

(2015) 04 KAR CK 0210

In the Karnataka High Court

Case No : Writ Petition Nos. 82154/2009 (S-DIS) and 59425/2013 (S-RES)

Subashchandra Patil

APPELLANT

Vs

The Administrator, Tagore Memorial Education Association
and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Karnataka Societies Registration Act, 1960 — Section 27A

Citation : (2015) 04 KAR CK 0210

Hon'ble Judges : Ravi V. Malimath, J

Bench : Single Bench

Advocate : Ratna N. Shivayogimath, for the Appellant

Final Decision : Dismissed

Judgement

Ravi V. Malimath, J.—The case of the petitioner in W.P. No. 82154/2009 is that he was working as a Lecturer in SRK college of Education which is run by the Tagore Memorial Education Association, Raichur. On 26.03.2003 the Principal of the college gave a complaint to the Administrator who was appointed by the Government, alleging that on 26.03.2003 the writ petitioner had misbehaved with the Principal of the institution in his chambers by holding his collar shirt, by using un-parliamentary words and man handled him. The same is unbecoming of an employee of an educational institution. On 28.03.2003 three women lecturers of the college gave a joint written complaint to the Administrator making several allegations against the writ petitioner, that he misbehaved with the women staff by making sexual advancement towards them and used indecent language and behaved indecently and insulted them. He was imitating the walking action of a lady lecturer who happened to be physically handicapped in the presence of the students. This act also is unbecoming of an employee of the educational institution. On receipt of the complaints, the Administrator intended to hold a prima facie enquiry with regard to the allegations made. Hence, he appointed a commission consisting of Chairman and four members of the Governing Council

to ascertain about the truth of the allegations made. A report was submitted on 09.04.2003 indicating that the allegations are true. Based on the said enquiry report, the petitioner was placed under suspension. An article of charges was framed against him. He was asked to show cause and submit his defence. He submitted his reply denying the charges. An enquiry was ordered. He was found guilty of the three charges levelled against him. He was dismissed from service. Aggrieved by the same, he filed an appeal before the Education Appellate Tribunal in EAT No. 1/2004. By the impugned order, the appeal was dismissed. Hence, the present petition.

2. The petitioner has also filed W.P. No. 59425/2013 wherein the names of respondents 7 to 9 were recommended for salary grant and not his. Questioning the same, this writ petition has been filed.

3. Heard both petitions together at the request of learned counsels.

4. Learned counsel for the petitioner contends that the impugned order is bad in law and liable to be set aside. Her first contention is that the Administrator has no jurisdiction to either initiate or to pass any order of dismissal. She contends that the Administrator having been appointed under Section 27A of the Karnataka Societies Registration Act, 1960 (for short the Act") exceeded his jurisdiction in passing the impugned orders. Hence, she pleads that entire enquiry is beyond authority of law. It is contended that the Administrator is appointed only for a specific period of time and therefore he cannot usurp the powers of the governing body.

5. Section 27A of the Act is with regard to the appointment of an Administrator. It would indicate that where the society on account of the pendency of litigation or otherwise, has not held or is unable to hold annual general meeting or where the term of office of the members of the governing body of a society has expired or where a report is made by the Registrar and the State Government considers necessary in public interest may appoint an Administrator and various other clauses. In exercise of this power, the State Government has appointed the Administrator. In terms of sub-clause-3 when an Administrator is appointed, the governing body of the society shall cease to exercise any powers and perform and discharge any functions or duties conferred or imposed on it by this Act. All such functions and duties shall be performed or discharged by the Administrator. Therefore, the provisions of law is clear. It is an undisputed fact that the disciplinary authority is the governing council. However, in terms of sub-clause 3 of Section 27A of the Act, the power of the governing council has to be exercised by the Administrator as provided therein. Therefore, the contention that the Administrator has usurped the powers of the governing council is opposite to the provisions of law. The provisions of law is quite clear and unambiguous. Since the disciplinary authority is the governing council and the governing council has been superceded in terms of the order issued by the Government, the Administrator has every right and duty to perform the functions of the governing council. The functions of the governing council to act as a disciplinary authority has to be

discharged by the Administrator. Therefore, the contention of the petitioner that the Administrator has no power to either initiate or to issue any order of punishment is unacceptable.

6. It is further contended that the Karnataka Educational Institutions (Recruitment and Terms and Conditions of Employees Aided Colleges of Education and Teacher Training Institutions) Rules 2001 are applicable. However, the provisions of the Karnataka Educational Institutions (Terms and Conditions of service of employees in private Educational Institutions) Rules 1997 have been made applicable. The basis of the said contention is Annexure-C dated 31.03.2010 produced in W.P. No. 59425/2013, a letter written to the Director, Directorate of State Education Research and Training in the said letter, in pursuance to the letter regarding the dismissal of the writ petitioner herein he has stated that the 2001 Rules would be applicable and not the 1997 rules. Therefore, it is contended that the initiation of the proceedings under the said rule is vitiated.

7. Such a contention was not taken by the petitioner before the Tribunal. It has been raised for the first time before this Court. However, on perusal of the writ petition it could be seen that such a ground has even not been taken in the pleadings of the writ petition. However, it is sought to be contended that this is a question of law and therefore a pleading is not required. I "am of the considered view that such an argument cannot be accepted. Even though such a contention has not been taken before the Tribunal, it could have atleast been urged in the present petition. Even that has not been done. It is only an oral argument that has been advanced by the learned counsel for the petitioner. Notwithstanding the fact that such a contention cannot be argued orally, without pleading, it is still considered. The petitioner was appointed in the year 1991. The 2001 rules came into force when they were published in the Karnataka Gazette on 12.10.2001. Therefore, it is applicable to all the persons who are appointed subsequent to the said date. Admittedly, the petitioner was appointed much earlier in the year 1991. Therefore, the 2001 Rules would not be applicable. It is the 1997 rules alone that would be applicable. Therefore, such a contention cannot be accepted.

8. It is further contended that the petitioner sought for certain documents which were not provided to him. Therefore, it is contended that the non-furnishing of the documents would vitiate the entire proceedings. In support of her case, learned counsel for the petitioner relies on the judgment reported in Kashinath Dikshita Vs. Union of India (UOI) and Others, AIR 1986 SC 2118 : (1986) 2 LLJ 468 : (1986) 1 SCALE 909 : (1986) 3 SCC 229 : (1986) 2 SLJ 278 to contend that when documents have not been furnished, the same would vitiate the proceedings. She relies on another judgment reported in Sri Venkatesh Gururao Kuratti Vs. The Syndicate Bank and Others, (2004) ILR (Kar) 2240 : (2004) 7 KarLJ 243 : (2004) 3 KCCR 1752 : (2004) 3 LLJ 660 on the same lines.

9. The Tribunal has gone into detail with regard to the furnishing of the documents. Ex. P3 would show that the petitioner has asked for supply of

certified copies of the documents mentioned therein. PW-1 namely the Principal has issued an endorsement stating that the documents could not be issued since they were not preserved in the office. What were the documents was also considered by the Tribunal. They were the year-wise time table of 1994 to 2003 and the orders/memos for making allotment (incharge) of academics (internal assessments marks) from 1994 to 2003 and details regarding allotment of work in respect of CTC camps at Matman, Sirwar and the tour programme list and also the register containing the addresses of the students from the years 1993 to 2003 etc. All the documents sought for at SI. No. 3 i.e. complaint by PW-5 has been furnished and the aforesaid documents have not been furnished on the ground that they were not preserved. The petitioner had failed to explain as to how it has caused prejudice to him and in what manner the documents are relevant for the matter in issue. The charge against the petitioner is of using unparliamentary language and trying to man handle the Principal, of making sexual advancement towards the women lecturers etc. of divulging internal assessment marks assigned by the women lecturers to the students etc. What is sought for are the year-wise time table, the allotment of academics, the tour program list etc. There is no nexus with the documents sought for and the charges levelled. Therefore, even though the documents were not available with the respondents, the failure to furnish the same to the petitioner has not prejudiced his case in any manner whatsoever. Therefore, such a contention cannot be accepted.

10. It is her further contention that the statements have not been issued to the petitioner. What is sought to be relied upon by the learned counsel for the petitioner is an unreported judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 3935/2013 in the case of Anant R. Kulkarni v. Y.P. Education Society and others wherein the Hon'ble Supreme Court at para-10 has held as follows:

"10. Where the charge sheet is accompanied by the statement of facts and the allegations are not specific in the charge sheet, but crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge sheet, the enquiry stands vitiated xxxxxx"

11. The facts of this case are opposite to the contentions and the judgment relied upon. Three charges were levelled against the petitioner. The first charge against the petitioner is he has used unparliamentary language and trying to manhandle the Principal. The second charge is that he has misbehaved with the women staff members of the institution by making sexual advancement towards them by using indecent language behavior, gestures and acts intended to insult them. That he imitated the action of lady lecturer by limping just like her only because she was physically handicapped in the presence of the students. The third charge

is that the petitioner is in the habit of divulging internal assessment marks assigned by the women lecturers to the students and creating unnecessary embarrassment to the women lecturers. The charges have been accompanied by a statement of imputations. Hence, the judgment relied upon would be of no avail to the petitioner. This is a case wherein the charges were well accompanied with the imputations namely, the statements and therefore such a contention stands rejected. The judgment is not applicable to the facts of this case.

12. The Tribunal has considered all the contentions advanced therein. On merits it found that the plea of the petitioner cannot be accepted. That the petitioner was afforded a fair opportunity to participate in the enquiry. All the relevant documents have been furnished to him. In support whereof, the Tribunal relied on the judgment of the Hon''ble Supreme Court reported in Kendriya Vidyalaya Sangathan and Another Vs. Satbir Singh Mahla, AIR 2008 SC 1612 : (2008) 105 CLT 647 : (2008) 3 JT 327 : (2008) 3 SCALE 313 : (2008) 4 SCC 445 : (2008) 1 SCC(L&S) 1046 : (2008) 2 SLJ 494 : (2008) AIRSCW 1790 : (2008) 2 Supreme 174 wherein the Hon''ble Supreme Court has held at para-8 as follows:

"8. We regret our inability to uphold the judgment of the Tribunal as well as of the High Court. A teacher has to be a role model in the society. He is a "guru" who sets an example for the students. A person who physically assaults the Principal of the Institution is, in our opinion, not fit to be a teacher. He is more like agoonda xxxxxxxx"

13. For all the aforesaid reasons, I'am of the considered view that there is no merit in this petition. Consequently, W.P. No. 82154/2009 is dismissed. Rule discharged.

14. W.P. No. 59425/2013 is for a writ of certiorari to quash the impugned order therein wherein the petitioner's name was not recommended but the name of respondent Nos. 7 to 9 were alone recommended for the purpose of salary grant. In view of confirming the order of dismissal, W.P. No. 59425/2013 is dismissed as being infructuous.

Pending I.As. in W.P. No. 59425/2013 stand dismissed.