

P.E. Manjunath Vs. Chitradurga District Ambedkar Education Society

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Court : Karnataka

Decided On : Apr-12-1990

Reported in : ILR1990KAR2021

Judge : Rama Jois, Ag. C.J. and ;Rajasekhara Murthy, J.

Acts : Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 - Sections 8

Appeal No. : W.P. No. 398 of 1990

Appellant : P.E. Manjunath

Respondent : Chitradurga District Ambedkar Education Society

Advocate for Def. : Kaleemulla Shariff, Adv.

Advocate for Pet/Ap. : B.K. Manjunath, Adv.

Disposition : Appeal allowed

Judgement :

Rama Jois, Ag. C.J.

1. This Writ Appeal is presented by the appellant against the order of the learned Single Judge dismissing the Writ Petition presented by him in which he had prayed for the issue of direction to the first respondent-Society for reinstating the appellant

into service and for consequential benefits.

2. The facts of the case, in brief, are as follows:-The appellant was appointed on 6th February 1986 as a teacher on the establishment of the Mahatma Gandhi Residential High School, Jajur, Chitradurga District, which is a private educational institution receiving financial aid from the State Government in accordance with the Rules regulating the recognition and giving the grant-in-aid, the appointment of the appellant was approved by the Deputy Director of Public instruction, Chitradurga on 28th July 1986. According to the appellant he fell sick on 29-2-1988 and, therefore, he applied for medical leave for a period of one week from 29-2-1988 to 6-3-1988. As his illness continued, he extended his leave from 7-3-1988 to 30-3-1988. Thereafter, there was Summer Vacation. According to the appellant, he suffered from relapsed typhoid fever and, thereafter, he had to apply for medical leave from 15-5-1988 to 15-7-1988. Eleven days thereafter on 26-7-1988 the Management of the School issued recall notice (Annexure-B), the relevant portion of which reads:-

'It is reported by the Head Master, Mahatma Gandhi Residential High School, Jajur, Challa-kere Taluk, vide his letters cited above that Sri P.E. Manjunatha, Science Assistant Master, working in the same school has been absent unauthorized w.e.f. 29-2-1988 and he has not turned up so far to resume his duties as science Assistant Master in this school.

Sri P.E. Manjunatha, Science Assistant Master is therefore required to join duty, treating this as a recall notice to him as per Rules, by obtaining necessary permission from the management under intimation to the department failing which, proper action will have to be taken against the incumbent as per Rules.

He should submit his explanation in writing within fifteen days from the date of receipt of this Memo.'

According to the appellant, he reported for duty sometime before 1-8-1988 to the Head Master, but the Head Master informed him that unless permission was secured from the Society for taking him on duty he would not be taken for duty. According to the appellant, he went to the house of the President of the Society on

1-8-1988 and requested him to give instructions to the Head Master to take him to duty. But the President declined to do so.

3. Thereafter, the appellant addressed a letter dated 8-8-1988 to the President setting out all the above facts. The said letter reads:

4. As the Respondent failed to take the appellant on duty, and it amounted to terminating his service, he presented an appeal under Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, ('the Act' for short), before the District Judge, Chitradurga. The said appeal, however, was dismissed by the Tribunal on 17-8-1989 on the ground that the appeal was not maintainable as there was no order of termination against which the appeal was presented under Section 8 of the Act.

5. Faced with the above situation, the appellant presented a Writ Petition before this Court under Article 226 of the Constitution seeking, Inter alia, praying for the issue of a direction to the first respondent to reinstate the appellant into service and to give him all consequential benefits. The learned Single Judge took the view that, as the first respondent was a Society registered under the Societies Registration Act, it was not a State or an authority amenable to the jurisdiction of this Court under Article 226 of the Constitution of India and consequently the Writ Petition was dismissed.

6. Aggrieved by the said order, the appellant presented this appeal. In the Writ Appeal the Division Bench of this Court, which admitted the appeal permitted the appellant to amend the Writ Petition by way of adding an additional prayer, seeking for the issue of a Writ to the Management-First Respondent to communicate the order of termination terminating the services of the appellant so as to enable him to present the appeal before the Educational Appellate Tribunal.

The reason for according per mission to amend the Writ Petition as above are these:- The Act, inter alia, provides for a remedy by way of appeal to the Educational Appellate Tribunal to the members of the staff of private educational institutions in the State, against orders of the Management of those institutions imposing penalty of dismissal from service or orders terminating their services or

against the orders which effect their conditions of service. Section 6 of the said Act prescribes the procedure for imposing penalties - dismissal or removal or reduction in rank. The wording of the said Section is almost similar to Article 311(2) of the Constitution. Sections 7, 8(1) and 10(1) and (2) of the Act reads thus:-

'7. Communication of orders - Every order of the Board of Management terminating the services of an employee or imposing a penalty or otherwise affecting his conditions of service to his prejudice shall be communicated in writing to the employee.

8. Appeals - (1) Any employee aggrieved by an order of the Board of Management may within three months from the date of communication of the order appeal against such order to the Educational Appellate Tribunal constituted under Section 10 The provisions of Sections 4 and 5 of the Limitation Act, 1963 shall be applicable to such an appeal.

10. Tribunal -

(1) The State Government shall, by Notification, constitute one or more Educational Appellate Tribunals for the adjudication of appeals preferred under Section 8 and where more than one Tribunal is constituted, the State Government shall specify in the Notification the limits to which the territorial jurisdiction of each Tribunal extends.

(2) The Educational- Appellate Tribunal shall consist of one person who is or has been a judicial Officer not below the rank of a District Judge:

Provided that pending constitution of the Educational Appellate Tribunal under Subsection (1), the District Judge of each district shall function as the Educational Appellate Tribunal of the District.'

Section 7 of the Act makes it obligatory for every Board of Management to communicate the order passed by it against any of its employee imposing any penalty or otherwise affecting their condition of service in writing to the employee concerned. Sub-section (1) of Section 8 provides that any employee aggrieved by

the order of the Board of Management of a private Educational Institution, may appeal to the Educational Appellate Tribunal constituted under Section 10, within three months from the date of communication of the order. Section 10 of the Act empowers the State Government to constitute one or more Educational Appellate Tribunals by issue of a Notification for adjudication of appeals preferred under Section 8 of the Act. Before this Act, there were two enactments in 1973 and 1974, Except for some variations, as far as the provisions with which we are concerned in this case, they were similar. 1973 Act was replaced by the 1974 Act and the latter was replaced by the 1975 Act which is now in force.

7. The first case which came up for consideration before this Court was: MALNAD EDUCATIONAL SOCIETY v. KARNATAKA EDUCATIONAL APPELLATE TRIBUNAL, 1975(2) Kar.L.J. 392. It was under the provisions of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1973, the provisions of which were in part materia with the provisions of the 1974 and 1975 Act. Interpreting Sections 6 and 7 of the said Act, which corresponds to Sections 7 and 8 of the 1975 Act, this Court held that, before invoking the jurisdiction of the Tribunal there must be an order in writing issued by the Management and communicated to the employee concerned.

8. The second case which came up for consideration before this Court was: DAYASHANKAR DUBE v. THE EDUCATIONAL APPELLATE TRIBUNAL AND ORS., 1978(2) Kar.L.J. 173. This case arose under the 1974 Act, Sections 7 and 8 of which were similarly worded as Sections 7 and 8 of the 1975 Act. In the said case it was held, that if the Management failed to communicate the order removing any of its employee from service, or any order affecting the conditions of service of any of its employee, as in view of the decision in Malnad Education Society, referred to above, the employee concerned cannot approach the Educational Appellate Tribunal without an order, the employee concerned was entitled to approach this Court in a Writ Petition under Article 226 of the Constitution and to secure a direction to the Management to communicate the order of termination of service or any other order affecting his condition of service, which the Management had passed against the employee concerned, and, that after such order was communicated pursuant to the Writ issued, the party has to approach

the Educational Appellate Tribunal, It is in view of these two decisions, the Division Bench of this Court, in this appeal, permitted the appellant to amend the Writ Petition by adding another prayer seeking a direction to the first-respondent-Management to communicate the order terminating the services of the appellant so as to enable, him to approach the Educational Appellate Tribunal under Section 8 of the Act.

9. In the circumstances, several cases are coming before this Court for merely seeking for the issue of a Writ directing the private Management concerned to communicate the order passed against their employees, so as to enable the aggrieved employee to approach the Educational Appellate Tribunal and after securing directions, and after orders are communicated they are filing appeals to the Tribunal.

10. Therefore, the question raised by the learned Counsel for the Appellant is as to whether the Management of a private educational institution could prevent its employee from approaching the Educational Appellate Tribunal against an order terminating his service by not passing an order, in writing, and/or not communicating the order to its employee and thereby deprive him of the remedy available to him under Section 8 of the Act and deprive the Tribunal of its jurisdiction at least till he secures a Writ of Mandamus from this Court directing the Management to communicate the order?

11. A similar question, namely, as to whether a civil servant could not approach the Administrative Tribunal constituted under the Administrative Tribunals Act, 1985, (Central Act No. 13 of 1985), in the absence of an order, was the subject-matter for consideration in DR. KSHMA KAPUR v. STATE OF KARNATAKA, : ILR 1986 KAR4007 . The Central Administrative Tribunal was established under the provisions of the Central Administrative Tribunal Act enacted pursuant to Article 323-A of the Constitution. Under Sections 14 and 15 of the said Act, the jurisdiction to decide all dispute and complaints in service matters of civil servants was conferred on the State or the Central Administrative Tribunals, as the case may be. Once the Tribunal was constituted, the jurisdiction of the High Court under Article 226 of the Constitution was taken away. Section 19 of the said Act provides

as follows:-

'19. Applications to Tribunals -(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.'

According to the above Section, a person aggrieved by any order could make an application before the Tribunal for the redressal of the grievance. Even after the Constitution of the Tribunal a Writ Petition was filed before this Court, challenging an order, affecting the service condition of the petitioner therein. The contention urged before this Court, regarding the maintainability of the Writ Petition, was that the petitioner therein could not approach the Administrative Tribunal as there was no order passed by the Government and therefore the Tribunal had no jurisdiction to entertain an application and consequently this Court had the jurisdiction to entertain a Writ Petition under Article 226 of the Constitution.

11-A. After analysing the provisions of the said Act, this Court held that, when the jurisdiction was conferred on the Tribunal to decide every dispute or complaint in service matters of the civil servants, and for that purpose the Tribunal could entertain an application, by the mere fact that no order had been passed and/or communicated by the Government or the authority concerned, it could not be said that the Tribunal had no jurisdiction to entertain the application and to redress the grievance. This Court further held, that though Section 19 was worded in the manner as indicated above, the Tribunal had jurisdiction to entertain the application in respect of the grievances of civil servants in all service matters even in the absence of communication of an order.

12. In our opinion, the same principle should apply to any case arising under the provisions of the Act. It is true that Section 7 of the Act makes it obligatory to every Management terminating the services of any of its employee or otherwise affecting the service conditions of any of its employees to his prejudice, to communicate, in writing, its order to the employee. Section 8 provides that any employee aggrieved by any order of the Board of Management may appeal to the Tribunal within three months from the date of communication of the order. While Section 7 casts a duty

upon a Management to communicate every order made by it against any of its employee, Section 8 of the Act not only confers jurisdiction and power on the Tribunal to entertain appeal against an order of the Board of Management of a private educational institution, terminating the service of its employee or otherwise affecting his condition of service, but also confers a right to a remedy on every such employee. This being the position, the Management of a private educational institution cannot be allowed to deprive its employee of the right of appeal under Section 8 of the Act by not incorporating its decision in writing and/or communicating the same to the employee concerned or to deprive the jurisdiction of the Tribunal to entertain an appeal and to give relief.

13. Therefore, in our opinion, Section 8 should be interpreted so as to advance the intent object and purpose of the Section, which is to provide a speedier and cheaper remedy to the employees of private educational institutions.

13-A. Therefore, it appears to us, that if in a given case the allegations made by the appellant before the Educational Appellate Tribunal is that the Management has failed to pass and/or communicate the order of termination of his service or any order affecting his condition of service, in writing, but has terminated his service or has taken action affecting his condition of service on any date, the Tribunal has the jurisdiction to entertain the appeal and to decide as to whether the allegations made as to the action taken by the Management is true and, if it is found to be true, to adjudicate as to whether the action is justified, and if it is found that the action was not justified in law and to grant appropriate relief to the appellant.

14. Coming to the facts of this case, it is seen, as stated by the appellant that he had to apply for medical leave on account of his illness from 29-2-1988 till 15-7-1988 and the Management issued a recall-notice on 26-7-1988 and pursuant to that he went to the school and reported for duty, but he was told by the Head Master that unless permission was secured from the President of the Society, he would not be taken for duty, and that, thereafter, he went to the President and requested him to give instructions to the Head Master to take him on duty, but the President declined to give him the permission. All these facts have been set-out in

the representation of the appellant dated 8-8-1988, which according to the appellant, he had sent it to the President of the first-respondent-Society. If what the appellant has stated is true, it is clear that the Management has terminated his services without issuing an order, in writing, on 8-8-1988 or at least on 15-8-1988 on which date, according to the appellee he was ready and willing to report for duty and therefore, the appellant preferred an appeal under Section 8 of the Act before the Educational Appellate Tribunal. The Tribunal, however, had no other alternative than to dismiss the appeal in view of the decisions of this Court in Malnad Education Society and Dayashankar Dube,² referred to above.

15. As stated earlier, we now take a view different from the one taken in those two decisions and hold that even in the absence of a written order the employee has a right to present an appeal under Section 8 before the Educational Appellate Tribunal and the Tribunal has jurisdiction to entertain an appeal and then to decide as to whether any action as alleged in the appeal has been taken by the Management and if it is found to be so, then to decide as to whether such action was in violation of the provisions of the Act or of the provisions of the conditions of service applicable to the appellant and to give appropriate relief to the appellant in the light of the findings.

16. In view of our decision, as above, it appears to us, that instead of issuing a Writ of Mandamus to the first-respondent to communicate the order terminating the services of the appellant to him, in the first instance, and thereafter, giving opportunity to the appellant to approach the Educational Appellate Tribunal, the appropriate course is to set aside the order of the Educational Appellate Tribunal holding that the appeal presented by the appellant was not maintainable and to direct the Tribunal to decide the appeal on its merits.

17. The learned Counsel for the first-respondent-Management submitted that while it was true that the appellant has not been working in the Institution from February, 1988, it was not correct that the Management terminated the services, but actually the appellant absented himself from duty, and, therefore, cannot have a grievance against the Management. This is also a contention which the Tribunal has to decide. Therefore, we do not express any opinion on the said question for the

reason that it is open to the Management to take such pleas as are open to it in the appeal before the Educational Appellate Tribunal.

18. If the Management, in fact, has terminates the services of the appellant, the Management is at liberty to state so before the Tribunal and also justify its action. The Tribunal would have to decide the validity of any such plea by the Management.

19. In the result, we make the following order:

(i) The Writ Appeal is allowed;

(ii) The order made by the learned Single-Judge is reversed, and the Writ Petition is allowed;

(iii) The order of the Karnataka Educational Appellate Tribunal Chitradurga, (Annexure-D), dismissing the appeal presented by the Appellant under Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, is set aside;

(iv) A direction shall issue to the Tribunal to entertain and dispose of the appeal presented by the appellant before it on merits, in accordance with law, and in the light of this order.

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