

(1998) 06 KAR CK 0043

In the Karnataka High Court

Case No : Civil Revision Petition No. 2432 of 1996

Veerannaiah

APPELLANT

Vs

Sree Hoisala Vidya Samsthe (Registered)

RESPONDENT

Date of Decision : 09-06-1998

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978 — Rule 13

Citation : (1998) ILR (Kar) 2446 : (1998) 4 KarLJ 512

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri Ashok Haranahalli, for the Appellant; Sri V.S. Sanjeeva Murthy, for the Respondent

Judgement

1. The petitioner was working as a Head Master in the respondent-school. The respondent-institution is an aided institution. The petitioner was suspended by the respondent by an order dated 1-8-1994. This order of suspension was challenged in M.A. No. 25 of 1994. The petitioner in the M.A. No. 25 of 1994 filed an application seeking payment of subsistence allowance. The Tribunal rejected the application. The reason given by the Tribunal was that it is the State Government that has to pay the subsistence allowance during the period of suspension and not the management.

2. The learned Counsel for the petitioner submitted that the impugned order dated 4th July, 1996 is contrary to the law. the learned Counsel submitted that it was a grant-in-aid school and as per the Grant-in-aid Code the subsistence allowance should be paid by the institution and reimbursed to the institution from the Government. The learned Counsel relied on the judgment of this Court in Shivaji High School v Prabhakar Jotiba Bamane, wherein the Division Bench of this Court held that the primary liability to make payment is that of the management and that the management could however claim the same by way of reimbursement from the Government. That being the position in law, it appears

that there is a duty cast on the management to pay the subsistence allowance in accordance with the Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978. Rule 13 deals with subsistence allowance during suspension.

3. It is not in doubt that the petitioner would be entitled to subsistence allowance during the period of suspension. The only question was whether it should be the Government that should pay the subsistence allowance or the management. This Court has held that the primary responsibility to pay the subsistence allowance is with the management of the school. That being so, it is not permissible for the management to escape its legal liability to pay subsistence allowance and to pass the responsibility on to the Government. It is also well-settled law that nobody can defend oneself in an enquiry on an empty stomach.

4. During the pendency of the revision petition, it was submitted by the learned Counsel for the petitioner that the petitioner has been dismissed from service. Aggrieved by the order of dismissal the petitioner has preferred an appeal to the Tribunal. We are not concerned in this revision petition with the correctness of the order of dismissal. We are only concerned with the fact that the petitioner has not been paid subsistence allowance in accordance with Rule 13 during enquiry.

5. In that view of the matter, there will be a direction directing the respondent to consider the case of the petitioner in accordance with Rule 13 of the Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978 and to pay the subsistence allowance to the petitioner as expeditiously as possible. The petitioner is directed to make an application before the respondent within four weeks from the date of receipt of this order. On such application for subsistence allowance, the respondent shall consider it in accordance with law and pass appropriate orders within four weeks from the date of receipt of the application made by the petitioner. In that" view of the matter the order passed by the Appellate Tribunal on the application in M.A. No. 25 of 1994, dated 4-7-1996 is set aside. The civil revision petition is allowed accordingly. No costs.