

(1978) 07 KAR CK 0022
In the Karnataka High Court
Case No : WP. 5175 of 1975

Neelakanthaiah

APPELLANT

Vs

R.M. Desai and Others

RESPONDENT

Date of Decision : 04-07-1978

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 7

Citation : (1979) 1 KarLJ 98

Hon'ble Judges : Venkatachaliah, J; Jagannatha Shetty, J

Judgement

Jagannatha Shetty, J.-The petitioner was a teacher in the New English High School at Galgali in Bilgi Taluk, Bijapur Dist. The Management of the School, by order d/ 13th September, 1974 terminated his services by giving him one month's advance notice. It was stated in the order that consequent on the closure of the Urdu Medium Standard VIII during the academic year 1974-75, the post occupied by the petitioner was in excess. Challenging the validity of the said order, the petitioner appealed before the Educational Appellate Tribunal, Bijapur. The management resisted the appeal inter alia contending that the appeal was not maintainable since the order of termination was not by way of penalty. The Tribunal upheld that objection and dismissed the appeal.

The validity of the aforesaid order is called into question in this petition under Article 226 of the Constitution.

2. The Tribunal after referring to the provisions of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (called shortly "the Act"), has observed that since the Management was compelled to terminate the services of the petitioner because of the abolition of the Urdu Section of the VIII Standard in the High School, the order of termination was not appealable falling within the scope, of Sec.8 of the Act. In other words, the Tribunal has stated that the impugned order was not by way of penalty and it would, be only such penal orders would be appealed against. The Tribunal for its conclusion has also relied

upon Sec. 10(4) of the Act.

3. It seems to us that the Tribunal was in error in construing the provisions of the Act and reaching the said, conclusion,. We may now refer to the relevant provisions. Sec. 10(1) authorises the Govt by Notification to constitute one or more Educational Appellate Tribunals for the adjudication of appeals preferred under Sec. 8. Sec. 8 confers right of appeal. It provides:

"8. 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 under Sec. 10. The provisions of Secs.4 and 5 of the Limitation Act, 1963 shall be applicable to such an appeal.

(2) Notwithstanding anything contained in sub-sec. (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."

The above section also prescribes a period of limitation for appeal. The appeal should be filed within three months from the date of communication of the order complained of. Sec. 7 is complementary to Section 8. It provides:

"7. Communication of orders-Every order of the Board of Management terminating the services 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."

Sec.7 indicates the following three types of orders: (i) an order terminating the services of an employee; (ii) an order imposing any one of the penalties; (iii) an order which would otherwise affect the conditions of service to the prejudice of any employee. When any such order is made Sec.7 imposes an obligation on the Management to communicate that order in writing to the employee; while Sec.8 confers a right of appeal against that order, prescribing also a period of limitation to three months to prefer an appeal to the Tribunal. By reading Secs.7 and 8 together the conclusion, appears to be inescapable that the employee could appeal to the Tribunal against any order contemplated and communicated, under Section 7.

The scheme of Sec.7 is comprehensive enough to include an order of the kind we are concerned within the present case.

4. It now requires to be examined whether the power of the Tribunal to entertain the appeal has been circumscribed by any other provision under the Act. The Counsel for the management has relied upon Sec. 10(4)(c) and urged that the Tribunal has no power to dispose of and give relief unless the appeal is against the order of dismissal or removal passed by way of penalty against the employee. But we do not think that any such conclusion is possible. For immediate reference we may set out the said sub-section under.

"10(4)-The Educational Appellate Tribunal shall,- (c) if, after making such fresh evidence as it considers necessary, is satisfied from the materials on record that- (i) the order of dismissal or removal was not justified, it may set aside the order and direct reinstatement of the employee on such, terms and conditions (including payment of salary and other allowances from the date of dismissal till the date of reinstatement and costs, if any) as it thinks fit or give such other relief to the employees) including the award of any lesser punishment in lieu of dismissal or removal as the circumstances of the case may require,;

(ii) the punishment (other than those specified in sub-clause(i)) imposed was not justified, it may set aside the punishment imposed or give such other relief to the employee including the award of any lesser punishment in lieu of the punishment imposed as the circumstance of the case may require."

Clause(i) of S. 10(4)(c) deals with the method of disposal of appeals by the Tribunal against the order of dismissal or removal of the employee, and clause (ii) thereunder provides the manner of disposal of appeals against orders short of dismissal or removal. But, while examining the scope of Sec. 10(4)(c), we must not lose sight of Sec. 10(4)(a) which states that the Tribunal shall for the purpose of disposal of the appeal referred under Sec.8 has the same power of a Civil Court under the Code of Civil Procedure, 1908. It has thus obvious reference to Order XLI, Rule 33 of the CPC which so far as it is relevant provides:

"33. Power of Court of appeal-The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require....."

From these provisions, it appears to us that the content of the appellate power of the Tribunal is located in Sec. 10(4)(a), and it is not curtailed by Sec. 10(4)(c). Sec. 10(4)(c) is only complementary to Section 10(4)(a).

5. Since the complaint of the petitioner is that his services were wrongfully terminated by the management, he must be held to have a right of appeal under Sec. 8 of the Act. The Tribunal was in error in holding to the contrary.

6. In the result, the rule is made absolute and the order of the Tribunal is quashed. The Tribunal is directed to restore the appeal of the petitioner on file and dispose of the same on merits and in accordance with law.

7. The petitioner is entitled to his costs. Advocate's fee Rs. 100.