

PETITIONER:  
DHARMARATHMAKARA R .A. RAMASWAMY MUDALIAR ED. INSTITUTION

Vs.

RESPONDENT:  
THE EDUCATIONAL APPELLATE TRIBUNAL & ANR

DATE OF JUDGMENT: 20/08/1999

BENCH:  
Sujata V. Manohar, A.P.Misra

JUDGMENT:

Misra, J.

This appeal is directed against revisional order passed by the High Court of Karnataka on 25th September, 1989 confirming the order dated 13th February, 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 26th February, 1979 terminating her services w.e.f. 28th February, 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 5th June, 1973. She applied for grant of leave for proceeding 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 specified course with certain conditions but respondent No.2 neither went for the course for which she obtained the leave nor joined back her duties in spite of the reminder and hence after due notice to respondent No.2 and after receipt of her reply and after giving due consideration to it not finding it satisfactory, terminated her services on 26th February, 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 neither any enquiry was held nor any opportunity was provided to the second respondent to establish that she had not stayed away willfully. Aggrieved by this, the present appeal has been filed.

The appellants case is that on 27th May, 1978 respondent No.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 17th June, 1978. This application was examined by the Board of management and after careful consideration rejected it. Thereafter, another application dated 16th June, 1978 was made by respondent No.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 makes 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. 27th June, 1978. The second condition was that she should register herself for M.Phil course and confirm this registration by or before 31st July, 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 register with the Calicut University for M.Phil course and send a copy of this registration to the appellant institution, on or before 31st July, 1978, failing which she was to return back and join her services by 10 A.M. on 16th August, 1978. Admittedly, this registration was not sent by the said date nor she returned back to join her services in terms of the same. Then on 8th August, 1978 the appellant wrote a registered letter to respondent No.2 directing her to join her services by 16th August, 1978. This letter though was acknowledged by her, she did not join back. Rather she wrote on 12th August, 1978 expressing her inability to join her duties.

Thereafter, the appellant sought confirmation from the Registrar of the said University regarding the registration of respondent No.2 for the said course. The Registrar through his letter dated 24th August, 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 15th September, 1978, the appellant informed respondent No.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 30th September, 1978 through a show cause notice dated 27th September, 1978. In it a direction was given to respondent No.2 to join her duties before 4 P.M. by the 30th September, 1978, failing which her services in the college would stand terminated without further notice. Thereafter, the trust-Board in its meeting held on 6th December, 1978 resolve to issue another show cause notice which was issued to respondent No.2 on 20th December, 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 calender month from the date of receipt of this notice, ex parte action would be taken. The explanation sought was on the following charges which is quoted hereunder :

a) You applied for extra-ordinary leave of absence for higher studies at the Calicut University and you were granted one year extra ordinary 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 the 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 willfully. I, A.K. Madhava Narrain, Hony. Secretary & Correspondent of RBANMS 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.

A reply was sent by respondent No.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 law. This is also the submission of her counsel before us with reference to the letter dated 27th September, 1978. She challenged this letter before the Educational Appellate Tribunal on 1st January, 1978 believing the said letter to be an order of termination. However, respondent No.2 later got her appeal, before the said Tribunal, dismissed as not pressed.

This seems to be, in view of the fact that another show cause notice was issued to her, as aforesaid. Respondent No.2 filed reply to this 2nd show cause notice, which the appellant after due consideration rejected and passed termination order dated 26th February, 1979. This order was again challenged by respondent No.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 principle of natural justice as no opportunity was given to respondent No.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 full conceivable opportunity was given to respondent No.2 and in fact she even sent a reply dated 3rd February, 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 26th February, 1979 itself, her services were terminated w.e.f. 28th February, 1979. Thus it cannot be urged no opportunity was given to her. Thus there could possibly be no illegality in passing the impugned termination order.

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 31st July, 1978, failing which she would return back and join her services at 10 A.M. on 16th August, 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 the 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 in spite of the registered letter dated 8th August, 1978 by the appellant directing her to join her duties by 16th August, 1978, which was also acknowledged by her on the 12th August, 1978, she did not join her duties. The submission by the learned counsel for respondent No.2 is 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 the said permission was not granted by the appellant to respondent No.2.

The main submission on behalf of respondent No.2 is that the appellant when sent the aforesaid letter/notice dated 27th September, 1978 to respondent No.2, it directed her to join back her duties by 4 P.M. on 30th September, 1978. Since she received the letter only on 29th September, 1978 and in view of the language of the said letter she treated the said letter as termination letter and proceeded to challenge the same before the said Tribunal. This letter admittedly did not give any opportunity to respondent No.2 and this action was alleged to be illegal. Even in reply to the second show cause notice, as aforesaid, on the 3rd February, 1979 this point was reiterated and emphasised by her. We fail to appreciate such submission before us in the present proceeding as admittedly and as per records the challenge to the said letter/order dated 27th September, 1978 before the Tribunal was dismissed as withdrawn. This was clear in view of the receipt of the second show cause notice dated 20th December, 1978 in which full opportunity was given to respondent No.2 to explain. The second show cause notice truly repelled earlier show cause letter dated 27.9.1978. To this an explanation was furnished by her and the termination order dated 26th February, 1979 also clearly reveals that not only her reply dated 3rd February, 1979 was considered, but all her other letters and correspondence, nine in numbers, were placed before the appellant which is also referred in the termination order and thus after taking them into account 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 No.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 conditions of her leave for which she filed an affidavit, i.e., if she does not get admission in M.Phil course by 31st July, 1978, she would re-join the services which she did not do. The facts speak for itself. It is also clear from record 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 both Tribunal and the High Court did not revert or scrutinize these basic fact, which is 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 been taken by her.

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 ones right be

taken away without giving him/her opportunity or without enquiry in a given case or where statute require. 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 facts are almost admitted, the case reveals itself and is apparent on the face of 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 termination order.

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 No.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 termination order cannot be held to be invalid. Thus both the courts, viz., Tribunal and the High Court committed wrong in setting aside the order of termination passed against her by the appellant.

Learned counsel for respondent No.2 lastly submitted that her termination order puts stigma on her which would effect 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 No.2. Even if it could be construed as such we protect her not to be read as so by this order.

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