

(2024) 05 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal Nos. 6772-6773 Of 2023

Chaitra Nagammanavar

APPELLANT

Vs

State Of Karnataka & Ors.

RESPONDENT

Date of Decision : 02-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 16(4), 16(4A)
Karnataka State Civil Services (Unfilled Vacancies Reserved For Persons Belonging to the SC's and ST's) (Special Recruitment) Rules, 2001 — Rule 6
Karnataka SCs, STs and OBCs (Reservation of Appointment etc.) Act, 1990 — Section 2(2), 2(3)(vi), 4, 4(1), 4(1A)
Karnataka state universities Act, 2000 — Section 53, 54, 78

Citation : (2024) 05 SC CK 0022

Hon'ble Judges : Pamidighantam Sri Narasimha, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Shailesh Madiyal, Mrigank Prabhakar, Divija Mahajan, Vaibhav Sabharwal, Amisha Devi, Gagan Gupta, Rahamathulla Kothwal, Siddika Aisha, Manju Jetley, D. L. Chidananda, Shubhranshu Padhi, Anand Sanjay M Nuli, Agam Sharma, Suraj Kaushik, Dharam Singh, Nanda Kumar K B, Akhila Wali, Akash Kukreja

Final Decision : Dismissed

Judgement

Pamidighantam Sri Narasimha, J

1. A routine service dispute involving competing claims for appointment was transformed into a pleasurable discourse by the newly designated senior advocates of this court, Mr. Shailesh Madiyal, Mr. Anand Sanjay M. Nuli, Mr. Gagan Gupta. Mr. D.L. Chidananda, appearing for the respondent-State rose to the occasion and made crisp, clear and categorical arguments to match the submissions made by the senior counsels.

2. The facts, to the extent they are relevant for our consideration, are that the Bangalore University, constituted under the Karnataka State Universities Act, 2000, [Hereinafter, referred to as the 'Universities Act'] issued an advertisement

dated 21.03.2018 for filling up backlog vacancies to posts reserved for scheduled castes (SC's) and scheduled tribes (ST's). Of the 34 posts advertised for Assistant Professors, one post of Assistant Professor in the department of English was reserved for a candidate belonging to the ST community.

3. The advertisement provides that qualifications for the post shall be as provided under the UGC Regulations, 2010 and the UGC (4th Amendment) Regulations, 2016. The 'Mode of Selection', or the method of selection, as specified in the advertisement, is important. It is provided that the list of selected candidates will be prepared as per the Karnataka State Civil Services (Unfilled Vacancies Reserved For Persons Belonging to the SC's and ST's) (Special Recruitment) Rules, 2001, hereinafter referred to as the '2001 Rules'. Rule 6 of the 2001 Rules provides for a preference in favour of candidates between the age bracket of 29 and 40 years. In other words, amongst the eligible candidates belonging to a scheduled tribe, those who fall within the age bracket of 29-40 years, would have a preferential right to be appointed over and above even meritorious candidates.

"MODE OF SELECTION

The list of selected candidates will be prepared as per the following Government of Karnataka Notifications:

1. No. DPAR 13 SBC 2001 dated: 21.11.2001 & Dated: 01.06.2002
2. UGC Regulations 2010, UGC (4th Amendment) Regulations, 2016 and AICTE 2016 Regulations."
4. The appellant and respondent No. 7 are both ST candidates, and both of them were eligible for appointment to the solitary post of Assistant Professor in the English department reserved for a candidate belonging to the ST community. While the appellant was higher in merit, respondent no. 7 was within the age bracket of 29-40 years, and as such, was a preferential candidate as per Rule 6 of the 2001 Rules. Though the university advertised that the 'Mode of Selection' shall be as per the 2001 Rules, it followed its own procedure and proceeded to appoint the appellant on the basis of merit. Respondent no. 7 naturally challenged the appointment of the appellant by filing Writ Petition No. 4923/2020 before the High Court of Karnataka.
5. The Ld. Single Judge of the High Court, by a judgment dated 16.01.2021, allowed the writ petition and set aside the appellant's selection and appointment on the ground that the university specifically declared in the advertisement that the 'Mode of Selection' shall be as per the 2001 Rules. Therefore, its appointment of the appellant, who did not fall in the age bracket of 29-40 years, was illegal. Consequently, Respondent No. 7, who is the preferential candidate, was directed to be appointed.
6. The appellant and the university filed their respective writ appeals, namely W.A. 190/2021 and 233/2021, before the Division Bench of the High Court. While

confirming the order of the Single Judge, the Division Bench also directed that respondent No. 7 is entitled to be appointed as per the 2001 Rules. Thus, the present Civil Appeal by the appellant, who was the originally appointed candidate.

7. Before we consider the rival contentions, it is necessary to refer to three legislations that have a bearing on the case. The Karnataka State Civil Services Act, 1978 [Hereinafter referred to as the Civil Services Act, 1978]; the Karnataka SCs, STs and OBCs (Reservation of Appointments etc.) Act, 1990 [Hereinafter referred to as the Reservation Act, 1990]; and the Karnataka State Universities Act, 2000 [Hereinafter referred to as the Universities Act, 2000]. Very importantly, we will also consider the applicability of the 2001 Rules framed under the Civil Services Act, 1978.

8. The relevant law governing the filling up of backlog vacancies as per the advertisement issued by the university will be the Reservation Act, 1990 and the 2001 Rules. These rules are made under the Civil Services Act, which naturally relates to civil services under the State of Karnataka. The applicability of the 2001 Rules to appointments by the universities, which is governed by the University Act, is the controversy that has led to the present litigation.

9. The Bangalore University is governed by the Karnataka Universities Act, 2000. Sec. 53 of this law recognises a 'Board of Appointment' to be the appointing authority for teachers and other employees of the university. Sec. 54 provides that notwithstanding anything in Sec. 53, but subject to the rules and orders of the State Government, appointments to the posts of professors, readers, principals and asst. professors shall be made by the syndicate as per the scheme evolved by the UGC. Furthermore, under Sec. 78, the Universities Act is given an overriding effect to it over other statutes.

"Sec. 53. Appointment of Teachers, Librarians.- (1) There shall be a Board of Appointment for selection of persons for appointment as teachers and librarians in the University [...]"

"Sec. 54. Appointment in accordance with the promotion schemes.- (1) Notwithstanding anything contained in section 53 but subject to the rules and orders of the State Government issued from time to time for reservation of appointment and posts for the persons belonging to Scheduled Castes and Scheduled Tribes under Article 16(4) and 16(4A) of the Constitution, the appointment to the post of Professors and Readers, Principals and Assistant Professors in the constituent Engineering Colleges and to the post of Principal Grade-I, Principal Grade-II, Lecturer (Selection Grade), Lecturer (Senior Scale) in the constituent Engineering Colleges shall be made by the Syndicate in accordance with the scheme governing promotions as prescribed by the Statutes adopting the schemes evolved by the University Grants Commission or All India Council for Technical Education.[...]"

10. Apart from the Universities Act, there is an overarching law, namely, the Karnataka SCs, STs and OBCs (Reservation of Appointment etc.) Act, 1990. It is

intended to provide reservations in favour of SCs, STs and other OBCs in the state civil services and 'establishments'. The definitions of 'establishment' and 'appointing authority' under the Reservation Act, 1990 are relevant. Sec. 2(2) and 2(3)(vi) defines 'appointing authority' and 'establishments in public sector' as follows:

"Section 2. Definitions: In the Act, unless the context otherwise requires [...]

(2) "appointing authority" in relation to a service or posts, means the authority empowered to make appointment to such service or post;

(3) "establishments in public sector" means,- [...]

(vi) a University established or deemed to have been established by or under any law of the State Legislature [...]"

10.1 The most relevant provision in the Reservation Act, 1990 is Sec. 4 and it is extracted hereinafter for ready reference:-

" Sec. 4. Reservation of appointments or posts etc:- (1) After the appointed day, while making appointments to any office in a civil service of the State of Karnataka or to a civil post under the State of Karnataka, appointments or posts shall be reserved for the member of the Scheduled Castes, Scheduled Tribes and other Backward Classes to such extent and in such manner as may be specified from time to time in the order made by the Government under clause 4 of Article 16 of the Constitution of India." (emphasis supplied)

10.2 There was uncertainty about the applicability of the procedure contemplated under Sec. 4 of the Reservation Act, 1990 for the appointments of teachers by the universities, as Section 4 speaks about appointments in the civil service of the state and civil posts under the State of Karnataka. A common understanding was that an office in the civil service of the state or a civil post under the state did not include 'teachers' as contemplated under S. 53 of the Universities Act. This uncertainty was greater with respect to filling up of backlog vacancies in the university by following the procedure provided in the 2001 Rules.

10.3 It is under these circumstances that an amendment was proposed to the Reservation Act, 1990. The statements of objects and reasons ('SOR') for the introduction of sub-section (1A) to Sec. 4 clarifies the position and helps us understand the newly introduced sub-Section (1A) in its proper perspective.

"Amending Act 8 of 2004.- Government issued a Notification dated: 21.11.2001 under the Karnataka Civil Services (Unfilled Vacancies reserved for the persons belonging to Scheduled Castes and Scheduled Tribes (Special Recruitment) Rules, 2001 for filling up of vacancies reserved for persons belonging to the Scheduled Castes and Scheduled Tribes. This Special Recruitment Rules was published under clause (a) of sub-section (2) of section 3 of the Karnataka Civil Services Act, 1978 (Karnataka Act 14 of 1990) in Notification No. DPAR 13 SBC 2001, dated 6th August 2001. The Notification was issued to fill all unfilled

vacancies by all the appointing authorities wherever the service conditions are governed by the Karnataka Civil Services Act, 1978. The Cabinet appointed a sub-committee of the Cabinet to monitor and review the progress. The Social Welfare Department was made the nodal Department. As on date the Social Welfare Department has identified 17021 numbers of vacancies out of them, 14485 have already been notified, of which 11573 vacancies are filled up and the balance is in the process of being filled. During the course of the review meeting it was pointed out to the Cabinet Sub Committee that the Karnataka Civil Services (Unfilled Vacancies reserved for the persons belonging to Scheduled Castes and Scheduled Tribes (Special Recruitment) Rules, 2001 does not apply to the Universities, including Agriculture Universities and other institutions, etc., because they do not come under the purview of the said Rules. The non-inclusion of these institutions under the purview of the Notification dated 21.11.2001 and 1.6.2002 meant that the filling up of the backlog vacancies by the Universities and other institutions could suffer from a legal infirmity.

In view of the fact that the process of recruitment by these institutions i.e., Universities etc. 80% of the recruitment are already over, both for teaching and non-teaching staff and the persons recruited have already reported and are working, there is an immediate need to amend the Act to legally enforce the recruitment's already made.[...]"

10.4 It is clear from the SOR that the Cabinet Sub-Committee realised that the 2001 Rules were not made applicable to Universities as they do not come within the purview of the 2001 Rules. It is for this reason that the Reservation Act, 1990 is amended and the following sub-Section (1A) was introduced. The newly included sub-section (1A) to Sec. 4 of the Act is as follows:

"Sec. 4: Reservation of appointments or posts etc:-

1. [...]

(1A). Notwithstanding anything contained in any law for the time being in force, the appointing authority shall identify unfilled vacancies reserved for the persons belonging to Scheduled Castes and Scheduled Tribes in any service or post in an establishment in public sector as existing on the date of commencement of the Second Amendment Act, 2004 and take action to fill them as a one time measure within a specified time. The manner in which the number of vacancies is to be computed, the procedure for filling such vacancies and the time within which action is to be taken shall be as specified by notification by the State Government.

Provided that the provisions of sub-section shall not apply to any unfilled vacancy in Karnataka State Civil Services or Post in respect of which provisions have been already made [...]" (emphasis supplied)

11. The above-referred amendment to Sec. 4 of the Reservation Act, 1990 had the effect of bringing universities established by the state, within the mandate of

sub-section (1A) of the Reservation Act, 1990. A combined reading of Sec. 2(2), 2(3)(vi) and sub-sections (1) and (1A) of Sec. 4 of the Reservation Act, 1990 with Sec. 53 and 54 of the Universities Act, 2000 would establish that the Board of Appointment of the university is tasked with identifying the unfilled vacancies reserved for SCs and STs existing as on the amendment dated 2004 and to fill them up as a one-time measure within a specified time. Till here there is no difficulty. In fact, this is in the natural flow of the two statutes.

12. The difficulty, however, arises out of the latter part of sub-Section (1A) which provides that the manner, procedure and the time for identifying, filling and completing the same 'shall be as specified by the State Government by way of a notification'. There is nothing on record to show that the State Government issued any notification in furtherance of Sec. 4(1A) specifying the manner, procedure and time for identifying, filling and completing the same. Sub-Section (1A) delegates the power of specifying the method and manner of selection to the Government.

13. Mr. Shailesh Madiyal, learned Senior Counsel appearing for the appellant argues that the advertisement of the university, declaring that the 'Mode of Selection' shall be under the 2001 Rules, is a mistake. He calls it a mistake because the university shall be governed by the Universities Act and the Statutes made thereunder and not the 2001 Rules, particularly when these Rules are made under the Karnataka State Civil Services Act, 1978 [Hereinafter referred to as the 'Civil Services Act']. The university is an autonomous institution and can never be bound, much less governed, by rules intended to regulate State Civil Services, is his argument.

14. Mr. Anand Sanjay M. Nuli, learned Senior Counsel appearing for the university, has taken the same stand as the appellant. He submitted that Sec. 78 of the Universities Act gives an overriding effect to the provisions of this law over other laws. He has drawn our attention to Sec. 53 of the Universities Act as the guiding principle for appointments to the post of 'teachers' in the university, which includes assistant professors, readers and professors.

15. Mr. Gagan Gupta, learned Senior Counsel appearing for respondent no. 7, submits that the mandate under Sec. 4(1A) on the Government to specify the method and manner of selection by the issuance of a notification stood fulfilled when the university itself advertised by notifying that the 'Mode of Selection' shall be as per the 2001 Rules. He also submitted that this is the natural consequence of the purpose and object of introducing sub-Section (1A), which was to enable the universities to follow the 2001 Rules. He also relied on certain letters written by the State Government calling upon the university to follow the mandate of the 2001 Rules.

16. We will examine the question as to whether the advertisement issued by the university intending to follow the 2001 Rules made under the Civil Services Act suffers from any illegality. If we come to the conclusion that compliance with the

2001 Rules is mandatory, we will affirm the judgments of the Ld. Single Judge and the Division Bench, and dismiss these appeals. On the other hand, if we find that the 2001 Rules have no application, or that they are not extended to appointment by the university, we will allow the appeals and affirm the appellant's appointment.

17. The controversy about filling up backlog vacancies of SCs and STs by the university comes to an end with the insertion of Sec. 4(1A) of the Reservation Act, 1990. In fact, the provocation for introducing sub-Section (1A) is that the mandate of the 2001 Rules was not followed by the universities. In order to extend the provision of the 2001 Rules to universities, sub-Section (1A) was introduced and this is clear from the SOR of the amendment introducing sub-section (1A).

18. The identification, procedure and the time for computing, filling and completing the exercise of filling up backlog vacancies is specifically delegated under sub-Section (1A) to the Government. The intent behind the amendment is to vest the power of specifying the method, procedure and time for identifying, filling and completing the same to the State. The importance of the Government specifying the same lies in the fact that these incidents vary from service to service and establishment to establishment. The Government is best placed to address the same due to its resources. This is also evident from Sec. 54 of the Universities Act, which suggests that appointments to several posts in a university shall be laid down by the Government. It is an admitted fact that there is no notification issued by the Government to this effect. However, the university was aware of the continuous demand of the Government to follow the method of selection provided in the 2001 Rules. Therefore, in compliance with the statutory requirement and the Governmental demand, it issued the advertisement declaring that the 'Mode of Selection' shall be as per the 2001 Rules.

19. There have been letters by the Government demanding compliance with the 2001 Rules while filling up the backlog vacancies for posts for SCs/STs and OBCs. We will now refer to these letters. Even before the advertisement was issued on 21.03.2018, there was a letter addressed by the Principal Secretary, Department of Higher Education, State of Karnataka, to the university on 27.02.2018, instructing the latter to fill up backlog teaching posts as per the 2001 Rules and the guidelines prescribed by the university. We may mention at this very stage that similar letters were addressed by the State Government to the university on 22.05.2018 and 09.06.2021, directing that the procedure contemplated under the 2001 Rules must be followed for filling up the vacancies of SC/ST and other backward classes in the university. With these letters, the issue relating to the legality and validity of the university's advertisement is beyond doubt.

20. While we reject the submission of Mr. Shailesh Madiyal that the advertisement declaring that the 2001 Rules will be the 'Mode of Selection', is a mistake, we also hold that the university is bound to comply with what is

declared in its advertisement: the 2001 Rules will be the guiding principles for the selection in question. We state this for the following reasons. Firstly, there was no uncertainty left after the introduction of sub-Section (1A) to Sec. 4 of the Reservation Act, 1990, requiring an establishment, i.e., the university, to take action for filling the backlog vacancies as a one-time measure by following the method prescribed by the Government. Secondly, the purpose and object of the amendment was amply clear from its SOR contemplating the application of the 2001 Rules for the universities. Thirdly, the conduct of the university in not responding to the categorical demands of the Government through its letters dated 27.02.2018, 22.05.2018 and 09.06.2021 to implement the 2001 Rules is conclusive about its acceptance of the applicable law and the policy, and therefore, the advertisement. Hence, the requirement of the Government to specify the manner, procedure and time for identifying, filling backlog vacancies and completing the same was amply clear to the university. It is with this view that the university advertised that the 'Mode of Selection' shall be as per the 2001 Rules.

21. For the reasons stated above, the writ petition filed by respondent no. 7 was rightly allowed by the Ld. Single Judge of the High Court. While re-iterating the reasoning of the Single Judge, the Division Bench by the detailed order, upheld the findings of the Single Judge. Having considered the matter in detail, we have given our own reasons why respondent no. 7 should succeed even before this court. The appeals must, therefore, fail, and we hereby dismiss the same.

22. Having dismissed the appeals, we realise that an unusual situation has arisen in this case because of the university's conduct. Though the appellant was appointed in contravention of Rule 6 of the 2001 Rules, she continued in office during the subsistence of the writ proceedings. When the Ld. Single judge allowed respondent no. 7's writ petition and set aside the appellant's appointment dated 27.12.2019, the appellant approached the Division Bench and obtained a stay. After the Division Bench affirmed the Ld. Single Judge's order and dismissed the writ appeal, she approached this court and again obtained a stay, and this order is operating till date. In other words, the appellant's appointment dated 27.12.2019 is continuing till date without any interruption. She has been working for almost four and a half years. On the other hand, the wrongful denial of appointment to respondent no. 7 was addressed by the Ld. Single Judge and Division Bench of the High Court by setting aside the appellant's appointment, and also directing that respondent no. 7 must be given the appointment instead. While we have agreed that respondent no. 7 must succeed and be restituted to the rightful position that he had earned, the university must also address the concern of the appellant. The unfortunate situation has arisen not because of anything wrong attributable to the appellant, but due to the indifferent manner with which the university conducted itself. In order to obviate the injustice caused to the appellant, the university may consider creating a supernumerary post to accommodate her. We are fully conscious of the limitations in creating such posts over and above the positions

that are borne by a cadre, [Official Liquidator v. Dayanand, (2008) 10 SCC 1] but this is an extraordinary situation for exercising such discretion. [N.T. Devin Katti v. Karnataka Public Service Commission, (1990) 3 SCC 157] We leave it to the university to take a decision on this issue and pass the necessary orders.

23. For the reasons stated above, the Civil Appeal Nos. 6772-6773/2023 against the judgment and final order dated 12.03.2021 passed by the High Court of Karnataka at Bengaluru in Writ Appeal No. 233 of 2021 c/w Writ Appeal No. 190 of 2021 (S-RES) are dismissed, subject to the observations made in the previous paragraph.

24. There shall be no order as to costs.