
(2011) 06 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 17538 of 2010 (S-RES)

V. Jagannathan, J The O.S.C. Educational Society (R), Udupi APPELLANT
Vs
Emmanuel Lalith Kumar RESPONDENT

Date of Decision : 01-06-2011

Acts Referred:

Karnataka Educational Institutions (Collegiate Education) Rules, 2003 — Rule 41 (i), 41 (ii), 47, 51

Citation : (2011) 3 KCCR 2309

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : B.M. Baliga, for the Appellant; H. Somanathayya for Sri Nagaraja Hegde, for the Respondent

Final Decision : Dismissed

Judgement

V. Jagannathan, J.—in this writ petition the order passed by the Educational Appellate Tribunal ("Tribunal" for short) in EAT No. 3/09 is called in question and the petitioner-society prays for setting aside the order of the tribunal which has allowed the appeal preferred by the respondent herein and had set aside the order of termination issued by the management to the respondent.

2. This is the second round of litigation between the parties, in as much as, the respondent herein was earlier dismissed from service on 21.4.07 and the said dismissal order was called in question before the tribunal and the tribunal had set aside the order of dismissal and in turn the present petitioner society came up before this court in writ petition and this court confirmed the order of the tribunal. Thereafter, the petitioner-society again placed the respondent under suspension and held an enquiry against him in respect of the charges levelled against the respondent. The enquiry officer held the charge Nos. 1, 2, 4 and 5 as proved and charge No. 3 was held to be not proved. Based on the report of the enquiry officer, the petitioner once again dismissed the respondent from its services. Again the respondent approached the tribunal in. EAT Appeal No. 3/09

and the tribunal allowed the appeal preferred by the respondent and set aside the order of termination by its judgment dated 15.4.10. It is this order of the tribunal that is questioned in this petition once again by the society.

3. I have heard learned Counsel Sri. Baliga for the petitioner and Sri. H. Somanathayya for the respondent and perused the entire papers.

4. Learned Counsel for the society argued that the enquiry officer had found the charges levelled against the respondent proved except in respect of charge No. 3 and the tribunal on the other hand had set aside the order of termination passed by the society on the footing that the charges were not proved at the enquiry. It is the submission of the learned Counsel for the petitioner that, the evidence placed before the enquiry officer by the society had established the charge levelled against the respondent and all the witnesses were cross-examined by the respondent and therefore no infirmity can be found in the enquiry proceedings nor in the findings recorded by the enquiry officer.

5. To reinforce the aforesaid submission, learned Counsel took me through the evidence of the witnesses examined before the enquiry officer and various documents. It is also contended by the learned Counsel for the petitioner that the necessity of obtaining previous approval by the management does not arise and even the tribunal has taken the very same view as regards the need for obtaining the previous approval from the competent authority. It is his submission that, being a minority institution, the petitioner society framed its own rules to regulate the affairs of the educational institution and therefore the tribunal could not have interfered with the order of dismissal passed by the petitioner-society. Learned Counsel also relied on the decisions reported in B.C. Chaturvedi Vs. Union of India and others, , Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, and University of Delhi and Another Vs. Ram Nath, in support of his submission.

6. Referring to the observations of the tribunal as regards charge No. 5. It is argued by the learned Counsel for the petitioner that the tribunal has accepted charge No. 5 having been proved, but however, it only questioned the punishment that was given to the respondent and had opined that the punishment was disproportionate to the charge. Under these circumstances, the order of the tribunal be set aside by allowing this writ petition.

7. On the other hand, the submission of the learned Counsel for the respondent is that, the E.A.T. has considered all the aspects of the matter in detail and has found that the charge framed itself was vague and secondly, the evidence of the witnesses does not establish the charge levelled against the respondent and the documents were not given before hand to the respondent and even the list of witnesses was not furnished and in addition to that, certain documents were introduced for the first time during the course of the cross-examination of the respondent. Therefore, there was denial of opportunity to the respondent and, as such, the enquiry itself was not conducted in accordance with the principles of

natural justice.

8. It is also argued by the learned Counsel for the respondent that the learned District Judge and Chairman of the E.A.T. has considered the evidence of all the witnesses examined before the Enquiry Officer and has found that the charge levelled against the respondent was not established at the enquiry and consequently, the finding recorded by the Enquiry Officer, therefore, was perverse and, as such, the E.A.T. set aside the order of termination passed by the petitioner-society.

9. The learned Counsel also argued that the principles laid down by the Apex Court with regard to the conduct of enquiry are applicable to every institution irrespective of whether it comes under the minority institution category or outside the said category and in this regard, the learned Counsel referred to the observations of the Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,).

10. Therefore, the learned Counsel argued that the order passed by the E.A.T. does not call for interference as every aspect of the enquiry has been considered in depth by the learned District Judge. The above submissions are also sought to be supported by the learned Counsel for the respondent by relying on the decisions reported in State of U.P. Vs. Shatrughan Lal and Another, , Sher Bahadur Vs. Union of India (UOI) and Others, , Surath Chandra Chakrabarty Vs. State of West Bengal, , State of Uttaranchal and Others Vs. Kharak Singh, , Sri B.K. Gopala Krishna Sastry Vs. The Managing Committee, Bharathiya Samskrithi Vidyapeetha, The Director of Collegiate Education, Government of Karnataka and The Joint Director, Collegiate Education, Government of Karnataka, , Shankarappa Sharanappa Gaure Vs. The Deputy Director of Public Instructions, Bidar and others, , Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , P.A. Inamdar and Others Vs. State of Maharashtra and Others, and St. Joseph's Higher Primary School, Bangalore and Another Vs. Smt. J. Rose Mary and Others, .

11. Having thus heard both sides, the only point for consideration is whether the petitioner-society has made out a case for this court to interfere with the impugned order passed by the E.A.T.

12. The charges framed against the respondent are at Annexure-1 to the writ petition and they read as under:

CHARGE 1: Dealing in stolen goods.

That the said Shri Emmanuel Lalith Kumar, while serving as Lecturer in SMS College, Brahmavar, during the period 2005-06, engaged in stealing and purchase and sale of stolen goods; thereby violating Rule 41(i), (ii) and (iii) of the Karnataka Educational Institutions (Collegiate Education) Rules, 2003.

CHARGE 2 : Engaging in private trade of vehicles.

That the said Shri Emmanuel Lalith Kumar, while serving as Lecturer in SMS College, Brahmavar, during the period 2005-06 and in the years previous thereto, engaged in the private trade of purchase, repair and sale of vehicles: thereby violating Rule 47 and Rule 41(i), (ii) and (iii) of the Karnataka Educational Institutions (Collegiate Education) Rules, 2003.

CHARGE 3 : Engaging in activities unbecoming of a Lecturer.

That the said Shri Emmanuel Lalith Kumar, while serving as Lecturer in SMS College, Brahmavar, during the period 2005-06, and in the years previous thereto, engaged in acts involving moral turpitude such as indulging in making of blue films, having unethical relationship with someone not his wife etc. thereby violating Rule 41 (i), (ii) and (iii) of the Karnataka Educational Institutions (Collegiate Education) Rules, 2003.

CHARGE 4: Engaging in the business of lending money.

That the said Shri Emmanuel Lalith Kumar, while serving as Lecturer in SMS College, Brahmavar during the, period 2005-06, and in the years previous thereto, engaged in the business of lending" to people money at interest "or in a manner whereby return in money or in kind is charged or paid, thereby violating Rule 51 and Rule 41(1), (ii) and (iii) of the Karnataka Educational Institutions (Collegiate Education) Rules, 2003.

CHARGE 5: Surreptitiously signing the Attendance Register to record presence and remaining absent during the session signed as present.

That the said Shri Emmanuel Lalith Kumar, while serving as Lecturer in SMS College. Brahmavar, remained absent in the afternoon on 06 Jan 2006 but surreptitiously signed the Attendance Register to record his presence for that session thereby violating Rule 41(i), (ii) and (iii); Rule 41(3)(a), (c)(ii) and (iii) of the Karnataka Educational Institutions (Collegiate Education) Rules, 2003.

13. Referring to the aforesaid articles of charge, it was argued by the learned Counsel for the respondent that the charges framed are vague in nature and the details of the stolen good & or the details of engaging in private trade of purchase and sale of vehicles were not forthcoming before the Enquiry Officer and, as far as the charge No. 3 is concerned, the Enquiry Officer himself has held that the said charge did not stand proved. As far as charge No. 4 is concerned, the argument of the respondent's Counsel is that, the evidence is not very clear nor the charge gives the details of the various transactions of lending money in which the respondent is said to have engaged himself. As far as charge No. 5 is concerned, the learned Counsel submitted that the evidence before the Enquiry Officer, which has been taken note of by the E.A.T., reveals that there was practice of signing the attendance register in the morning session itself and only after a long period of time, the practice of signing the attendance register both in the morning session and in the evening session was introduced and even with regard to the said charge is concerned, the charge itself is not very specific and

apart from that, the Management had accepted the leave application given by the respondent and the absence on the particular day i.e., on 6.1.2006, has been treated as one of leave. As such, even charge No. 5 does not stand proved.

14. In the light of the aforesaid nature of the charges that were framed against the respondent, I do find enough force in the submission made by the learned Counsel for the respondent that the charges are very vague in nature and they do not give any details of the allegations made therein. Even the witnesses examined before the Enquiry Officer have not come out with the details of the charges levelled against the respondent and the Tribunal has noted that M.W.1 himself has stated that no case was registered against the respondent in respect of charge No. 1. Likewise, the Tribunal found that the evidence of the witnesses was not sufficient enough to accept the other charges viz., charge Nos. 2, 4 and 5, having been established.

15. Apart from the aforesaid conclusion reached, the Tribunal has also noted that the list of witnesses was not given to the respondent and even the documents were not furnished to the respondent before hand. As far as Exs.MD-16 and 16(a) are concerned, the learned District Judge of the Tribunal has observed that those documents do not reflect as to in whose presence they were recorded, but the date 16.7.2008 mentioned in Ex.MD-16(a) has rendered the said document also as not a genuine one.

16. It is only after a careful appreciation of the entire evidence let in before the Enquiry Officer, the learned judge of the Tribunal has recorded the finding that the charges did not stand proved and even the charges were very vague and, therefore, the Tribunal ultimately observed at paragraph-21 of its order that there is no link between the charges framed and the evidence let in and, as such, the order of termination was set aside.

17. It has to be mentioned at this juncture that, even in the decision relied on by the learned Counsel for the petitioner viz., B.C.Chaturvedi Vs. Union of India [(1995)6 SCC 7491], while observing that neither the technical rules of Evidence Act nor of proof of fact or evidence as defined in the Evidence Act apply to disciplinary proceeding, yet, the Apex Court has held that the Court or Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence, yet, the court/tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the court/tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

18. As far as the vagueness of the charges is concerned, the Apex Court has observed in the case of Sawai Singh Vs. State of Rajasthan, , that where the

charges framed against the delinquent officer were vague, the enquiry based on such charges would stand vitiated being not fair. Non-supply of the statement of allegations amounts to denial of reasonable opportunity is the observation of the Apex Court in the case of *Surath Chandra Chakrabarty Vs. State of West Bengal*, .

19. As far as the contention put forward by the learned Counsel for the petitioner concerning the petitioner being a minority educational institution and, therefore, it. Is free to make its own rules for administration, discipline and control is concerned, the decision cited by the learned Counsel for the respondent particularly the Constitution Bench judgments of the Supreme Court in the case of *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, , and *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, , lay down the proposition of law that, while a minority institution may have its own procedure and method of admission as well as selection of students, and the regulatory measures of control should be minimal, yet, the Apex Court, in *T.M.A. Pai Foundation*'s case had observed that, for redressing the grievance of employees of aided and unaided institutions, who are subjected to punishment or termination from service, appropriate tribunals could be constituted and till then, such tribunals shall be presided over by the judicial officers of the rank of the District Judge.

20. In *PA. Inamdar*'s case, the Apex Court has observed that, merely because Article 30(1) has been enacted, the minority educational institutions do not become immune from the operation of the regulatory measures because, the right to administer does not include the right to mal-administer.

21. I have referred to the aforesaid observations of the Apex Court in the context of the arguments advanced by the learned Counsel for the petitioner and as the E.A.T. has found the findings recorded by the Enquiry Officer being not in accordance with the evidence placed before the Enquiry Officer and as there is no link between the charges framed and the evidence let in, the Tribunal, therefore, has rightly interfered with the order of termination passed by the petitioner-society on finding that, not only the charges framed were vague in nature but, even the evidence of the witnesses did not establish the charges levelled against the respondent.

For the aforesaid reasons, I see no merit in this writ petition and it is accordingly dismissed.