

(2013) 03 KAR CK 0143

In the Karnataka High Court

Case No : Writ Appeal No's. 50589-50601 of 2012 S-RES C/w. Writ Appeal No's. 50539-50543 and 50546-50555 of 2012 S-RES

S. Venkateshwar Rao and Others

APPELLANT

Vs

The Gurunanak Dev Polytechnic College, Sri. Nanak Jhira
Saheb Foundation and The Director Board of Technical
Education
 Sri. Nanak Jhira Saheb Foundation Vs S.
Venkateshwar Rao and Others

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Constitution of India, 1950 — Article 226, 227
Karnataka High Court Act, 1961 — Section 4

Citation : (2013) 03 KAR CK 0143

Hon'ble Judges : Huluvadi G. Ramesh, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : P. Vilas Kumar and Shivalok N. Talawar, in W.A. Nos. 50589-50601 of 2012 and V. Hariharan and Ameet Kumar Deshpande, in Writ Appeal Nos. 50539-50543 and 50546-50555 of 2012, for the Appellant; V. Hariharan and Ameet Kumar Deshpande, for R1 and R2 and Sri. Manavendra Reddy, GA for R3 in W.A. Nos. 50589-50601 of 2012 and GA for R1, R2 and R17 in Writ Appeal Nos. 50539-50543 and 50546-50555 of 2012 and Sri. P. Vilas Kumar, for R1-R15 in Writ Appeal Nos. 50539-50543 and 50546-50555 of 2012, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Though the matters have come up for orders, with the consent of counsel appearing for the parties, the matters are taken up for disposal. One order passed by the learned single Judge of this court in writ petition Nos. 80547-561/2010 - petitions at the instance of persons who are erstwhile employees in the Educational Institution, namely, The Gurunanak Dev Polytechnic College, Bidar, figuring as first respondent in these writ petitions, managed by the second respondent-Sri Nanak Jhira Saheb Foundation, has given rise to two sets of writ appeals, one at the instance of the writ petitioners in writ

appeal Nos. 50589-601/2012 and another set of writ appeals in writ appeal Nos. 50539-50543 & 50545-50555/2012 by the Institution and its Management, questioning the very order of remand passed by the learned single Judge in the writ petitions at the instance of erstwhile employees, remanding the matter to the Educational Appellate Tribunal [for short "the Tribunal"] after setting aside the order of dismissal dated 21.12.2009 passed by Educational Appellate Tribunal in EAT No. 1/02 in the appeal that had been preferred by the writ petitioners questioning their so called termination of service as per notice served on them by the Management apprising that their services are dispensed with as per intimation dated 6.2.2002.

2. Writ petitioners had questioned this communication saying that it is an order of dismissal or removal, it amounts to one such though not depicted in that language and therefore they are entitled to prefer an appeal before the Tribunal u/s 94 of the Karnataka Education Act, 1983 [for short "the Act"].

3. For the purpose of the present appeals, we would like to confine to the bare facts and minimum notice of submissions made at the Bar as long drawn arguments are addressed both on facts and on law on both sides and relying upon number of authorities rendered either in the context of Education Acts of the States and more in the context of Judgments of the Supreme Court rendered by interpreting the provisions of the Industrial Disputes Act, 1947.

4. The Management had dispensed with the services of the employees on the closure of the Institution as it found that the students' strength in the classes had come down drastically and it had dropped to less than the number of teachers and therefore the Management could not run the Institution. It is in this background, the services of the staff, in all numbering "67" had been dispensed with and amongst them, 63 persons had approached the Tribunal questioning dispensation of their services by the Management.

5. It was the version of the Management that the students strength on the other hand had fallen to "27" and the Management could not continue to run the Institution for such meager number of students, to continue impart education for such small number of students.

6. The appeal by the employees before the Tribunal was mainly on the premise that they had joined the Institution to serve the Institution till the age of superannuation i.e., age of 58 years and service conditions did indicate that they can continue to serve the Institution till the age of retirement; that the Management was in the habit of giving inducements to them periodically by increasing the salaries, giving other benefits and were made to work with zeal and enthusiasm; that the Management having taken advantage of their good work had not continued their services till their superannuation, but had put it to premature end; that when the Institution was running, the Management had made good profits in large amount; that it was charging exorbitant fee collecting donations and had in fact several other institutions were run by the very

Management and making good profits out of them; that the employees viewing such a situation, had sought for enhancement of their salaries, but the Management in turn was postponing the same; that as the Institution wherein the employees were working was not an aided institution, the Management had no incentive in continuing the Institution and therefore the Management with a view to terminate the services, had devised the course of closing down the Institution; that it was with malafide intention; that when the Management was not receiving aid, it can terminate the services of the present employees and in their place, recruit others for consideration etc; that the employees principally contended that closure was a malafide one.

7. The appeal had been contested by the Management and the Institution contending that there was migration of employees from this institution to other institutions; that the employees whenever they found greener pastures left the institution; that there was no guarantee that the employees would continue to stick to the institution till they attain age of superannuation; that the service conditions of the employees was made known at the time of appointing and their services could be dispensed with at any time by giving three months notice on either side; that the effort on the part of the institution to get Government aid extended for them was not successful and in this background, when the college found that for want of commensurate number of students, there was no option except to close down the institution; that notice as contemplated u/s 105 of the Act had been issued and it is only thereafter the institution was closed down and all the employees had been paid compensation; that they pleaded for dismissal of the appeal and good number of authorities were cited even before the Tribunal on either side.

8. The Management also pleaded that the employees had all received three months notice with amount; that it is later they have turned around and come up with the appeal; that they never agitated before the Management saying that either it is insufficient or not commensurate.

9. It was pointed out by the Management that the prayer in the appeal was to set aside the order of dismissal dated 6.2.2002 and to grant consequential benefits and even as per the provisions of section 99 of the Act, what the employees if at all can seek is for compensation. It was the version of the Management that compensation in terms of section 99 of the Act was also paid.

10. The Tribunal examined these aspects and had formulated the following issues:

1. Do the appellants prove that the second respondent closed down the first respondent Polytechnic college with a malafide intention and thus their removal or termination was illegal and perverse?
2. Do the respondents 1 and 2 prove that the appeal is prematured and thus not maintainable?
3. Are the appellants entitled to the relief claimed by them in the memorandum

of appeal? If so, what order?

11. After appreciating the evidence let in by the appellants and the respondent-Management and examining the submissions made at the Bar, the Tribunal answered the issues against the appellants-employees and in favour of the Management and observing that though compensation and other benefits as per the Act has already been paid, it is still open to the employees to represent the Management for better benefits and with such observation, dismissed the appeal without costs.

12. It is aggrieved by this order of dismissal suffered at the hands of the Tribunal, the employees undaunted had presented the writ petitions before this court.

13. During the pendency of the writ petitions, at the instance of the court, learned Government Pleader produced closure permission order dated 30.09.2002. This was questioned by the employees-writ petitioners that it is not bonafide order; that it has come into existence during the pendency of the writ petitions; that it is the outcome of collusion between the respondent-Management and the State Level Committee etc.

14. On behalf of the writ petitioners, various contentions had been raised, amongst which, primary one is that the decision of the Management to close down the Institution was bad in law; that a mere notice u/s 105 of the Act in itself is not the end; that it should be in terms of rule 7 of the Karnataka Educational Institutions [Control of Private Educational Institutions] Rules, 1999 in form No. II and declaration in the form of an undertaking given by the Management and the closure notice indicates that it cannot be closed down without prior permission etc., and therefore the closure even assuming that the Management has effected the same, is void ab initio and in that view of the matter, subsequent post facto collusive permission granted by the State Level Committee is of no consequence etc.

15. The learned single Judge found that the order of permission granted in favour of the Management was not a material which was placed before the Tribunal and that the High Court cannot go into the circumstances under which it has come into existence or go into the validity or otherwise of the same and therefore thought it fit to allow the writ petitions, to set aside the order of the Tribunal and remand the matter to the Tribunal.

16. It is against this order of remand, as observed earlier in this order, petitioners as well as respondents are both in appeals.

17. The matter was heard extensively and we have heard Sri. P Vilas Kumar, learned counsel for the appellants-employees who are appellants in first batch of writ appeals, namely, writ appeal Nos. 50589-50601/2012 and Sri. V Hariharan, learned counsel appearing along with Sri. Ameet Kumar Deshpande, learned counsel for the respondent-Management, who are in appeal in other batch of writ

appeals, namely, in writ appeal Nos. 50539-50543/2012.

18. Submission of Sri. Vilas Kumar, learned counsel for the appellants-employees based on the contentions as urged before the learned single Judge and placing reliance on good number of decisions is to contend that there was no valid closure notice given by the Management in the eye of law; that want of valid notice and non compliance of want of requirements of section 105 of the Act read with rule 7 in form-II renders the closure void ab initio and therefore has sought that this court should declare that there is no closure in the eye of law and consequential reliefs should be given to the employees and has placed reliance on authorities in the context of the Industrial Disputes Act, 1947 and also decision rendered in the case of "Bharatiya Samskrithi Vidya Peeta, Rep. by Bharatiya Samskrithi Vidya Peeta Vs. The Secretary to the Government of Karnataka, Education Department and Others, to submit that private institutions whether receiving grant-in-aid or otherwise stand on the same footing and therefore no discretion can be made insofar as respondent-Management is concerned though particular institution wherein the appellants-employees were serving was not an aided institution.

19. Sri. Vilas Kumar, learned counsel for the appellants-employees has also placed strong reliance on the Judgment of the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, to submit that termination of employee without following mandatory requirement is no termination in the eye of law etc and it is therefore submitted that the learned single Judge should not have remanded the matter to the Tribunal for further examination, but should have set aside the order of the Tribunal and granted consequential reliefs.

20. On the other hand, countering these submissions and supporting the grounds raised in their appeals by the Management, Sri. Hariharan, learned counsel has vehemently submitted that the learned single Judge has gone beyond the scope of the petition under Article 226/227 of the Constitution of India; that the writ court cannot function as a court of appeal either to disturb findings of facts or re-appraise evidence and to record a fresh finding; that when once the Tribunal recorded a finding indicating that the appeal of the employees should be dismissed for the reasons mentioned therein, the High Court cannot sit in appeal over the order of the Tribunal as a fact finding authority and moreover the provisions of the Act does not give scope for such examination in writ jurisdiction; that notice u/s 105 of the Act had been issued by the Management and in fact it had been produced before the Tribunal also and had been marked as Ex. R15 before the Tribunal.

21. It is submitted by Sri. Hariharan, learned counsel for the respondent. - Management that the Management is not under an obligation to continue to run the institution when the students strength had fallen far below the viable numbers; that for a mere 27 students, the Management cannot afford to run the Institution employees both teaching and non teaching staff of about 65 members

and more; that even the requirement of law is only to issue notice u/s 105 of the Act; that analogous provision 26 figuring in Andhra Pradesh Education Act, 1982 which is in pari materia with section 105 of the Karnataka Education Act, 1983, had come in for notice and interpretation before the division Bench of the Andhra Pradesh High Court in the case of C.R. Reddy Law College Employees' Association and Others Vs. Bar Council of India and Others, ; that it had been noticed even consequence of non issue of notice, it was only penalty as contemplated u/s 26 of the Andhra Pradesh Education Act, 1982 and under the Karnataka Education Act, 1983, it is a penalty in terms of section 127 of the Act is consequence of non issue of notice; that the Andhra Pradesh High Court also observed mandamus cannot be issued to private educational institutions etc.

22. It is therefore submitted that the learned single Judge could not have set aside the order of the Tribunal and at any rate, could not have remanded the matter; that the permission as produced on the part of the Government and the Director should have been accepted and the matter left at it and therefore the order of the learned single Judge should be set aside and order of the Tribunal sustained.

23. Various shades of arguments are advanced in supplementing the main contentions as noticed above and Sri. Vilas Kumar, learned counsel for the appellants-employees, has urged that the Judgment rendered by the Andhra Pradesh High Court cannot be an authority for the reason that section 105 of the Act is to be worked in terms of rule 7 framed for the purpose of section 105 of the Act and notice should be in form-II and declaration which is required to be given by the Management, makes it mandatory that prior permission should have been obtained etc.

24. We have examined submissions made at the Bar. We are sitting in appeal u/s 4 of the Karnataka High Court Act, 1961 and in respect of the order passed by the learned single Judge in exercise of writ jurisdiction basically under Article 227 of the Constitution of India, in as much as, what was before the learned single Judge for examination was an order passed by a Statutory Tribunal under the Act and therefore this court was acting in a supervisory capacity under Article 227 of the Constitution of India while examining such orders.

25. In an order passed under Article 227 of the Constitution of India by the single Bench of this court, the division Bench; does not sit in appeal as though it is a regular first appeal u/s 96 of the Civil Procedure Code, 1908, but it has a very limited scope, in the sense, a glaring overlooking of any of the aspects which was required to be examined even within the scope of Article 227 of the Constitution of India has been omitted and if so for correction and nothing more. The division Bench virtually does not sit in appeal over the order passed by the learned single Judge of this court, but examine the very order which was questioned in the petition under Article 227 of the Constitution of India in the same parameters and if there was any gap left, supplement the same as found in the order of the learned single Judge, the appellate jurisdiction can be exercised

and not to sit in appeal over the correctness of the order passed by the learned single Judge. This is not an order which is virtually passed in the exercise of original jurisdiction by the single Bench but only in the exercise of supervisory jurisdiction of this court.

26. Though several contentions are urged on behalf of the employees-writ petitioners in their appeals, we find it is not as though this court cannot sit in appeal over the order of the Tribunal. This court whether by single Bench or the division Bench will not go into the question of facts unless it is perverse finding of fact apparent on the face of the record. The questions raised before the Tribunal was basically one of the so called termination of employees by the Management.

27. On an examination of the provisions of the Act, we find that the examination cannot be in the context of the employee-employer relationship, but only in the context of the Educational Institution run by private management being run on proper lines and for regulating the Management and ultimately in the larger interest of the students' community for whose benefit, the Educational Institutions are being run. It is incidentally no doubt takes care of the employees as it is obvious on a perusal of form-II for the purpose of rule-7 in which format section 105 notice is to be issued. But, that cannot be converted into a lis between the employer and employee, more so, when closure is in the general context and not in the context of conduct of employee reviewed by the employer and an order of termination issued as a measure of punishment or penalty. We find, in the present case, there is no such order, but notice and communication to the employees was as a result of closure of the institution itself and not as an individual instance.

28. The examination cannot be from the angle of the employees alone, but in a comprehensive manner when such closure is examined by the Tribunal. But, in an appeal u/s 94 of the Act, there is not much scope for such purpose. We are of the view that the closure permission granted by the State Level Committee and placed before the single Bench during the hearing of the writ petitions cannot be characterized as an exercise of collusion between the Management and the State Level Committee etc. At any rate, closure was not with any mala fide intention for seeking betterment of their future either to be continued as employees of a closed down institution or seek rehabilitation in other sister educational institution run by the Management.

29. However, it is noticed that some of the employees, who had sought for such employment in other sister institutions, were being accommodated by the Management to the extent possible. At one stage of the arguments, it was proposed by Sri. Vilas Kumar, learned counsel for the appellants-employees that if the Management can make such alternative arrangement for the present employees also, that would satisfy the employees. Time had been taken by counsel for the Management to seek instructions and to submit on this aspect. On receiving instructions, it is submitted by Sri. Hariharan, learned counsel for the Management that amongst thirteen names in respect of whom rehabilitation

and accommodation had been sought for by the employees and furnished as per the list along with the memo placed by Sri. Vilas Kumar, learned counsel for the appellants-employees with their educational qualifications, four of them could be accommodated immediately, whose name has already been furnished to Sri. Vilas Kumar, learned counsel for the appellants-employees, namely, B. Kedarnath, Shivraj Kere, Sanjay Kumar Ghanti and Rajesh Bhatnagar who are respondents 5, 9, 13 and 15 respectively in writ appeals preferred by the Management and in respect of others as and when openings are available, it can be considered and depending upon their qualification suitable job will be provided to them.

30. Sri. Hariharan, learned counsel for the respondent-Management has made submission that without prejudice to the outcome of the appeals and even otherwise also this offer is being made and maintained and the Management will abide by the same.

31. Submission is recorded.

32. It is open to the employees to avail the offer made by the Management and if it is acceptable, may accept the same.

33. Insofar as the present appeals are concerned, we find that the order of remand made by the learned single Judge is only on the aspect of examination of the permission accorded by the State Level Committee and which had been placed before the writ court during the hearing of the matter. The matter is remanded by the single Bench of this court only for the purpose of examining the contention raised by learned counsel appearing for the petitioners that it is not a bonafide order, but is a collusive act; that it cannot be accepted as valid in law etc.

34. The remand being for limited aspect and for the reason that this exercise cannot be undertaken by the High Court in writ jurisdiction, we think it not proper to disturb this part of the order making a limited remand to the Tribunal to examine this question and it is for the employees-appellants in these writ appeals who had come up with such allegations, to make good before the Tribunal.

35. The remand being for a limited aspect and limited scope, we do not think that we should interfere with this aspect as other aspects are not disturbed by the learned single Judge of this court.

36. It is therefore that we find no reason to disturb the order passed by the learned single Judge and dismiss both batch of the writ appeals. In view of the pendency of the writ appeals, the matter could not go before the Tribunal earlier and four months time stipulation as pointed out by the learned single Judge will be from the date of receipt of copy of this order before the Tribunal and the Tribunal to dispose of the appeal keeping in mind the scope of remand.