
(1998) 06 KAR CK 0004

In the Karnataka High Court

Case No : Civil Revision Petition No. 1975 of 1994

St. Joseph's Higher Primary School, Bangalore and Another APPELLANT
Vs

Smt. J. Rose Mary and Others RESPONDENT

Date of Decision : 12-06-1998

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 10, 10 (4), 8

Citation : (1999) ILR (Kar) 4065 : (1998) 4 KarLJ 421

Hon'ble Judges : V. Gopala Gowda, J;P. Vishwanatha Shetty, J;G.C. Bharuka, J

Bench : Full Bench

Advocate : Sri S. Vijaya Shankar and Sri Ujwala Kumar, for the Appellant; M/s. Vagdevi Associates, Sri S. Vasanth Kumar, for the Respondent

Judgement

V. Gopala Gowda, J.—By an order dated 18-11-1994 this petition was referred by one of us (Bharuka, J.) to a larger Bench for authoritative decision about the correctness of the decision reported in N.V.R. Ram v Indian Institute of Management, Bangalore and Others . The issue involved is, whether the Educational Appellate Tribunal constituted under the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (hereinafter referred to as the "Karnataka Act") can entertain the appeal u/s 10 of the Act against an order of "termination simpliciter? The reference was made in view of the conflicting decisions of this Court on the point.

2. The petitioners herein appointed the first respondent on 10-9-1986 subject to approval by the Department. On 17-11-1987 the approval was rejected. The first respondent was relieved from the service on 30-3-1988. Aggrieved by the said order, the first respondent preferred appeal in M.A.E.A.T. 20 of 1988 before the Educational Appellate Tribunal challenging the said order. By order dated 31-1-1994 the Tribunal allowed the appeal, set aside the order of termination and directed reinstatement of first respondent with all consequential benefits. Against the said order of the Tribunal the present revision is filed.

3. The contention taken by the petitioners is that the Tribunal could not have entertained the appeal filed against an order of "termination simpliciter" but can only entertain an appeal if the termination is done as a measure of punishment. In support of the said plea reliance is placed on the decision in N.V.R. Ram's case, cited supra, On the other hand, on behalf of the first respondent, in support of the contention that appeal against an order of termination simpliciter is maintainable, reliance was placed on the decision in Neelakanthaiah v R.M. Desai and Others , wherein it has been held as under:-

"The Tribunal can entertain an appeal against an order of termination challenged as wrongful and give relief though the order of removal is not by way of penalty".

The above decision was disapproved in N.V.R. Ram's case, supra in view of the decision of the Apex Court in The Principal and Others Vs. The Presiding Officer and Others, , in which Section 8(3) of the Delhi School Education Act, 1973 was interpreted and held that an appeal would lie only against an order of dismissal, removal or reduction in rank.

4. In view of the aforesaid decision of the Supreme Court, it is necessary to consider whether the provisions of the Act are analogous to Section 8(3) of the Delhi Act. Section 8(3) of the Delhi Act reads as under:--

"Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted u/s 11".

sections 7, 8 and relevant portions of Section 10 of the Karnataka Act read as under:--

"7. Communication of Orders.--Every order of the Board of management terminating the services of an employee or imposing a penalty or otherwise affecting his conditions of service to his prejudice shall be communicated in writing to the employee.

8. Appeals.--(1) 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;

(2) Notwithstanding anything contained in sub-section (1), any employee aggrieved by an order of dismissal or removal made by the Board of Management at any time within one year before the date of commencement of this Act may also appeal against such order within three months from such date.

10(4). The Educational Appellate Tribunal shall.-

(a) for the purpose of disposal of the appeals referred under this Act have the same powers as are vested in a Court of appeal under the Code of Civil

Procedure, 1908 (Central Act 5 of 1908);

(b) xxx xxx xxx; (c) if, after taking such fresh evidence as it considers necessary, it is satisfied from the material on record that:-

(i) the order of dismissal or removal was not justified, it may set aside the order and direct reinstatement of the employee on such terms and conditions (including payment of salary and other allowances from the date of and costs, if any) as it may think fit or give such other relief. . "

5. A plain reading of Section 8(3) of the Delhi Act makes it clear that the words "or otherwise affecting his conditions of service to his prejudice" which are incorporated in Section 7 of the Karnataka Act, are not incorporated in the Delhi Act. It is thus clear that Section 8(3) of the Delhi Act is not analogous to the provisions of Karnataka Act excerpted above. It follows that the decision of the Supreme Court in the Principal's case has no application as, u/s 8(3) of the Delhi Act only an employee who is either dismissed or removed or reduced in rank may file appeal to the Tribunal. But, under the provisions of Karnataka Act, not only an employee whose services are terminated or penalty is imposed can file appeal but an employee whose service conditions are otherwise affected to his prejudice can also file appeal before the Tribunal.

6. Further, in Section 7 of the Karnataka Act, the words employed are "terminating the services of an employee or". Termination of service may be by way of "termination simpliciter" or by imposition of penalty. In either case, the service conditions would be affected to his prejudice and the terminated employee can file appeal. The argument advanced by the learned Counsel for the petitioners that Tribunal can entertain an appeal only if the termination is by way of punishment cannot be accepted as the words "otherwise affecting his conditions of service to his prejudice" are used in Section 7 of the Act. In view of this, the filing of appeal by the employee terminated or entertainment of such appeal by the Tribunal cannot be confined only in respect of termination of service as a measure of punishment. "Termination simpliciter" undoubtedly affects the service conditions of an employee to his prejudice and therefore such employee can file appeal.

7. In addition to the above, u/s 8 of the Karnataka Act, any employee aggrieved by an order of the Board of Management may appeal against such an order to the Tribunal subject to the limitation prescribed therein. u/s 10(4) of the Karnataka Act, the Tribunal will have the powers of Court of appeal under C.P.C. and if it considers that the order appealed against is not justified, it can set aside such an order and direct reinstatement of the employee including payment of back wages.

8. For the reasons stated above, we have no hesitation to hold that the decision of the Supreme Court in Principal's case, supra, is of no assistance to the petitioner since the said decision was rendered on the interpretation of Section 8(3) of the Delhi Act which is not analogous to the provisions of the Karnataka

Act quoted above.

9. From the discussion made above, it follows that the decision of the learned Single Judge of this Court in *Anathasevashrama Trust, Malladihalli v H.C. Ramakrishna Rao and Others*, holding that when there is a termination of service, an appeal is maintainable by the employee, and the Division Bench decision of this Court in the case of *Neelakan-thaiah, supra*, holding that the Tribunal can entertain an appeal filed against an order of termination, which was relied upon on behalf of the first respondent, lays down the correct law. The decision of this Court in *N.V. Ram's case, supra*, is, therefore, over-ruled as not properly laid down the law to the extent it is contrary to *Neelakanthaiah's case, supra*.

10. Consequently, we hold that an appeal by an employee before the Educational Appellate Tribunal even against order of termination of service simpliciter is maintainable and the Tribunal can entertain such an appeal. The contention that such an appeal has to be confined only in respect of termination of service by way of punishment is misconceived.

11. In the light of the above conclusion, this petition may be placed before the learned Single Judge for disposal on merits.