

(2001) 09 KAR CK 0052

In the Karnataka High Court

Case No : Civil Revision Petition No. 2363 of 1999

Sri Vanivilasa Rural Education Vidya Samsthe and Another

APPELLANT

Vs

L.S. Mallikarjunaiah

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 4, 5

Citation : (2001) ILR (Kar) 4921 : (2002) 1 KarLJ 43 : (2001) 4 KCCR 434 SN

Hon'ble Judges : B.K. Sangalad, J

Bench : Single Bench

Advocate : N. Devadas, for the Appellant; Kaleemulla Shariff, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. This civil revision petition is filed u/s 115 of the CPC against the order dated 18-6-1999 passed in MA (EAT) No. 13 of 1997 by the Principal District Judge and Educational Appellate Tribunal, Chitradurga.

2. The facts of the case in brief are as follows.--

3. The first petitioner is the President and the second petitioner is the Secretary of Sri Vanivilasa Rural Education Vidya Samsthe, a Society registered under the Societies Registration Act, 1960. The said Society is running a High School, namely "Sri Vanivilasa Gramaanthara Proudha Shaale" at Aranakatte in Hiriyur Taluk, Chitradurga District. It is an aided institution admitted to grant-in-aid.

4. In the year 1993, the Deputy Director of Public Instruction, Chitradurga by his order dated 4-12-1992 permitted the petitioner-Institution to fill up the post of teachers including the post of Grade I Physical Instructor as Teacher for additional section. Annexure-A is such notification. Pursuant to the order of the DDPI, the petitioner-Society invited applications from suitable candidates. The

respondent applied for the post of Grade I Physical Instructor and was called for an interview and was selected for the said post. He reported for duty on 4-11-1993 and after his selection, a copy of the order was forwarded to the DDPI, Chitradurga for his approval. The DDPI, Chitradurga by his order dated 7-2-1994 as per Annexure-B refused to approve the appointment of the respondent on the ground that the selection was made without following the roster system.

5. Thereafter wards, the Management again requested the Director of Secondary Education and the Government to reconsider the matter and approve the appointment. The Director also sent his report dated 25-1-1995 to the Government but the Government did not approve the appointment of the respondent. Non-approval of his appointment was informed to the respondent during March 1995. In view of the fact that his appointment was not approved, he voluntarily did not attend the " school from May 1995. The respondent left the services in the petitioner-Institution from 18-3-1995 itself. All of a sudden, in the year 1997, he came to the institution and obtained the certificate dated 6-1-1997 from the Headmaster of the petitioner-School about his "satisfactory service". Then to his request, the Headmaster of the petitioner-School has issued the certificate as per Annexure-B, dated 6-1-1997. Making use of this certificate, the respondent has approached the Tribunal and the Tribunal has considered it as termination and further entertained the appeal and ordered for his reinstatement. Being aggrieved by this, the present civil petition arises.

6. Mr. N. Devadas, learned Counsel for the petitioners submitted that the issuance of the salary certificate does not amount to be the order of termination. He relied upon Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 which reads as follows.--

"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. The provisions of Sections 4 and 5 of the Limitation Act, 1963 shall be applicable to such an appeal".

7. On the other hand, the learned Counsel for the respondent vehemently submitted that there was former sanction of the post and he was appointed for the same. Even if the order of termination is not communicated, the appeal is maintainable. His whole submission was that there was no error in the judgment passed by the lower Court. In view of these rival submissions, it is to be seen whether the judgment is liable to be set aside or not.

8. At the very outset it is to be seen that Annexure-D is the salary certificate. In this the Headmaster has stated that the respondent was working from 4-11-1993 as Grade I Physical Instructor and on 18-3-1995 he was relieved from his duties. Two things are to be complied with to maintain the appeal.--

(1) Whether the alleged document requires to be considered as order of

termination?

(2) Whether the order is passed by the Board of Management terminating the services?

9. As far as first point is concerned nothing is on the record to show that the Management has terminated him. After not having been approved of the post, the respondent voluntarily left the institution on 18-3-1995. Only in the year 1997, he has come to the school again to obtain the certificate dated 6-1-1997. At the best this document can be construed as approving the good conduct of the respondent. Since this certificate is not issued by the Board of Management, this certificate cannot be made use as a basis for filing an appeal. The contentions from the other side is that there was approval and in the approved post, this respondent was appointed. Annexure-A is the letter dated 4-12-1992 addressed by the DDPI, Chitradurga. Of course from all these documents, it can be inferred that there was a permission. But in Annexure-B, the appointment of the respondent was not approved as there were some hurdles regarding the reservations. By this it could be inferred that no imputation can be made against the petitioners. They have acted as per the direction of the DDPI.

10. As far as Annexure-D is concerned, in my opinion by any stretch of imagination it cannot be construed as an order of termination as it is already stated that no order is passed by the Management. Moreover, the Headmaster has obliged by giving him the salary certificate and approving the satisfactory conduct of the respondent. This cannot be made a basis for approaching the Tribunal. I think the lower Court has approached the case on humanitarian considerations. But the law is against the respondent. Therefore, I am constrained to set aside the impugned order. Hence the following order:

11. In the result, the petition is allowed. The impugned order is set aside. However, if the respondent before attaining the age of disqualification, if there is any notification by the petitioner-Institution in respect of appointment of Physical Instructor, and if he applies, his case may be considered.