

(2004) 08 KAR CK 0059
In the Karnataka High Court
Case No : Writ Petition No. 7460 of 2004

Dr. C. Basavaraju

APPELLANT

Vs

University of Mysore and Others

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Karnataka Universities Act, 2000 — Section 21, 21 (1)

Citation : (2005) 104 FLR 684 : (2004) ILR (Kar) 5082 : (2004) 6 KarLJ 542

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Ravi Verma Kumar and J. Prashanth, for the Appellant; S.G. Bhagwan, for R-1 K.M. Nataraj, for R3, for the Respondent

Judgement

N. Kumar, J.—The petitioner was appointed as a full time lecturer in the 1st respondent University on 30.10.1996. He was appointed as a Reader through direct selection on 31.1.2003. He has completed M.A., LL.M., and he has been awarded Ph.D. degree in Social Justice under the Indian Constitution. By a notification dated 22.10.2003 the petitioner came to be nominated as a Dean of faculty of law u/s 21 of the Karnataka Universities Act, 2000 (for short hereinafter referred to as "the Act") pursuant to the approval given by the Vice Chancellor. Annexure -B is the said notification. According to the petitioner, as is clear from the notification the term of Deanship is for a period of two years, hence his term shall expire only on 22.10.2005.

2. The University has issued a notification as per Annexure - A nominating the 3rd respondent as Dean of Faculty of law, in the 1st respondent University. The grievance of the petitioner is that as per Annexure-B he is entitled to continue to hold the office of Dean for a period of two years from the date of his nomination which expires on 22.10.2005, which is now been curtailed by the University by the impugned notification. It is contended that prior to the appointment of the petitioner, the 3rd respondent had already completed two terms of Deanship in the University as the said post is to be held on rotation. Before passing the

impugned notification, the petitioner has not been heard and no prior notice was given, hence, the impugned notification is violative of principles of natural justice.

3. In Para 7 of the Writ Petition, the petitioner alleges that after the 2nd respondent took over as Vice Chancellor in November 2003, he has been exhibiting hostile attitude towards SC officers of the University. At his instance, two SC officers namely, Mr. Mahesh Chandra Guru, was removed from the additional charge of the post of Director, Students Welfare as per Annexure-C, and Dr. Shekar, was removed from the post of Director, P.G. Centre, Hassan prematurely. Now the axe has fallen on the petitioner, who is the President of the Mysore University, Dalit Employees Association, in furtherance of the hostile attitude towards SC officers. Therefore, it is contended that the action of the University in cutting short the tenure of the petitioner is arbitrary and capricious as it violates the right guaranteed to the petitioner under Articles 14 and 16 of the Constitution of India, besides being actuated with mala fides. Hence, the petitioner seeks quashing of Annexure -A and direction to the University to allow him to complete his term of two years.

4. After filing of the Writ Petition, this Court has granted interim order of stay for a period of four weeks on 25.5.2004 which has been extended from time to time. Therefore, the 3rd respondent has filed an application for vacating the interim order. The 3rd respondent contends that only in the event of non availability of a Professor u/s 21(1) of the Act, a Reader could be nominated to act as Dean. As there was no Professor in the legal Faculty of the University, the 3rd respondent being the senior most Reader was appointed as Dean for two terms. The 3rd respondent has been appointed as Professor on 9.1.2004 and therefore, the petitioner cannot continue as Dean. Hence, the nomination of the 3rd respondent as Dean is in accordance with law. The nomination of the petitioner as Dean is illegal because he was not the senior most Reader in the legal Faculty. The petitioner has no vested right to continue as a Dean. There is no illegality in the nomination of the 3rd respondent and therefore the petitioner has no right to challenge the said order and sought for vacating the interim order.

5. Though the University is represented by its counsel, no counter is filed. The 2nd respondent is duly served but has not filed any counter controverting the allegations made in the Writ Petition insofar as allegations of mala fides against him is concerned.

6. As the entire dispute revolves round the interpretation of Section 21 of the Act, the learned Counsel submitted that the matter be taken up for final hearing and Writ Petition be disposed of on merit. Accordingly, the Writ Petition was heard on merits.

7. Sri Ravivarma Kumar, learned Senior Counsel contends that as is clear from Section 21 of the Act, the post of Dean is a tenure post. Statutorily, the period of tenure is fixed as two years. Once a person is nominated or appointed as Dean, his services cannot be dispensed with before expiry of two years. As the

petitioner had the requisite qualification on the date of his appointment to be nominated as Dean, a vested right had accrued to him and his services cannot be dispensed with before the expiry of two years on the basis of subsequent events and therefore he submits that the impugned order passed which has the effect of cutting short his tenure of two years is arbitrary, illegal and liable to be quashed. In support of his contention is relied on various decisions of the Supreme Court.

Secondly, the petitioner contends that the impugned order passed by the University is on account of the hostile attitude of the 2nd respondent against SC/ST officers of the University. After he assumed office as Vice Chancellor, he has singled out SC/ST officers for such discriminatory treatment. The petitioner being the President of the Mysore University Dalit Employees Association, has been a victim of such hostile attitude. The very fact that though notice was served on 2nd respondent he has not chosen to contest by controverting the allegations made against him in the Writ Petition, mala fides alleged are established and therefore the impugned notification is liable to be quashed on that short ground.

8. Sri S.G. Bhagwan, learned Senior Counsel appearing for the University contends that as per Section 21 of the Act, a Professor in each Faculty according to seniority shall act as Dean of Faculty for a period of two years and if there are more than one Professor, they shall be appointed by rotation. It is for the said post the two years period is referable to. Proviso to Section 21 of the Act, sets out that if a person who is not a Professor is appointed as a Dean, he cannot claim to continue in the said post for a period of two years. His tenure can be only for two years or until further orders. In the instant case, after the nomination of the petitioner as Dean, the 3rd respondent was appointed as Professor. Hence, from that date by operation of law, the petitioner ceases to be the Dean and this precisely what is stated in Annexure-A. Therefore, the impugned notification is strictly in accordance with law. Merely because some allegations are made against the Vice Chancellor which are not controverted to it would not make such a legal order invalid. Therefore, he submits that there is no substance in the contention of the petitioner.

9. Sri K.M. Nataraj, learned Counsel for the 3rd respondent submits in the first place the nomination of the petitioner as Dean of Faculty of Law itself is illegal because the proviso to Section 21(1) categorically states that if there is no Professor the senior most Reader shall act as Dean. Admittedly, the 3rd respondent became a Reader on 24.2.1994 and the petitioner became a Reader on 31.01.2003. Hence, when there was senior Reader in the Department, ignoring the senior and nominating the petitioner as Dean itself is illegal and on the basis of an illegality the petitioner cannot maintain a Writ Petition nor can enforce a non-existent right merely because the said appointment order was not challenged by the 3rd respondent earlier. The 3rd respondent being the only Professor, by virtue of Section 21(1) of the Act, the impugned notification has been passed nominating him as a Dean, which is legal and valid and cannot be found fault with.

10. In view of the aforesaid facts and rival contentions the points that arise for consideration in, this petition are as under:-

"a) In the absence of a Professor, if a Reader is nominated to act as a Dean of Faculty, for a period of two years from the date of the notification or until further orders, can it be said that such a person is entitled to hold the post uninterruptedly for a period of two years, if before the expiry of the said period a Professor is appointed in the Faculty?

b) Whether the impugned notification is liable to be quashed on the ground of mala fides as alleged in para -7 of the Writ Petition?

POINT(a):-

11. Section 34 of the Act, provides the University to have the Faculties of Arts, Commerce, Education, Engineering, Law, Science and Technology and such other subjects as may be prescribed by the Statutes from time to time and each such Faculty shall have a Dean. Section 11 of the Act, describes the Officers of the University, wherein Dean is one such Officer. Section 27(e) describes the Faculties, which is held to be one of the authorities of the University. Section 21 of the Act, deals with Dean. As the entire case revolves round on the interpretations of the Section, it is necessary to refer to the said section which reads:

"21. DEAN: (1) A Professor in each Faculty according to seniority shall be rotation, act as Dean of faculty for a period of two years:

Provided that if there is no Professor the senior most Reader shall act Dean:

Provided further that if in any Faculty there is no Professor or Reader, then the Vice-Chancellor may in his discretion designate any other suitable Teacher to act as Dean:

Provided also that where no person is available in a Faculty to act as Dean of the Faculty or where the University doesn't have such a Department of Studies for any Faculty, then such teacher in a Department of Studies in any affiliated College may be nominated by the Vice Chancellor on the basis of seniority to act as the Dean of Faculty.

2. The Dean of each Faculty shall be the Executive Officer of the Faculty and shall preside over the meetings of the Faculty.

3. The Dean shall exercise such other powers and discharge such other functions as may be prescribed by the Statutes or Ordinance."

A literal reading of the aforesaid section makes it very clear that a Professor in each Faculty shall be the Dean. If there are more than one Professor the senior most professor shall act as Dean for two years. In other words, the senior most Professor after completing two years has to make way for a Professor, who is junior to him. The language employed in Section 21 of the Act, makes it clear

that the post of a Dean is held on rotation for a period of two years on seniority basis. The section has three provisos. The first proviso says that if there is no Professor, senior most Reader shall act as Dean. The Second proviso gives the discretion to the Vice Chancellor to designate any other suitable Teacher to act as Dean in case there is no Professor or Reader in the Faculty. The 3rd proviso confers discretion on the Vice Chancellor to nominate any Teacher in a Department of Studies to act as Dean if no person is available to act as Dean. Therefore, the purpose of the provisos appears to make adhoc or stop gap appointment in the absence of a Professor. Probably, that is the reason why in the proviso, we do not find the word "rotation" and "period of two years" which is conspicuously missing. In other words for want of a Professor if any of the category of person mentioned in the category are appointed and once a Professor is available the tenure of such person nominated to act as Dean in place of the Professor comes to an end. In fact, the literal meaning of the first proviso makes it very clear that if there are more than one professor in the Faculty they are appointed on the basis of rotation. In case of Readers it is only the senior most Reader who is eligible to be nominated as Dean. The reason is obvious for a stop gap arrangement or an ad hoc appointment or officiating appointment, there cannot be any tenure. Tenure is only for a fixed post. Therefore, though in Section 21(1) of the Act, it is categorically stated that a Professor shall act as a Faculty of Dean, for a period of two years, any person nominated in the absence of a Professor as an ad hoc arrangement cannot claim the said period of two years. If before the expiry of two years if a Professor is nominated as Dean then the tenure of the Reader acting as the Dean comes to an end.

12. The learned Senior Counsel for the petitioner contended that the proviso has to be read in the context of what is contained in the main section. When in the main section, rotation as well as period of two years is mentioned even though the said two words are conspicuously missing in the provisos it is the rule of interpretation that proviso should be read as proviso to the whole section. I am unable to accept the said contention. The question of interpreting the section would arise only when there is an ambiguity in the section. The Golden rule of interpretation is to give the words the meaning they deserve which could be made out from plain language used in the section itself. If the Legislature has deliberately omitted to use the words "rotation" and "period of two years" in the provisos, it is not open to the Court to read those two words into the proviso which virtually amount to legislation by this Court: While interpreting the section, the Court has to see not only what is said but also what has not been said and give full meaning to the section. Therefore, when the legislature has consciously omitted the words aforesaid in the provisos, we cannot import the said words into the said provisos.

13. Next, it is contended that if the petitioner had the requisite qualification to be appointed as a Dean, his appointment order cannot be questioned or altered on the basis of a subsequent rule or subsequent post event the appointment is to

be governed by law as it existed on the date of, the appointment. It is in that connection the learned Counsel relied on a Judgment of the Andhra Pradesh High Court in the" case of J.J. MURAUDHARA RAO v. THE STATE. OF ANDHRA PRADESH AND ORS. 3971 (1) S.L.R. 523 It was a case, that after 10 years, certain new ad hoc Rules were framed under which the petitioner did not possess the necessary qualification and therefore his services are liable to be terminated. The said case has no application to the facts of this case. That was a case where the question that arose for consideration was, whether the appointment of the petitioner was temporary or regular and on the date of appointment he possessed the requisite qualification and continued in service for a period of 10 years. After 10 years by virtue of the new Rules, the services were sought to be terminated.

14. In the case of P. Mahendran and others Vs. State of Karnataka and others, relied on by the petitioner, the Court was considering whether a particular rule was prospective or retrospective. In the said case applications had been made for the post of Motor Vehicles Inspectors on the basis of the existing rules, the applicants had been called for interview and interview was in progress. It is thereafter that Rules were changed. Applying the said rules, it was contended that the applicants do not possessed the requisite criteria. It is in that context the Supreme Court said unless the Legislature by express words makes the rules retrospective a valuable right accrued to an applicant who has applied for a particular post on the basis of the existing rules and that too when the selection process is under way, cannot be applied and he should not be deprived of an appointment. That is not the position in the instant case.

15. In the case of SUBBARAO v. STATE OF MYSORE AND ANR. 1970(2) MYS. L.J. 286 wherein one Kandaswamy, was promoted on the basis of 1964 Rules which were in force and he had the requisite eligibility criteria of being promoted. Subsequently, applying the Rules, 1967 he was reverted to his original post on the ground he did not possess the prescribed qualification to hold the post of Professor. It is in that context it was stated that when on the date he was promoted he had the requisite eligibility criteria on the basis of the Rules which governed the promotion. Merely because by subsequent rules the qualifications were changed that cannot be given retrospective effect so as to revert a person who had the requisite qualification on the date of promotion. Therefore the said judgment also has no application to the facts of this case.

16. In the case of AJEEB SINGH BAKSHI v. STATE OF HARYANA 1969 S.L.R. PUNJAB & HARYANA, 400 is a case of reversion, which is not the case on hand. Further reliance was placed on short notes item No. 202 1975 (1) Kar.L.J. 67, wherein it was held by interpreting several rules, that no promotion could be made to the posts referred to in R.3 of persons who did not possess the minimum qualification referred to therein. The Rules do not affect prejudicially a person who has already been promoted. In the case on hand there is no promotion or reversion.

17. The Supreme Court in the case of Rama Kant Chaturvedi and Others Vs. Divisional Superintendent, Northern Railway, Moradabad and Others, held on facts, of that particular case that the Firemen Grade "C" who were drafted into the diesel unit earlier would not lose the benefit of their continuous service on the diesel side merely because others who were senior to them on the steam side came in or chosen to come in at a later stage. Thus, they could not be reverted while their juniors on the diesel side, though senior on the steam side, were retained. The seniority on the steam side was of no relevance in determining seniority on the diesel side when they were appointed on the diesel side on different days. The diesel side running staff was constituted and treated as a separate unit distinct from the steam side, running staff. Hence, this decision is of no help to the petitioner as in the instant case there is no promotion or reversion.

Therefore, I am of the view, that none of the aforesaid decisions would support the case of the petitioner to any extent.

18. Nextly, it was contended by the learned Counsel for the petitioner, that nothing turns upon the words of the notification "until further orders" because all appointments to tenure posts shall have same kind of order. In fact, reliance was placed on the decision in the case of Debesh Chandra Das Vs. Union of India (UOI), to support such a contention. That was a case where by an amendment of Fundamental Rule 9(30) in 1967, a form was prescribed and that form was used in his case. It is in that context it was held that the words in the notification "until further orders" has no meaning as it is governed by Statute. In the instant case, there is no prescribed form. Section 21 of the Act, statutorily provides two years as a tenure for the post of Dean. If any person other than a Professor is nominated on account of non availability of a Professor the tenure can be maximum for two years or till a professor becomes available. Even on earlier occasions, when the 3rd respondent was nominated as a Dean, the words "until further orders" were used because he was not a Professor. So whenever, a person other than a Professor is nominated as a Dean, the University is using the words "two years" or "until further orders". In cases, where a Professor is nominated the words "until further orders" do not assume any significance. But when a Professor is not nominated the words "until further orders" assume significance. Therefore, when the petitioner who was not a Professor, was only a Reader was nominated as a Dean, the order makes it very clear that he was holding the post for two years or for until further orders. In the case on hand, the moment a Professor was available the impugned order came to be passed nominating the said person as the Dean and consequently informed the petitioner that he ceased to hold the said post with immediate effect. When the petitioner was not conferred the benefit of holding the post for two years and if the University reserved the right to put an end to the said period earlier and when the University exercised the said right by passing the impugned order, it cannot be said that the University committed any illegality or the impugned order is contrary to the Statute and therefore liable to be set aside.

POINT (b):

19. In so far as the second point is concerned, it is a fact that some allegations of mala fides are made against the 2nd respondent Vice Chancellor of the University. The 2nd respondent though served remained absent and has not countered the allegations by filing his say in the matter. Merely because the allegations of mala fides are not controverted to or not denied by filing a counter, it cannot be said that the allegations of mala fides stands established. One of the allegations made in para -7 is that, Dr. Mahesh Chandra was removed from the additional charge from the post of Director as per Annexure -C. Therefore, it is not a case where the said person is removed from a post which he was holding. He was only relieved of an additional post. As is clear from Annexure-C, which is produced along with the Writ Petition, Dr. Mahesh Chandra was working as Reader, in Mass Communication and Journalism, Mysore was placed in additional charge in the post of Director, Students Welfare, was relieved of the said additional charge. It is not a case of removal of an SC officer from the post which he was holding it as a substantive right. In so far as other officer by name Dr. Shekar, no material is produced to substantiate the said allegations. Merely because the petitioner happens to be the President of the Mysore Employees Dalit Employees Association, and because the impugned order was passed, no inference could be drawn to the effect that the 2nd respondent is hostile towards SC /ST officers of the University. When once it is demonstrated that the power exercised by the Vice Chancellor is in accordance with law and that the person now appointed to the post of Dean of Faculty of law as duly qualified to hold the said post and that the petitioner does not possess the required qualification prescribed in law and appointed to the post on ad hoc basis, no. mala fides could be attributed to the 2nd respondent.

20. Dealing with mala fides and the approach of the Court regarding those allegations, the Supreme Court in the case of E.P. ROYAPPA v. STATE OF TAMIL NADU & ANOTHER 1974 SC 555 has held that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are easily made than proved and the veracity of such allegations demands proof of a higher degree.

21. Therefore, before the allegations of mala fides are to be considered by the Court, there should be clear pleadings giving full particulars so that the person against whom allegations are made is able to answer those allegations. It is thereafter the person who has made those allegations has to establish by producing acceptable evidence. In the absence of pleadings and the particulars which is required in law, merely because person against whom allegations are made did not contest or traverse those allegations, the Court cannot draw an inference that those allegations stand proved.

22. In this case, as I have referred to earlier the allegation against the 2nd respondent is that he is hostile towards two officers belonging to SC ST have been removed from their posting and petitioner is the third officer. As is clear

from the material on record, Annexure -C shows that the officer against whom order is passed is only relieved from an additional charge and in respect of another officer no material is produced. In these circumstances, even in the absence of denial and contest by the 2nd respondent it is not possible for the Court to hold that the action of the 2nd respondent in passing the impugned order is actuated with mala fides. In this regard it is useful to refer to a passage from the judgment of the Supreme Court in the case of State of Punjab and Another Vs. Gurdial Singh and Others, where in it is held as follows :-

"If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one or which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment."

In the instant case, if the Vice Chancellor at the request of the 3rd respondent who has been appointed as a Professor in the Faculty of law has reconsidered the nomination of the petitioner to the post of Dean of law of Faculty, which was made at a time where there was no Professor at the Faculty, and has given effect to the law in letter and spirit without he being in any way personally benefited by such appointment, it cannot be said that it is a case of mala fide exercise of power by the 2nd respondent.

23. The material on record discloses that the 3rd respondent was appointed as Reader on 24.2.1994, whereas the petitioner was appointed as Reader on 31.1.2003 i.e., 10 years after the 3rd respondent was appointed as Reader. Before the petitioner became a Reader, it is a fact that the 3rd respondent had completed two terms in the post of Dean. The petitioner is aged 41 years, whereas the 3rd respondent is aged 48 years. It is not as if the petitioner would never get an opportunity to become Dean, but it is only the question of time. The moment he becomes a Professor in a couple of years even if the 3rd respondent continues as a Professor as is clear from Section 21(1) of the Act, by rotation, the Deanship certainly would come to the petitioner. Qualification, seniority and age are to be respected. Seen from any angle, no injustice is done to the petitioner. It is not a case of reversion. During the interregnum period the petitioner was nominated as a Dean. When a full -fledged Professor is available in the Faculty of law, who is senior to him in experience, and qualification, it would be inequitable to deny a person who has the requisite qualification to be the Dean of the University. Therefore, seen from any angle, I do not find any justification for quashing the impugned notification.

Accordingly, Writ Petition is rejected.