

Board of Management of S. V. T. Educational Institution and Another

Vs

A. Raghupathy Bhat and Others

Civil Appeals Nos. 695-698 of 1997

03.02.1997

ORDER

1. Leave granted.

2. We have heard counsel on both sides.

3. This appeal by special leave arises from the order of the Karnataka High Court, made on 18-4-1996 in CRPs Nos. 934 of 1993 and 2362 of 1993 and the order dated 5-8-1996 in CPs Nos. 365 and 366 of 1996.

4. The admitted position is that the respondent was suspended from service on 18-3-1989. Domestic enquiry was conducted and the order of removal was passed. A petition was filed by the respondent against the said order before the Tribunal constituted under the Karnataka Education Act, 1983. The Tribunal on finding that the respondent was not paid the subsistence allowance, set aside the order of termination and remitted the matter for fresh enquiry. In revision, the High Court stayed the domestic enquiry and the civil petition was allowed by the High Court. Thus, this appeal by special leave.

5. It is not necessary for us to go into the merits of this matter. Rules 12(3) and 12(4) of the Rules framed under the Kamataka Private Educational Institutions (Discipline & Control) Act, provide that in a case where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside in an appeal or on review under these Rules and the case is remitted for further inquiry or action or with any other direction or under Rule 12(4) of the Rules is rendered void in consequence of or by a decision of a court of law and the disciplinary authority on consideration of the circumstances of the case, decides to hold further enquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders. Thus, it can be seen that the Rules provide for further enquiry to be conducted by the disciplinary authority. It is settled law that the employer has power to conduct enquiry afresh from the stage at which the illegality in the proceedings is found vitiating the action. The High Court is, therefore, not right in foreclosing further enquiry after upholding the order of the Tribunal which has held that there is need for further enquiry and the order of removal was set aside because of non-payment of subsistence allowance. The question whether the order of removal was bad in law for non- payment of subsistence allowance is left open, as it has not been canvassed. The disciplinary authority's proceeding further, as a consequence of remittance of the order, is clearly adumbrated under Rule 12(3) or Rule 12(4), as the case may be. It is now well settled by a Constitution Bench decision of this Court in *Managing Director; ECIL v. B. Karunakar* ((1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25

ATC 704) that as a consequence of setting aside of the order of termination or removal or dismissal further enquiry is required to be undertaken from that stage. Pending enquiry, the employee must be deemed to be under suspension. Under these circumstances, the High Court was not right in foreclosing the further enquiry. The appellants are directed to continue and complete the enquiry within a period of four months from today and until the final order, the respondent must be deemed to be under suspension.

6. We are informed that the respondent has been paid a sum of Rs. 2,00,000 (Rupees two lakhs only), pursuant to the directions issued by the High Court. The said payment will be subject to the result of the enquiry and final order and must be adjusted, as a consequence of the order of the enquiry report towards subsistence allowance or otherwise.

7. The appeal is disposed of accordingly. No costs.