

(2005) 04 KAR CK 0031
In the Karnataka High Court
Case No : Writ Appeal No. 2917 of 2003

Bangalore University

APPELLANT

Vs

Dalappa and Another

RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Karnataka Universities Act, 2000 — Section 2 (12)

Citation : (2005) ILR (Kar) 4007 : (2006) 4 KarLJ 399 : (2005) 4 KCCR 336 SN

Hon'ble Judges : P. Vishwanatha Shetty, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : Ravi Malimath, for the Appellant; Prasanna and P.S. Rajagopal, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—The appellant in this appeal is the Bangalore University. In this appeal, the appellant is aggrieved by the order dated 6th February 2003 made in Writ Petition No. 5170 of 2000. The 1st respondent in this appeal filed the writ petition challenging the correctness of the order dated 5th November 2001, issued by the appellant-University, a copy of which has been produced as Annexure-B to the writ petition, informing the respondent that he would attain the age of superannuation on 30th September 2002 as he would be attaining 58 years on that date. It was the case of the respondent in the writ petition that since the respondent was in the teaching cadre, he was entitled to continue in service till he attained the age of 60 years and the notification-Annexure-B issued by the University notifying that he would attain the age of superannuation on 30th September 2002 on the premise that he was not in a teaching cadre is totally unsustainable in law. The appellant-University disputed the claim of the respondent that he was in the teaching cadre before the learned Single Judge. It is the case of the University that since the respondent was initially appointed as a laboratory assistant and subsequently he was promoted to the cadre of workshop superintendent and the post held by him cannot be

treated as a leaching post, he was not entitled to continue in service till he attained the age of 60 years as the staff who are holding teaching post alone are entitled to continue till 60 years.

2. The learned Single Judge on consideration of the rival submissions made by the learned counsel appearing for the parties, in the impugned order took the view that the respondent was in the leaching cadre and as such entitled to continue in service till he attained the age of 60 years in terms of Statute 21.2 of Bangalore University Statutes (hereinafter referred to as "the Statutes"). In the light of the said conclusion, he quashed the notification-Annexure-B issued by the University so far as the respondent is concerned. Aggrieved by the said order, as noticed by us earlier, the University has presented this appeal. During the pendency of the writ petition and the pendency of the appeal, the respondent was continued in service and having attained the age of 60 years on 26th September 2004, he also retired from service on the said date.

3. Sri Ravi Malimath, learned counsel for the appellant challenging the correctness of the impugned order passed by the learned Single Judge strongly urged that since the respondent was appointed to a non-teaching cadre, it is not permissible for the respondent to contend that he was a teacher within the meaning of Section 2(12) of the Karnataka Universities Act (hereinafter referred to as "the Act") and Statute 21.1 of the Statutes. In support of his submission, Sri Malimath, relied upon the judgment of the Supreme Court in the case of State of Karnataka v. C.K. Pattamashetty, (: (2004)6SCC685 and drew our attention to paragraph 15 of the judgment.

4. However, Sri Prasanna, learned counsel appearing for the respondent while strongly supporting the judgment of the learned Single Judge pointed out that though the nomenclature of the post held by the respondent was that of a workshop superintendent, since the respondent was appointed in an engineering college established by the University, he was designated as a workshop superintendent and the nature of the duties entrusted to the respondent being that of teaching and valuing answer scripts, the learned Single Judge was fully justified on examination of the nature of the duties discharged by the respondent that the respondent was in a teaching cadre. He pointed out that since the definition of teacher u/s 2(12) of the Act provides that unless the context otherwise requires, teachers means Professors, Assistant Professors, Readers or Lecturers imparting instructions in any University, the respondent who was discharging the duties of imparting instructions to the students should be considered as a teacher for the purpose of age of retirement. In other words, it is his submission that since the definition starts with the words "unless the context otherwise requires", unless from the nature of the duty discharged by an employee, it is not possible to take the view that he is in the teaching cadre he should be treated as a teacher. Therefore, he submits that though the respondent was not designated as either a Professor, Assistant Professor, Reader or Lecturer, if from the context it is possible to come to the conclusion that he

was carrying out teaching work in the University, he has to be considered as a teacher. Learned counsel for the appellant also replied upon the AICTE norms and standards which governs all the engineering colleges in the country, wherein, Clause 8.11 of the guidelines lays down that the workshop superintendent should be of a cadre of Assistant Professor with a nominal teaching work-load. It is useful to refer to the Regulations which reads as hereunder:

"8.11 Technical and Other Staff

The Workshop Superintendent should be of a cadre of an Assistant Professor with a nominal teaching workload. The Asstt. Superintendent Workshop (ASW)/Foreman in the Workshop should be given a cadre equivalent to that of Lecturer. The six workshop facilities consist of Carpentry, Welding, Smithy, Machine Shop, Fitting and Sheet Metal Shop. Each of these facilities would have a mechanic and an attendant. All these facilities should be headed by a ASW/Foreman.

The ratio of non-teaching (inclusive of administrative, ministerial, technical and other unskilled and semiskilled staff) to teaching staff should not exceed 3:1."

5. Learned counsel for the respondent relied upon a decision of this Court in the case of R. Shamsunder v. The Bangalore University and Anr., Writ Petition No. 10545 of 2005 wherein the learned Single Judge of this Court has distinguished the decision of the Supreme Court in the case of C.K. Pattamashetty (supra). He also relied upon the decision of the Supreme Court in the case of P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another, and drew our attention to paragraphs 19 and 20, of the judgment wherein the Supreme Court took the view that a physical instructor is also in the cadre of teacher in a University. The learned counsel also pointed out that this Court in the case of Jayashree Nayak Vs. State of Karnataka and Others, rendered by one of us (P. Vishwanatha Shetty J.,) has taken the view that the physical instructor is also a teacher.

6. In the light of the rival submissions advanced by the learned counsel for the parties, the only question that would arise for consideration in this appeal is as to whether the learned Single Judge was justified in taking the view that the respondent was in the teaching cadre and as such entitled to be in service till he attained the age of 60 years. While we are unable to accede to the submission of the learned counsel for the appellant that the respondent was not in a teaching cadre, we find considerable force in the submission of the learned counsel for the respondent that though the post held by the respondent was described as workshop superintendent, he was actually holding a teaching post. The learned Single Judge in the impugned order, after examining the definition of teacher provided u/s 2(12) of the Act and the guidelines laid down by AICTE at Clause 8.11 referred to above, has taken the view that though the nomenclature of the post held by the respondent was of workshop superintendent, he was in the teaching cadre. It is not disputed by the University that the respondent was actually teaching in the college. Though the respondent at paragraphs 4,5 and 6

of the petition has asserted that he was assigned teaching work by the University, the same has not been denied in the statement of objections. Further, nothing is placed on record by the University to show that the services of the respondent was utilised in any manner other than teaching in the University and the assertion made by him that he was carrying out teaching work in the University was not correct. Sri Malimath is unable to dispute this position. It is common knowledge that the nature of teaching varies depending upon the nature of the training imparted in an educational institution. While some areas of study may require a class-room lecture, in some areas of study like engineering, it may require teaching in a workshop with reference to the machinery or other instruments or giving practical training outside the classroom. Therefore, when in the context of the nature of the duties discharged by the respondent, it is possible to take the view that the respondent was in the cadre of a teacher in the University, merely because the respondent was designated as a workshop superintendent, it will not be correct to take the view that he was not a teacher in the University. Therefore, we are of the view that though a person in the service of the University is not designated as a professor, assistant professor, reader or lecturer, still if he is teaching in the University or his services are utilised by the University as a teacher, he could be treated as a teacher. The Supreme Court in the case of P.S. Ramamohana Rao (supra) at paragraph 20, while considering whether an instructor in an educational institution can be treated as a teacher has observed as follows:

"20. We are unable to agree. It may be that the Physical Director gives his guidance or teaching to the students only in the evenings after the regular classes are over. It may also be that the University has not prescribed in writing any theoretical and practical classes for the students so far as physical education is concerned. But as pointed by us earlier, among various duties of the Physical Director, expressly or otherwise, are included the duty to teach the skills of various games as well as their rules and practices. The said duties bring him clearly within the main part of the definition as a "teacher". We, therefore, do not accept the contention raised in the additional counter affidavit of the University."

7. This Court in the case of Jayashree Nayak (supra) after referring to the judgment of the Supreme Court has at paragraph 7 taken the view that a Physical Instructor is a teacher:

"7. ...It is not in dispute that the petitioner was appointed as a Physical Culture Instructor on 11th September 1989. The discharge of duties by the petitioner as a Physical Culture Instructor in my view has to be considered as a teaching staff. In fact this view also is supported by the decision of the Supreme Court in the case of Ramamohana Rao (supra) relied up by Sri Holla. In the said decision, at paragraph 10 the Supreme Court has observed as follows:

"10. From the aforesaid affidavit it is clear that a Physical Director has multifarious duties. He not only arranges games and sports for the students

every evening and looks after the procurement of sports material and the maintenance of the grounds but also arranges inter-class and inter-college tournaments and accompanies the students team when they go for the inter-University tournaments. For that purpose it is one of his important duties to guide them about the rules of the various games and sports. It is well known that different games and sports have different rules and practices and unless the students are guided about the said rules and practices they will not be able to play the games and participate in the sports in a proper manner. Further, in our view, it is inherent in the duties of a Physical Director that he imparts to the students various skills and techniques of these games and sports. There are large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and the techniques of these game apart from the rules applicable to these games. "

8. Therefore, we are of the view that the learned Single Judge having regard to the nature of the duties assigned and discharged by the respondent in the University, was fully justified in taking the view that the respondent was a teacher in the University. In our considered view, as rightly pointed out by the learned counsel for the respondent, the decision of the Supreme Court in the case of C.K. Pattamashetty (supra) relied upon by Sri Malimath has no bearing to the facts of the present case. In the said case, the question that came up for consideration before the Supreme Court was whether a librarian in the University could be considered as a teacher. In that context, the Supreme Court has taken the view that a librarian in the University cannot be considered as a teacher. The said judgment of the Supreme Court was also considered by this Court in the case of R. Shamsunder (supra) relied upon by the learned counsel for the respondent. In the said decision, this Court while considering the question whether a lab instructor is a teacher in the University, distinguishing the judgment of the Supreme Court in the case of C.K. Pattamashetty (supra) has taken the view that the lab instructor is a teacher. It is useful to refer the observation made at paragraphs 20 to 22 of the judgment which reads as hereunder:

"20. Learned counsel for the respondent has placed reliance on the decision of the Apex Court in the case of State of Karnataka v. C.K. Pattamashetty and Anr. reported in : (2004)6SCC685 . In that case, the person concerned was appointed on honorary basis by the Karnataka University as honorary teacher. He was later selected to the post of Librarian. Referring to the Statute framed by the Karnataka University, which dealt with the meaning of the word "appointed teachers of the University", the Apex Court held thus:

"A bare perusal of the aforementioned definition would, thus, clearly show that the appointed teachers with the University have been categorised in two categories; one who are salaried employees and the others who work on honorary basis. Those who were appointed to work on honorary basis, therefore, cannot be placed in the same class as that of the salaried employees. In that

view of the matter, we are of the opinion that the respondent herein, who was appointed to work as visiting Professor on honorary basis, could not claim the financial benefits of the salaried employee of the University as a Lecturer or other teachers of the University."

21. In paragraph 15, the Apex Court has further observed as under:

"If the respondent herein was not appointed as a member of the teaching staff by the University, the High Court, in our opinion, committed a manifest error in directing the University to treat the post held by him to be a teaching post. Such a direction by the High Court was unwarranted. If the respondent had undertaken the teaching work voluntarily knowing fully well that he would not be entitled to have any financial gain thereby, he cannot be granted the same benefits only because he undertook teaching job pursuant thereto. He, thus, could not be given any financial benefit of a teacher, including the benefit of a age of superannuation."

22. It is thus clear from the observations made by the Apex Court in the aforementioned decision that the employee concerned was appointed on honorary basis. He had undertaken the work as a teacher voluntarily. He wanted to claim the same status as that of a regular teaching staff recruited as salaried employee and in that context the Apex Court has held that such benefits cannot be extended to the said employee. The facts of that case further disclose that the respondent employee was only appointed as a visiting Professor in the year 1986 and was later on appointed as a Librarian in the year 1994. Having accepted the said post of Librarian without any demur, the employee in the said case sought for the benefit of the age of superannuation of teaching staff as prescribed. Therefore, the facts involved in the said case and the law laid down therein is not applicable to the facts in the present case. The facts of the present case being similar to the one involved in Dalappa's case, the decision of the learned Single Judge wherein the definition of the terms "teacher" examined in the context of the nature of the duties discharged by the concerned employee have been held to be determinative factor. Therefore, the contentions advanced by the learned counsel for the respondent cannot be accepted. For the foregoing discussions, I hold that the action of the University in issuing the impugned notification purporting to retire the petitioner on attaining the age of 58 years is unsustainable."

9. Therefore, in the light of the discussion made above, we are not able to accede to the submission of Sri Malimath that the learned Single Judge was not justified in taking the view that the respondent was a teacher in the University and granting the relief sought for by him in the writ petition. Therefore, this appeal is liable to be rejected. Accordingly, it is rejected. However, no order is made as to costs.