

**(2005) 02 KAR CK 0047**

**In the Karnataka High Court**

**Case No : Writ Petition No. 12227 of 2001**

Dr. Madan Kumar Stanley

APPELLANT

Vs

University of Agricultural Sciences and Another

RESPONDENT

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**Date of Decision : 16-02-2005**

**Acts Referred:**

Karnataka State Universities Act, 2000 — Section 8

**Citation :** (2005) 2 KarLJ 462 : (2005) 2 KCCR 75 SN

**Hon'ble Judges :** N.K. Patil, J

**Bench :** Single Bench

**Advocate :** P.S. Manjunath and H.C. Shivaramu, for the Appellant; K.G. Nayak, for Caveator-Respondent-1 and N. Basavarajaiah, High Court Government Pleader for Respondent-2, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

N.K. Patil, J.—The petitioner, questioning the legality and validity of the order dated 15-3-2001 passed by the 1st respondent bearing No. AO:EST-V:LC:MKS:7188-B:2000-01 vide Annexure-H, has presented this writ petition.

2. The undisputed facts of the case are that; the petitioner earlier had filed a writ petition before this Court in No. 18008 of 1999 against the recommendations of the Enquiry Committee at paras 4.01 and 4.04. The said writ petition was rejected of by this Court on 18th June, 1999 with the observation that, "if any action has to be taken in pursuance of the report, such action can only be in accordance with law. Therefore, if any action is to be taken for cancelling the appointment of the petitioner as Deputy Librarian in pursuance of the said report, necessarily the University has to issue a show-cause notice and hear the petitioner and then take a decision in accordance with law. It is open for the petitioner to file objections to the show-cause notice issued by the respondents taking a specific ground that his appointment as the Deputy Librarian is not illegal and his appointment does not call for cancellation. The University has to take the explanation into account and then proceed in the matter in accordance

with law".. Further, it is observed that, "if the petitioner justifies his appointment and satisfies that there is no cause for cancellation, the University may not cancel his appointment". After the disposal of the said writ petition, the show-cause notice was issued to the petitioner on 1st July, 2000 vide Annexure-F by the Administrative Officer of the 1st respondent-University. To that show-cause notice, petitioner has filed his detailed reply on 10th July, 2000 vide Annexure-G. Be that as it may, the matter was placed before the Competent Authority regarding implementation of recommendations of Mr. Narasimha Rao's Enquiry Committee Report and cancellation of appointment order of the petitioner as Deputy Librarian on 15th March, 2001 and the Competent Authority has passed the order vide Annexure-H. It reveals from the order at Annexure-H that there are 25 references made in the order and in the preamble, the facts of the case has been narrated and there is a reference regarding the reply given by the petitioner. After having discussed deliberately about the recommendations of Narasimha Rao Committee's report at length by the Board and after applying its mind towards the pros and cons involved thereon and considering the reply given by the petitioner, it is stated that there are no grounds in support of the claim of the petitioner to the post of Deputy Librarian. Accordingly, by assigning the said reason, the appointment of the petitioner as the Deputy Librarian has been withdrawn and he has been reinstated as Assistant Librarian retrospectively. Assailing the correctness of the impugned order passed by the Board of the 1st respondent-University, the petitioner felt necessitated to present this writ petition.

3. The learned Senior Counsel appearing for the petitioner vehemently submitted that, the impugned order passed by the Board of the 1st respondent-University on 15th March, 2001 vide Annexure-H is liable to vitiate for not conducting the proper enquiry and not affording an opportunity to the petitioner. Nor the Board of the 1st respondent-University has considered the reply filed by the petitioner in accordance with law. To substantiate his submission, he has taken me through the observation made by this Court earlier in Writ Petition No. 18008 of 1999 on 18th June, 1999 at paragraph 6 and submitted that, this Court has specifically observed that, "if any action has to be taken in pursuance of the report, such action can only be in accordance with law and necessarily the University has to issue a show-cause notice and hear the petitioner and then take a decision in accordance with law". Further he submitted that, in spite of the said observations made by this Court, the Board of the 1st respondent-University has neither considered the reply filed by the petitioner nor given any opportunity to the petitioner nor heard the petitioner and it has unilaterally proceeded to take a decision by making gray reference about the reply filed by the petitioner. There is no discussion, reasons or finding regarding the consideration of the stand taken by the petitioner in his objections in the impugned order. Therefore, he submitted that, the impugned order passed by the Board of the 1st respondent-University is liable to be rejected at threshold, in view of non-compliance of the observations made by this Court in the earlier round of litigation.

4. The learned Counsel for the 1st respondent-University, inter alia, contended

and substantiated the order passed by the Board of the 1st respondent-University. The said order is in strict compliance of the mandatory provisions of the Karnataka State Universities Act, 2000 and Regulations and after considering the reply filed by the petitioner. To substantiate his submission, he has taken me through the consideration made by the 1st respondent-University in paras 2 and 3 in internal page No. 6 of the order and submitted that, the Board of the 1st respondent-University presided over by the academicians and after having deliberate discussion and taking into consideration the recommendations of the Committee and the reply given by the petitioner, they found that there are no grounds in support of the claim of the petitioner for the post of Deputy Librarian. No error or illegality as such has been committed by the authority while passing the said order. Nor the petitioner has made out any grounds to interfere with the order passed by the Board of the 1st respondent-University.

5. I have heard the learned Counsels for the petitioner, the learned Standing Counsel appearing for the 1st respondent-University and the learned Government Pleader for the 2nd respondent.

6. After considering the rival contentions urged by the learned Counsels appearing for both the parties as stated supra, the only question that arises for consideration in this petition is:

Whether the impugned order passed by the Board of the 1st respondent-University is in consonance with the mandatory provisions of the Universities Act and Rules and the observations made by this Court in the earlier round of litigation in W.P. No. 18008 of 1999 on 18th June, 1999?

7. After careful perusal of the impugned order passed by the Board of the 1st respondent-University, it emerges on the face of the order that, the board of the 1st respondent-University has committed an error of law, illegality and much less material irregularity in passing the said order. It is significant to note here itself as rightly pointed out by the learned Counsel for the petitioner that, the earlier writ petition filed by the petitioner was disposed of by this Court on 18th June, 1999 with a specific observation to the effect that, "if any action has to be taken in pursuance of the report, such action can only be in accordance with law. Therefore, if any action is to be taken for cancelling the appointment of the petitioner as the Deputy Librarian in pursuance of the said report, necessarily the University has to issue a show-cause notice and hear the petitioner and then take a decision in accordance with law". Further, it is crystal clearly clarified that, "Narasimha Rao Committee's Report itself makes it clear that the action has been taken in accordance with law and therefore it is open to the petitioner to file a reply to the show cause issued by the University". In pursuance of the show-cause notice issued by the Administrator of the 1st respondent-University on 1st July, 2000 vide Annexure-F, the petitioner has filed his detailed reply on 10th July, 2000 vide Annexure-G, specifically pointing out that, the Enquiry Committee has not issued any public notice informing the general public of the points on which the Committee had been asked to submit the report u/s 8 of the

Universities Act and calling upon the concerned persons to file their affidavits before the Committee. The petitioner was not specifically aware of the allegations made in the report of Dr. Mumtaz Ali Khan, regarding the appointment of the petitioner in the post of Deputy Librarian and therefore the findings given by the Enquiry Committee are violative of principles of natural justice. Further, it is specifically pointed out by the petitioner that the Enquiry Committee after having held that the action of the Board of Regents in upgrading the post of Assistant Librarian to the post of Deputy Librarian as illegal has erroneously held that the petitioner who was occupying the post of Assistant Librarian and who had been kept in the reserve list for appointment to the post of Deputy Librarian pursuant to the recruitment notification dated 28-1-1993 ought not to have been appointed in the upgraded post and applications should have been invited afresh to fill the upgraded post. Further, he contended in his reply statement that Committee ought to have noticed that upon upgradation, the persons holding lower posts are deemed to have been appointed to the upgraded post and are automatically entitled to the pay and scale of the upgraded post and the Committee has also failed to notice that when specified number of posts upgraded in the order of seniority are entitled to upgradation and as there were only two posts of Assistant Librarian and as both the posts have been upgraded, both the Assistant Librarian were entitled to the upgraded post. In that view of the matter, the finding of the Enquiry Committee that the upgraded post should have been filled up by inviting applications is incorrect and the said finding is liable to be set aside and the findings of the Enquiry Committee at paragraphs 4.01 to 4.03 besides being illegal are also opposed to the principles of natural justice and therefore liable to be set aside. The petitioner has also placed reliance on the decision of this Court in the case of *M. Munireddy v. State of Karnataka* and Ors. 1981(2) Kar. L.J. 417. These specific stand taken by the petitioner in his reply has not been taken into consideration by the Board of the 1st respondent-University, while passing the order, except making a gray reference regarding earlier writ petition filed by the petitioner, the report of the Enquiry Committee and the reply filed by the petitioner has straightaway held that "the Board after detailed discussions on the recommendations of the Committee and the reply filed by the petitioner found that there are no grounds to support the claim of the petitioner. The said reasoning given by the Board of the 1st respondent-University is contrary to the specific observations made by this Court in the earlier round of litigation as referred above and the stand taken by the petitioner in his reply statement specifically pointing out the judgment of this Court as stated supra. There is no whisper in the impugned order regarding these aspects of the matter is concerned. Therefore, I am of the considered view that, at any stretch the impugned order passed by the Board of the 1st respondent-University is not sustainable and hence, it is liable to be set aside.

8. Having regard to the facts and circumstances of the case as stated above, the writ petition filed by the petitioner is allowed.

The impugned order dated 15-3-2001 passed by the Board of the 1st respondent-

University bearing No. AO:EST-V:LC:MKS:7188-B:2000-01 vide Annexure-H, is hereby set aside.

The matter stands remitted back to the 1st respondent-University for reconsideration afresh, in accordance with law.

Further, the 1st respondent-University is directed to comply with the observations made by this Court in W.P. No. 18008 of 1999 on 18th June, 1999 and also to consider the detailed reply filed by the petitioner on 10th July, 2000 vide Annexure-G and pass appropriate orders in accordance with law, after affording an opportunity to the petitioner, as expeditiously as possible, within an outer limit of four months from the date of receipt of the copy of this order.