

(2014) 10 KAR CK 0156

In the Karnataka High Court

Case No : Writ Petition No. 40241/2004 [S-DIS]

Subhashini Education Trust

APPELLANT

Vs

B.S. Manjunath

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2015) 1 LLN 707

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Bipin Hegde, Advocate for the Appellant; C. Pattabi Raman and P. Raghavan, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—The. Educational Institution and its Secretary have jointly preferred this petition, calling in question the order dated 25.8.2004 of the Principal District Judge, Kolar, for short "Tribunal", in EAT No. 10/1993.

2. Respondent, when employed as a "Lecturer" in the first petitioner/Education Trust with effect from 1.8.1983, was instructed to hold the post of "Principal", as incharge, from 1.10.1991 to 16.7.1992. The first petitioner in its Meeting held on 23.12.1992 resolved that the second petitioner/Managing Trustee be the "Disciplinary Authority", who, acting on the resolution dated 10.7.1992 of the first petitioner, issued a charge sheet, leveling six charges against the respondent. The reply dated 15.1.1993, when found not satisfactory led to the appointment of one M. Nagappa, Retired District & Sessions Judge, as One Man Enquiry Committee, to enquire into the charges. Domestic enquiry, when held, led to a report, following which a show cause notice dated 22.10.1993 was issued by the second petitioner enclosing a copy of the report, which was responded to by way of reply. The Disciplinary Authority by order dated 25.11.1993 concurred with the findings of the Enquiry Officer that charges 1, 2, 5 and 6 were proved and imposed the punishment of dismissal from service. That order, when called in question in EAT No. 10/1993, the Principal District

Judge at Kolar, framed 11 points for consideration and having regard to the material on record, returned findings, inter alia, confirming the proof over charge No. 1, while disagreeing with the findings of the Enquiry Officer on Charges 2, 5 and 6, to conclude that the respondent was entitled to reinstatement with 50% back wages, by the order impugned.

3. The first submission of the learned Counsel for the petitioners that the Tribunal was not justified in recording a finding that Charge No. 2 was not proved, is without merit. The Tribunal, having regard to the material on record, more appropriately, the undisputed facts that the Kannada Yuvajana Seva Sangha, KGF, conducted its coaching classes for High School students in the premises of the first petitioner/Education Institution under the very nose of the second petitioner/Secretary who had on many an occasion, participated in the functions conducted by the said Sangha, while several other Teachers also taught students in the coaching classes, without any remuneration, and further that Rs. 18,000/- collected from those students was deposited in a Bank for acquiring a property to conduct coaching classes for students, the Tribunal justifiably held that there was implied permission by the petitioners to the respondent to train students in the coaching classes. In my opinion, no exception can be taken to the said reasons and conclusions.

4. The next submission of the learned Counsel is that Charge No. 5 relating to respondent's refusal to sign the memo dated 22.1.1992 issued by the second petitioner, for prompt completion of college work, since proved in the light of evidence of MW. 3, the Tribunal was not justified in reversing the finding recorded by the Enquiry Officer.

5. Regard being had to the testimony of MW. 3-Srinivasareddy, that on instructions of second petitioner, he carried the memo Ex. M14 and showed it to all the staff members of the College, some of whom affixed their signature to the memo, undoubtedly, the respondent having not affixed his signature did not mean that he had refused to see or sign the memo. Since the instruction to MW. 3 was only to show the memo to all the teaching staff, it is not the testimony of MW. 3 that respondent had not seen the memo. The Tribunal, in my opinion, was fully justified in reversing the finding recorded by the Enquiry Officer over Charge No. 5.

6. Charge No. 6 relating to refusal to sign and receive the memo dated 27/29.7.1991 sent by Sri. C.L. Gopinatha Rao, the then Principal, communicating the timetable memo and that respondent did not take up classes as per the said timetable, though held to be proved by the Enquiry Officer, nevertheless, when reviewed by the Tribunal, held that the testimony of MW. 4 Shivanna that when he carried the said memo along with timetable when seen and signed by MW. 5 Smt. Lissamma Joseph, other staff members and Lecturers refused to sign the memo. Since no action was taken against those teachers who refused to sign the said memo, other than the respondent, the Tribunal reversed the finding recorded by the Enquiry Officer and the 2nd petitioner. On this score too, no

exception can be taken to the said finding.

7. It is true that Charge No. 1 relating to respondent's, unauthorized absence for one day is proved and that finding is final, since, not called in question by the respondent employee.

8. Regard being had to the nature of charge proved and the fact that no evidence was placed by the petitioners, the custodian of service records of the number of days of leave to the credit of the respondent, a day's accommodation against said leave would have served the purpose. The punishment of dismissal from service is not only harsh but disproportionate to the gravity of the misconduct produced. The withholding of 50% of back wages while directing reinstatement, by the Tribunal, in the circumstances itself is excessive.

9. Although Sri. Bipin Hegde, learned Counsel for the petitioners submits that respondent is not entitled to be reinstated as he has since attained age of superannuation in the light of contents of the application filed for Membership to KGF Teachers Association, by the respondent, indicating his date of birth as 1.2.1952, is unacceptable. The respondent when employed by the petitioners, were required to maintain his service register, recording, amongst others, his date of birth which evidence would perhaps, be clinching evidence of the said fact. That piece of evidence is not made available, for reasons best known to the petitioners, who have kept it away from the purview of examination by this court as well as by the Tribunal.

10. In that view of the matter, application for additional evidence to place on record the application for membership allegedly filed by the respondent deserves to be rejected and is accordingly rejected. Even otherwise the proceeding before this court is one under Article 227 of the constitution of India, in other words exercise of supervisory jurisdiction and not an appellate jurisdiction to entertain application for additional evidence.

11. Further submission of learned Counsel for the petitioners that the respondent in his affidavit dated 18.4.2011, in this petition, stated that he was employed from 1.6.1997 to 31.10.2008 as a "Headmaster" in a School at KGF and therefore salary for that period should be denied to the respondent is yet another submission which is without merit. The very fact that the Tribunal denied 50% of back wages and 50% of other allowances for the period from 25.11.1993 upto the date of the order impugned, i.e., 25.8.2004, in the facts and circumstances, is more and enough punishment imposed on the respondent.

12. The order impugned is not shown to suffer from any legal infirmity occasioning grave injustice to the petitioners, calling for interference.

13. Petition is rejected.