

(2005) 03 KAR CK 0050
In the Karnataka High Court
Case No : Writ Petition No. 9266 of 2005

Smt. Muthubai

APPELLANT

Vs

Manjula Makkala Kendra Kannada Senior Primary School and
Others

RESPONDENT

Date of Decision : 09-03-2005

Acts Referred:

Karnataka Education Act, 1983 — Section 131, 133, 92 (1), 94 (5)
Karnataka Educational Institutions (Recruitment and terms and conditions of services
of employees in private Aided Primary and Secondary Educational Institutions) Rules,
1999 — Rule 14

Citation : (2005) ILR (Kar) 1512 : (2005) 3 KarLJ 158 : (2005) 2 KCCR 1020

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Vasantha Kumar, for Kumar and Bhat, for the Appellant; Rosa
Paramel, HCGP for R3 and R.S. Hegde, for C/R1, for the Respondent

Judgement

B.S. Patil, J.—A suspended teacher is before this Court challenging the orders passed by the 3rd respondent vide Annexure-N and T dated 16.08.2003 and 21.02.2005 respectively.

2. Few facts which are essential for the disposal of this case can be set out as under:

The petitioner who was working as a teacher in the 1st respondent - School was kept under suspension pending enquiry by an order dated 08.01.2002 vide Annexure-L. The said order was challenged before the 3rd respondent invoking Sections 131 and 133 of the Karnataka Education Act, 1983 (for short "the Act"). The 3rd respondent by order dated 16.08.2003 dismissed the appeal holding that the dispute pertains to one filed by the petitioner against the Management challenging the order of suspension and hence the appropriate Authority to decide the dispute was the Educational Appellate Tribunal.

3. The petitioner aggrieved by this order presented a review petition before the

3rd respondent contending inter alia that there was no appeal provided against the order of suspension to the Educational Appellate Tribunal and that the appeal which she had presented earlier in Appeal No. 19/2002 was maintainable. The 3rd respondent, not persuaded by the contentions urged by the petitioner has dismissed the said review petition also, by order dated 21.02.2005. Hence, the petitioner has approached this Court challenging both the orders passed by the 3rd respondent.

4. I have heard the learned Counsel for both the parties and perused the materials on record.

5. Learned Counsel for the petitioner contends that the 3rd respondent has committed an error apparent on the face of the record in coming to the conclusion that the appeal remedy is provided u/s 94(5) of the Act against the order of suspension which was assailed before the 3rd respondent. It is his submission that Section 94(5) provides for an alternative remedy before the competent authority in respect of "penalties" other than the major penalties as provided u/s 92(1).

6. Elaborating his submission, he would further point out that it is not the case of the petitioner that the order of suspension was by way of penalty. He contends that the petitioner had approached the Authority invoking Sections 131 and 133 having regard to the fact that there was no other alternative remedy provided by way of any statutory appeal.

7. On the other hand, learned Counsel for the respondent contends that a reading of Section 92(3)(c) and Section 94(5) of the Act along with the Rules framed namely the Karnataka Educational Institutions (Recruitment and terms and conditions of service of employees in Private Aided Primary and Secondary Educational Institutions), Rules, 1999, particularly Rule 14 would make it clear that even as against an order of suspension an appeal lies u/s 94(5) of the Act.

8. Having regard to the respective contentions urged by both the parties, the only question that arises for consideration in this appeal is:

"Whether a statutory appeal is maintainable u/s 94(5) as against the order of suspension which is produced in this case at Annexure-L dated 08.01.2002".

9. The ancillary question of course would be as to whether the 3rd respondent was justified in coming to the conclusion that there being an alternative remedy, the petition filed before him was not maintainable.

10. It is useful at this juncture to extract the provisions contained u/s 94(5), which reads thus:

"94. Appeals. -

(5) In respect of an order imposing a penalty other than those specified in Sub-section (1) of Section 92, on any teacher or other employee, an appeal shall lie to the competent Authority within three months from the date of communication

of the order imposing such penalty."

11. What is emphasized u/s 94(5) is that an order imposing a penalty other than those specified in Section 92(1) is appealable before the competent Authority and a period of three months is prescribed as period of limitation within which the appeal has to be filed.

12. What is challenged in the instant case is the order of suspension. No penalty is imposed by the Management against the petitioner. The order of suspension in the instant case issued by the Management cannot be characterised as an order of penalty. Nor is it so described by either of the parties. When the statute in clear terms states that appeal to the Competent Authority is permissible against the orders of penalty, it cannot be interpreted so as to strain the language of the Section to include even the orders of suspension which are not in the nature of penalty or which are not punitive in nature. Such an interpretation is impermissible when the language of the Section is unambiguous. The contention of the learned Counsel for the respondent stating that Section 92(3)(c) of the Act which provides for an obligation on the Managing Committee placing an employee under suspension to forthwith report the same to the Competent Authority disclosing circumstances in which the order was made would enable such an interpretation and the remedy of appeal against the order of suspension should be taken to have been permitted impliedly by the provisions as a whole cannot be accepted. The legislature has restricted and confined the right to prefer appeals only in respect of orders that impose penalty or that are punitive in nature passed by the Management. When the intention is clear, the exercise to discern any other intention by implication referring to other provisions of the Section is uncalled for.

13. Sections 131 and 133 of the Act provide for remedies against the orders on an application from any person interested/ aggrieved. The Authorities are invested with the powers to examine the correctness or legality or the propriety of the decision taken. It is precisely for this reason the petitioner has invoked these provisions and approached the 3rd respondent challenging the order of suspension requesting to examine the matter and find out the correctness or otherwise of the order dated 16.08.2003 passed by the 3rd respondent. The 3rd respondent has rejected the petition, holding that the petitioner was required to approach the Educational Appellate Tribunal which according to the 3rd respondent was the Competent Authority. This is a total misconception of the legal position inasmuch as the Appellate Tribunal is invested with the powers u/s 94(1) and these powers conferred are in connection with the orders which have resulted in major penalties. The order impugned before the 3rd respondent was not the one that could have been challenged before the Educational Appellate Tribunal, Therefore, this order is totally unsustainable in law. When this was brought to the notice of the 3rd respondent by presenting the Review Petition No. 84/03, the 3rd respondent has chosen to dismiss the same holding that the petitioner had an opportunity to present an appeal before the Competent

Authority u/s 94(4) and (5).

14. As already held by me Section 94(5) does not provide an appellate remedy against the order which are not in the nature of penalty or which are not punitive in nature. In this regard useful reference can be made to the decision of the Division Bench of this Court in the case of Management of M.S. Ramaiah Medical College and Hospital Vs. Dr. M. Somashekar, . At paragraph-11 of the said judgment, the Division Bench has observed thus:

"We may sum up the position regarding remedies available to an employee (including a teacher) of Private Educational institution thus:

(i) The remedy against an order imposing the penalty of dismissal, removal or reduction in rank, is by way of appeal to the Educational Appellate Tribunal u/s 94(1).

(ii) The remedy against an order imposing any other penalty, is by way of an appeal to the competent Authority u/s 94(5) with a further appeal to the Educational Appellate Tribunal u/s 94(7).

(iii) The remedy against any order of management which is not punitive in nature is by way of revision to the State Government u/s 131.

(iv)"

15. Thus, it is clear that the remedy in the instant case for the petitioner is to approach the 3rd respondent u/s 131. She had rightly approached the Authority invoking the provisions of Section 131. The 3rd respondent is not justified in rejecting the petition filed by the petitioner on the ground that alternative remedy was available by way of an appeal. Hence, the impugned orders at Annexure-N and T dated 16.08.2003 and 21.02.2005 respectively passed by the 3rd respondent are not sustainable in law. Therefore, I pass the following:

ORDER

Writ Petition is allowed.

The impugned orders passed by the 3rd respondent dated 16.08.2003 and 21.02.2005 vide Annexure-N and T respectively are hereby set aside.

The matter is remanded to the 3rd respondent with a direction to examine the matter in the light of the observations made above, on the merits of the case within a period of three months from the date of receipt of a copy of this order.

It is open to the petitioner to move the 3rd respondent seeking an interim order pending disposal of the appeal.