

ORDER ON I.A.No.XIX

At the stage of hearing on preliminary issue/hearing regarding stage of the case, appellant has filed this application U/s 151 of CPC, quoted the additional issue dated 12.03.2024 in brackets praying to hear the same.

2. Application is supported by memo of facts wherein, the appellant's counsel contends that, above said additional issue was framed as per the order dated 12.03.2024 passed on I.A.No.XII but on 14.07.2025 it was wrongly submitted by him that, matter may be posted for hearing on preliminary issue. Accordingly, it is prayed to allow the application.

3. Respondent Nos.1 and 5 have filed objections contending that, already they have examined three witnesses and produced the documents regarding the delay condonation and fairness of inquiry and they are ready to produce the evidence on main matter but appellant has to produce evidence on main matter/appeal. Accordingly, it is prayed to reject the application.

4. Heard both sides and perused the records, thereafter following points arise for consideration;

5. My findings to the above points are as under:

Point No.2 As per final order
for the following:

6. **Point No.1:** According to the appellant

Abdulkhadar Allabaksha Banakar, Milat Educational Society
®, Masoor represented by it's President was started in the
year 1987-88. He joined as an Assistant Teacher in the said
institution in the year 1990 and served as Assistant Teacher
till 1999. He served as Head Master from 2000 to 2009 and
thereafter, grant-in-aid was provided to the said institution.
After grant-in-aid by the Government, some of the members
of the institution demanded him to pay a sum of
Rs.10,00,000/- donation to the institution to regularise his
services. He expressed inability to pay the said sum on the
ground that, he is serving without pay since 1990. Some of
the members of the institution have opposed the said
demand. Suit in O.S.No.313/2010 was filed on the file of a
court in Hirekerur and thereafter, respondent No.1 passed

the illegal order. He was illegally removed from the service vide order dated 22.03.2012 based on report of an illegal inquiry. He challenged the said order. Said inquiry was not in accordance with law. Accordingly, it is prayed to allow the appeal.

7. Respondent Nos.1 and 5 have filed separate objections contending that, appellant conducted misconduct, an inquiry was held in accordance with law. Inquiry report was supplied to the appellant and board of management has passed the order dated 12.03.2012. Said order is in accordance with law. Accordingly, it is prayed to dismiss the appeal. Respondent Nos.1 and 5 deny all the allegations made in the appeal memo.

8. Further, it is the case of the respondents that, the appellant himself has filed I.A.No.I to condone the delay of 30 months and 08 days in preferring the appeal, appeal is barred by limitation and liable to be dismissed apart non-joinder of necessary parties ie., secretary of the institution.

9. Basing on the above said pleadings this tribunal framed following issues and additional issues:

ISSUES

1.	Whether the appellant proves that he domestic enquiry alleged to have been held against him by the respondent institution is without any basis and the said domestic enquiry report is biased and colluded one with the respondent No.1?
2.	Does he further proves that his dismissal order from services of respondent No.1 institution is opposed to the principles of natural justice, the same is illegal and one sided one, therefore it is liable to be interfered with by this authority?
3.	Is the appellant entitled for the relief against respondents as prayed in the petition?
4.	Whether respondents prove that there were serious charges against the appellant about his conduct and reputation as a teacher and all those charges have been proved before the enquiry officer, therefore without any alternative to maintain dignity and decorum of their institution they have passed an order of dismissal of the appellant and the same was communicated to him?
5.	What order?

ADDITIONAL ISSUE DATED 03.11.2016

1.	Whether the respondents proves that present appela is barred by law of limitaito ?
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ADDITIONAL ISSUE DATED 12.03.2024

1.	Whether resondent/management proves that domestic enquiry conducted against appellant is fair and proper?
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10. Appellant's counsel filed chief examination of PW.1 dated 02.06.2015 in support of I.A.No.I and thereafter, evidence of PW.2 and got marked Ex.P1 to 4 documents. Respondents have produced evidence of RW.1 to 4 on and after 08.02.2022 and got marked Ex.R1 to 38 documents. RW.3 recalled and fully examined and got marked Ex.R35 to 38 documents thereby respondents side evidence on preliminary issue was closed and matter was posted for hearing on preliminary issues. Later, this application came to filed.

11. Law is well settled regarding procedure for trial of labour matters in which employee approaches the court alleging that, no fair and proper inquiry was conducted before dismissal order. According to said procedure the court has to frame an issue regarding fairness and correctness of inquiry conducted by the employer and decide the said issue as preliminary, thereafter court has to give opportunity to the employee to prove his case and employer to prove the misconduct of the employee if finding to preliminary issue is recorded against the employer. Said position of law is laid down by the Hon'ble Apex court in Civil Appeal

No.3585/2008 Kurukshetra University VERSUS Prithvi Singh and other cases.

12. Procedure prescribed to the labour matters needs to be followed in this matter. In fact, it is the duty of employer to request to hear the above said additional issue as preliminary before hearing the other issues but employee himself has filed this application. Under these circumstances the judgment of own High Court reported in *2004 (1) Kar.L.J 111 The Management of Shiddaganga.. Vs. S.Kumaraswamy* which is having different set of facts is not helpful to him. Therefore, it is necessary to allow the application as prayed for. Accordingly, point No.1 is answered in the Affirmative.

13. **Point No.2:** Admittedly, appeal is not filed within limitation. No issue can be decided unless, delay is condoned. Therefore, it is necessary to hear the parties on I.A.No.I and additional issues simultaneously. Hence, I proceed to pass the following:

ORDER

I.A.No.XIX filed U/s 151 of CPC by the appellant is hereby allowed and parties are directed to advance the arguments on Additional issue dated 12.03.2024. In

addition to said issue, parties are directed
to address the arguments on I.A.No.I.

*(Dictated to the Stenographer Grade-I, transcribed and computerized by
him, revised, corrected and signed by me and then pronounced in the open Court
on this the 25th day of November, 2025.)*

(Biradar Devindrappa N)

Prl. District and Sessions Judge
& Special Judge (EAT), Haveri.