

(2002) 07 KAR CK 0057

In the Karnataka High Court

Case No : Civil Revision Petition No. 2477 of 2000

Poornaprajna Education Centre, Belur

APPELLANT

Vs

Pushpa

RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Karnataka Education Act, 1983 — Section 145, 92, 94

Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978 — Rule 7

Citation : (2002) 5 KarLJ 161 : (2002) 4 KCCR 2185

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Ashok Haranahalli, for the Appellant; H.C. Kavitha, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—This revision petition is filed by the petitioner-private educational institute questioning the correctness of the order dated 25-10-1999 passed in EATMA No. 2 of 1998 by the learned Additional District Judge, Hassan, and has sought for setting aside the same and prayed for dismissal of the appeal urging various grounds.

2. The respondent-teacher filed an appeal u/s 94 of the Karnataka Education Act, 1983 (for short "Act 1983"), questioning the correctness of the order of termination dated 10-4-1998 passed by the petitioner urging various grounds. The petitioner-institution filed its written statement in justification of its order of termination inter alia contending that the respondent is not a permanent employee, as such no enquiry was required to be held to relieve her from her duty; that she was working on probation and the management of the institution took decision to relieve her and as such there is no illegality committed by the petitioner-institution and that it is not liable to pay the back wages and also not liable to reinstate the respondent in view of the nature of the service and the

nature of relieving order which was impugned in the appeal. Respondent filed the rejoinder statement reiterating her contention that she was appointed as a probationer teacher and she has completed her probation period satisfactorily and her services were continued by the petitioner-institution; that she is a member of Provident Fund Scheme; the probationary period was not extended at any point of time invoking the right of the petitioner under Rule 7 of the Private Educational Institutions (Discipline and Control) Rules, 1978 (for short "Rules 1978"), and that the termination order passed by the petitioner without conducting an enquiry, the order was rendered illegal. On the basis of the pleadings of the parties, the Educational Appellate Tribunal framed one point for consideration as to whether the impugned order passed by the petitioner in relieving the respondent from her duties from the afternoon of 10-4-1998 is legal and valid. The EAT after perusing the documents produced by the parties has answered the said point against the petitioner by recording its findings at paragraphs 8 and 9 of the impugned order with reference to the appointment order holding that the respondent was working as assistant teacher from 1-6-1995; she was on probation upto 10-4-1996 and thereafter she continued to work as such from 10-4-1996 to 10-4-1998 and since her probationary period was not extended, she is deemed to be the permanent employee of the petitioner-institution. Further, finding is recorded by the EAT holding that the petitioner-institution even after giving opportunity did not choose to produce the concerned file and proved that the respondent was a temporary employee as contended by it in its written statement. Therefore, the EAT has held that the termination order is not justified and has accordingly set aside the termination order and passed the order of reinstatement with full salary from the date of termination till the date of her reinstatement. Being aggrieved by the same, the petitioner-institution has preferred this revision petition urging various grounds.

3. It is contended by the learned Counsel Mr. Ashok Haranahalli for the petitioner that the petitioner was appointed on temporary basis and in the absence of issuing confirmation order of her appointment as a permanent teacher in favour of the respondent, the finding recorded by the EAT holding that she is deemed to be confirmed in service as a permanent employee is in contravention of the provisions of the Act 1983 and Rule 7 of the Rules 1978. Further, placing reliance upon the judgment of this Court in the case of Dr. Karanam Mallikarjuna Rao Vs. The Educational Appellate Tribunal, Belgaum and Others, , it is contended that Section 92 of the Act 1983 applies to a permanent employee of the educational institution; that the institution has got every right to remove the temporary employee as per the terms of the appointment order and as such enquiry was not necessary to be held prior to passing the order of termination, as the petitioner is governed by the terms and conditions of the appointment order given by it to the respondent. Lastly, it is contended that after the termination order on enquiry, it was found that the respondent was working as a teacher in the Indian

English Medium School, Hanbal, Sakleshpur Taluk, Hassan District and as such

she was gainfully employed and therefore she is not entitled for back salary as awarded by the EAT. Therefore, it is urged that this Court in exercise of the power u/s 115 of the CPC can modify the back wages awarded by the EAT if this Court were to come to the conclusion that this is not a fit case for interference with the order of reinstatement with consequential benefits awarded by the EAT.

4. The learned Counsel Smt. H.C. Kavitha for the respondent-teacher sought to justify the findings recorded in the impugned order by the EAT and submitted that the Tribunal being the fact finding authority on the basis of the material documents produced before it by the parties and in the absence of the evidence required to be adduced by the institution regarding their stand taken in its statement in justification of its order of termination has rightly recorded a finding of fact holding that she is a permanent employee; the said finding is in conformity with Rule 7 of the Rules 1978 and the decision of the Supreme Court in the case of State of Punjab Vs. Dharam Singh, which has been reiterated by the Supreme Court in the case of Karnataka State Road Tpt. Corporation and Another Vs. S. Manjunath, It is further submitted that this Court in the case of President, Golden Valley Education. Trust, Oorgaum, K.G.F. v. The District Judge and Educational Appellate Tribunal, Kolar and Ors. ILR 1979 Kar. 526, has held that the procedure required to be followed by the Labour Court u/s 11 of the Industrial Disputes Act has to be made applicable to the procedure before the EAT under the Act 1975. It is further submitted that despite the fact that the petitioner-institution was given opportunity to produce the record and justify its action, the petitioner did not produce the same and as such the EAT has rightly recorded a finding of fact holding that the petitioner is the permanent employee and since the gainful employment of the respondent after she was relieved from service was not proved, the EAT exercising its jurisdiction and power has rightly set aside the order of termination and awarded reinstatement with full back wages, which is in conformity with the law laid down by the Supreme Court and as such this Court in exercise of its revisional jurisdiction cannot receive additional evidence and record the findings holding that the respondent was gainfully employed and as such she is not entitled for back wages annulling the findings recorded by the EAT in this regard in the impugned order.

5. With reference to the above said rival contentions urged by the parties, I have examined the correctness of the findings of the EAT with reference to the appointment order and the termination order produced before the EAT to find out as to whether the findings recorded by the EAT is based on documents before it and the same is in accordance with the provisions of the Act, 1983 and the Rules, 1978.

6. By a careful reading of the appointment order, it is clear that there is a specific mention that the respondent was appointed as a probationer teacher. The appointment of the respondent by the petitioner is against the permanent post is governed by the Rules. Rule 7 of the Rules, 1978 has got application to this case in view of Sub-section (3) of Section 146 of the Act, 1983. The Act, 1983 came

into force with effect from 20-1-1995. As on the date of the appointment order, the State Government has framed the Rules in exercise of its power under the repealed Karnataka Private Educational Institutions Act of 1975. In the absence of the Rules required to be framed under the provisions of Section 145 of the Act, 1983, the Rules of 1978 framed under the repealed Act of 1975 are applicable to the Private Education Institutions with regard to the service conditions of the employees and for other purposes. Rule 7 of the Rules 1978 clearly states that the probationary period is for a period of one year and the same can be extended by another six months in writing by the Appointing Authority. Further, there is no provision under Rule 7 of the Rules 1978 that the probationary period of an employee shall continue till the said probationary period is confirmed in writing. In the instant case, it is undisputed fact that there is no extension of the probationary period. It is also an undisputed fact that the respondent has been continued in service pursuant to the appointment order till 10-4-1998. The similar provision of rule similar to the above said rule has fell for consideration before the Supreme Court in the case of State of Punjab, *supra*, wherein the Supreme Court has categorically held at paragraphs 8 and 9 that if the probation Rules are silent regarding the confirmation of period of probation of an employee in writing, after the expiry of the probationary period, the probationary period of such an employee is deemed to be confirmed. The said judgment has been reiterated by the Supreme Court in the case of Karnataka State Road Transport Corporation, *supra*, upon which the learned Counsel for the respondent has rightly placed reliance. In this view of the matter, though these aspects are not referred to in detail in the impugned order, the conclusions arrived at by the Tribunal in recording the finding that the respondent is the permanent employee is perfectly legal and valid. On the basis of the said finding, the Tribunal has proceeded to examine as to whether the termination was justified or not. The Tribunal with reference to the contention of the petitioner that enquiry in respect of a temporary employee and that the respondent was a temporary teacher and therefore it was not required to conduct enquiry in the finding recorded at paragraph 9 and held that the petitioner has not substantiated its case that the petitioner was an temporary employee and it has not adduced evidence in that regard. Further, finding is recorded that it was incumbent upon the petitioner-institution to conduct an enquiry before passing the termination order as contemplated u/s 92 of the Act, 1983. The said finding was totally uncalled for by the EAT for the reason that the order of termination discloses that it is the termination simpliciter and not for any misconduct and if it is the case of termination simpliciter, the termination of an employee otherwise for misconduct would amounts to retrenchment as defined u/s 2(oo) of the Industrial Disputes Act, 1947. The said definition has to be borrowed as there is no definition of retrenchment under the provisions of Karnataka Education Act, as the definition of retrenchment of the Industrial Disputes Act has to be borrowed as the said Act is similar statutory enactment and also in view of the fact that this Court in Golden Valley's case, *supra*, has after interpreting the provisions of the Karnataka Private Educational Institutions (Discipline and

Control) Act, 1975 and Sections 10, 11 and 11-A of the Industrial Disputes Act has clearly laid down the law with regard to the procedure required to be followed in the appeals filed by the aggrieved parties.

7. Further, Section 98(1) of the Act 1983, clearly states that where the retrenchment of an employee is rendered necessary by the Governing Council or Competent Authority consequent on any change relating to education or course of instruction or due to any other reason, such retrenchment may be effected with the prior approval of the Competent Authority or the next higher authority, as the case may be. The Competent Authority as defined u/s 2(7) of the Act 1983 reads thus.-

"Section 7. Competent Authority.--The State Government appoints a Competent Authority for the purpose of (i) performing functions and discharging duties under all or any provisions of this Act; or (ii) for such other purposes to carry out the object and purposes of this Act, with regard to any area, class of institutions as the case may. The State Government has already the existing infrastructure in its Education Department, and therefore, the existing District Education Officer or his subordinates, Assistant Education Officers are appointed as Competent Authority for the routine work of inspection, overseeing the examination, attendance in schools, discipline supervision over the functioning of the schools and their teachers, and so forth. In Karnataka State, primary education is under the control and supervision of the Commissioner for Public Instruction, High School or Secondary Education under the Secondary Board of Education, the two-years Pre-University Course under the Pre-University Board, and the Director for Collegiate Education is looking after the degree courses run by the degree and first grade colleges".

By a perusal of the relieving order issued by the petitioner, to the respondent it is a clear case of termination of the services of respondent from her services. It is not preceded by the approval of the Competent Authority notified by the State Government under the Notification. Therefore, the termination order passed by the petitioner is a nullity in the eye of law as the termination order requires prior approval which is the statutory and mandatory duty cast upon the petitioner. If the termination order is issued without complying with the mandatory and statutory duty, as provided under the above said provisions of the Act then the termination order is a nullity in the eye of law as has been held by the Supreme Court in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, , wherein the Supreme Court has referred to the entire case-law right from Hariprasad Shivshankar Shukla Vs. A.D. Divikar, . This important aspect of the matter has not been considered by the Tribunal though it has come to the right conclusion in holding that the termination order passed against the respondent is not justified. The said order of the Tribunal is supplemented with the reasons of this Court assigned in this order. Therefore, the finding recorded by the Tribunal that the termination order is not justified is perfectly legal and valid, which cannot be

interfered with by this Court in exercise of the power u/s 115 as no case is made out to show that neither the findings nor the conclusions of the Tribunal are vitiated either on account illegality or procedural irregularity.

8. The next question for consideration is as to whether the Tribunal was justified in awarding back wages and consequential benefits. As could be seen from the impugned order, both the parties have not adduced evidence on merits of the case including the gainful employment of the respondent. As per the points formulated by the Tribunal and the law laid down by this Court in *Golden Valley's* case, *supra* and also the judgments of the Supreme Court, the termination order passed by the petitioner-employer is the positive action requires to be justified by it before the Tribunal though that order is challenged by the respondent-appellant before the Tribunal. In the absence of the evidence before the Tribunal either regarding the justification of the termination order and gainful employment of the respondent for denial of back wages, the order of the Tribunal is justified as it has rightly set aside the termination order and awarded reinstatement of the respondent with full back wages and the same is in conformity with the judgment of the Supreme Court wherein the Apex Court in the catena of cases has clearly held that when once the order of termination is set aside, the normal rule is award all the consequential benefits including full back wages except in exceptional cases wherein it is shown that either the employee is gainfully employed or petitioner is not in a position to pay back salary to the employee. The petitioner has not produced any evidence before the Tribunal to show that either respondent was gainfully employed and it is not in a position to pay back salary and therefore she is not entitled for the salary. However, the contention urged in this regard by the learned Counsel for respondent in this revision petition is that petitioner is not entitled for back salary as she has been in employment is the averment pleaded in the petition and the document produced in this regard. Though this Court cannot receive additional evidence in this petition and cannot go behind the findings recorded by the Tribunal, however to do complete justice to the parties and having regard to the fact that the petitioner has already paid 50% of the back wages to the respondent pursuant to the interim order granted by this Court and the respondent has not controverted regarding her gainful employment after the order of termination was passed by the petitioner, as pleaded by the petitioner this Court feels that the impugned order requires to be modified by reducing to 50% from full back wages. However, it is made clear that the award of full back wages by the Tribunal is modified by this Court in exercise of its power having regard to the facts of the case by considering the additional statement of fact not as a matter of right of the petitioner but in order to do complete justice to the parties. However, in respect of other findings and the conclusions recorded and arrived by the Tribunal, this Court is not inclined to interfere with the impugned order, as the same are perfectly legal and valid and therefore the same do not call for interference.

9. With the above said modification of the order regarding back wages, this

revision petition is dismissed confirming the order of the Tribunal in holding that the order of termination passed against respondent is not legal as she is deemed permanent employee in the petitioner-institution.