

(2003) 02 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 39904 of 2002

The Marimallappa Education Trust

APPELLANT

Vs

Smt. K.S. Rathnamma and Another

RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Karnataka Education Act, 1983 — Section 130

Citation : (2003) 4 KarLJ 229 : (2003) 2 KCCR 1133

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : N. Devadass, for the Appellant; K.V. Narasimhan, for Respondent-1 and B. Manohar, A.G.A. for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

H. Rangavittalachar, J.—The petitioner-Marimallappa Educational Trust in this writ petition, has challenged the legality and correctness of the order passed by the Commissioner of Collegiate Education in Appeal No. 11 of 2002.

2. The facts leading to the filing of this writ petition are as under:

The petitioner-Trust has been running Educational Institution in Mysore City from primary to collegiate education. The first respondent herein is the employee working as a Principal of Mallamma Marimallappa Women's Art and Commerce College, Mysore. On the ground that the first respondent committed certain financial irregularities during the period when she was on leave, disciplinary enquiry was instituted and pending enquiry, by the order dated 26-8-2001 she was kept under suspension by the petitioner-institution.

3. The first respondent-employee challenged the said order of suspension by filing an appeal before the Commissioner of Collegiate Education. The Appellate Authority allowed the appeal by its order dated 23-10-2002 and set aside the suspension order mainly on the ground that the prior permission of the Commissioner of Department of Collegiate Education was not obtained and

suspension order was passed by an incompetent person.

4. This order under Annexure-A is in challenge before this Court. The main ground of attack made by the learned Counsel for the petitioner Sri Devadass is that the appeal filed by the first respondent was incompetent, in other words, the appeal was not maintainable and the Commissioner therefore "had no jurisdiction. Learned Counsel read to me the provisions of Section 130 of the Karnataka Education Act, 1983, in support of the said contention. In answer to the said contention, Sri K.V. Narasimhan, learned Counsel for the first respondent and Sri B. Manohar, Additional Government Advocate for respondent 2 defended the power of the Appellate Authority.

5. In order to appreciate the rival contentions, Section 130 of the Karnataka Education Act, 1983, which is the section under which the Appellate Authority has purported to have exercised the power is extracted herein for ready reference:

"Appeals.--Save as otherwise provided in this Act, any person or Governing Council, aggrieved by an order passed by an officer or authority under this Act may within the prescribed period prefer an appeal to the prescribed Appellate Authority".

6. An analysis of Section 130 indicates that if an order is passed by an "officer" meaning an officer of the State Government who is empowered to exercise the powers under the provisions of this Act, or an "authority" meaning a statutory authority within the meaning of the Education Act any person aggrieved by the orders of such an officer or authority can file an appeal. Admittedly, in the facts of the present case, the order is passed by the petitioner who is a Private Educational Trust. The petitioner cannot be equated to an officer or an authority within the meaning of the two expressions stated in Section 130 of the Act. Therefore, the appeal filed by the first respondent against the orders of the private body to the Commissioner is not maintainable u/s 130 of the Education Act. No other provisions of the Act has been brought to the notice of this Court by the Counsel for the State and the first respondent authorizing the Commissioner to entertain an appeal against the orders passed by the Managing Committee of an Educational Institution. On an interpretation of Section 130, it is clear that the Appellate Authority has no jurisdiction to entertain the appeal against the order of a private body.

7. In view of the discussion made above, this writ petition is allowed. The impugned order at Annexure-A is quashed. All other contentions are left open. Liberty is reserved to the first respondent to seek such other remedy as is available to it under law.

There shall be no order as to costs.