

(1996) 08 KAR CK 0012
In the Karnataka High Court
Case No : CRP. 2198/96

The Malleswaram Ladies Association(R)	APPELLANT
Vs	
H.N. Channaiah	RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Karnataka Educational Institutions (Discipline and Control) Act, 1975 — Section 6 (1), 8

Citation : (1996) ILR (Kar) 3409 : (1996) 7 KarLJ 26

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : K. Lakshminarayana Rao, for the Appellant; B.B. Bajentri, for the Respondent

Judgement

V.P. Mohan Kumar, J.—When this Revision Petition came up for admission Sri B.B. Bajentri, learned Advocate, took notice on behalf of the respondent. It was agreed that the C.R.P. itself can be disposed off.

2. The respondent herein was working as a Second Division Clerk in the petitioner-institution. On certain alleged charge of misappropriation, disciplinary proceedings were initiated and an enquiry was conducted by the Principal of Seshadripuram Evening Law College. After enquiry the worker was found guilty. On the basis of the enquiry report his services were terminated. He filed an appeal before the Appellate Authority constituted u/s 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (for short "the Act"). Several contentions were urged on the merits of the case as well. The Appellate Authority was mainly impressed by the circumstances that there were two sets of charges framed against the worker; one by the Committee and the other by the Enquiry Officer; that the termination order had not been approved by the Director of Collegiate Education; that the President of the Committee had no power to impose the punishment and the Principal who was the complainant himself had conducted the enquiry thereby combining the role of complainant

and the Judge. On these grounds it set aside the order of dismissal and called upon the Management to reinstate the worker. It is this order that is challenged before this Court by the Management.

3. I have heard Sri K. Lakshminarayana Rao, Learned Counsel for the petitioner in detail as also Sri B.B. Bajentri, Learned Counsel for the respondent as well. In the light of the order proposed to be passed herein it is not proper for this Court to discuss on the merits of the case. The order passed by the Appellate Authority needs to be set aside and remitted for fresh disposal for the following reasons.

4. As regards the finding of the Tribunal that two sets of charges framed against the worker and the same is illegal is not of much consequence. The first charge itself was issued by the Committee of the Management. The second charge was issued by the Enquiry Officer by elaborating the first charge itself in almost similar manner. The second charge issued by the Enquiry Officer contained the same set of allegations and charges contained in the first set of charges. The difference is that the second set of charges has re-arranged the first set of charges. This does not vitiate the enquiry and the defect if any does not go to the root of the matter. As to the second issue of the matter is concerned Sri Bajentri, Learned Counsel submitted that the Management has failed to secure approval from the Director for dismissal and the request made was declined. This question requires more consideration and would be referred to later. The third objection raised by the Tribunal is that the President has no power to impose the punishment. A reading of the last portion of the order makes it dear that the President has not imposed the punishment. The order in question reads as follows:

" In exercise of the powers and in accordance with Section 6(1) of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 read with Rule 10 (vii), Rule 17 and Rule 18 of the Karnataka Private Educational Institutions (Discipline and Control) Rules 1978, and. in the light of the above findings and conclusions based on evidence, and agreeing with the same, the Managing Committee which had earlier proposed the penalty of removal from service, has resolved to compulsorily retire Sri H.N. Channaiah, SDA, Pre-University College for Women, MLA, Bangalore, to take effect from the date of the communication of this order and he is deemed to have been relieved of his duties with effect from the date of receipt of this order by the delinquent official. He will be entitled to such terminal benefits which are available as per Rules."

The above order shows that the same was issued by the Managing Committee and not by the President. As such the defect noticed by the Tribunal does not exist. As regards the premise that the enquiry was held by the Principal himself who was the complainant and therefore the enquiry held is bad in law is also not correct. The report in this case discloses that the enquiry was conducted by the Principal of Seshadripuram Evening Law College and not the complainant Principal. Therefore there is no substance in the allegation that the enquiry was vitiated on the ground that the complainant himself was the enquiry Officer.

5. The main point now to be considered is regarding the absence of permission from the Director/Government before imposing of the punishment. It is relevant to advert to certain other facts in this context. It may be noted that the salary of the teaching and non-teaching staff is paid by the Government under the direct payment of salaries scheme. In order to avail the facility of the scheme, the intending Management should enter into an agreement with the Government. And it is brought to my notice that the petitioner Management had entered into an agreement with the Government and had executed, an agreement in this behalf as stipulated, containing the terms and conditions under which the Government had agreed to make direct payment of the salary to the staff. The said agreement contains Clause IV(5)(g) which reads as herein under;

"(g) give effect to any policy decision of the Government."

Clause V(5) of the agreement also states that the Management shall be responsible and liable for the due and prompt observance of and compliance with all the terms and conditions of this Agreement. It is seen that in terms thereof the Government had issued certain guidelines in the matter of appointment and transfer of teachers. The initial guidelines were issued as per Government Order No. ED 161 UPC 77, dated 31.12.1977. Subsequently the same has been replaced by Order No. Ed. 146 UPC 79 dated 3.10.1981 which came into force retrospectively from 1.4.1981. The said guidelines stated that all appointments and promotion of the employees on and after 1.1.1981 shall be in accordance with thereof. Rule 8 thereof as introduced on 22.12.1986 reads thus:

"The teaching and non-teaching staff whose appointment have been approved by the Department of Collegiate Education cannot be removed from service/dismissed/retrenched/suspension without the prior approval of the Director of Collegiate Education. However such prior approval shall not be refused in the case of Minority Institutions unless the removal or dismissal/retrenchment/suspension from service is violative of the principles of natural justice or is malafide or is intended for the victimisation of teachers."

According to Sri Bajentri, Learned Counsel, there is no prior approval secured as required under Rule 8 and the resultant position is that the order of terminations is a nullity. He points out that as per proceeding No. CR 19: 91-92 dated 21.10.1992, the Director defined the grant of approval for the termination of service of the employer. Sri Lakshminarayana Rao, Learned Counsel, countered this contention contending that Rule 8 has no validity in the eye of law on and after the enactment of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 and that the rules referred to above cannot have any application because rules have been framed under the said enactment namely the Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978; the said Act and the Rules should prevail and the 1981 Rules referred to above have no field to operate. In this behalf he relies on the decision of this Court reported in *Pundalika Shenoy Vs. Canara High School Association*, wherein their Lordships have categorically laid down that authorities under Grant-in-Aid

code Rules have no jurisdiction to interfere with matters covered by the Education Act and Rules, regulating relationship between employees and private Educational Institutions. It can be seen from the facts of the said case that the principles laid down therein has no application to the facts of the present case. That was a case where punishment was imposed on the teacher and he filed an appeal before the Appellate Authority constituted u/s 8 of the Act. He also prayed for stay of the order under challenge. The Appellate Authority declined to grant the interim relief. Frustrated the worker moved the competent authority i.e., the Deputy Director under Rule 52(iv) of the Grant-in-Aid Code Rules; he granted the interim direction staying the operation of the order of punishment. That order was the subject matter of challenge in the Writ Petition filed which resulted in the above said decision. In considering the question their Lordships observed thus:

"In exercise of this power, statutory rules have been framed by the State of Karnataka called "the Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978". It becomes, therefore, clear that in the matters pertaining to discipline and control in connection with the employees of Private educational Institutions in Karnataka State, the field is completely occupied by the Act and the Rules, It is, therefore, difficult to appreciate how the Grant-in-Aid Code Rules which might have earlier occupied this very field, could still operate when even the Civil Court's jurisdiction is barred under the Act. The Act is a complete code on the topic of discipline and control regulating the relationship between the employees on the one hand and the Private Educational Institutions governed by the Act on the other. Therefore, by necessary implication, on these topics which are covered by the Act and the statutory rules, the authorities functioning under the Grant-in-Aid Code Rules cannot exercise any jurisdiction."

The above cited decision will not apply to the facts of this case. This is a case where the Management has covenanted with the Government to receive aid to pay the salary payable to the staff. This payment was agreed to be paid by the Government on certain condition. It is a contract entered into between the Management and the Government. By the contract the Management has agreed to give effect to all policy decisions of the Government. This under taking is an integral part of the contract and the Management cannot contend that they will abide by only the favourable parts of the contract and relinquish those that are not favourable. It cannot treat the same as a contract for convenience. Such unilateral apportionment of terms of a contract is not legally permissible. The Government have thereafter laid down the condition under which it will make available the requisite funds to pay the salary to the Staff. In exercise of the said power the Government has issued order No. 161/UPC /77 dated 31.12.1977 which has now been replaced by Order No. ED 146 UPC 79, Bangalore dated the 3rd October, 1981. It contains the condition for grant of aid for payment of salary to the staff of the colleges. If that be so, all the conditions imposed under which the Government sanctioned aid to pay the salary are valid and the Management is bound to abide by the same. It is not open for the Management to say that they are not bound by those conditions which are less favourable. The

Management is bound by the Agreement entered into between the Government. Therefore the guidelines referred to above are valid and should be deemed to be part of the agreement which the Management is bound to abide as long as they receive Grant from the Government.

6. The next contention urged by Sri Lakshminarayana Rao, Learned Counsel, is that the Management has conducted a fair enquiry and has come to the conclusion that disciplinary action has to be taken against the worker and that the Director illegally declined to grant permission. He contends that if in a given case the Director declines prior approval the Management is left with no remedy. I do not think this is a serious objection. The punishment is imposed on the worker by the Management on complying with certain conditions as are contemplated under the guidelines issued by the Government. One of the limb of the order is the prior approval as contemplated under Rule-8. If these conditions are satisfied then the order becomes valid. If the prior approval is illegally refused by the Authority then the Tribunal is entitled to examine the propriety or otherwise of the refusal of approval while examining the merits of the case. Assume a case where a punishment was imposed after a domestic enquiry and the said punishment was approved by the Director as well. If an appeal is filed against such an order, can it be contended that because the Director has approved the punishment, the hands of the Tribunal is tied and that it cannot interfere with the Order ? I am afraid not. In such a case if the Tribunal finds that there has not been a proper domestic enquiry in accordance with law, that the finding on the charges are not supported by evidence and that the punishment is disproportionate to the charges and amounts to victimisation then the Tribunal is entitled to set aside the punishment. If so, automatically the approval granted by the Director will also fall to ground. Likewise, logically it has to be held that in a contrary case where the approval was declined, if the Tribunal upholds the punishment then, the Tribunal can pronounce that the refusal of approval by the Director is illegal and incorrect.

7. Now suppose the Management has imposed punishment and the Director of Collegiate Education has declined to grant prior approval for imposing the said punishment will the order imposing punishment become a nullity? The answer to this question should be in the negative. The Management has put an end to the relationship of master and servant. They are entitled to do so. It may be a case of an illegal termination of the contract. But as long as the said order stands, the servant cannot enforce his contract against the master. He has to get rid of the order. When the Management establishes that it has conducted an enquiry conforming to the requirements of law and principles of natural justice, that on the basis of the evidence the charges against the worker stand proved and the punishment is neither disproportionate nor in any manner result of victimisation, then there is no justification on the part of the Director in declining the approval. The approval as sought for should follow. When the same is declined it is a case of perverse exercise of power; it is as if where despite the guilt having been established and a case for imposing of punishment is made out still no

punishment is allowed to be imposed. The tribunal therefore has jurisdiction to consider whether the punishment awarded by the Management is just and proper. In doing so it can also examine the propriety or otherwise of the order declining the approval, in essence, it is a case where the Tribunal examines whether the Management was justified in putting an end to the contract of employment. That question also comes directly within the ambit of the enquiry in the appeal.

8. In a given case if an order of termination is passed by the Management without securing an approval then that is an irregular exercise of power. The same is nevertheless not a nullity. In this case approval was declined by the Director as per his proceeding No. CR 19: 91-91 dated 21.10.1992. If so, the order of termination was an irregular termination of a contract. Such termination of the contract becomes valid not only in the event of existence of finding of guilt of the employee deserving the said punishment but also on the approval being granted by the Director as contemplated under Rule 8 referred to above. That is to say the termination of the contract of employment becomes valid only with the prior approval of the Director. But all the same the Management which is one of the contracting party has put an end to the contract. If so, the affected teacher/staff will have to avoid the said order by resorting to appropriate legal proceedings. When he initiates the said proceedings, the competent Forum gets jurisdiction to examine the whole issue including the propriety of the unilateral termination of the contract and also the exercise of the power under Rule-8 by the Director. Thus, these are all matters to be examined by the Tribunal when it considers the appeal of the aggrieved teacher/staff.

9. The power of approval is conferred on the Director of Collegiate Education under Rule-8 to oversee whether the Management illegally exercises its power as the employer and dismisses its employee. In exercising his power of approval he examines prima facie whether the allegations against the worker are true and whether the Management has conducted a fair enquiry conforming to the principles of natural justice. If the Management conforms to the requirement of law and satisfies that it is not a naked case of victimisation and if the Director is prima facie satisfied in this behalf then a case for approval stands made out. As the Management has complied with the parameters of a fair and proper enquiry and the charges stand proved then the approval has to be granted. It is not the domain of the Director to sift to evidence or to find whether on the basis of the evidence the finding is correct. The power conferred on Rule-8 referred to above is not appellate jurisdiction. It is only a power to prevent arbitrary dismissals. As the statute itself has constituted an appellate Forum to examine all these aspects resulting in the punishment it has to be borne in mind that the satisfaction, to be arrived at by the Director is basing on prima facie consideration. In the instant case the Domestic enquiry was set aside by the Tribunal and perhaps it was the reason why approval was declined. Hence, when the charges are proved by adducing evidence before the Tribunal the defect or the reason for the refusal to grant approval ceases to exist. If so, the order declining approval will have to be

set aside as a corollary. That may be the factual position.

10. If that be the situation then the question is as to what is the order to be passed in this revision. Admittedly in this case the Tribunal has found that there was no proper domestic enquiry. Though this finding is on a wrong footing, nevertheless for the purpose of the appeal we will accept the finding and proceed further; the appeal has to be decided in accordance with the principles laid down by this Court in the decision reported in *PRESIDENT, GOLDEN VALLEY ED. TRUST v. DJ*, EAT ILR 1979 Kar 526. As held therein it should have necessarily called upon the Management to lead evidence to sustain the charges. This opportunity was denied to them. If the Management leads evidence to sustain the charges the Tribunal may examine the same and come to its own conclusion regarding the charges. Then the claim for the grant of approval arises. This is a case where as a matter of fact the Management had sought for approval to impose the punishment. It is stated that the Director had illegally declined permission. As stated earlier an approval is also a part of the order of termination as it makes the termination order complete and regular. If so just as it examines the merits of the charges, the propriety or otherwise of the said order declining approval has also to be gone into by the Tribunal. The Tribunal can hence examine the validity or otherwise of the declining of approval. If the Tribunal comes to the conclusion that the charges are true it has to decide on the propriety of the order refusing approval. The Appellant Authority may re-hear the appeal after adducing of evidence by the management and after necessary issues are framed. The Appellate Authority may pass fresh order in accordance with law. In view of the long pendency of the dispute the Appellate Authority shall dispose of the appeal as expeditiously as possible in any event within 4 months from the receipt of the copy of the order. All the contentions raised in this C.R.P. by the petitioner as also the respondent on the merits of the case are left open, the Civil Revision Petition is disposed of as above