
(1980) 10 KAR CK 0025
In the Karnataka High Court
Case No : W.P. 1021/79

N.V.R. Ram

APPELLANT

Vs

Indian Institute of Management and Others

RESPONDENT

Date of Decision : 27-10-1980

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 6

Citation : (1981) 1 KarLJ 559

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. In this writ petition, the petitioner has questioned the legality and correctness of the order rendered by the 3rd respondent-Education Appellate Tribunal. Bangalore district, Bangalore (hereinafter referred to as the Tribunal) in M.A. (E.A.T) No. 3 of 1977 a certified copy of which is produced at Annexure "P".

The facts leading to the present petition may be briefly stated as follows: The petitioner Dr. N.V.R. Ram was an employee of the 1st respondent-Indian Institute of Management registered under the Karnataka Societies Registration Act (hereinafter referred to as the Institute). The petitioner was appointed by a letter dated 10th June, 1973 for a period of five years. The crucial clause relating to terms of employment in the said letter at paragraph 2 is as follows:

"This is a tenure appointment valid for a period of five years and you shall be on probation for the first two years during which period your services may be terminated by giving one month's notice or compensation in lieu thereof. But after the period of probation, a notice of three months is necessary if either side desires to terminate the contract. After the completion of four years a review of your contribution to the institute will be made and, if the Institute is satisfied with your performance, it may either extend the period of your term or consider offering you a permanent position if possible. In all other matters like, leave, provident Fund, Gratuity, medical benefits, etc., you will be eligible for the full benefits as applicable to permanent staff."

2. By another letter dated 7-6-76 the Institute acting through its Director (respondent-2) terminated the services of the petitioner in exercise of the right of termination under paragraph 2 of the letter of appointment extracted above. Aggrieved by the order passed, the petitioner presented W.P. No. 4698 of 1976 before this Court which came to be disposed of on 30th August by Malimath J., by a considered order. In the said earlier proceedings before this Court it was put to the petitioner that it would be more appropriate for him to pursue his appeal to the General Body of the Society under Rule 23 of the Code of Conduct and Disciplinary Rules of the Institute. Accepting the suggestion made by the Court, the petitioner withdrew that petition and pursued the matter in appeal before the General Body of the Society-Institute.

3. In the meanwhile, the petitioner had also presented an appeal before the 3rd respondent-Education Appellate Tribunal in M.A. (E.A.T.) 24 of 1976 on 30-7-76. That also came to be withdrawn unconditionally on 21-10-76.

4. The General Body (Society) to which appeal was preferred in accordance with the Code of Conduct and Disciplinary Rules rejected the appeal stating as follows:

"(a) Your service was terminated by the Board as per the terms of the contract of appointment, and that you have been tendered three months' salary in lieu of notice.

(b) There was no stigma attached to the termination as it formed part of the contract which has been accepted by you at the time of joining the Institute."

This decision was communicated by the 3rd respondent by his letter dated 16th November, 1976. Aggrieved by the rejection of the appeal, the petitioner presented the appeal before the 3rd respondent for the second time in M.A. (E.A.T.) 3 of 1977 challenging the decision of the General Body in appeal as well as the original order of termination inter alia contending that the order of termination was not a termination simpliciter as held by the Appellate authority but it was in fact an order of termination made by the 2nd respondent-Director on account of certain ill-will borne by the 2nd respondent towards the petitioner. The ill-will appears to have arisen according to the pleadings in the appeal before the 3rd respondent on account of the hostility of the 2nd respondent-Director towards the employees of the Institute who were Kannadigas and who on that account suggested to the petitioner that he should tender his resignation in the petitioner's own interest and on the failure of the petitioner to resign as suggested he was served with a series of memos calling upon him to produce particulars of the Doctorate degree obtained by him at the Universitaires Internationales of Luxembourg. The petitioner furnished the particulars called for. Thereafter he was informed that there was occasion to prove the particulars furnished including obtaining material from other sources. The petitioner sent an appropriate reply on 26-11-1975 requesting to be informed of the relevance of the information called for. Subsequently his services came to be terminated as aforementioned and therefore it was pleaded before the Tribunal that it was not a

simple question of exercising the right of the Institute under paragraph 2 of the letter of appointment but really an illegal act terminating the services of the petitioner after coming to the conclusion behind his back and without any enquiry that he did not possess the Doctorate degree from the Universities of Luxembourg.

6. Respondent-1 resisted the appeal before the 3rd respondent inter alia contending that the Institute was not a Private Educational Institution as defined in S. 2(d) of the Karnataka Private Educational Institution (Disciplinary and Control) Act 1975 (hereinafter referred to as the Act); that the appeal was not maintainable inasmuch as the same was filed long after the period of termination, in any event beyond three months from the date of communication of the order dated 7th June, 1976; that in any event, having withdrawn appeal No. M.A. (E.A.T.) 24 of 1976, unconditionally the second appeal presented by him was barred in terms of Order 23 Rule 1 CPC and that the termination was a termination simpliciter in exercise of the powers available under paragraph 2 of the order of appointment.

7. In the light of the rival contentions of the parties before it, the Tribunal proceeded to hear the arguments of the respective learned Counsel appearing for parties on the question of maintainability and dismissed the appeal holding that the termination of the petitioner was a termination simpliciter in accordance with the rights of parties under the letter of appointment; that the appeal was barred by limitation inasmuch as it was beyond three months from the date of communication of the order dated 7-6-76 and that the appeal was not maintainable because of the withdrawal of the earlier appeal.

8. Aggrieved by the order of dismissal as above, petitioner has moved this Court under Art. 226 of the Constitution contending that the Tribunal was in error in holding that the appeal was not maintainable for the reasons given by it inasmuch as without recording evidence to find out whether the termination simpliciter was really one of victimisation and therefore constituting removal attracting the provisions of S. 6 of the Act when there was specific pleading as to the nature of victimisation by the 2nd respondent and also an application made on 18-6-77 in I.A. No. II specifically praying for recording evidence on that question and without disposing of the same, resulting in failure to exercise the jurisdiction vested in it. It was further contended that the appeal was not barred by limitation regard being had to the fact that termination had got merged in the order of the General Body of the Society passed under Rule 23 of the Code of Conduct and Disciplinary Rules of the Institute and therefore the appeal which was filed within three months, prescribed under S. 8 of the Act from the date of the appellate order could not be said to be beyond the period of limitation prescribed.

8. Sri K. Subba Rao learned counsel for the petitioner has strongly urged before me that the Tribunal incorrectly applied the ratio of the decision of the Supreme Court in the case of the Principal v. Presiding Officer, AIR 1975 SC 344, decided

by the Supreme Court inasmuch as in that case, the question of the need for recording the evidence as to whether the order impugned before the Tribunal was what it appeared to be or purported to be or was in fact an order of removal clothed as an order of termination simpliciter did not arise and therefore that decision had no application to the facts of the petitioner's case and the Tribunal ought to have been governed by the first principles in deciding the question as to the real nature of the termination order.

9. In this behalf the learned Counsel has drawn my attention to a Division Bench decision of this Court in the case of *Neelakantia v. Desai*, (1979) 1 Kar LJ 98, wherein the learned Judges have held that in the scheme of the Act with particular reference to Ss. 6 and 7, even a termination simpliciter would confer jurisdiction on the Tribunal if the person so terminated is aggrieved by such termination. Unfortunately, the decision of the Supreme Court *supra* does not appear to have been brought to the notice of learned Judges and therefore the ruling of the Division Bench as against the ruling of the Supreme Court is not binding.

9(a). No doubt, the learned Counsel has argued that the language of the Delhi School Education Act (sub-section (2) of Section 8 thereof) was not in *pari materia* with the language of the Act with which we are concerned, and therefore, the Division Bench Ruling which specifically considered the provisions of the Act should prevail. On a perusal of the provisions contained in the Delhi Education Act, in so far as it relates to the jurisdiction of the Tribunal and the circumstances under which an aggrieved person could approach the Tribunal under that Act, I am of the view that though the language of the concerned sections are not in *pari materia* or identical with each other, they are definitely similar and one could almost come to the conclusion that Ss. 6 and 7 of the Act have been bodily lifted from Ss. 8(2) of the Delhi School Education Act.

10. Sri Subba Rao has further argued that even assuming that the language of the Act and the aforementioned Delhi Act were similar, there were vital differences between the two Acts inasmuch as the provision conferring jurisdiction on the Tribunal entertaining appeal under S. 8 of the Act provided for "an order" giving the cause of action and not necessarily an order of dismissal or one reducing an employee in rank or an order of removal. In other words, the emphasis is the failure under S. 8 to mention that "an order" passed in accordance with Ss. 6 and 7 of the Act would enlarge the jurisdiction of the Tribunal. This argument if accepted would lead to the absurd situation of conferring jurisdiction on the Tribunal to entertain any appeal whatsoever filed in respect of any order whatsoever passed by an employer of a Private Educational Institution in relation to an employee. That could not be the intention of the legislature. Ss. 6, 7 and 8 of the Act must be read together and construed in such a manner that neither the jurisdiction is enlarged nor curtailed by interpretation which would defeat the ends and objects sought to be achieved by the Act. Therefore, it is necessary to read down the word "order" occurring in S.

8 of Act to mean an order passed either under Sec. 6 or 7 and definitely one communicated under S. 7 of the Act. Therefore, the contention advanced is liable to be rejected. In another reported case *B.M.S. Edn. Trust v. Education Appellate Tribunal*, (1980) 1 Kar. LJ. 448, I have taken the view that other orders than the ones passed under S. 6 of the Act but which affect, the service conditions of the employee are also appealable under S. 8 of the Act.

10(a). Next, the learned Counsel has argued that the Tribunal was in error inasmuch as inspite of a specific prayer for recording evidence as to the maintainability of the appeal, the Tribunal had failed to do so and therefore, the impugned order was vitiated for failure to exercise the jurisdiction vested in it. In the normal circumstances, it would have been so, but in the instant case, when paragraph 2 of the letter of appointment had not been disputed by the petitioner, the Tribunal was only required to satisfy itself whether the 2nd respondent had by virtue of that right under the contract the power to terminate the contract of employment. When the contract made it clear that the appointment was one of tenure for five years and that question of permanent absorption would arise only on assessing the value of the service rendered by the petitioner at the end of four years of service and any time before such assessment or confirmation, the contract of service could be terminated in terms of paragraph 2 by giving notice of three months or salary for three months in lieu thereof would be a power available to exercise even if there were specific charges levelled against the employee. Rights flowing out of a contract entered into between parties can be agitated before the 3rd respondent-Tribunal only if it strictly falls within the ambit of Ss. 6 and 7 of the Act. From the relevant dates already pointed out such as the letter of appointment and the date of termination, it is clear that the petitioner had not earned the right to be considered for confirmation. In this position, the Tribunal below did not err in not recording evidence as to the nature and cause of victimisation. Assuming that it is a case of victimisation, the right of the employer to terminate the services cannot be curtailed if the contract otherwise provided for it, by interpreting the provisions of the Act, so as to destroy the legal character of a bilateral contract or the sanctity attached to such a contract. In other words under contractual employment the employee cannot assert any legal right which does not flow from the terms of the contract. At best, the petitioner could only have a grievance for breach of contract and claim for adequate damages in an appropriate Civil Court and in a properly framed suit. The Tribunal would not be justified in embarking on such investigation as to breach of contract and quantification of damages unless it was directly in issue before it. Even according to the learned Counsel, the Tribunal was required to record evidence only to test whether the power under the contract of employment had been exercised mala fide and not whether there was breach of the terms of the contract. In this view of the matter, the petitioner's contention in this behalf should also fail.

11. Sri Sundaraswamy learned Counsel for respondents stated before this Court that he had no other arguments than the arguments advanced before the

Tribunal and therefore, it is unnecessary to notice in detail the arguments of the respondents.

12. In the view, I have taken it is also unnecessary to deal with the other questions which have been raised and answered by the Tribunal for they become merely academic. If on the question of maintainability the petitioner has to fail, it is of no consequence to him if this Court came to a favourable conclusion in regard to other points raised.

13. It is necessary to state that the period of tenure fixed under the letter of appointment has since expired and without an order of confirmation and in that position the petitioner certainly cannot claim a permanent tenure.

14. In the result, this writ petition is dismissed. Rule issued earlier is discharged. However, the petitioner is at liberty to sue for damages so that he can make out a case of breach of contract if so advised and claim such damages as he would be entitled to in terms of the contract of employment. Parties to bear their own costs.