

Tikaram

Vs

Mundikota Shikshan Prasarak Mandal and Others

Civil Appeal No. 3189 of 1984

(E. S. Venakataramiah, V. B. Eradi JJ)

10.08.1984

ORDER

1. Special leave granted.

2. In the year 1975 the appellant was working as the Headmaster of a High School which was being run by the Mundikota Shikshan Prasarak Mandal, respondent 1, which was a private body. On account of certain earlier events which need not be set out here the management instituted a disciplinary enquiry against the appellant and on July 7, 1975, the appellant was informed by the management that it had imposed on the appellant the punishment of reversion to the post of Assistant Teacher which according to the management was the substantive post held by him. Aggrieved by the above order of reversion, the appellant filed an appeal before the Deputy Director of Education, Nagpur Division, Nagpur contending that the enquiry had been vitiated on account of violation of principles of natural justice and that he had never held the post of an Assistant Teacher to which he had been reverted. After hearing both the parties the Deputy Director of Education passed an order dated October 3, 1975 setting aside the decision of the management and remanding the case to the management for fresh decision on the ground that the enquiry had been vitiated on account of violation of principles of natural justice. Instead of filing an appeal against that order, the management filed a review petition before the Deputy Director himself on October 17, 1975. That was rejected by the Deputy Director by his order dated November 11, 1975 on the ground that no such review petition could be filed before him. Against this order the management filed an appeal before the Director of Education and that was dismissed on May 12, 1976 affirming the order of remand passed by the Deputy Director. The management again filed a petition before the Director of Education to reconsider the case. This petition for review was allowed by the Director on November 26, 1976 and the order passed by the Deputy Director on October 3, 1975 remanding the case to the management for a fresh decision was set aside. Aggrieved by the said order dated November 26, 1976, the appellant filed a writ petition before the High Court of Bombay on the principal ground that the Director had no jurisdiction to review his earlier order of May 12, 1976 by which he had dismissed the appellant against the order of the Deputy Director. The High Court dismissed the above writ petition holding that the appellant could not file a writ petition under Article 226 of the Constitution against the order passed by the Director on the ground that the teachers working in private schools could not enforce their right under Clause 77 and connected clauses of the Schools Code which were not statutory rules. This appeal is filed against the above order of the High Court under Article 136 of the Constitution.

3. It is not disputed that the Deputy Director and the Director are officer of Government and the nature of functions discharged by them while hearing appeals against order made in disciplinary proceedings is quasi-judicial in character. It is also not disputed that neither of them has been

authorised by the Schools Code to review their own decisions and that in the absence of such power and order made on review in such quasi-judicial proceedings would be ineffective. In the writ petition the appellant was not seeking any relief directly against the management on the basis of the clauses in the School Code. If the management does not obey the order passed by the Deputy Director or the Director, it is open to the State Government to take such action under the Schools code as may be permissible. In such an event, the recognition accorded to the school may be withdrawn or the grant-in-aid may be stopped. In the instant case the appellant is seeking a relief not against a private body but against an officer of Government who is always amenable to the jurisdiction of the Court. The appellant has merely sought the quashing of the impugned order dated November 26, 1976 passed by the Director on review setting aside the order of the Deputy Director. What consequences follow from the quashing of the above said order insofar as the management is concerned is an entirely different issue. In the circumstances, the High Court was wrong in holding that a petition under Article 226 of the Constitution did not lie against the impugned order passed by the Director. We are aware of some of the decisions in which it is observed that no teacher could enforce a right under the School Code which is non-statutory in character against the management. But since this petition is principally directed against the order passed in a quasi-judicial proceedings by the Director, though in a case arising under the School Code and since the Director had assumed a jurisdiction to review his own order not conferred on him, we hold that the appellant was entitled to maintain the petition under Article 226 of the Constitution.

4. On merits it is not disputed that neither the Deputy Director nor the Director of Education had the power to review the order passed by them earlier. The Director had affirmed the order of the Deputy Director by his order dated May 12, 1976. The order passed by the Deputy Director on October 3, 1975 remanding the case to the management or holding a fresh enquiry thus became final. The Director had no power to review his earlier order. The High Court should have in the circumstances set aside the order dated November 26, 1976 passed by the Director on review setting aside the order passed by the Deputy Director. We, therefore, set aside the order dated November 26, 1976 passed by the Director of Education and restore the order dated October 3, 1975 passed by the Deputy Director of Education remanding the case to the management for holding a fresh enquiry. The management may now proceed to hold the enquiry in accordance with law, if it consider it necessary. The appellant is entitled to all consequential benefits flowing from this order.

5. The appeal is accordingly allowed. No costs.

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