

Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution

Vs

Educational Appellate Tribunal and Another

Civil Appeal No. 3391 of 1990

(Sujata V. Manohar, A. P. Mishra JJ)

20.08.1999

JUDGMENT

MISRA, J. –

1. This appeal is directed against revisional order passed by the High Court of Karnataka on 25-9-1989 confirming the order dated 13-2-1980, passed by the Educational Appellate Tribunal under Section 8 of the Karnataka Private Educational Institutions (Discipline and Control), Act of 1975 (hereinafter referred to as "the 1975 Act") which allowed the appeal of the respondent by setting aside the order dated 26-2-1979 terminating her services w.e.f. 28-2-1979. The appellant Institution is a private educational institution conducting a junior college. The second respondent was appointed as a Lecturer in Chemistry in the said Institution on 5-6-1973. She applied for grant of leave for proceeding with her higher studies which was granted subject to her giving a declaration that after expiry of the leave if she fails to resume her duties, the authorities shall be entitled to terminate her services. The case of the appellant is that though an extraordinary leave was granted for a specified course with certain conditions but Respondent 2 neither went for the course for which she obtained the leave nor joined her duties in spite of the reminder and hence after due notice to Respondent 2 and after receipt of her reply and after giving due consideration to it, not finding it satisfactory, terminated her services on 26-2-1979. It is this order which was challenged before the said Tribunal in appeal in which her termination order was set aside. Aggrieved by the same, the appellant filed civil revision in the High Court. The High Court confirmed the order of the Tribunal by holding that neither any enquiry was held nor any opportunity was provided to the second respondent to establish that she had not stayed away wilfully. Aggrieved by this, the present appeal has been filed.

2. The appellant's case is that on 27-5-1978 Respondent 2 wrote a letter to the Principal of the College seeking leave to register her name for Ph.D. course and also for sanction of leave for three years from 17-6-1978. This application was examined by the Board of Management which after careful consideration rejected it. Thereafter, another application dated 16-6-1978 was made by Respondent 2 for extraordinary leave for a period of one year to enable her to do M.Phil. for which the prescribed duration is one year. The Board of Management after considering her second application granted her the extraordinary leave for one year, on two main conditions that she make a declaration on affidavit that she would join her services at the end of the said leave period. It was on submission of such an affidavit the aforesaid leave was granted for one year w.e.f. 27-6-1978. The second condition was that she should register herself for M.Phil. course and confirm this registration by or before 31-7-1978. As a fact she did not join M.Phil. course but contrary to the condition of leave, which was for M.Phil. course, she got herself registered for Ph.D. course. As per the undertaking, she was to get herself registered with Calicut University for M.Phil. course and send a

copy of this registration to the appellant Institution, on or before 31-7-1978, failing which she was to return back and join her services by 10 a.m. on 16-8-1978. Admittedly, this registration was not sent by the said date nor did she return back to join her services in terms of the same. Then on 8-8-1978 the appellant wrote a registered letter to Respondent 2 directing her to join her services by 16-8-1978. This letter though was acknowledged by her, she did not join back. Rather she wrote on 12-8-1978 expressing her inability to join her duties.

3. Thereafter, the appellant sought confirmation from the Registrar of the said University regarding the registration of Respondent 2 for the said course. The Registrar through his letter dated 24-8-1978 informed the appellant that the University was unable to start the course of M.Phil. in Chemistry and hence she was not registered for the said course. On 15-9-1978, the appellant informed Respondent 2 about her non-registration in M.Phil. course in terms of her agreement, in spite of this, an opportunity was given to her to come back and join her duties on or before 30-9-1978 through a show-cause notice dated 27-9-1978. In it a direction was given to Respondent 2 to join her duties before 4 p.m. by 30-9-1978, failing which her services in the College would stand terminated without further notice. Thereafter, the Trust-Board in its meeting held on 6-12-1978 resolved to issue another show-cause notice which was issued to Respondent 2 on 20-12-1978, through which another opportunity was given to the respondent to submit her written explanation, if any, and in case no written and satisfactory explanation was received within one calendar month from the date of receipt of this notice, ex parte action would be taken. The explanation sought was on the following charges which are quoted hereunder :

"(a) You applied for extraordinary leave of absence for higher studies at Calicut University and you were granted one year's extraordinary leave of absence with effect from 27-6-1978 for a specific purpose viz. 'for taking up M.Phil. course in Chemistry' on giving an affidavit.

(b) You failed to register yourself for the M.Phil. course in Chemistry at Calicut University. Thus the conditions under which the said leave was granted were not fulfilled by you.

(c) Neither did you report yourself to duty by 30-9-1978 nor did you send any reply to the registered letter dated 27-9-1978 and thus stayed away wilfully.

I, A. K. Madhava Narrain, Hony. Secretary & Correspondent of RBANM's Educational Institutions, serve this notice on you as to why your services in the Junior Day College should not be terminated in the light of the above."

4. A reply was sent by Respondent 2 to this notice. In reply, she submitted that after letter dated 27-9-1978 which is really the termination order these charges are not sustainable in the eye of the law. This is also the submission of her counsel before us with reference to the letter dated 27-9-1978. She challenged this letter before the Educational Appellate Tribunal on 1-1-1978 believing the said letter to be an order of termination. However, Respondent 2 later got her appeal before the said Tribunal dismissed as not pressed.

5. This seems to be, in view of the fact that another show-cause notice was issued to her, as aforesaid. Respondent 2 filed reply to this 2nd show-cause notice, which the appellant after due consideration rejected and passed termination order dated 26-2-1979. This order was again challenged by Respondent 2 before the said Tribunal which allowed her appeal and set aside her

termination order. The High Court upheld this order of the Tribunal holding that there was violation of the principle of natural justice as no opportunity was given to Respondent 2 and no enquiry was held in terms of Section 6 of the aforesaid 1975 Act. Challenging these findings, the submission is made on behalf of the appellant that a full conceivable opportunity was given to Respondent 2 and in fact she even sent a reply dated 3-2-1979 and it is only after considering the said reply and other letters sent by her and relevant record which is recorded in the order of termination dated 26-2-1979 itself, her services were terminated w.e.f. 28-2-1979. Thus it cannot be urged that no opportunity was given to her. Thus there could possibly be no illegality in passing the impugned termination order.

6. On these facts we proceed to examine the merit of contentions. We find, it is not in dispute that she earlier applied for leave for three years for doing Ph.D. course which was rejected by the Board. She later applied for extraordinary leave for a period of one year for doing M.Phil. course with an undertaking that she would be sending the registration of her M.Phil. course by 31-7-1978, failing which she would return back and join her services at 10 a.m. on 16-8-1978. It is also not disputed that she did not get herself registered for M.Phil. course. It is only when enquiry was made by the appellant from the Registrar of Calicut University it was revealed that M.Phil. course did not even start in the said year in question in the University and instead she got herself registered for Ph.D. course. It is significant, as aforesaid, that her earlier application for leave for doing Ph.D. course stood rejected, hence she applied subsequently, alternatively for M.Phil. course. It is also not in dispute that in spite of the registered letter dated 8-8-1978 by the appellant directing her to join her duties by 16-8-1978, which was also acknowledged by her on 12-8-1978, she did not join her duties. The submission by the learned counsel for Respondent 2 is that since she could not get herself registered for M.Phil. course in the said University, having no alternative she got herself registered for Ph.D. course. Her case is, as she had already obtained extraordinary leave for higher studies for one year she joined this course. Later she sent a request to the appellant to grant her permission for the same. It is also not in dispute that the said permission was not granted by the appellant to Respondent 2.

7. The main submission on behalf of Respondent 2 is that when the appellant sent the aforesaid letter/notice dated 27-9-1978 to Respondent 2, it directed her to join back her duties by 4 p.m. on 30-9-1978. Since she received the letter only on 29-9-1978 and in view of the language of the said letter she treated the said letter as a termination letter and proceeded to challenge the same before the said Tribunal. This letter admittedly did not give any opportunity to Respondent 2 and this action was alleged to be illegal. Even in reply to the second show-cause notice, as aforesaid, on 3-2-1979 this point was reiterated and emphasised by her. We fail to appreciate such submission before us in the present proceedings as admittedly and as per records the challenge to the said letter/order dated 27-9-1978 before the Tribunal was dismissed as withdrawn. This was clear in view of the receipt of the second show-cause notice dated 20-12-1978 in which full opportunity was given to Respondent 2 to explain. The second show-cause notice truly repelled the earlier show-cause letter dated 27-9-1978. To this an explanation was furnished by her and the termination order dated 26-2-1979 also clearly reveals that not only her reply dated 3-2-1979 was considered, but all her other letters and correspondence, nine in number, were placed before the appellant which is also referred in the termination order and thus after taking them into account the termination order was passed. In view of this, it cannot be said on the facts and circumstances of this case that there was any violation of any principle of natural justice as sufficient opportunity was given to her. The said matrix of facts reveal, on the contrary, which is also not in dispute that Respondent 2 in spite of her earlier application for leave for seeking permission for doing Ph.D. course which is for three years being rejected, she in spite of this under the garb of leave for doing M.Phil. course for one year and on

such leave, without seeking any fresh permission from the appellant got herself registered for Ph.D. course. This apart, admittedly, she even violated the conditions of her leave for which she filed an affidavit, i.e., if she does not get admission in M.Phil. course by 31-7-1978, she would rejoin the service which she did not do. The facts speak for themselves. It is also clear from the record that the appellant gave opportunity to her. On these facts, the order of termination passed by the appellant cannot be said to be illegal. We find that both the Tribunal and the High Court did not revert (sic advert to) or scrutinise these basic facts, which are so apparent and revealing that no other inference is possible and that is why we do not find on record even from her reply any sustainable defence taken by her.

8. The contention of learned counsel for the respondent is confined that there was no enquiry in terms of Section 6 of the said Act. There is no submission of any defence on merit. Even before us when we granted learned counsel an opportunity to give any prima facie or plausible explanations on record to defend her actions, nothing could be placed before us. Giving of opportunity or an enquiry of course is a check and balance concept that no one's right be taken away without giving him/her opportunity or without enquiry in a given case or where the statute requires. But this cannot be in a case where allegation and charges are admitted and no possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations? When she admitted she did not join M.Phil. course, she did not report back to her duty which is against her condition of leave and contrary to her affidavit which is the charge, what enquiry was to be made? In a case where the facts are almost admitted, the case reveals itself and is apparent on the face of the record, and in spite of opportunity no worthwhile explanation is forthcoming as in the present case, it would not be a fit case to interfere with the termination order.

9. Further the order of termination was passed in the year 1978 which is more than 21 years back and on the facts and circumstances of this case, as she is not working since then in the said Institution and we are also informed by her learned counsel that she is already in some job and in view of our findings above, we do not find this case to be such as to confirm the impugned orders. On the contrary we feel it was a fit case where her termination order should have been upheld. This is a case where Respondent 2 acted clearly in violation of her own undertaking against her condition of leave and in spite of information to her by the appellant to return to duty she did not which clearly depicts a picture that the termination order cannot be held to be invalid. Thus both the courts, viz., the Tribunal and the High Court committed wrong in setting aside the order of termination passed against her by the appellant.

10. Learned counsel for Respondent 2 lastly submitted that her termination order puts a stigma on her which would affect her future and other employment. On the facts of this case we have no hesitation to hold that this termination order is an order of termination simpliciter and it does not put any stigma on Respondent 2. Even if it could be construed as such we protect her not to be read as so by this order.

11. For all these reasons, the appeal filed by the appellant succeeds and is allowed. The impugned order of the High Court dated 25-9-1989 confirming the order of the Tribunal dated 13-2-1980 is hereby set aside and we uphold the order of termination dated 26-2-1979. Costs on the parties.