

(2003) 02 KAR CK 0073
In the Karnataka High Court
Case No : Writ Petition No. 5170 of 2002

Dalappa

APPELLANT

Vs

Bangalore University and Another

RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

Karnataka State Universities Act, 2000 — Section 2 (12)

Citation : (2003) 6 KarLJ 236 : (2003) 2 KCCR 1222

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; P.H. Virupakshaiah, for the Respondent

Judgement

R. Gururajan, J.—An interesting question is raised in this petition. The petitioner-Dalappa is aggrieved by a notification dated 5-11-2001 issued by the Bangalore University (for short, "the University"). He was to retire in terms of the notification on 30-9-2002 on reaching the age of superannuation. The petition averments would show that the petitioner obtained B.E. degree in Mechanical Engineering in July 1968. He joined the services as Laboratory Assistant in the year 1972. He obtained M.E. degree in 1990. He was promoted as Superintendent in terms of an order dated 31-1-1995, Annexure-A. Workshop Superintendent is a teacher and having regard to the fact that retirement age for teaching staff is 60 years, he would reach the age of superannuation on 30-9-2004. According to him, Annexure-B is a case of non application of mind. He has produced SSLC certificate at Annexure-C.

2. The petitioner refers to the provisions of the Karnataka State Universities Act to contend that the petitioner is a teacher for the purpose of retirement. He has also filed various annexures in support of his contentions that he cannot be termed anything other than a teacher in terms of the law governing the age of superannuation.

3. Respondents have entered appearance and they have filed a detailed

statement of objection. In the objection filed by the respondent, they state that the post of Superintendent is a non-teaching post. The petitioner belongs to a non-teaching cadre and therefore, he has to retire at 58 years. His further contention is that the Workshop Superintendent cannot come within the four corners of a teacher within the terms of definition. They want this Court to dismiss the petition. A rejoinder has been filed by the petitioner and in the rejoinder, it is stated that even under the new Act Librarians, Physical Education Directors, Assistant Director of Physical Education etc., are treated as teachers and therefore, the test is not that of a designation but the duties performed and the functions discharged by an official.

4. Matter is heard for final disposal with the consent of the Counsel.

5. Sri Rajagopal, learned Counsel appears for the petitioner. He took me through various facts to contend that on facts, the Workshop Superintendent cannot but be termed as a teacher in terms of the Act. He also refers to the legal aspect of the matter. While referring to the new Act, the Counsel for the petitioner states that the definition words "context otherwise requires" would mean and include the Workshop Superintendent as a teacher. He refers to Sections 7, 40, 53(7) and 73. He invites my attention to Sections 48, 49 and 50 of the new Act. He refers to various judgments and in particular State of Kerala Vs. M.K. Krishnan Nair and Others, , State of Orissa and Another Vs. N.N. Swamy and Others, and Punjab Higher Qualified Teachers' Union (Non-Petitioners) and Others Vs. State of Punjab and Others,

6. Per contra, Sri Ashok Haranhalli, learned Senior Counsel for the University states that when the legislation is clear, Courts cannot substitute any amendment thereby violating the very intention of the Legislature. He states that the legislation has omitted other portions in the new Act and interpretation is to be done in such a manner so as not to violate the provisions.

7. After hearing the learned Counsel, according to me two questions arise for my consideration:

(1) Whether the petitioner can be held to be a "teacher" within the meaning of Section 2(12) of the Karnataka State Universities Act, 2000?

(2) Whether the definition of Section 2(12) is available to the petitioner in the light of the definition being subject to the context "otherwise required"?

8. Let me first notice the contention as to whether the petitioner can be treated as a teacher. Elaborate arguments have been advanced by the Counsel on either side. Sri Rajagopal, learned Counsel took me through various annexures to contend that petitioner cannot but be a teacher in terms of the definition. He has also filed several annexures in support of his contention. The same is challenged by the other side.

9. Annexure-A is an order issued by the University redesignating the petitioner as Workshop Superintendent in the pay scale of Rs.

2375-75-2900-100-3700-125-4450 without sanctioning any increment. In Annexure-B there is a reference to teachers and non-teachers. Petitioner's name is included in the non-teaching clause. Annexure-C is an SSLC certificate and Annexure-D is the norms and standards for technical education. Clause 8.11 would show that the Workshop Superintendent should be of a cadre of an Assistant Professor with a nominal teaching workload. Annexure-D is the job description and Annexure-F is an order issued by the University. In the said order it is shown that the petitioner is treated as a teacher, appointed to work as coordinator in connection with "Central Valuation" of Engineering (Annual Scheme) Exams of April/May 1984. Annexure-G and H would support the contention of the petitioner. Teaching in these sophisticated days, even otherwise may not strictly be construed as teaching in a four walled classroom. An overall view of the material on record in the light of the pleadings would point out the factum of the petitioner doing the teaching work as understood in law. In these circumstances, the petitioner is right in his contention with regard to his being treated as a teacher on facts in the light of the material available on record. The argument of the University is not acceptable to me.

10. There are large number of case-laws available with regard to this aspect of the matter. This Court in W.P. No. 12266 of 1981 has considered somewhat a similar question. This Court after noticing the factual aspect of teaching work has come to a conclusion that the petitioner in those cases is a teacher. This Court noticed in para 13 as under:

"The qualification prescribed indicates that persons to be appointed as Instructors must be proficient in the particular branch of Engineering to the extent necessary so as to enable them to give necessary instructions to the students, when they are doing practical work in the laboratory. It cannot be said that giving instructions while doing practical work is not a teaching work".

In *Muthegowda v. University of Mysore* 1983(2) Kar. L.J.55 this Court held as under:

"Petitioner who was engaged in research, though not actually doing the job of a teacher, was a member of the academic staff or would be a person holding the post of an academician and was entitled to continue in service till he completed 60 years. In deciding whether a person is holding the post of an academic staff or the post of an academician, the nature of the duties performed by him should primarily guide the decision rather than an inept description of the post in the recruitment rules".

The Supreme Court in *P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another*, ruled that the Director of Physical Education in University comes under the definition of "teacher".

It is also fairly well-settled that a mere nomenclature is not a deciding factor in such cases. Taking into consideration the factual aspects of the matter in the light of the decided cases, it cannot be said that the petitioner is not a teacher as

contended by the other side. The first question is thus answered in favour of the petitioner.

11. Having answered this question in favour of the petitioner let me see as to whether the petitioner could still be excluded as argued by the other side in the light of the definition reading as "unless the context otherwise requires".

Section 2(12) reads as under:

"2. Definitions.--In this Act unless the context otherwise requires.-

xxx xxx xxx

2(12) "Teachers" include Professors, Readers, Assistant Professors, Lecturers and such other persons imparting instruction in the University or in any college declared as such by the statutes".

Section 2(12) has to be seen in the light of the words "unless the context otherwise requires". Elaborate arguments have been advanced by the parties. Sri Rajagopal, learned Counsel for the petitioner would say that the interpretation has to be done in the light of the object of the Act and in the light of the nature of work of the petitioner. Per contra, Counsel for the contesting respondent says that when the Legislature has excluded the Workshop Superintendent, this Court cannot by implication include such persons as teacher. It is a well-settled principle of law that while interpreting the statutes, the Court has to take into consideration such interpretation which would avoid unconstitutionality of such a provision. Courts have also ruled that if the interpretation results in creating a class that has to be avoided. Reference can be made to the judgments of the Supreme Court in M.K. Krishnan Nair's case and Punjab Higher Qualified Teachers' Union's case, supra.

The Supreme Court in M.K. Krishnan Nair's case, supra, has ruled in para 11 that where two constructions are possible that one which leads to unconstitutionality must be avoided and the other which tends to make provision constitutional should be adopted, even if straining of language is necessary. If in the present case, the petitioner is excluded notwithstanding his coming within the definition of a teacher, a situation would be created of two classes, one a teacher and one a non-teacher is similarly acceptable. That would be contrary to the intention of the Legislature. The Legislature could not have in my view thought of creating two groups in respect of teaching work itself.

The Supreme Court, again in Smt. Pushpa Devi and others Vs. Milkhi Ram (Dead) by his L.Rs., has considered these very terms namely, "unless the context otherwise requires" and ruled as under:

"18. It is true when a word has been defined in the interpretation clause, prima facie that definition governs wherever that word is used in the body of the statute unless the context requires otherwise. "The context" as pointed out in the book Craies -- Statutory Interpretation (2nd Edition, page 48) "is both internal

and external". The internal context requires the interpreter to situate the disputed words within the section of which they are part and in relation to the rest of the Act. The external context involves determining the meaning from ordinary linguistic usage (including any special technical meanings), from the purpose for which the provision was passed, and from the place of the provisions within the general scheme of statutory and common law rules and principles.

19. The opening sentence in the definition of the section states "unless there is anything repugnant in the subject or context". In view of this qualification, the Court has not only to look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the Legislature. Reference may be made to the observations of K.N. Wanchoo, J. in *The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another*, where the learned Judge said that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. In that case, the learned Judge examined the construction of the word "insurer" as used in Sections 33(1) and 2-D of the Insurance Act, 1938, in the light of the definition of that word u/s 2(9) thereof. The Insurance Act by Section 2(9) defines an "insurer" as a person carrying on the business of "insurance". The question arose whether Sections 33(1) and 2-D did not apply to insurer who has closed his business completely as the definition of the word "insurer" in Section 2(9) postulates actual carrying on of the business. It was pointed out that in the context of Sections 33(1) and 2-D and taking into account the policy of the Act and the purposes for which the control was imposed on insurers, the word "insurer" in the said sections also refers to insurers who were carrying on the business of insurance but have closed it.

20. Great artistry on the Bench as elsewhere is, therefore, needed before we accept, reject or modify any theory or principle. Law as creative response should be so interpreted to meet the different fact situations coming before the Court. For, Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the legislators to foresee the manifold sets of facts and controversies which may arise while giving effect to a particular provision. Indeed, the legislators do not deal with the specific controversies. When conflicting interests arise or defect appears from the language of the statute, the Court by consideration of the legislative intent must supplement the written word with "force and life". See, the observation of Lord Denning in *Seaford Estate Limited v. Asher* (1949)2 KB 481".

The Supreme Court has noticed that Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the legislators to foresee the manifold sets of facts and controversies which may arise while giving effect to a particular provision. The Supreme Court has noticed the necessity of legislative intent. In the case on hand, the various provisions of the Act would

show that it is not the intention of the Legislature to exclude those who are doing the teaching work from the definition. In fact, the definition shows that a teacher means Professors, Assistant Professors, Readers or Lecturers imparting instructions in any University. Therefore, imparting instruction in University assumes greater importance in the context of the case. Therefore, in my view the context as such is to be understood in favour of the petitioner. There may be some other cases involving some other facts which may require a different interpretation. But, the facts of this case require an interpretation in favour of the petitioner as otherwise notwithstanding imparting instructions by the petitioner a separate class would be created which certainly would not be the intention of the Legislature. Moreover the Supreme Court has pointed out in Smt. Pushpa Devi's case, *supra*, that the Court has not only to look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the Legislature. Even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. In the light of these decisions I am of the view that notwithstanding the context in the definition, still the petitioner would be a teacher within the meaning of Section 2(12) of the Act.

12. Further, I must notice the contention of Sri Ashok Haranhalli, learned Counsel for the respondents. He invites my attention to the judgment of the Supreme Court in *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, . I have carefully perused the said judgment. That was a case in which the Court was considering with regard to the interpretation of the provisions of the Municipalities Act. In the said case there was a margin note available. The Court in the light of the wordings of the proviso ruled that the dropping of the word "reduce" and the introduction of the word "modify" in the body of Section 60 of the Act under consideration clearly indicate an intention on the part of the Legislature to widen the scope of this section and the High Court was right in so construing the same. That case stands on a different footing. The judgment of the Apex Court has to be understood in the light of the facts available in that case.

13. Taking into consideration all aspects of the matter and also interpretation of law, the petition is to succeed. Annexure-B insofar as the petitioner is concerned is set aside. A direction is issued to the respondent-University to continue the petitioner in the services of the University until he attains the age of 60 years. Insofar as the non-employment period is concerned, respondents are directed to pay the arrears of wages after satisfying themselves with regard to petitioner's gainful employment in the matter.

Ordered accordingly. No costs.