

(2016) 04 KAR CK 0101

In the Karnataka High Court

Case No : Writ Petition No. 9288 of 2016 (S-RES)

President, Kalpatharu Vidya Samsthe (R)

APPELLANT

Vs

Dr. R. Obaleshappa

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Citation : (2016) 3 AirKarR 399

Hon'ble Judges : Raghvendra S. Chauhan, J.

Bench : Single Bench

Advocate : Sri Satyanarayana P. Hogade, Advocate, for the Appellant; Sri Subramanya Bhat M, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Raghvendra S. Chauhan, J.—The petitioners have challenged the legality of the order dated 28.1.2016, passed by the Education Appellate Tribunal & Court of Prl. District and Sessions Judge, Tumakuru (for short "the Tribunal"), whereby the learned Tribunal has set aside the dismissal order of the respondent, and has directed the petitioner to reinstate the respondent to his original post. He has also directed that the respondent is entitled to arrears of salary, with all consequential benefits as may be admissible during the period of dismissal from service till his reinstatement to his original post.

2. Briefly the facts of the case are that the petitioner- Institution is running schools and colleges including College of Education (B.Ed.) By order dated 29.1.2005, it had appointed the respondent, Dr. R. Obaleshappa, as the Principal to the College of Education run by the petitioner's Institution. A team of National Council for Teachers Education (for short "NCTE") had inspected the college, and had found certain deficiencies in the college. Therefore. on 21.5.2012, the NCTE had issued a show cause notice to the college. One of the deficiencies pointed out by the NCTE is that "the Principal is not eligible for the post of Principal as the Institution has not submitted the experience certificate and copies of mark sheets in respect of the Principal". Therefore, the college issued a show cause

notice to the respondent on 29.6.2012 asking the respondent to submit his mark sheets. The respondent submitted his reply on 3.7.2012. Subsequently, by order dated 31.7.2012, the respondent was dismissed from the post of Principal with immediate effect. Since the respondent was aggrieved by the dismissal order dated 31.7.2012, he filed an appeal before the learned Tribunal. By order dated 28.1.2016, the learned Tribunal set aside the dismissal order in the above mentioned terms. Hence, this petition before this Court.

3. Mr. Satyanarayana P. Hogade, the learned counsel for the petitioner, has vehemently contended that the termination order dated 31.7.2012 was a dismissal order simpliciter. Since it did not cast any stigma on the respondent, the appeal under Section 94 of the Karnataka Education Act, 1983 (for short "the Act"), was not even maintainable. Therefore, the learned Tribunal should have rejected the appeal on this basis alone. In order to buttress his plea, the learned counsel has relied on the case of Management of M.S. Ramaiah Medical College and Hospital v. Dr. M. Somashekar, ILK 2004 Kar 37J.

Secondly, the college is legally bound by the norms established by the NCTE. Since the respondent did not fulfil the norms, the college was justified in dismissing him from service.

4. On the other hand, Mr. Subramanya Bhat, the learned counsel for the respondent, has submitted that the dismissal order dated 31.7.2012 is a stigmatic one as the college has alleged that the respondent had submitted false information. Therefore, it has tarnished the respondent's character as the Principal of the college, and that too without affording an opportunity of hearing. Since the dismissal order has a stigmatic character, the appeal under Section 94 of the Act was certainly maintainable.

Secondly, the learned Tribunal was justified in concluding that prior to passing of the dismissal order, the college did not hold a departmental enquiry. Therefore, the right of the respondent under the principles of natural justice were clearly violated.

Lastly, even the dismissal order has not been approved by the competent authority. Thus, the learned Tribunal was justified in setting aside the dismissal order and directing reinstatement in the aforementioned terms.

5. Heard the learned counsel for the parties and perused the impugned order and the records.

6. A bare perusal of the dismissal order dated 31.7.2012 clearly reveals that certain allegations have been made against the respondent by the college which are as under :

So you have given false information to NCTE. Being in a responsible position as Principal the act of yours is one which shows that you have not been diligent and intentionally furnished false information. Accordingly, show cause notice was issued to you dated 29-6-2012 bearing No. 203/2012-2013 for which you have

issued a reply dated 3-7-2012 under your letter No. 106/2011-2012. The said reply clearly indicates that you have secured only 52% and 54.6% in M.A., and M.Ed., respectively and you have admitted that the information furnished to NCTE is wrong. But you have stated that the said information is furnished by oversight both of you and your clerk which cannot be accepted at all. It is pertinent to note that you have deprived an opportunity of getting suitable eligible candidate by furnishing false information which is against law. It is very clear that intentionally in order to see that you are eligible for the post of Principal you have given wrong information and it cannot be considered to be by oversight at all.

7. A bare perusal of the portion of the dismissal order, quoted above, clearly reveals that a stigma is being cast on the truthfulness of the respondent, and in very polite terms the respondent is being characterised as "a liar". Before such a stigma could be labelled upon the respondent, a full Hedged opportunity should have been given by the college to the respondent to clarify his position. Therefore, the learned counsel for the petitioner is unjustified in claiming that the dismissal order dated 31.7.2012 is merely a dismissal order simpliciter and does not cast any stigma on the respondent.

8. In the case of Management of M.S. Ramaiah Medical College and Hospital, 2004 AIR Kant HCR 758 (supra), this Court has merely held that the termination is a termination simpliciter and appeal would not lie under Section 94(1) of the Act. However, this is not a case of termination simpliciter, especially when a stigma has been cast upon the respondent. Therefore, the case of the Management of M.S. Ramaiah Medical College and Hospital (supra), does not come to the rescue of the petitioner.

9. A bare perusal of the impugned order clearly reveals that the appointment of the petitioner, as a Principal of the college, was approved by the Deputy Registrar of the Tumakuru University. The order further reveals that even the dismissal order has not been approved by the competent authority.

10. Moreover, according to the learned Tribunal since no departmental enquiry was held, the right of the respondent under the principles of natural justice has been violated. It is for these three reasons that the learned Tribunal was justified in setting aside : the dismissal order. Since the learned Tribunal has given cogent reasons, and since there is no illegality in the impugned order, this Court does not find any merit in the writ petition. It is hereby dismissed. No order as to costs.