

(1993) 09 KAR CK 0036
In the Karnataka High Court
Case No : W.A. No. 1176 of 1993

Pundalika Shenoy

APPELLANT

Vs

Canara High School Association

RESPONDENT

Date of Decision : 09-09-1993

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 6, 8, 8 (1)

Citation : (1993) ILR (Kar) 2685 : (1994) 1 KarLJ 40

Hon'ble Judges : S.B. Majmudar, C.J.; S. Venkataraman, J

Bench : Division Bench

Advocate : V.P. Kulkarni, for the Appellant; S.R. Nayak, Government Advocate for R-3 to R-5, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Majmudar, C.J.—The appellant herein at the relevant time was working as Head Master in an aided Private Educational Institution which was running a school named "Canara High School" at Urva. The Management had reverted the appellant from the post of Head Master after holding a disciplinary enquiry. We are not concerned with the merits of this decision. The appellant had challenged the said decision by filing an appeal u/s 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, to the Educational Appellate Tribunal constituted under that Act. He had prayed for stay of the reversion order which was not granted. The appeal is still pending for decision on merits. The appellant, in the meantime, had also approached the Deputy Director of Public Instructions functioning under the Grant-in-Aid Code Rules, making grievance about the very same order and the Deputy Director gave a direction to the Management that the Management should stay the operation of the order of reversion. It is that order which brought the Management to this Court by way of Writ Petition.

2. The learned Single Judge, after hearing the parties, took the view that once

the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, has come- into force and the Educational Appellate Tribunal is constituted for adjudication of disputes between the Management of Private Educational Institutions and its employees, the Deputy Director could not have exercised any jurisdiction and could not have interfered. The appellant had to pursue his remedy before the Tribunal which he has already invoked. He, therefore, allowed the Writ Petition and set-aside the impugned order, Annexure-"A", passed by the Deputy Director, and the communication, Annexure-"B", communicated to the Management.

3. In this appeal it is vehemently contended by the learned Counsel for the reverted Head Master, namely, the appellant herein, that merely because the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 has come into force and the Educational Appellate Tribunal is constituted, the jurisdiction vested in the Deputy Director under the Grant-in-Aid Code is not divested. It is difficult to appreciate this contention. The reason is obvious. The Grant-in-Aid Code rules have no statutory force. They applied at a time when the field was not covered by any statutory provisions. But after the advent of the 1975 Karnataka Act, the field, so far as disciplinary matters are concerned, is occupied by the Act. Section 6 of the Act lays down the procedure as to how the services of an employee can be terminated by the Management of a Private Educational Institution. Even if the procedure is followed and an adverse order is passed by the Management against an employee, the concerned employee has a right of appeal u/s 8. Sub-section (1) of Section 8 lays down that any employee aggrieved by an order of the Board of Management may within three months from the date of communication of the order, appeal u/s 8. Sub-section (1) of Section 8 lays down that 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 u/s 10. Sub-section (4) of Section 10 of the Act provides that the Educational Appellate Tribunal shall, for the purposes of the disposal of the appeals so referred under the Act, have the same powers as are vested in a Court of Appeal under the Code of Civil Procedure, 1908, and shall have the power to stay the operation of the order appealed against on such terms as it may think fit, and can also pass appropriate final orders. Section 11 of the Act lays down that no Civil Court shall have jurisdiction in respect of any matter in relation to which the Educational Appellate Tribunal is empowered by the Act to exercise any power. Section 16 lays down that all appeals and all proceedings pending before the Educational Appellate Tribunal constituted under the Mysore Private Educational Institutions (Discipline and Control) Act, 1973, immediately before the date of commencement of the Act, shall stand transferred to the Educational Appellate Tribunal under the Act. As per Section 3 of the Act, the State Government shall, after previous publication of the draft for not less than one month, make, by notification, model rules in respect of matters relating to the code of conduct and the conditions of service of employees. In exercise of this power, statutory rules

have been framed by the State of Karnataka called "the Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978". It becomes, therefore, clear that in the matters pertaining to discipline and control in connection with the employees of Private Educational Institutions in Karnataka State, the field is completely occupied by the Act and the Rules. It is, therefore, difficult to appreciate how the Grant-in-Aid Code Rules which might have earlier occupied this very field, could still operate when even the Civil Court's jurisdiction is barred under the Act. The Act is a complete code on the topic of discipline and control regulating the relationship between the employees on the one hand and the Private Educational Institutions governed by the Act on the other. Therefore, by necessary implication, on these topics which are covered by the Act and the statutory rules, the authorities functioning under the Grant-in-Aid Code rules cannot exercise any jurisdiction. Otherwise, there will be two parallel proceedings before two authorities and the proceedings may result in conflicting decisions. Consequently, no fault can be found with the Decision of the learned Single Judge on the facts of the present case. We may also in this connection usefully refer to a Decision of the learned Single Judge of this Court in *SRI SHARIFF SHIVAYOGI & GURU GOBIND SHIVAYOGI PANCHAGNIMATH TRUST v. JT. DIRECTOR OF PUBLIC INSTRUCTION AND ANR.* 1981 (1) KarLJ 589. In that case, an employee was sought to be suspended pending enquiry by the Management of a Private Educational Institution. As per the requirements of Rule 52(6) of the Grant-in-Aid Code, the order of suspension of a teacher had to be approved by the Joint Director of Public Instruction. The Joint Director refused to approve the suspension, So far as that was concerned, upto that stage there was no difficulty. He had the jurisdiction to go into the question whether suspension pending enquiry should be approved or not. Such question would not be covered by Section 8 of the Act. But while doing so the Joint Director also called upon the Management to reinstate the teacher. The learned Single Judge had to examine the question whether that part of the order was within the jurisdiction of the Joint Director or not. In this connection, in Para-8 of the Decision, the learned Single Judge has observed that if the order of the Joint Director is understood as an order issuing a direction for reinstating the teacher, notwithstanding the fact that the Management decided to place him under suspension the order has to be declared as without jurisdiction as the power is conferred only on the Educational Appellate Tribunal constituted under the Act. It is obvious that if the Joint Director refuses to approve the suspension, two courses will be open to the Management. They may either reinstate the employee pending enquiry or they may not. If the Management decides to reinstate the employee, it would be the decision of the Management and then the teacher can work and get full salary. But despite the non-approval of the suspension pending enquiry by the Joint Director, if the Management decides not to reinstate him, then the Management has to pay full salary even though without taking work from him and that salary would not be covered by the grant. That will be the only effect of non-approval of the suspension order pending enquiry by the Joint Director under the Grant-in-Aid Code and which is not followed by an order of reinstatement by the

Management. But it cannot be said that the Joint Director can call upon the Management to necessarily reinstate such teacher whose suspension pending enquiry is not approved by him. Therefore, the observation of the learned Single Judge in this connection cannot be found fault with. It clearly flows from the scheme on the Grant-in-Aid Code on the one hand and the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, under which the Tribunal is constituted on the other.

4. We may mention here that Sri S.R. Nayak, the learned High Court Government Advocate appearing for respondents Nos. 3, 4 and 5, also stated to us that after the Act has been brought on the statute book, the authorities under the Grant-in-Aid Code will not have jurisdiction to interfere with the penalty orders like the reversion in the present case after due enquiry by the Management and the only course open to the appellant is to file an appeal before the Tribunal which he has done.

5. For all the above reasons, we see no substance in this Appeal. It is, therefore, dismissed. We, however, make it clear that these proceedings or anything observed in this Decision will not come in the way of the appellant pursuing his remedy of appeal which he has already preferred against the reversion order before the Tribunal and the Tribunal will decide the appeal on its merits without in any way being influenced by the Decision in this Appeal.