



IN THE HIGH COURT OF KARNATAKA AT BENGALURU



DATED THIS THE 12TH DAY OF OCTOBER, 2023

PRESENT

THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT APPEAL NO. 580 OF 2023 (S-RES)

BETWEEN:

RAJARAJESHWARI DENTAL COLLEGE AND HOSPITAL
NO.14, RAMOHALLI CROSS,
KUMBALGODU, MYSORE ROAD,
BENGALURU-560 074,
REPRESENTED BY ITS CHAIRMAN.

...APPELLANT

(BY SRI. DHANANJAYA V JOSHI., SENIOR COUNSEL FOR
SMT. KAVITHA D.,ADVOCATE)

AND:

DR. SANJAY MURGOD,
SON OF MR. JUSTICE A .B. MURGOD,
AGED ABOUT 51 YEARS,
RESIDING AT NO. 1075/E,
10TH MAIN, HAL 2ND STAGE,
BENGALURU-560 008.

...RESPONDENT

(BY SRI.V SRINIVASA RAGHAVAN., SENIOR COUNSEL FOR
SRI.P CHINNAPPA.,ADVOCATE FOR C/R-1(CP NO.5036/23))





THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT,1961 READ WITH ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER, DATED 24/01/2023, PASSED IN WP NO.15873/2021 (IMPUGNED ORDER), AND PASS SUCH OTHER ORDERS AND / OR DIRECTIONS.

THIS APPEAL IS COMING ON FOR FINAL HEARING, THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGMENT

This intra-court appeal seeks to lay a challenge to a learned Single Judge's order dated 24.01.2023 whereby the respondent's W.P.No.15873/2021 having been favoured the termination notice dated 11.06.2021 came to be voided coupled with a direction for reinstatement with immediate effect. Learned Single Judge also directed payment of backwages to the writ petitioner employee at the rate of 25% of the basic pay without emoluments within four weeks, for a period of twelve months. Of course, liberty is also reserved to the appellant-Institution to seek prior approval of the competent authority for discharging the respondent from service.



2. Learned Sr. Advocate appearing for the appellant-Institution vehemently argues that the learned Single Judge failed to see that the provisions of Section 98 of the Karnataka Education Act, 1983 (for short, '1983 Act') is not applicable to the unaided educational institution run by the linguistic minority institution. In support of this submission, he places reliance on the decision of the Apex Court in **TMA PAI FOUNDATION VS. STATE OF KARNATAKA**¹. In the alternative, according to the counsel, the permission taken from the Dental Council of India amounts to compliance with requirement of Section 98(1) of the 1983 Act.

3. Learned Sr. Advocate appearing for the counsel on record for the respondent through caveat opposes the appeal making submission in justification of the impugned order of the learned Single Judge and the reasons on which it has been constructed. He draws attention of the court to the pleadings of the appellant filed by way of

¹ (2002) 8 SCC 481



Statement of Objections in the writ petition and seeks to demonstrate that the line of argument is not supported by such pleadings on facts.

4. Having heard the learned counsel for the parties and having perused the appeal papers, we decline indulgence in the matter being broadly in agreement with the reasoning of the learned Single Judge. He has considered all the contentions of the parties in the right perspective and he has also done equity to the appellant-institution by minimizing the payment of backwages, which otherwise, would have been much higher.

5. The first contention advanced on behalf of the appellant that the appellant-institution is unaided and therefore, the provisions of Section 98(1) of the 1983 Act are not applicable is bit difficult to countenance, in view of its text and context. Provisions of Section 98(1) & (2) have the following text:

"98. Retrenchment of employees-(1) *Where retrenchment of any employee is rendered necessary by the Governing Council or Competent Authority consequent on any change relating to*



education or course of instruction or due to any other reason, such retrenchment may be effected with the prior approval of the Competent Authority or the next higher authority, as the case may be.

(2) Where any retrenchment of the member of the teaching staff in any aided Educational Institution is effected, the State Government or the Competent Authority shall, subject to prescribed rules or orders governing the reservation in posts to Scheduled Castes and Scheduled Tribes and other Backward Classes, appoint such person to a similar post where available in any other aided educational institution."

(Other provisions of Section 98 not being much relevant, are not reproduced.)

6. The text of Section 98(1) of the 1983 Act, employs the term 'any employee'; the word 'Employee' is defined under Section 2(15) to mean a person employed in an educational institution. It obviously includes in its sweep any & every employee regardless of designation and nature of functions or the kind of educational institution, except those excluded under Section 2(14), which defines 'Educational Institution'. This becomes clear from the text of sub-section 2 of Section 98 which employs the terms 'teaching staff' and 'aided educational institution'. These terms are conspicuously absent in sub-section 1. This is where the maxim *Expressio Unius Est*



Exclusio Alterius becomes invocable. In 'Maxwell on The Interpretation of Statutes' , at page 293, it is written as under:-

"By the rule usually known in the form of this Latin maxim, mention of one or more things of a particular class may be regarded as silently excluding all other members of the class: expressum facit cessare tacitum. Further, where a statute uses two words or expressions, one of which generally includes the other, the more general term is taken in a sense excluding the less general one: otherwise there would have been little point in using the latter as well as the former."

If the legislature intended to exclude unaided educational institutions, it would have in so many words said it, as it has done in sub-section 2 of Section 98.

7. The next contention of learned counsel for the appellant that the provisions of 1983 Act do not apply to the educational institutions run by linguistic minority, also does not merit acceptance. The term 'Educational Institution' is defined in Section 2(14) of the Act to mean 'any educational institution imparting education referred to in Section 3 and includes a private educational institution but does not include an institution under the direct



management of the University or of the Central Government or a tutorial institution'. Apparently, it is a 'means and includes' definition. It is also 'excludes' definition and what is excluded is specifically stated; that a Minority Educational Institution as defined under Section 2(21) is not enlisted in the excluded category.

8. The above apart, it is relevant to reproduce Section 97 which reads as under:-

"97. Resignation.- (1) *Any employee of a private educational institution may resign his service by giving a notice to the Governing Council in accordance with sub-section (2).*

(2) *Every such notice of resignation shall,-*

(a) *conform to the terms and conditions of service governing such employee; and*

(b) *be in the prescribed form attested by an officer duly authorised in this behalf by the State Government.*

(3) *No resignation which is not in accordance with sub-section (2) shall be valid or be of any effect whatsoever."*

The legislature in its wisdom has taken special care to protect the tenure of employees of the private Educational Institutions by restricting the power of management to cut short the same casually. Section 97 prescribes the modalities of resignation; sub-section 3 which begins with



the negative terminology is apparently mandatory; it ensures *voluntati* of the employee in the matter of resignation. Section 98 secures the tenure by restricting management's power to remove or retrench the employees. The underlining philosophy of these provisions is that an employee whose tenure is secured will be in a better position to discharge his duties efficiently and that is necessary in public interest. It hardly needs to be emphasized that the education and educational institutions play a pivotal role in nation building and therefore a legislature rightly feels the need for protecting tenure of service and its conditions of these employees. In a sense, these provisions aim at social security as well, like the Labour Laws do for the workmen.

9. The next submission of the learned Sr. Advocate appearing for the appellant-Institution that the Apex Court in **TMA PAI** *supra* has differentiated unaided minority Educational Institutions from other Educational Institutions and therefore, the provisions of Section



98(1) of the 1983 Act cannot be invoked, again is bit difficult to countenance. The reason for this is obvious: the 1983 Act is a plenary legislation which enjoys a very strong presumption of validity in the light of **R.K.DALMIA VS. JUSTICE TENDOLKAR**². In the absence of a successful challenge and striking down of the provisions of Section 98 of the Act, their invocability cannot be hibernated on the ground that arguably they are repugnant to the observations of the Apex Court in some decisions. Admittedly, the case of the appellant as sought to be made out in its Statement of Objections filed in the writ petition did not whisper about the arguable unconstitutionality of Section 98(1) of the 1983 Act.

10. The above contention of the learned Sr. Advocate appearing for the appellant-institution is liable to be rejected for yet another reason: The Delhi

² AIR 1958 SC 588



High Court in **KATURIA PUBLIC SCHOOL VS. DIRECTOR OF EDUCATION**³ had struck down Section 8(2) of the Delhi School Education Act, 1973; the said provision is in *pari materia* with the provisions of Section 98(1) of 1983 Act. The ground for voiding the same was that the said provision ran repugnant to the observations in **TMA Pai supra**. However, the Apex Court in **RAJ KUMAR vs. DIRECTOR OF EDUCATION**⁴ overruled the said view, observing as under:-

"49. ... Sub-section (2) of Section 8 of the Act ordains that subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director of Education...

50. The Division Bench of the Delhi High Court, thus, erred in striking down Section 8(2) of the DSE Act in Kathuria Public School by placing reliance on the decision of this Court in T.M.A. Pai, as the subject-matter in controversy therein was not the security of tenure of the employees of a school, rather, the question was the right of

³ 2005 SCC Online Del 778

⁴ (2016) 6 SCC 541



educational institutions to function unfettered. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.”

11. The last contention advanced on behalf of the appellant-institution that it imparts education in the field of Dental Science & Technology and it is exclusively governed by the provisions of the Dentists Act, 1948 and therefore, 1983 Act is not applicable, does not impress us, even in the least. The provisions of 1948 Act in essence intend to regulate the standard of professional education whereas, the provisions of Sections 97 & 98 of the 1983 Act in substance intend to secure the service conditions of employees of Educational Institutions. Thus, they are poles apart. By no stretch of imagination, one can be read into the other.



In the above circumstances, this appeal being devoid of merits is liable to be and accordingly dismissed, costs having been made easy.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Snb, KPS
List No.: 1 SI No.: 27