

(1990) 08 KAR CK 0022
In the Karnataka High Court
Case No : W.A. No. 20275 of 1986

Dr. Mrs. G. Durga Nageswari

APPELLANT

Vs

University of Agricultural Sciences

RESPONDENT

Date of Decision : 22-08-1990

Acts Referred:

Citation : (1991) ILR (Kar) 14 : (1990) 3 KarLJ 142

Hon'ble Judges : Rama Jois, J;Mirdhe, J

Bench : Division Bench

Advocate : R.U. Goulay, for the Appellant; P. Vishwanatha Shetty, for R-1 and G. Shanthappa, for R-2, for the Respondent

Judgement

Rama Jois, J.

1.The petitioner, who had applied for the post of Instructor of Chemistry on the establishment of the University of Agricultural Sciences, Bangalore, has presented this petition questioning the validity of Statute 30 of the University of Agricultural Sciences, Bangalore.

2. The brief facts of the case are these:- The 1st respondent University was established under the provisions of the University of Agricultural Sciences Act, 1963. On 8th September, 1984 applications were invited by the University for the posts of Instructors in Chemistry. The petitioner, who possessed the qualification prescribed for the post, applied pursuant to the aforesaid advertisement. The Selection Committee constituted for the purpose interviewed the petitioner and other applicants. The Selection Committee selected three persons and arranged them in the order of merit. The petitioner was at Sl. No. 1 and respondent No. 2 was at Sl. No. 3. The Board of Regents however selected the 2nd respondent for appointment as Instructor in Chemistry. Accordingly, in terms of the decision of the Board of Regents, the 2nd respondent was appointed as Instructor in Chemistry by order dated 17-12-1985 (Annexure-A). Thereafter, the petitioner has presented this petition questioning the validity of Statute 30 of the University

under when the Board of Regents has exercised its powers.

3. The relevant portion of Statute 30, the validity of which has been challenged in the Writ Petition reads:-

"(2)(a) The Selection Committee shall review applications for the posts and consider the qualifications of all applicants including University Officers and other employees who may be qualified for the post. If a qualified candidate(s) is found, the Committee shall recommend in order of merit not more than three qualified persons for appointment.

(b) In case no qualified person is recommended and/or appointed as under (2) above, the Selection Committee shall (a) contact various institutions and agencies (such as ICAR, State Departments, Colleges, etc) for the purpose of obtaining applications from qualified persons and (b) otherwise advertise for qualified applicants in such manner as may be approved by the Vice-Chancellor. On receipt of such further applications the Committee shall prepare a list of all applicants and shall recommend in order of merit, not more than three qualified persons for appointment.

(3) If the Selection Committee fails to nominate an acceptable person for an office, the Board shall take such steps as are necessary to select a suitable person.

(4) Out of the qualified persons recommended by each Selection Committee the Board shall choose the best individual for appointment in all cases of appointments to be made by the Board."

(Underlined by us)

As can be seen from Clause (2) of Statute 30, the Selection Committee constituted for the purpose is required to make recommendation of names for appointment in the order of merit not more than three qualified persons for appointment. Clause (4) of Statute 30, however, empowers the Board of Regents to choose the best individual for appointment in the case of appointment to be made by the Board.

4. In the case of KESHAYYA v. UNIVERSITY OF AGRICULTURAL SCIENCES 1971 (2) Mys.L.J. 330, in which the petitioner therein had a grievance similar to the one as that of the petitioner in this case, it was contended for the Board of Regents that it could select any one of the persons whose name was included in the list. The relevant portion of the Judgment reads:-

"22. In the last analysis, what is of the essence of the matter is that the Board, while making appointments, must apply its mind to the qualifications required and the recommendations made by the Committee, including the recommendation for relaxation. As we have already pointed out, the record of minutes of the Board of Regents contains sufficient evidence of their having applied their mind to the appointment in question, including the recommendation

made by the Selection Committee in favour of the 5th respondent,"

5. In this Writ Petition, the petitioner contends that Statute 30(4) which empowers the Board of Regents to choose any one among the persons recommended by the Selection Committee is void on the ground of violation of Articles 14 and 16(1) of the Constitution of India, as it confers arbitrary power on the Board of Regents, for, it could, without assigning any reason exclude a candidate whose name is placed above according to merit in the opinion of the Selection Committee i.e., without assigning any reason as to why the Board disagreed with the recommendation made by the Board, proceed to appoint a person whose name is lower.

6. Sri Vishwanatha Shetty, learned Counsel for the University, submitted that the Board of Regents was a responsible body to whom the power to make final selection is entrusted and therefore in exercising the power under Clause (4) of Statute 30 the Board is expected and is bound to exercise its power reasonably. He further submitted that when the Board of Regents is of the opinion after applying its mind that a candidate placed lower according to merit by the Selection Committee, is better suited for employment, the exercise of such a discretion by a high power Board like the Board of Regents, cannot be considered as discriminatory and therefore there is no substance in the challenge made by the petitioner to Statute 30(4) of the University.

7. In our opinion, the question is not as to whether the Board for good reasons should not proceed to select and appoint a candidate whose name according to the recommendation made by the Selection Committee is lower, in preference to the candidate who is placed above, but the question is, whether the Board can do so without recording reasons for preferring a person placed below in preference to a person placed above by the Selection Committee. In this behalf, it is necessary to state that Clause (2) requires the Selection Committee to recommend the names in the order of merit and when the Selection Committee has done so, there must be some basis to alter the merit as fixed by the Selection Committee. Otherwise, the exercise of the power would be arbitrary and come into conflict with the right to equality and injunction against arbitrariness in State action prescribed in Article 14 of the Constitution and the right to equality and equality of opportunity in matters relating to, employment under the State guaranteed under Articles 14 and 16(1) of the Constitution.

8. The question as to whether the reasons should be recorded or not in making selection for appointment in the context of selection for Indian Administrative Service came up for consideration before the Supreme Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, . In the said case, the Supreme Court was considering as to whether the Selection Committee constituted for the purpose of making selection for Administrative Service by promotion could supersede a candidate who is senior and select a candidate who is junior without assigning any reason. The relevant portion of the Judgment contained in paragraph-28 reads:-

"28. In the context of the effect upon the rights of aggrieved persons, as members of a public service who are entitled to just and reasonable treatment, by reason of protections conferred upon them by Articles 14 and 16(1) of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others, who were to be preferred, particularly as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee. This is all that the supposed statement of reasons amounts to. We, therefore, think that the mandatory provisions of Regulation 5(5) were not complied with. We think that reliance was rightly placed by respondents on two decisions of this Court relating to the effect of non-compliance with such mandatory provisions. These were: Associated Electrical Industries (India) Private Ltd., Calcutta Vs. Its Workmen, and The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, "

9. The above case no doubt interpreted the Indian Administrative Service Regulations. Regulation 5(5) of the said Regulations required recording of reasons for supersession. But as can be seen from the above paragraph of the Judgment, the Supreme Court based its conclusion on the right to equality guaranteed under Articles 14 and 16(1) of the Constitution and observed that recording or reasons for overlooking the claim of a person who is above and select a person below was necessary. The said principle was applied by this Court in the case of T.K. Devaraju v. State of Karnataka ` 1988 KAR 2084. This Court pointed out that the Regulation 5(5) of the Indian Administrative Service Regulation was only for the purpose of giving effect to Article 14 and 16(1) of the Constitution and the position would be the same even in the absence of such a regulation because of recording of reasons is the only way to ensure obedience to the fundamental right guaranteed under Articles 14 and 16(1). Therefore, in our opinion, Clause (4) of Statute 30 must be read along with Articles 14 and 16(1) of the Constitution, for the reasons, the University of Agricultural Sciences is state as defined in Article 12 of the Constitution and hence bound by the Articles included in the Fundamental Rights Chapter. Therefore, when under Clause (2) of Statute 30, a Selection Committee constituted for making selection on the basis of the performance of the candidate at the interview recommends the names in the order of merit, the power of the Board of Regents to choose

best among them means normally it should proceed in the order of merit as arranged by the Selection Committee, and if it is of the view that any person placed lower is the best, it can do so, but it has to record reasons. If reasons are recorded then it can be said that the provisions of Articles 14 and 16(1) are complied with. But if a person placed below is appointed without assigning any reason, there is no other alternative than to hold that such a selection and appointment is arbitrary and violative of Articles 14 and 16(1) of the Constitution.

10. In the present case, it is not disputed that no reasons had been recorded by the Board of Regents as to why the 2nd respondent was selected for appointment in preference to the petitioner though the petitioner was placed at Sl. No. 1 and the 2nd respondent was placed at Sl. No. 3. The learned Counsel for the University submitted that reasons were not recorded in view of the earlier decision of this Court in Keshayya's case in which it was held that the Board of Regents had the power to select any one of the persons whom it considers best and make the appointment. But the precise question raised in this case and which was not raised in Keshayya's case is as to whether the Board of Regents could do so without assigning any reason. As shown earlier, the recording of reasons is a must having regard to the right guaranteed to the citizens under Articles 14 and 16(1) of the Constitution. Therefore, we are of the view that whenever the Board of Regents considers that a person placed lower in merit in the list of selected candidates recommended by the Selection Committee, it can do so only by recording reasons as to why the case of the person placed above is being overlooked and the person below is considered the best for being appointed. In the present case, no reasons have been recorded, may be for the reason the Board considered that it was unnecessary as stated by the learned Counsel. He however submitted that the Board of Regents has stated that respondent-2 is more suitable than the petitioner. That is the conclusion and not the reason. That conclusion must be preceded by the reason which is wanting in this case.

11. In the result, we are of the view that the appointment of the 2nd respondent is liable to be set aside and a direction has to be issued to the University to re-consider the question of making selection and appointment for the post of Instructor in Chemistry, in accordance with law and in the light of this Judgment. Before concluding, it is necessary to state that it is already more than 4 years from the date on which the 2nd respondent was appointed. Therefore, we make it clear that if any other vacancy or any other equivalent post exists or the University decides to create one more post, the University is at liberty to do so and appoint the petitioner for the said post without disturbing the 2nd respondent.

12. In the result, we make the following order: (i) The Writ Petition is allowed.

(ii) The appointment of the 2nd respondent as Instructor in Chemistry made as per order dated 17-12-1985 is set aside with a direction to the 1st respondent to re-consider the case of the petitioner and the 2nd respondent for appointment to

the post of Instructor in Chemistry in the light of the recommendation made by the Selection Committee, in accordance with law and in the light of this Judgment.

(iii) Till the Writ issued is complied with, the 2nd respondent is permitted to continue in the post.

(iv) If the University finds a way to accommodate the petitioner either against any existing vacancy or by creating a new vacancy, the University is at liberty to do so and in that event it is not necessary for the respondent to give effect to the first direction.