matter between the Government and the Private college concerned and it does not confer any right to the teacher concerned. The said judgment do not at all apply to the questions involved in this appeal.

12. Another judgment cited is Kumari Regina Vs. St. Aloysius Higher Elementary School and Another, . Relying upon the said judgment, the learned Counsel read over to me para 11 from the judgment, where the Hon''ble Supreme Court observed considering Chapters 2 and 4 of the Madras Elementary Education Act holding that those rules cannot be said to be rules to carry out any or all the purpose of the Act as provided by Section 56 of the Act. Even if the Government were to claim to have framed the Rules under the said Section, the said rules would not satisfy the conditions precedent for such rule making namely that they can be made only to carry out all or any of the purposes of the Act. That ordinarily the relations between the management of the elementary School and the teachers employed in it would be governed by the terms of the contract of employment and the law of master and servant in the absence of any statute controlling or abrogating such contract of employment and providing to the contrary. In the present case, the Act applicable is the Karnataka Act where the provisions as pointed out by me earlier is in existence. Hence the above cited judgment is also not applicable to the facts of this case.

13. The learned Counsel for the Appellant further relied upon the unreported Division Bench decision of this Court in Writ appeal Nos. 1833 to 1836 of 1995, dated 30.5.1998. In that case, the Division Bench of this Court was considering the question of the plea made by the teachers for a direction to the Management for payment of salary to the teaching and non-teaching staff whose appointment has been approved by the Government. This Court held that the writ petitions filed are not maintainable. The question in those appeals are quite different. That was not a case where a teaching staff member has claimed arrears of salary. Here there is no dispute that the Appellant-Defendant is bound to pay salary to the Plaintiff-Respondent. The question is what is the agreed salary. That is a pure question of contract and in the suit basing on the material evidence on record and on appreciation of the evidence, the Court below has come to the conclusion that the agreed salary is as per Ex.D1 which I have already considered and upheld. Hence the above said judgment also cannot be applied to the facts of this case.

14. For the above reasons, I do not find any merit in this appeal. Appeal is dismissed with costs. The Appellant is further directed to pay 12% interest per annum on the decreed amount from the date of filing of this appeal till the date of payment. It is stated an amount of Rs. 30,000/- has been deposited by the Appellant before this Court in view of the interim order passed. The said amount is directed to be paid to the Respondent.