

(1984) 10 KAR CK 0037
In the Karnataka High Court
Case No : W.P. No. 15134 of 1984

Yeragatti Y.B.

APPELLANT

Vs

Sarvodaya Shikshana Trust.

RESPONDENT

Date of Decision : 09-10-1984

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 10(4)

Citation : (1985) 1 KarLJ 130

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. The petitioner, Y.B. Yergatti, was an Assistant Teacher in the New English School at Alnawar in Dharwar District. The said School is managed by the 1st respondent-Sarvodaya Shikshana Trust of Dharwar. The 2nd respondent is the Head Master of the School in question. The 3rd respondent is the Joint Director of Public Instructions, Belgaum Division, Belgaum. The 4th respondent is the Educational Appellate Tribunal, Dharwar, (hereinafter referred to as the Tribunal) and the 5th respondent is a teacher in the School in question run by the 1st respondent. Briefly stated the facts leading to this petition are as follows: The petitioner was terminated in the service of the 1st respondent purporting to act under the instructions of the 3rd respondent to fall in line with the staff pattern prescribed for the Schools run by the 1st respondent, as he was the junior most Assistant Master in its employ. The petitioner questioned his termination before the I Additional District Judge, Dharwar, who was the Educational Appellate Tribunal designated under the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, (hereinafter referred to as the Act). In that Mis. Appeal No. 4/1980 the Tribunal came to the conclusion that without first determining the seniority of the staff employed by the 1st respondent-Trust in the various Schools run by it, it could not retrench the petitioner. Therefore, it gave the following direction:

"In the result, for my above discussion, I allow this miscellaneous appeal, set aside the termination order in question and remand the case directing the

respondent No. 1 management and the respondent No. 2 Head Master of the School, to consider the seniority list of its staff members after giving an opportunity to the appellant. If it is found that the appellant is senior to some other person, he has to be accommodated. The management shall appoint him with retrospective effect and consequential reliefs".

2. Therefore, the management prepared the seniority list of the three Schools run by it aided by the Government as aided institutions under the relevant Grant-in-Aid Code. In that seniority list, the petitioner was placed in the cadre of Assistant Masters at the lowest. Therefore, he was not accommodated as directed by the Tribunal. Aggrieved by the same, the petitioner filed Execution Case No. 5/1982 before the same Tribunal (respondent-4). The Tribunal after holding an enquiry came to the conclusion that the execution petition was liable to be dismissed, that there was nothing to execute in as much as the direction of the Tribunal to prepare the seniority list after notice to the petitioner and other Assistant Masters etc had indeed been prepared. In fact, the Tribunal also, in my view, unnecessarily examined some of the contentions advanced on the merits of the case which was impermissible for it to do while exercising its jurisdiction on the execution side. Aggrieved by that order of the Tribunal in Execution Case No. 5/1982, the petitioner has approached this Court to have the same quashed with consequential directions inter alia contending that the Tribunal had declined to exercise the jurisdiction despite the case made out on merits by the petitioner before it. It would be useful to summarise the contentions advanced before this Court:

(1) That the 4th respondent-Tribunal in the Execution Case failed to see that the petitioner was senior to respondent-5;

(2) That the seniority list as per Ex. P3 prepared by the 1st and the 2nd respondents was not in accordance with law as two other schools run by it had not been included for purpose of determining the staff seniority inter se of the staff of all the Schools run by the 1st respondent;

(3) That the Tribunal ought to have on the evidence recorded by it, determined the relative seniority of the petitioner and the 5th respondents.

3. It would be useful at this stage to notice that under the Act, the Tribunal exercises, in addition to the specific powers conferred on it under Sec. 10(4) of the Act, all the powers of an appellate Court under the Civil Procedure Code. In fact clause (d) of sub-sec. (4) of the Sec. 10 of the Act reads as follows:

"(d) For the purpose of executing its own orders have the same powers as are vested in a Court executing a decree of a Civil Court under the Code of Civil Procedure , 1908, (Central Act 5 of 1908) as if such orders were decrees of a Civil Court".

4. What was invoked apparently in Execution Case No. 5/1982 on the file of the 4th respondent-Tribunal was that power conferred by clause(d) of sub-sec. (4) of

Sec. 10 of the Act. Therefore, the important question for this court is to examine what was the Tribunal's order which was required to be obeyed in the instant case. The direction extracted by me earlier clearly indicates that the 1st and the 2nd respondents were required to prepare a seniority list of its staff members before getting rid of the surplusage as directed by the 3rd respondent. If on such preparation it was found that the petitioner was senior to somebody else in the relevant cadre, he ought to be accommodated retrospectively with all backwages etc. It was only contingent liability if it was found that there was an Assistant Master who was junior to the petitioner. But if it is not disputed that Exhibit-P3 was prepared as directed after notice to respondents, then the contingent liability would arise only if Exhibit-P3 showed the petitioner above some other Assistant Master. That is not the fact recorded by the Tribunal in Execution Case No. 5/1982. The Tribunal has proceeded to consider after examining relevant evidence oral and documentary that the list prepared was not in violation of the order made by the Tribunal earlier. If the list has been prepared, there is nothing to execute. But if the list is advantageous to the petitioner, then the question of reinstatement, paying him backwages etc., would have arisen. If he was the casualty of the surplusage then the petitioner cannot say that the Executing Court has not examined his case or failed to exercise the jurisdiction.

5. I am inclined to agree with the conclusions reached by the Executing Court that there was nothing to execute after due notice to the staff members the list was prepared and the petitioner was at the bottom of the list.

6. In fact, it was urged by the learned Counsel for the petitioner that in reply to the notice issued by the Management, the petitioner had given counter notice to the Management to prepare the list of the staff members of all the five institutions run by it. My attention was drawn to one of the Exhibits to show the other two institutions not mentioned in Ex.P3, a copy of which is filed into Court today. It is true, on the relevant date the Management 1st respondent had two other Secondary Schools under its control. But those two Schools were unaided. In other words, they did not come within the purview of the Grant-in-Aid Code. If those two Schools do not come within the purview of the Grant-in-Aid Code, the members of the staff of those two Schools cannot be placed on par with the members of the Staff of the other three Schools mentioned in Exhibit-P3. The surplusage created was not in the institutions managed without aid by the 1st respondent but in the aided Schools over which alone the 3rd respondent and the department of Education can exercise regulatory control. Therefore, omission to include those two Schools was not in any way incorrect on the part of the Management.

7. In the light of what is stated above, none of the three contentions advanced for the petitioners should succeed. There is no failure to exercise jurisdiction vested in the Tribunal nor is there any apparent error of law in the impugned order which calls for interference by this Court.

8. Therefore, the petition is rejected without issuing rule.