
(1985) 08 KAR CK 0004
In the Karnataka High Court
Case No : W.A. 1444 of 1983

Shivaji High School

APPELLANT

Vs

Prabhakar Jotiba Bamane

RESPONDENT

Date of Decision : 12-08-1985

Acts Referred:

Citation : (1985) ILR (Kar) 3979

Hon'ble Judges : Jagannatha Shetty, Acting C.J.;Patil, J

Bench : Division Bench

Advocate : N. Mandagi, for the Appellant; H. Thipperudrappa, for R-1 and Chandrashekaraiyah, for R-2, for the Respondent

Judgement

Jagannatha Shetty, Ag. C.J.

1.This appeal is directed against the order dated July 27, 1983 made by the Learned Single Judge in W.P. No. 13556/1983.

2. Appellant filed a Writ Petition challenging the legality of the order of the Karnataka Private Educational Appellate Tribunal, Belgaum, directing the management to pay the salary of respondent-1 in accordance with the order of the said Tribunal made in Appeal No. K.P.E.I. 16 of 1980.

3. The facts leading to this appeal are as follows :

Prabhakar Jotiba Bamane was a teacher in the Shivaji High School at Kadoli in Belgaum Taluk & District. He was placed under suspension in contemplation of certain disciplinary proceedings with post facto sanction for suspension obtained from the Joint Director of Public Instructions as required under the provisions of the Grant-in aid Code. The said suspension was the subject-matter of an appeal before the Tribunal Constituted under the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975. The Tribunal held that the order suspending Prabhakar Jotiba Bamane was invalid for want of prior sanction of the Joint Director. It also declared that Prabhakar Jotiba Bamane was deemed to be

in continuous service and entitled to salary and other benefits.

4. Management of the School challenged the validity of the order of the Tribunal in W.P.No. 6246 of 1981. This Court allowed that Writ Petition concurring with the view taken by the Tribunal as to the requirement of prior approval for placing the teacher under suspension. However, this Court observed that the management as an employer has got every right to restrain the teacher from attending duties but on payment of full salary to him. In other words, this Court held that the management was liable to pay to Prabhakar Jotiba Bamane full salary and allowances during the period of suspension although it was declared to be invalid.

5. Aggrieved by the order of this Court, Management preferred W.A.No. 2359 of 1982 which was disposed of on January 11, 1983 with certain observations with which we are not concerned in this proceeding.

6. Prabhakar Jotiba Bamane was finally dismissed from service. But the direction given by the Educational Appellate Tribunal to the management to pay salary and allowances to him remained in operation. He, therefore, moved the Educational Appellate Tribunal with Execution Petition No. 1 of 1981 to recover the money due to him. The Tribunal allowed the execution Petition, but without specifying the period for which the payment should be made. Challenging that order, the management again moved this Court with W.P. No. 13556/1983. The Learned Single Judge, before whom the Writ Petition came up for consideration, dismissed the Petition with some clarifications. First, he observed that there is no relationship of master and servant between the teachers of private educational institutions and the Government, although the salary of teachers is paid directly by the Government to teachers. Secondly, Learned Judge observed that an employee of a private educational institution can enforce his demand only as against the management of his school and not against the Government. Thirdly, it was observed that it would be open for the management to claim the amount by way of reimbursement from the department and if such a claim is made the department would have to consider the claim on its merits.

7. This Writ Appeal has been preferred against this order. With due regard to these observations made by Learned Judge, the management approached the Deputy Director of Public Instructions, Belgaum, for releasing the grant to meet the payment of salary due to Prabhakar Jotiba Bamane. The Deputy Director in his endorsement dated August 11, 1982 rejected that request by observing that the Department is not liable for payment of salary since the High Court has dismissed the first Writ Petition filed by the Management against the order of the Educational Appellate Tribunal. It may be recalled that the first Writ Petition filed was W.P. No.6246 of 1981 in which this Court observed that the post facto approval given for placing Prabhakar Jotiba Bamane under suspension was invalid and the management, therefore should pay the salary of Prabhakar Jotiba Bamane for the period during which he was kept under suspension.

8. Incidentally, the management has also challenged the validity of the said order

made by the Deputy Director of Public Instructions.

9. It seems to us that the Deputy Director has misconstrued the respective liabilities of the Department and the Management in regard to payment of salary to teachers. He has incorrectly observed that the Department is not liable for payment of salary on the ground that the High Court has dismissed the first Writ Petition filed by the Management against the order of the Educational Appellate Tribunal. The dismissal of W.P.No. 6246/81 referred to by the Deputy Director of Public Instructions, in our opinion, is not relevant to deny relief to the Management. As Learned Single Judge has rightly observed there is no relationship of master and servant between the teachers of private educational institutions and the Government. The Government no doubt pays directly to teachers by way of grant to the Management, but that does not mean that a teacher of a private educational institution can enforce his demand against the Government. He could enforce his demand only against the Management of his school. The liability to pay arises under the relationship of master and servant which exists only between the Management and teachers. That liability, no doubt, has been taken over by the Government under the Grant-in Aid Code, but the Management cannot ask its employees to run after the Government to recover their dues. Nor the employees could, as a matter of right, demand their salary or other dues from the Government. The primary liability to make such payment is that of the Management and the Management could, however, claim the same by way of advance grant or by way of reimbursement from the Government.

10. In the circumstances of the case and in the light of the principles we have enunciated, the Government cannot refuse to release the grant towards the dues payable to Prabhakar Jotiba Bamane. The Management may, therefore, move the concerned authority for appropriate relief.

The appeal stands disposed of accordingly.