
(2007) 07 KAR CK 0080

In the Karnataka High Court

Case No : Writ Petition No. 14749 of 2006

The Secretary, S.J.M. Vidyapeeta, The Administrator, S.J.M. Polytechnic and The Principal, S.J.M. Polytechnic

APPELLANT

Vs

The Principal, Secretary to Government, Higher Education, Education Dept. and Others

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Karnataka Education Act, 1983 — Section 130, 131

Citation : (2007) 6 KarLJ 448

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G.A. Srikante Gowda, for the Appellant; Sheela Anish, GA for R-1 and 2, Devaraj, for M.S. Anandaramu, for R-7, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This writ petition by the management of a private educational institution is against the order passed on the interlocutory applications in pending revision petitions before the government, which had been preferred u/s 131 of the Karnataka Education Act, 1983 [for short, the Act].

2. The revision petitioners, who were the teachers working in the petitioner-institution, had sought for the intervention of the government invoking the provisions of Sections 130 and 131 of the Act for the purpose of compelling the management to forward the case papers of the revision petitioners to the director of technical education for the purpose of approval of their appointment as lecturers in the subjects concerned and also to direct the director of technical education or any other authority to reject the proposal of the management in forwarding the candidature of the respondents 5 to 8 and for appointing them as lecturers etc.

3. Such revision petitions, filed in the year 2003, were pending and were ripe for hearing and arguments and at that stage it appears the revision petitioners

before the government filed two interlocutory applications, one for amendment of the prayer and production of additional documents and another one for treating the pending matters as appeals and the revision in respect of the subsequent action particularly such as appointment of respondents 5 to 8 as lecturers and their appointment having been approved etc. It is such applications which were ordered in terms of the impugned order dated 31-1-2006, questioned in this writ petition.

4. At the time of issue of notices to the respondents, an interim order was granted staying all further proceedings before the revisional authority.

5. Aggrieved by this, one of the revisional petitioner, who has been arrayed as seventh respondent in this writ petition, has come up with an application for vacating the interim order on the ground that the interim order of stay has come in the way of the disposal of the revision petition pending before the government; that it has not only held up the proceedings but the petitioners who should have been otherwise appointed lecturers, are denied the post etc.

6. It is the submission of Sri G.A. Srikante Gowda, learned Counsel for the petitioners that the writ petition is only against order passed on the IAs before the revisional authority in the pending revision petitions in so far as it relates to the pending revision petition at the instance of the seventh respondent herein, who was the petitioner in Revision Petition No. 44 of 2004.

7. I have heard Sri G.A. Srikante Gowda, learned Counsel for the petitioner and Sri Devaraj, learned Counsel for the seventh respondent.

8. The applications filed by the revision petitioner were one for including additional prayers and production of additional documents and for converting the revision petition into an appeal. Such applications had been ordered.

9. In the normal course, orders passed on such applications in pending proceedings are not interfered with by this Court, unless while doing so the authority passes order without jurisdiction or acts in a patently illegal manner. Under the present order, what is noticed is that by allowing the applications in the pending revision petition, the revision petition would be virtually converted into an appeal u/s 130 of the Act. Sections 130 and 131 of the Act read as under:

130. 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.

131. Revision by the State Government:- (1) The State Government may, either suo motu or on an application from any person interested, call for and examine the record of an educational institution or of any authority, officer or person in respect of any administrative or quasi-judicial decision or order, not being a proceeding in respect of which a reference to an arbitrator or an appeal to the High Court is provided, to satisfy themselves as to the regulatory, correctness,

legality or propriety of any decision or order passed therein, and if, in any case, it appears to the state government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, they may pass order accordingly.

Provided that the State government shall not pass any order adversely affecting any party unless such party has had an opportunity of making a representation.

(2) The State government may stay the execution of any such decision or order pending the exercise of powers under Sub-section (1) in respect thereof.

(3) Every application preferred under Sub-section (1) shall be made within such time and in such manner and accompanied by such fees as may be prescribed.

10. An appeal is to be preferred against a specific order in terms of the statutory provision. An appeal being a creature of the statute, the remedy by way of an appeal can be availed of in accordance with the statutory provision. An appeal u/s 130 of the Act being an appeal against an order passed by an officer or authority under the Act, has to be preferred within 90 days to the appellate authority.

11. A perusal of the earlier revision petition filed by the seventh respondent indicates that it was not an appeal against an order, but only a revision petition for issue of certain directions not only to the school management but also to the director of technical education complaining of non-forwarding of the candidature of the petitioner for approval of his appointment as lecturer and against the positive action of the management in forwarding the candidature of respondents 3 to 6 for such approval of appointment. No specific order had been sought to be questioned. Though the revision petition has been termed as one under Sections 130 and 131 of the Act, it is actually one u/s 131 of the Act and not an appeal u/s 130 of the Act, as no specific order is challenged.

12. When such is the situation, on the application filed in the year 2005 in the pending revision petition, the revision petition cannot be converted as an appeal against the order which according to the writ petitioners had come into existence even prior to the revision petitions were filed or at any rate against any other order passed before or after for making that order as the subject matter of the appeal. It is because of this reason, the management being aggrieved by the impugned order, the effect of which is to convert the pending revision petition into an appeal, the present writ petition.

13. Sri G.A. Srikante Gowda, learned Counsel for the petitioners, submits that the revisional authority has no power to convert a pending revision into an appeal that too one filed two or three years after the passing of the order etc.

14. As observed earlier, the appeal remedy is one provided by the Statute and should be availed of in the manner provided for. By filing an application in the revision petition, neither the revision petition can be converted into an appeal against an order not the subject matter of the revisional remedy, nor can it be

converted into an appeal in respect of an order that has come into existence subsequent to the filing of the revision petition. If the revision petitioner wants to avail of the remedy u/s 130 of the Act, he should file an independent appeal and not an interlocutory application in a pending proceedings. It is not open to the revisional authority to permit a pending revision petition to be treated as an appeal u/s 130 of the Act, when such an appeal had never been filed.

15. It is for this reason, this writ petition is allowed and the impugned order in so far as it relates to allowing the interlocutory application for the purpose of treating the pending revision petition as an appeal is hereby quashed by issuing a writ of certiorari. The revision petition can only be for examining the petition within the scope of revisional authority of the government u/s 131 of the Act and not as an appeal u/s 130 of the Act.

16. Rule made absolute.

17. Revisional authority is permitted to proceed in the matter treating the pending matter only as a revision petition.