



IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 24TH DAY OF FEBRUARY, 2022

PRESENT

THE HON'BLE Dr.JUSTICE H.B.PRABHAKARA SASTRY

AND

THE HON'BLE MR. JUSTICE S. RACHAIAH

R.F.A.NO.100061/2021

BETWEEN

SMT. RABIYA ABDUL HAMID BEPARI,

...APPELLANT

(BY SMT P G NAIK, ADVOCATE)

AND

1. THE CHAIRMAN,
SCHOOL MANAGING COMMITTEE,
VOLKART ACADEMY,
GOKAK FALLS-591308,
TAL. GOKAK,
DIST. BELAGAVI.
2. THE SECRETARY,
SCHOOL MANAGING COMMITTEE,

VOLKART ACADEMY,
GOKAK FALLS-591308,
TAL. GOKAK,
DIST. BELAGAVI.

3. HEAD MISTRESS,
SCHOOL MANAGING COMMITTEE,
VOLKART ACADEMY,
GOKAK FALLS-591308,
TAL. GOKAK,
DIST. BELAGAVI.

...RESPONDENTS

(BY SRI Z.N. HANSI, ADVOCATE)

THIS RFA IS FILED UNDER SEC. 96 READ WITH ORDER 41 RULE 1 AND 2 OF CPC., 1908, PRAYING THAT ORDER DATED 09.11.2020 ON PRELIMINARY ISSUES 1 AND 2 AND DECREE PASSED IN ORIGINAL SUIT NO.547/2018 BY THE LEARNED II ADDITIONAL SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, GOKAK, MAY KINDLY BE SET-ASIDE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY,
DR. H.B. PRABHAKARA SASTRY, J., DELIVERED THE
FOLLOWING:

JUDGMENT

In Original Suit No.547/2018 filed by the present appellant as plaintiff in the Court of learned II Additional Senior Civil Judge and Judicial Magistrate First Class, Gokak, the present respondents were defendant Nos.1 to 3. The said suit was for the relief of recovery of money seeking a direction to the defendants to make the payment of alleged arrears of salary of ₹20,10,125/- with interest thereupon, from the date of suit to the plaintiff.

2. The contention of the plaintiff was that, she was appointed on 25.6.1997 on temporary basis as a Teacher for a period of one year in Urdu Medium High School being run by the defendant Nos.1 and 2. On 01.12.1998, she was appointed as a full-time Urdu Assistant Teacher for Urdu Medium High School run by defendant No.1. According to plaintiff, she worked in the said institution for more than 16 years as a Teacher. On the date 01.06.2015, the defendant - Institution orally terminated the services of the plaintiff

without there being any reason and also without any written intimation. The reason assigned by the Management at the inquiry made by the plaintiff was that the very school itself was closed from 01.06.2015, as such, the services of the plaintiff could not be continued. According to the plaintiff, from 01.12.1998 till May 2015, as a Teacher, she has received a total salary of ₹4,73,700/- from the defendant - Institution when infact the defendants ought to have paid her a total amount of ₹24,83,825/-. Thus, there was a short payment of a sum of ₹20,10,125/- to the plaintiff, which she has claimed as arrears of salary. The plaintiff has further stated that several of her personal visits and oral requests with the defendants for the arrears of her salary did not yield any result and did not invoke any response from them, as such, she was constrained to issue a legal notice to the defendants on 14.09.2016 claiming the arrears of salary. However, the defendant - Institution gave an evasive reply on 29.09.2016, denying to meet the demand made by the plaintiff, which constrained her to institute the suit.

3. After the service of summons, defendant Nos.2 and 3 filed their written statement which was adopted by defendant No.1 by filing a memo. In its written statement, the defendants denied the plaint averments that the plaintiff was a full-time regular Teacher, entitled and eligible for the alleged arrears of salary as claimed by her.

4. Based on the pleadings of the parties, the Trial Court framed six issues. Among them, issue Nos.1 and 2 were treated as preliminary issues which read as below:-

(1) Whether the defendants prove that the suit is barred under sections 94 and 96 of the Karnataka Education Act?

(2) Whether the defendants prove that this Court has no jurisdiction to try the suit?

5. The Trial Court after hearing both sides on the said preliminary issues, by its impugned order dated 09.11.2020, while answering both the issues in affirmative, ordered that the suit was barred under sections 94 and 96 of the Karnataka Education Act, 1983 (for brevity "Education

Act”) and that it had no jurisdiction to try the suit. Accordingly, the plaint was rejected under Order 7 Rule 11(d) of Civil Procedure Code, 1908. Challenging the said order, the plaintiff in the Trial Court has preferred the present appeal.

6. In response to the notice, the respondents are being represented by their learned counsel.

7. Though the matter is listed in the admission list, however, with the consent from both sides, the matter is taken up for its final disposal.

8. During the pendency of this appeal, the respondents have filed photocopies of six documents, however, the Registry has raised an objection that the index sheet attached to the documents has not been signed by the learned counsel for the respondents. Accordingly, it returned the said set of documents to the respondents. However, today since the learned counsel for the respondents has cured the said objections raised by the office, with the leave of the court and the learned counsel for the appellant

submitted her no objection to accept those documents for consideration, those documents filed with the index is taken on record for a mere perusal, however, keeping open the proof of those documents to be agitated, if any, by the parties at the appropriate stage, before the appropriate forum.

9. Heard the submission from both sides. Perused the materials placed before this Court.

10. The points that arise for our consideration are as below:-

- (1) *Whether the finding given by the Trial Court on preliminary issue Nos.1 and 2 is erroneous?*
- (2) *Whether the impugned order under appeal deserves any interference at the hands of this Court?*

11. Learned counsel for respondents submits that the respondents would not dispute the fact that the present appellant who was the plaintiff in the Trial Court was serving in Urdu Medium High School, Gokak, under the management

of the respondents for sometime. However, he would not make any further statement regarding tenure of her service in the said school and whether the service of the plaintiff was as a permanent full-time teacher, which are the matters to be agitated and established before the appropriate forum, at the appropriate time.

12. Learned counsel for the appellant, in her very brief argument, submits that, though she was asked not to come to school as a teacher with effect from the date 01.06.2015, the plaintiff / appellant has chosen not to challenge the said order, because the school itself came to be closed from the said date, as such, her service from the school is not a dismissal, retrenchment or removal from the service. That being the case, she cannot prefer any appeal before the Tribunal under section 94 of the Education Act. Learned counsel for the appellant further submits that her claim in the original suit is only for the arrears of salary, in which regard, for her request to pay the arrears, the Management has not passed any order. Thus,

she cannot even approach the Commissioner under Section 131 of the Education Act. Therefore, only remedy available to her was through the original suit.

13. Learned counsel for the respondents, in his arguments, submitted that in response to the legal notice dated 14.09.2016 sent by the appellant claiming the alleged arrears of the salary, the respondents through their counsel, have sent a reply dated 29.09.2016. In addition to that, the appellant, who was permitted to stay in the quarters belonging to the Management, has not vacated the quarters even after cessation of her alleged employment under the respondents. In that regard, a notice to vacate the quarters dated 26.09.2016 was also served upon the appellant, for which, the appellant has sent an untenable reply. Therefore, the appellant cannot have any claim against the respondents. As such, the Trial Court's order does not warrant any interference at the hands of this Court.

14. The respondents, through the index attached to the copies of the documents dated 18.02.2022, have produced

copies of the claim filed by the present appellant in the Trial Court in Original Suit No.547/2018, the written statement of the respondents, the legal notice dated 14.09.2016 sent by the appellant, reply to the said notice dated 29.09.2016 sent by the respondents, notice issued by the respondents asking the appellant / plaintiff to vacate the quarters which notice is dated 26.09.2016 and a copy of reply dated 03.10.2016 said to have been sent by the appellant / plaintiff to the respondents.

15. A perusal of all these documents furnished by none else than the respondents go to show that nothing is placed by the respondents on record to show that on the alleged oral demands and claims made by the plaintiff claiming the alleged arrears of salary, no order in writing has been passed by the respondents. Even according to the respondents, there is no order either of dismissal or for removal or even of reduction of the plaintiff in rank in its Institution. Though learned counsel for respondents submits that in their written statement they have taken a stand that a discharge letter

was given to the plaintiff, but admittedly, the plaintiff has not challenged her alleged discharge, though such a discharge can be presumed, from the Institution run by the respondents. None of the six documents produced by the respondents with an index dated 18.02.2022 contain any document which can be called as an order passed by the respondents towards the alleged claims said to have been made by the plaintiff. Thus, admittedly, there exists no order in writing, as on today, passed by respondent-Management towards the alleged claim for arrears of salary said to have been made by the plaintiff.

16. Section 94 of the Education Act, which speaks about appeal, reads as below:-

"Appeals.—(1) Any teacher or other employee of a private educational institution who is dismissed, removed or reduced in rank may within three months from the date of communication of the order prefer an appeal to the Tribunal.

(2) The provisions of Sections 4 and 5 of the Limitation Act, 1963, shall be applicable to such an appeal.

(3) If, before the date of commencement of this Act, any teacher or other employee has been dismissed, or removed or reduced in rank or his appointment has been otherwise terminated and any appeal preferred before that date—

- (a) by him against such dismissal or removal or reduction in rank or termination; or*
- (b) by him or by the Governing Council against any order made in any appeal referred to in clause (a) is pending before any officer, such appeal shall, notwithstanding anything in sub-section (1), stand transferred to the Tribunal, if he makes an application in that behalf to such officer.*

(4) The Tribunal shall dispose of the appeal filed under sub-section (1) or transferred under sub-section (3) after giving the parties the opportunity of being heard.

(5) In respect of an order imposing a penalty other than those specified in sub-section (1) of Section 92, on any teacher or other employee, an appeal shall lie to the Competent Authority within three months from the date of communication of the order imposing such penalty.

(6) The Competent Authority shall dispose of an appeal preferred under sub-section (5) after giving the parties the opportunity of being heard.

(7) An appeal against an order of the Competent Authority under sub-section (6) shall lie within the prescribed period of the Tribunal, whose decision shall be final."

According to the said section, any teacher or other employee of a private educational institution who is dismissed, removed or reduced in rank, may within three months from the date of communication of the order, prefer an appeal to the Tribunal.

17. The constitution and power of the Tribunal has been explained in section 96 of the same Act, which reads as below:-

"Tribunal.—(1) The State government shall, by notification in the Official Gazette constitute one or more Educational Appellate Tribunals for the adjudication of appeals preferred under this Act and where more than one Tribunal is constituted, the State Government shall specify the territorial jurisdiction of each such Tribunal.

(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 sub-section (1), the District Judge of each District shall function as the Educational Appellate Tribunal of the District.

(3) The Educational Appellate Tribunal.—

(a) may, if satisfied from the material on record that the order is arbitrary, perverse, mala fide, violative of the rules of natural justice or not sustainable on any other ground, pass such orders including one for the reinstatement of the employee, as it deems fit on such terms and conditions, if any, including payment of salary, allowances and costs;

(b) shall for the purposes of the disposal of the appeals referred under this Act have the same powers as are vested in a Court of appeal under the Code of Civil Procedure, 1908 (Central Act 5 of 1908);

(c) shall have the power to stay the operation of the order appealed against on such terms as it may think fit;

(d) shall for the purpose of executing its own orders have the same powers as are vested in a Court executing a decree of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) as if such orders were decrees of a Civil Court.

(4) All expenses incurred in connection with the Tribunal shall be borne from out of the Consolidated Fund of the State.

(5) No Civil Court shall have jurisdiction in respect of matters over which the Tribunal exercises any power under this Act."

18. A careful reading of the plaint averments and more particularly, the prayer made in the plaint by the present appellant in Original Suit No.547/2018 makes it very clear that the claim of the plaintiff against the defendants in the original suit is for the alleged arrears of the salary. In the very plaint itself, the plaintiff is said to have made clear that she is not claiming any continuation of her service in the Institution of the defendants since the very Institution is said to have been closed from 01.06.2015. As such, even according to the plaintiff, her cessation of work under the

respondents has not been challenged by her in any manner, in any forum. Therefore, it is clear from the plaint that the plaintiff has not considered the cessation of her work / employment with the respondents as a dismissal or removal. Admittedly, it cannot be a reduction in the rank. Therefore, when the stoppage of the work of the plaintiff with the defendants' - establishment cannot be considered as a dismissal or removal or even as reduction of rank, the question of she preferring any appeal under section 94 to the Tribunal would not arise.

Even under section 96 of the Education Act, the Educational Appellate Tribunal may consider the order which is alleged to be arbitrary, perverse, *mala fide* or violative of rules of natural justice. Admittedly in the instant case, no such order has been passed. Therefore, when the plaintiff has not called the act of the defendants as an act of her dismissal or removal from the services, the appeal will not lie under section 94 of the Education Act.

19. A Co-ordinate Bench of this Court in ***SHANKARAPPA SHARANAPPA GAURE vs. THE DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS, BIDAR & OTHERS*** reported in ***1998 SCC OnLine Karnataka 599***, while analyzing the scope of section 94 of the Education Act, was pleased to observe, in para 9 of its judgment that, a bare reading of section 94 of the Education Act clearly shows that any teacher or other employee of a private educational institution can prefer an appeal to the Tribunal only when dismissed, removed or reduced in rank within the prescribed time and no appeal can be entertained by the Tribunal against an order of any other nature even if it pertains to the service conditions.

In the same judgment, at para 10, it was further observed that, so far as the other orders passed by the Management against which the employees may have grievance are concerned, those can be assailed only by way of revision under section 131 of Education Act.

Referring ***Shankarappa's case (supra)***, a Division Bench of this Court in ***MANAGEMENT OF M.S.RAMIAH MEDICAL COLLEGE & HOSPITAL vs. Dr.SOMASHEKAR*** reported in ***2003 SCC OnLine 919***, in para 23 of its judgment, was pleased to summarize the position regarding the remedies available to an employee (including a teacher) of a private educational institution as below:-

"(i) The remedy against an order imposing the penalty of dismissal, removal or reduction in rank, is by way of appeal to the Educational Appellate Tribunal under Section 94(1).

(ii) The remedy against an order imposing any other penalty, is by way of an appeal to the Competent Authority under Section 94(5) with a further appeal to the Educational Appellate Tribunal under Section 94(7).

(iii) The remedy against any order of management which is not punitive in nature, is by way of revision to the State Government under Section 131.

(iv) Where an employee contends and establishes that the order of termination simplicitor or retrenchment, as the case may

be, passed by the Management is really an order imposing punishment/penalty of dismissal or removal and files an appeal under Section 94(1), the Tribunal can go behind the form of the order and decide upon the true nature of the order, that is whether the order is merely what it purports to be, or whether it is a cloak for punishment/penalty, either as a disciplinary measure or as victimisation. If it concludes that the order is a cloak for dismissal or removal, the appeal will be maintainable and it can proceed to hear and dispose of the appeal on merits."

20. In the instant case, even according to the parties, the cessation of the work of the plaintiff by the defendants is neither dismissal nor removal nor even a reduction in rank. Admittedly, the plaintiff is not challenging the alleged letter of dischargal, if any, written by the defendants. Thus, the alleged cessation of the work, in any of its nomenclature, is not a matter of dispute. The only question of dispute is the alleged entitlement of the plaintiff for the alleged arrears of salary. Thus, when there is no dismissal or removal or reduction in rank, the appeal would

not lie under section 94 of the Education Act. Admittedly, no order regarding the claim of the plaintiff towards her alleged arrears of salary has been passed by the defendants. As such, in the absence of any such order passed by the Management against the alleged claim of the plaintiff, she cannot take the grievance even in the form of a revision under section 131 of the Education Act. Therefore remedy available, when it is neither in the form of an appeal before the Tribunal nor in the form of a revision under section 131 of the Education Act, it ought to be only before a competent Civil Court.

No doubt, section 96 sub-section (5) of the Education Act states that, no Civil Court shall have jurisdiction in respect of matters over which the Tribunal exercises any power under the Education Act, but the analysis made above shows that, with respect to the claim made by the plaintiff in her plaint, the Tribunal cannot exercise its power, since it is not an order of dismissal, removal or reduction in the rank. Thus, the bar under section 96(5) of the Education Act is also

not attracted. Thus, the competent Civil Court cannot say that it has got no jurisdiction under section 96(5) of the Education Act. However, the Trial Court without noticing the absence of any order of dismissal, removal or reduction of the rank as the subject matter of litigation, has embraced section 94 and section 96 of Education Act and erroneously held that the remedy available to the plaintiff is only under section 96(3)(a) of the Education Act. Since the said finding now proved to be an erroneous finding, the same deserves to be reversed and the matter requires to be restored on the file of the Trial Court for its further proceeding in accordance with law.

Accordingly, we proceed to pass the following:-

ORDER

- (i) The appeal is allowed.
- (ii) The finding given on preliminary issue Nos.1 and 2 by the Trial Court in Original Suit No.547/2018 is set-aside and the issue Nos.1 and 2 are answered in the affirmative.

- (iii) Consequently, the impugned order is set-aside. Original Suit No.547/2018 is restored on file, with a direction to the Trial Court to proceed with the matter in accordance with law.
- (iv) Registry to transmit a copy of this order to the concerned Trial Court without delay.
- (v) In order to avoid any further delay in disposal of the Original Suit No.547/2018, both parties herein are directed to report before the Trial Court, without anticipating any fresh summons or notice from it, on 28.03.2022 at 11.00 a.m.

**Sd/-
JUDGE**

**Sd/-
JUDGE**