

---

**(2004) 06 KAR CK 0029**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 32964 of 1998**

Dr. (Mrs.) Rahimunnisa

APPELLANT

Vs

Bangalore University and Another

RESPONDENT

---

**Date of Decision :** 02-06-2004

**Acts Referred:**

Karnataka State Universities Act, 1976 — Section 49 (6)

**Citation :** (2004) ILR (Kar) 3151 : (2004) 4 KCCR 472 SN

**Hon'ble Judges :** Ram Mohan Reddy, J

**Bench :** Single Bench

**Advocate :** N.B. Bhat, for the Appellant; Ravi Malimath, for R-1 and Sridhar, for R-2, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Ram Mohan Reddy, J.—The First respondent, Bangalore University by its notification dated 25.08.1997 published in the daily newspaper the Indian Express, Bangalore, invited applications for filling up of vacant posts of lectures in the Department of Zoology, Out of 7 posts notified, 3 were reserved for General Merit, while one each for SC, ST Category-I and one SC backlog. Human cytogenetics was shown to be the specialisation reserved for backlog SC. The specialisation as provided for in the notification for the other six posts were Biological Chemistry/Animal Biology, Fishery Biology/General Physiology of Reproduction.

2. The petitioner, claiming to be a lady candidate belonging to Muslim community-Daravesu, possessing the required qualification, applied for the post of lecturer in the Department of Zoology reserved for category-I, by her application dated 14.10.1997.

3. It is the allegation of the petitioner that when she appeared for the interview on 18.09.1998 before the Board of Appointment, she was compelled to give in writing that her application be treated as one under the General Merit Category

and not under Category-I, Muslim-Daravesu as she was told that the said caste was no longer existing as a caste under Category-I and that the university was not interviewing the candidates for the post under category-I.

4. In the petition it is averred that the syndicate in its meeting held on 21.09.1998 resolved to convert the lecturer posts under category- I to that of General Merit Category, as per rules, since there were no candidates or applicants for the post under category-I, to fill up the said vacancy, the wait-listed candidates under the General Merit category were considered and the Syndicate appointed the second respondent, whose name was found at Sl.No. 1 in the waiting list of candidates.

5. The petitioner on 04.11.1998 presented this Writ Petition questioning the decision of the syndicate in converting the post of lecturer in the Department of Zoology reserved for Category-I to that of General Merit Category and for other reliefs of declaratory nature. This Court by an interim order dated 05.11.1998 directed the 1st respondent not to fill up the post of lecturer reserved for category-I by appointing respondent No. 2 or any other candidate, if not already appointed. It transpires that on 06.11.1998, the 1st respondent issued the order of appointment, appointing 2nd respondent for the post of lecturer in the Department of Zoology in terms of the resolution of the syndicate, mentioning the subject as General Physiology of Reproduction.

6. The petitioner filed I.A.No. III for additional reliefs, having regard to the fact, that, subsequent to the filing of the petition the first respondent had appointed respondent No. 2 the post of lecturer, which application was allowed by order dated 16.11.1998 of this Court.

7. The claim of the petitioner is opposed by the University and the 2nd respondent by filing their respective statement of objections. The 1st respondent University while denying the averments set out in the petition would contend that though the petitioner in her application claimed to fall under category-I, she on her own, without any compulsion, addressed a letter to the Registrar stating that she had applied under Group-I, which could be considered under the General Merit category. It is also contended that the board of Appointment did not find the petitioner suitable for the post of lecturer in the Department of Zoology and therefore her claim for the said post stood rejected. Its further statement is that the syndicate had the authority to convert the post under category-I to that of general Merit Category having regard to the fact that no candidates were available under category-I, which action of conversion of the post is in accordance with the Government order and cannot be termed as illegal and arbitrary.

8. Sri N.B. Bhat, learned Counsel appearing for the petitioner would contend that the petitioner was deprived of her legitimate right to be considered under category-I due to the compulsion of the 1st respondent prevailing upon her to give up her claim under category-I. It is no doubt true that one vacant post of

lecturer in the Department of Zoology under category-I was advertised to be filled up by direct recruitment. The petitioner having applied for the said post under category-I, for reasons best known to herself, chose, in writing to be considered under General Merit category and not under category-I. The allegations set out in the Writ Petition are as under:

" In her application she has clearly mentioned that she belongs to Daravesu. However, when she appeared for the interview before the Board of appointment on 18.09.1998, she was compelled to give in writing that her application may be treated as one under general Merit category and not under category-I. She was told that Muslim-Daravesu caste was no longer existing as a caste and that the university was not interviewing the candidates for the post under category-I. In such circumstances, the petitioner was constrained to give in writing that her claim may be treated as one under general Merit and not as one under category-I."

In her letter date 03.11.1998 produced as Annexure-G to the Writ Petition, addressed to the vice chancellor- the 1st respondent University, the petitioner has alleged as under:

" At the time of interview, I was misled and was told by interviewing authority to give a letter to be interviewed in the General Merit category. I was told that they are not interviewing the candidates under category-I and hence the Registrar wanted a letter mentioned above from me."

9. A reading of the allegations set out, *supra*, it is quite clear that there is no consistency in the allegations, more over, it is not known whether the allegation are against the Board of Appointment or whether it is against the Registrar of University or any other person. One thing is clear that the petitioner having made the allegations did not choose to either name the person or make them parties to the Writ Petition before this Court. If really the allegations were true, the petitioner ought to have set out the names of the persons, who had cajoled her into submission. The allegations cannot be tested in the absence of the persons against whom the allegations are made. The 1st respondent in its statement of objection denied the allegation of compulsion on the petitioner to give up her claim for the post under category-I and to be considered under General Merit category . In this view of the matter, in my opinion, an attempt in vain is made by the petitioner to establish that her valuable right was lost on account of compulsion by some authority. The first submission of Sri N.B Bhat, learned Counsel, is but a specious plea devoid of merit.

10. The next contention advanced by the learned Counsel is that the second respondent did not possess the required qualification to hold the post of lecturer in the Department of Zoology, reserved for category-I. He would further contend that the 2nd respondent had not applied for the post of lecturer under category-I for which the subject specialisation was "General Physiology of Reproduction". In short, his contention is that in the advertisement at Annexure-A as against the

post reserved for category-I, the subject specialisation being " General physiology of Reproduction" was not the subject in which the 2nd respondent had specialised in. He would hasten to add that candidates with subject specialisation, as noticed above, are eligible to apply for the said post, reserved for category-I.

11. Per contra, Sri Ravi Malimath, learned Counsel for the 1st respondent University would contend that the notification at Annexure-A and in particular under Column 10, mentioning the specialisation was common specialisation in respect of the six vacancies for the post of lecturers in the Department of Zoology and it was not reserved category-specific. Learned Counsel would reiterate that the specialisations in Biological Chemistry/Animal Biology, Fishery Biology/ General physiology of Reproduction were common specialisation and candidates possessing any one or more of the said specialisation could apply for the post of lecturer in the Department of Zoology. He would point out that it is only against one backlog SC vacancy that the specialisation was specific in that the candidate ought to possess subject specialisation in "Human cytogenesis". It is his further submission that the subject specialisation in "General Physiology of Reproduction" cannot be construed as a specific specialisation applicable only to the post reserved under category-I.

12. Sri Sridhar, learned Counsel for the second respondent would adopt the submissions of the learned Counsel for the University and in addition would point out to the statement of objection, where it is specifically pleaded that the subject of specialisation "General Physiology of Reproduction" is the subject in which both the petitioner and the second respondent have specialised.

13. Having considered these submissions and perused the advertisement at Annexure-A with reference to column 10 providing for specialisation, it is quite obvious the requirement of the University was candidates possessing subject or subject of specialisation in Biological Chemistry, Animal Biology, Fishing Biology/ General Physiology of Reproduction could apply for the six posts of lecturers in Department of Zoology. There is considerable force in the contention of Sri Ravi Malimath, learned Counsel, that the subject of specialisation was not category specific and that any candidate possessing any one or more of these subject as specialisation would be eligible to apply for the post of lecturer in the Department of Zoology. One another reason why Sri N.B. Bhat's contention is without any merit is that there are six posts and there are four subjects mentioned in the column for specialisation. If the contention advanced by Sri N.B. Bhat is to be accepted, then, against each category the University ought to have specified the subject specialisation which would mean six separate independent or common subjects for the six posts. The contention of Sri N.B. Bhat has to be necessarily rejected.

14. At this stage, Sri N.B. Bhat, learned Counsel for the petitioner drew my attention to the re-joinder dated 13.01.1999 filed by the petitioner and in particular to para 6 to contend that the order of appointment appointing 2nd

respondent for the posts of lecturer in the Department of Zoology is in the subject of specialisation "General Physiology of Reproduction", which qualification the 2nd respondent did not possess. As I have already arrived at the conclusion that the specialisation as noticed at column 10 in Annexure-A, details several subjects, common for the six posts of lecturers in Zoology and not being category specific, the contentions of Sri N.B. Bhat is not acceptable. Moreover in the statement of objections of the respondents the aforesaid allegation is rejected and 2nd respondent has produced academic records to establish his subject of specialisation as General Physiology of Reproduction

15. Be that as it may the fact that the Board of Appointment consisting of members who have the requisite expertise in the matter of selection, having selected the 2nd respondent to the post of lecturer in the Department of Zoology, cannot be found fault with on the mere statement of the petitioner that the 2nd respondent did not possess the subject of specialisation "General Physiology of Reproduction". It is well-settled law that it is the selection process and not the selection itself made by the expert body that could be called in question. Whether, the research subject in the academic qualification, secured by the 2nd respondent would fall within the subjects enumerated in the column providing for specialisation as noticed in Annexure-A, or not, are matters which the Authorities have considered while selecting the 2nd respondent. This Court in the exercise of writ jurisdiction cannot arrogate to itself the functions of the Board of Appointment and hold a roving enquiry into the question whether or not the 2nd respondent possess, in fact, the required qualification.

16. Sri N.B. Bhat, learned Counsel would next contend that the syndicate did not have the power to convert the post reserved for category-I to that of General Merit category as per rules, much less, issue directions to fill up the said post by considering the candidates in the waiting list, reserved for General Merit. According to the learned Counsel, the direction of the syndicate is in gross violation and contrary to the recommendation of the Board of Appointment which recommended for re-advertisement of the post of lecturer under category-I as there were no applicants for the said post. In addition the learned Counsel would further contend that the Board of Appointment having not sent any list of candidate under category-I, the syndicate could not have converted the said post to be filled up from out of the waiting list of candidates under General Merit category but ought to have referred the matter to the chancellor for a decision, as required under Sub-section 6 of Section 49 of the Karnataka State Universities Act, 1946 (for short "the Act").

17. The learned Counsel for the first respondent University would draw my attention to Sub-section 6 of Section 49 of the Act, to contend, that, in sum and substances, under Sub-section (6) the Board is empowered to interview, adjudge the merit of each candidate in accordance with the qualifications advertised, prepare a list of persons selected, arranged in the order of merit and forward the same to the syndicate. It is for the syndicate to make the appointments in

accordance with the said list. His submission is if and in the event of any difference between the Board of Appointment and the syndicate with reference to the matters set out under Sub-section (6) of Section 49 of the Act, it is only such of those matters which could be referred to the chancellor for a decision. In the instant case, learned Counsel would point out that the Board did not forward a select list of candidates for appointment under category-I and the recommendation of the Board of Appointment to re-advertise the post under category-I was beyond the power vested in it, under Sub-section (6) of Section 49 of the Act. Learned Counsel would submit that the syndicate placing reliance on the Government order dated 20th June, 1995, providing for filling up of vacancies reserved for category-I, if eligible persons belonging to such category were not available, from out of the select list of candidates belonging to General Merit category, had accordingly done so.

18. Sub-section 6 of Section 49 of the Act is very specific, with regard to the powers of the Board of Appointment. It is unambiguous and clear that the Board of Appointment is required to interview and adjudge the merit of each candidate in accordance with the qualifications as advertised and thereafter to prepare the list of selected persons arranged in the order of merit and to forward the same. It is only in the case of deference of opinion between the board of appointment and the syndicate with regard to the select list of candidates recommended by the Board of Appointment, that such matters are required to be referred to the Chancellor for decision. Having regard to the powers of the Board of Appointment, under Sub-section (6) of Section 49 of the Act, it was not competent to make the recommendation to re-advertise the post reserved under Category-I and even if it did so, the syndicate need not comply with the said recommendation, particularly in the face of the Government order permitting the conversion into G.M. Category and filling up of the post. The admitted fact is that there were no candidates available under category-I, since the petitioner had withdrawn her candidature for being considered under category-I and the Board's recommendation to re-advertise the post of lecturer in the Department of Zoology reserved for category-I, was in excess of its powers.

19. Having carefully gone through the provision of Sub-section 6 of Section 49 of the Act, it would be very unreasonable to accept the interpretation that all and any kind of matter in dispute between the syndicate and that of the Board of Appointment could be referred to adjudication by the chancellor. The provision of law does not admit of such an interpretation. Sri N.B. Bhat, learned Counsel for the petitioner placed reliance upon the decision of this Court in the case of *EVA RAMACHANDRAYYA v. KUVEMPU UNIVERSITY* ILR 1998 KAR 48 wherein, the powers of the chancellor u/s 49(6) of the Act fell for consideration and this Court observed thus:

" The chancellor in my view, had only limited alternatives viz., to agree with the recommendation made by the board of Appointed in selecting a particular candidate for the post, since the recommendation was already rejected by the

syndicate or in the alternative concur with the thinking of the syndicate and direct the University to re-advertise the post."

The said judgment has no application to the facts of this case, obviously because there were no candidates for the post of lecturer in the Department of Zoology reserved for category-I. In the absence of such a recommendation, the syndicate was well within its powers to convert the post reserved for category-I to that of General Merit and direct filling up of the said vacancy in terms of the Government order dated 20th June, 1995, from out of the candidates in the waiting list under General Merit category. Thus the action of the syndicate in appointing the 2nd respondent to the post of lecturer in the Department of Zoology by converting the post reserved for category-I to that of General Merit cannot be characterised as illegal or arbitrary.

In the result and for the reason set out supra, the petition fails and is dismissed. Rule discharged.