

(2002) 11 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No"s. 33466-67 of 1998

President/Secretary District Madakari Nayaka Association and
Another

APPELLANT

Vs

Educational Appellate Tribunal and Others

RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Government Order, 1981 — Rule 7

Citation : (2003) 1 KCCR 231

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : M. Raghavendrachar, for the Appellant; Shoba Patil, High Court Government Pleader for Respondents 1, 4 and 5 and Jayakumar S. Patil, for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The Petitioners are President and Principal of Maharaja Madakarinayaka First Grade College, Chitradurga. They

have filed these Writ Petitions seeking to quash the common order at Annexure-M passed by the Educational Appellate Tribunal allowing the

appeals in M.A. Nos. 12 and 13/1994 filed by Respondents 3 and 2 respectively, setting aside the Orders of termination dated 1.4.1993 and

directing payment of salary from the date of their joining into service upto 8.10.1992 by the Petitioners herein and thereafter; by the Deputy

Director of Collegiate Education, Bangalore and the Regional Deputy Director of Collegiate Education, Mysore, who were Respondents 3 and 4

in the appeals. The appeals came to be filed by Respondents 2 and 3 herein against the order dated 1.4.1993 intimating that they have been

relieved from the post of Lecturers.

2. Mr. M. Raghavendrachar, learned Counsel for the Petitioners contends that there was no approval of appointment of Respondents 2 and 3.

Even Smt. Shobha Patil, learned Government pleader also made the same submission. But the same is wholly untenable as Petitioners themselves

have produced Annexure-N dated 8.10.1992 by which the appointment of Respondents 2 and 3 have been approved. The approval was granted

relaxing the economy Order. This document belies the submission made in this regard. The Educational Appellate Tribunal (EAT) has considered

this aspect in paragraph 19 of its judgment and has rightly held that there was no force in the contention that there was no approval of the

appointments. Thus, the contention does not hold water and the same is wholly untenable.

3. The next contention advanced by the learned Counsel for the Petitioners is that the EAT has wrongly applied Rule 7 of the Government Order

of November 1981. According to him, the Petitioners-institution had closed the Science combination for want of requisite student strength and

hence question of considering transfer of these two lecturers does not arise. At page 33 of the judgment the EAT has considered this aspect. It is

held that RW-1 has admitted about the management had addressed a letter to the Director of Collegiate Education that four Lecturers were excess

as there was no work-load and sought for their transfer to some other college. It was also found that no such letter was addressed in respect of the

present two Lecturers. Admittedly, the Petitioners-institution is an aided institution. No communication is received from the Government to put an

end to the services of the Respondents 2 and 3. Rule 7 of the Government Order of 1981 prescribes transfer of such posts to some other College.

No such effort is made in the case of Respondents 2 and 3. The EAT has rightly applied Rule 7 of the Government Order and hence the

contention of the learned Counsel for the Petitioners deserves rejection.

4. The EAT has elaborately considered all aspects of the case and discussed the case law on the subject and recorded its findings by assigning

valid and cogent reasons. The EAT being fact finding authority, the findings recorded by it on the basis of the material placed on record cannot be

substituted by this Court in exercise of its Writ jurisdiction. Both the learned Counsel for the Petitioners and the learned Government Pleader were

unable to show that the findings of the EAT are either erroneous or perverse. Hence, no interference is warranted in this case.

5. Learned Government Pleader submits that the Government filed C.R.P. No. 1452/1998 against the Order passed by the EAT and the same

was dismissed as not maintainable with liberty to avail the remedy available under law. Thereafter, Writ petition was filed and the same is pending.

Pendency of the said Writ petition shall not come in the way of disposal of these Writ petitions. The said Writ petition will be considered

independently on its merits or it will be disposed of by virtue of this Order.

6. Mr. Raghavendrachar, learned Counsel for the Petitioners sought to argue that the termination of services of Respondents 2 and 3 amounts to

"retrenchment" and they are entitled only to retrenchment compensation, which cannot be accepted. The said contention was not raised before the

EAT. The same is raised for the first time before this Court. The only duty cast upon this Court is to consider whether the impugned judgment is

legal, valid and in accordance with law. Since that has been considered, there is no scope to consider the fresh contention sought to be raised as

the same requires evidence to record the finding on that plea. In the absence of evidence in this regard it is not possible for this Court to entertain

the above said ground.

7. In the result, the Writ Petitions are dismissed.