

(1988) 11 KAR CK 0028
In the Karnataka High Court
Case No : W.P. No. 11261/88

Narasappaiah, K.S.

APPELLANT

Vs

Educational Appellate Tribunal, Mysore and Others

RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 8(1)

Citation : (1989) 1 KarLJ 165

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

Judgement

Swami, J.-Sri Shahapur, learned Govt. Pleader is directed to appear for respondent-1.

2. In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the Order dated 13-7-1988 passed by the Principal District Judge and Educational Appellate Tribunal, Mysore in E.A.T. No. 2/1988 Annexure-J. He has also sought for issue of a direction to the 2nd respondent to promote him as Head Master of Dalvai High School, Mysore with all consequential benefits.

3. The Educational Appellate Tribunal, Mysore has held that the appeal preferred by the petitioner under Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (hereinafter referred to as the "Act") is premature and as such it is not maintainable.

4. In this case, it is not necessary to refer to any of the contentions raised on both sides. It is nor in dispute that the decision of the Management (respondent-2) to promote the 3rd respondent as Head Master of Dalvai High School, Mysore, has not been communicated to the petitioner. Section 7 of the Act in unequivocal terms provides that every order of the Board of Management terminating the service of an employee or imposing a penalty or otherwise affecting his conditions of service to his prejudice shall be communicated in writing to the employee. The case of the petitioner is that he ought to have been

promoted instead of the 3rd respondent.

5. There is no doubt that the order promoting the 3rd respondent does affect the service conditions of the petitioner. Therefore he has a right to challenge the same by way of an appeal under Section 8 of the Act. But such an appeal can only be preferred on communication of the order or the decision of the Board of Management. Section 8(1) of the Act specifically provides that 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 under Section 10. Sub-section (1) of Section 8 and Section 7 read together, make it clear that the decision of the Management affecting the service conditions of an employee has to be communicated to the concerned employee and on such communication, the affected employee has a right to prefer an appeal to the Educational Appellate Tribunal. In the statement of objections filed by the Management, it is stated in categorical terms that it has resolved to promote the 3rd respondent and has appointed him as Head Master having regard to the various circulars and directions given by the Government from time to time.

6. Apart from stating that the appeal is premature the Educational Appellate Tribunal has held that unless the approval of the D.D.P.I. to the decision of the Board of Management is obtained, the petitioner cannot maintain the appeal and he has to await the approval of the D.D.P.I. In this regard it is apparent that the Educational Appellate Tribunal has failed to notice the provisions contained in Sections 7 and 8(1) of the Act. It is the order or decision of the Board of Management that is appealable and not the order of the D.D.P.I. according approval.

7. In order to test the validity of the reasoning of the learned Educational Appellate Tribunal, it may be relevant to notice that the Management of a Private Educational Institution resolves to promote A" to the next higher post ignoring the claim of B" and places him in the promotional post As against that order, if the right of appeal has to depend upon the approval to be accorded by the Governmental Authority and that approval is (sic) after a lapse of considerable time and in the meanwhile B" were to retire from service, the damage that (sic) caused to B" is incalculable. He will have to retire without agitating the matter as per Section 8 of the Act. It is because of this, the legislature has advisedly used the words "Board of Management" and not "as approved by the Government". In fact, the provisions contained in the Grant-in-Aid Code cannot control the provisions of the Act. Therefore, the Educational Appellate Tribunal is not right in holding that the petitioner cannot avail the remedy of appeal until the approval is accorded by the D.D.P.I. Therefore, the said finding is liable to be set aside.

8. This does not help the petitioner to have the entire order of the Educational Appellate Tribunal set aside because the appeal is preferred by the petitioner before the communication of the decision of the Board of Management As already pointed out, the right to avail the remedy of appeal accrues only after the

communication of the order or the decision of the Management. Therefore, the Educational Appellate Tribunal is right to this extent.

9. For the reasons stated above, this writ petition is disposed of in the following terms:

i) The finding of the Educational Appellate Tribunal recorded in the order dated 13-7-1988 in EAT No. 2 of 88 produced as Annexure J that the appeal is not maintainable without the approval of the order of the Management by the D.D.P.I. is set aside.

ii) In other respects, the order is not disturbed.

iii) The Management (respondent-2) is directed to communicate its decision to promote the 3rd respondent as Head Master of Dalwai High School, Mysore within six weeks from today.

iv) On receipt of such communication, it is open to the petitioner to challenge the same under Section 8 of the Act. In such an event, the Educational Appellate Tribunal shall decide the appeal in accordance with law without reference to the impugned order dated 13-7-1988 passed by the 1st respondent in E.A.T. No. 2/1988.

v) All the contentions of the parties having a bearing on the merits of the decision of the Board of Management are left open.

Sri Shahapur, learned Govt. Pleader is permitted to file his memo of appearance on behalf of respondent-1 in six weeks.

Writ petition disposed of.