

Manohar Harries Walters

Vs

Basel Mission Higher Education Centre, Dharwad and Others

Civil Appeal Nos. 1827-28 of 1984

(K.N. Singh, P.B. Sawant JJ)

16.08.1991

### JUDGMENT

1. The appellant was appointed in 1968 as a lecturer in Chemistry in the respondent-College, viz., the Kittel College, Dharwad run by the respondent-Society, viz., Basel Mission Higher Education Centre, Dharwad. He was promoted as a senior lecturer in 1971. A series of disputes ensued between him and the respondent-Society thereafter which culminated in the suspension of the appellant w.e.f. July 2, 1975. A domestic inquiry was instituted against him on the charges of insubordination and other misconducts. A retired District Judge was appointed as the Inquiry Officer and according to the contentions of the respondent-Society, notwithstanding the non-cooperation of the appellant at the subsequent stages of the inquiry, the Inquiry Officer completed his inquiry and submitted his report in which he held that the appellant was guilty of the charges levelled against him. On the basis of the report and the reply filed thereto by the appellant, the respondent-Society dismissed the appellant from service w.e.f. January 10, 1976.
2. On February 9, 1976, the appellant filed an appeal to the Educational Appellate Tribunal against the order of his dismissal, under Section 8 of the Karnataka Private Educational Institutions Act, 1975 [hereinafter referred to as the 'Act']. The Tribunal by its order of November 26, 1979 allowed the appeal and directed the respondent-Society to reinstate the appellant. The Tribunal, however, did not make any order for back wages. It may be mentioned here that before the Tribunal the respondent-Society had not urged the contention that it being a minority institution, the provisions of the Act were not applicable to it and, therefore, the appellant had no right to prefer an appeal to the Tribunal constitutional under the Act.
3. Against the decision of the Tribunal granting reinstatement to the appellant, the respondent-Society preferred a writ petition to the High Court. The appellant also preferred a writ petition against the order of the Tribunal insofar as the Tribunal did not consider his prayer for back wages. Both the petitions were heard by a learned Single Judge of the High Court. The respondent-Society for the first time raised before the learned Single Judge the contention that the Act was not applicable to it because it was a minority institution. Since it was not disputed that the Society was a minority institution and the point raised was a pure question of law, the learned Single Judge entertained the said plea, and relying on a decision of a Division Bench of the same Court in *Anjuman Mani-E-Muslimeen, Bhatkal v. Educational Appellate Tribunal for Uttara Kanna* [(1981) 1 ILR (31) 304 (Kar)] held that the Act was not applicable to the Society. The learned Single Judge did not consider other issues and allowed the writ petition of the Society and dismissed the writ petition of the appellant by his decision dated September 6, 1982. The appellant carried the matter by way of writ appeal before a Division Bench of the same court which dismissed it in limine by its decision of June 1, 1983.

4. Since the decision delivered by the High Court, much water has flown under the bridge. This Court in the case of Frank Anthony Public School Employees' Association v. Union of India [(1986) 4 SCC 707 : (1987) 2 ATC 35] has held that the right guaranteed to minority institutions by Article 30(1) of the Constitution is not invaded merely because a Tribunal is constituted under an Act to hear appeals against the order of dismissal, removal or reduction in rank of an employee in the service of a minority institution. The same view is reiterated by another Division Bench of this Court in Y. Theclamma v. Union of India [(1987) 2 SCC 516]. There the Court also pointed out that the view taken in Frank Anthony Public School case [(1986) 4 SCC 707 : (1987) 2 ATC 35] is based on the view taken by the majority in All Saints High School v. Government of A.P. [(1980) 2 SCC 478] and there was no conflict between the Frank Anthony Public School case [(1986) 4 SCC 707 : (1987) 2 ATC 35] and Lily Kurian v. Sr. Lewina [(1979) 2 SCC 124 : 1979 SCC (L&S) 134] decided by a Constitution Bench of this Court. Two subsequent decisions of this Court, viz., All Bihar Christian Schools Association v. State of Bihar [(1988) 1 SCC 206] and Osmania University Teachers' Association v. State of Andhra Pradesh [(1987) 4 SCC 671] have also reiterated the same view.

5. In this view of the matter, the impugned decision of the High Court has to be set aside.

6. However, we find that the High Court has not considered the other points raised by the respondent-Society as well as by the appellant in their respective writ petitions. Hence the matter will have to be remanded to the learned Single Judge for decision on the said points.

7. We, therefore, allow the appeal, set aside the impugned decision and remand the matter to the learned Single Judge of the Karnataka High Court for decision on points raised in the respondent-Society's writ petition as well as in the writ petition filed by the appellant.

8. In the circumstances of the case, there will be no order as to costs.

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