**IN THE HIGH COURT OF****KARNATAKA**

Writ Petition No. 18229 of 2009

Decided On: 01.02.2010

Appellants: **A.M. Shivalinge Gowda**
**Vs.**
Respondent: **Shri Adhichunchanagiri Shikshana Trust (R) and Shri Adhichunchanagiri Kshetra and Anr.**

**Hon'ble Judges/Coram:**
Anand Byrareddy, J.

**ORDER**

**Anand Byrareddy, J.**

1. Heard the Counsel for the parties.

The present application in Misc. Writ No. 713 of 2010 is filed for seeking correction of the interim order dated 10-9-2009.

2. The Counsel for the petitioner would submit that while this Court on 10-9-2009 had directed payment of subsistence allowance from the date of petitioner's removal from service and to continue to pay the same until further orders was passed, when the matter was listed for preliminary hearing, while issuing notice on the petition to the respondent.

3. The Counsel for the petitioner has now filed an application to state that this Court had categorically ordered for payment of subsistence allowance at Rs. 5,000/ - from the date of petitioner's removal but the text of the order as recorded does not reflect the same. Therefore, the application seeking correction.

4. On the petition coming on for orders on this application, it was brought to the attention of this Court that the writ petition itself was not maintainable as against the respondent, by the Counsel appearing for the respondent, who has in turn filed his statement of objections to the writ petition along with an application in Misc. Writ No. 933 of 2010 for vacating, the interim order to state that the petitioner was appointed as a Pharmacist as on 8-6-1990 in the second respondent-Hospital and his employment was regularised as on 3-7-1997 as a Pharmacist. The past records of the petitioner were blemished and that the petitioner had indulged in acts which affected and tarnished the reputation of the second respondent-Hospital. Therefore, disciplinary action was initiated against him and on examination of records, a committee concerned, held that the petitioner ought to be removed from service on account of the acts of misconduct noticed. The petitioner was afforded an opportunity of hearing and thereafter an order of termination from service was passed, on 15-5-2000. That order having been challenged by way of an appeal before the EducationAppellate Tribunal, the same was dismissed as not maintainable. Hence, the present writ petition.

5. It is contended that the second respondent-Hospital is not an educational institution. Therefore, the Karnataka Education Act,1983 was not applicable to the second respondent-Hospital. Hence, the Educational Appellate Tribunal had no jurisdiction to entertain and adjudicate the appeal filed by the petitioner and has rightly rejected the appeal filed.

6. It is contended that the second respondent is recognised by the Medical Council of India. A letter dated 24-11-1993 issued by the Medical Council of India is produced in this regard. This Court vide its order dated 1-4-1999 in C.R.P. No. 3461 of 1998 pertaining to one of such institutions recognised by the Medical Council of India has held that the institutions recognised under the Indian Medical Council Act, 1956 stood excluded from the Karnataka Education Act, 1983. A copy of the order is produced.

7. Insofar as the misconduct of the petitioner is concerned, the respondent has sought to produce several documents in support of the same. The primary contention being the writ petition of the petitioner was not maintainable and that the petitioner be left to his remedies elsewhere, if any.

8. The Counsel for the petitioner on the other hand would vehemently urge that the petition is now listed for hearing on the interlocutory applications before this Court the earlier order of this Court clearly directed the respondent to pay subsistence allowance at Rs. 5,000/ - per month, beyond considering the application for correction, there is no warrant at this point of time to decide the petition on merits.

9. This objection is not tenable. If the petition is not maintainable the question should be addressed. It is contended that the question whether the writ petition is maintainable against the respondent is no longer res Integra and is covered by a catena of judgments, which are referred to in the case of Vidyavardhaka Sangha, Bijapur and Anr. v. S.K. Joshi and Ors.  : 2005 (5) Kar.L.J. 402 : 2005 (3) KCCR 2064; while referring to the decision in the case of Tejaswini Patil v. Bangalore University and Ors.   : 1991 (1) Kar.L.J. 556 : ILR 1991 Kar. 387 : AIR 1991 Kant. 352; wherein it is held as under:

29. We are also of the view that there is no substance in the contention of the respondent-Medical Colleges that they are private bodies not amenable to the writ jurisdiction of this Court. If an educational institution is established by a private individual or private body, which is not affiliated to University and is not recognised by any public law or by the State Government to impart instruction which entitles the students to appear for a public examination leading to the conferment of any certificate, diploma or degree by the Government or a statutory University, it may be that such private educational institutions may be purely a private body not amenable to writ jurisdiction. But an educational institution, though established by a private body, once it secures recognition from the Government of an affiliation to a University established under a public law, namely, the Universities Actand is admitted to the privileges of the University, in that it acquires the privilege of imoarting instruction to the students so as to enable them to take the public examination conducted by a Government Department or by the University leading to conferment of Certificates, Diplomas or Degrees by the Government or the University concerned, such an institution cannot be regarded as purely a private body. The recognition or affiliation constitutes the very life breath of such educational institution, without which it cannot exist. If recognition or affiliation is not granted or once granted is withdrawn, no student will get admitted to such an institution. This aspect has been considered by this Court in the case of Dr. R.K. Sethi v. CBCI Society for Medical Education and Anr.   : 1985 (1) Kar.L.J. 12, by one of us (Rama Jois, J.), and it was held that a writ will issue to an affiliated college for enforcement of a statutory duty. The relevant portion of the judgment reads:

27. Therefore, the real question for consideration is: Whether no writ petition is maintainable against an affiliated College for enforcement of statutory provision. It should be pointed out in the first instance that a private college is not just like any private individual or establishment doing any business or carrying on any avocation. Education is an obligatory function of the State. Therefore, the State, in discharge of its constitutional obligation under Articles 41 and 48 read with Entry 25 of List III of Schedule VII of this Constitution provides for the establishment of educational institutions by the Government directly or through any University established under an Act of Legislature. It can also make provision in a law enacted on the topic of education for grant of affiliation to an educational institution established by private bodies or individuals. The affiliation secured by a private institution under such law constitutes the life breath of the institution. Without affiliation, institution has no real existence, for, no student desirous of securing University degree would join the institution. Therefore, the function of an educational institution, which secured recognition or affiliation under public law, is quasi public in nature and is not just like any private individual doing his business or avocation. Such an institution should conform to the law through, which it secures that privilege. While the service rendered to the nation by the 3rd respondent through the colleges laudable and has to be eulogized, it has to conform to the University Act and the statutes made thereunder, for the benefit of teachers, who form the backgone of the institution, which are not violative of Article 30. If it violates such statutory provisions it would be amenable to the writ jurisdiction of this Court to that extent. It is a separate matter if the claim made in a writ petition is one not flowing from a provision having the force of law

10. In the above case concerned, the institution was receiving aid from the Government. Even otherwise a writ petition would be maintainable against an institution such as the respondent for reasons stated therein. The Counsel for the petitioner would submit that the law laid down by the Apex Court as well as this Court would apply on all fours to on the present case on hand and would submit that there is no warrant for withdrawing the interim order as sought for by the Counsel for the respondent or to vary the same in any manner except to incorporate the direction to pay Rs. 5,000/ - from the date of removal of service.

11. It is now pleaded that the petitioner was removed from service 10 years ago and that he had canvassed an appeal under theKarnataka Education Act, 1983 and is finally before this Court at this point of time.

Having due regard to the law laid down by this Court as well as in the case of Vidyavardhaka Sangha, and the case-law cited therein, the fact remains that the respondent-institution in which the petitioner was working was a Hospital and he was working as a Pharmacist. Hence, the question of Education Act applying insofar as the above decision cited by the petitioner is concerned is not applicable.

12. The argument of the Counsel for the petitioner is that the petitioner was a Diploma holder from a Medical College, which was recognised by the Medical Council of India and the very establishment of the hospital as a part of the college was for the purpose of imparting medical knowledge and therefore to construe the hospital as distinguished from Medical College would be a travesty of justice, since it is clearly part and parcel of the Medical College. It is contended that therefore the Education Act was clearly applicable.

13. This argument which is submitted in an unusually raised tone by the Counsel does not appeal to this Court and the case-law and the judgment cited would be applicable in respect of an educational institution and it cannot be said that the same would apply to the respondent herein. Hence, the order dated 10-9-2009 is recalled.

14. The petition is dismissed as not maintainable.