
(2012) 07 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 24223 of 2012 (S-RES)

Dr. M.S. Talawar

APPELLANT

Vs

Bangalore University Jnana Bharathi

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Karnataka Universities Act, 2000 — Section 11, 14, 17, 20, 21

Citation : (2012) 6 KarLJ 51

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Krishna S. Dixit, for the Appellant; H. Kantharaja, for the Respondent

Judgement

Subhash B. Adi

1. Petitioner has sought for a writ of mandamus directing the respondent - University to designate the petitioner as the Dean, Faculty of Education, Bangalore University, to enable him to act as Dean for a statutory period of two years forthwith. 2. Petitioner's case is that, in June 1978, he jointed as a Lecturer in SES College of Education at Karwar. On 22.11.1992, he joined to services of Bangalore University as a Reader in the Department of Education. He earned the promotion to the post of Professor in the Department of Education in November 2000. However, some of the faculty members of the Department of Education made 59 allegations against the petitioner. In this regard, an enquiry was held by the retired District Judge and the District Judge submitted a report holding that, charge Nos. 1 and 2 are proved and charge No. 3 is not proved. The University issued a show cause notice on the basis of the findings given by the Enquiry Officer as to why the said finding should not be accepted and punishment be imposed. To the said show cause notice, petitioner submitted his reply dated 8.2.2008. The Syndicate on consideration of the explanation offered by the petitioner unanimously resolved that the petitioner be warned interalia directing him not to repeat the same. However, the Syndicate also observed that, a circular be issued, informing the University Staff not to indulge in giving false

complaint and in case of such false complaints, they will be penalized. In this regard, the University also issued a Circular dated 30th May 2008.

2. On 31.1.2009, the University appointed the petitioner as a Director of UGC Academic Staff College on regular basis and w.e.f. 13th November 2009, thereafter, the petitioner was appointed as Registrar (Evaluation) of the 1st respondent - University. However, on 24.5.2010, the petitioner demitted the office of Registrar (Evaluation). One N.V. Kirtinarayana Swamy was the Dean, Faculty of Education and he was to complete his tenure of two years of Deanship by the end of 15.1.2012. On 4.1.2012 in order to fill up the vacancy of Dead of Faculty of Education, the Syndicate prepared the file of the petitioner, who was senior most Professor in the Department of Faculty of Education. The Registrar (Administration) also recommended the candidature of the petitioner by his recommendation letter dated 7.1.2012, however, on 30th January 2012, the second respondent - Vice Chancellor sought for legal opinion in this regard. Accordingly, second respondent returned the file to the Registrar on 6.2.2012 instructing him to suggest the names from amongst the Readers for the purpose of appointing one of them as Dean. The said matter was referred to the Syndicate. However, the Syndicate though held several meetings, but did not take any decision and kept the matter pending.

3. It is stated that, the second respondent - Vice-Chancellor was determined not to confer Deanship on the petitioner. Further stated that, keeping the file pending is nothing but denial of Deanship to petitioner, and same is contrary to the provisions of Karnataka Universities Act 2000 (for brevity "the Act").

4. Sri. Krishna Dixit, learned Counsel appearing for the petitioner submitted that, the petitioner is a senior most Professor in the Faculty of Department of Education, is not in dispute. Section 20 of the Act does not require that the Vice-Chancellor or the Syndicate to make an appointment of the petitioner as a Dean. The senior most Professor in the Department would act as a Dean on rotation for a period of two years. It is a tenure status, it is not a permanent post or it is not by appointment, however, to deny the said facility to the petitioner, second respondent without any justification sought for legal opinion, further referred to the Syndicate and further has sought for recommendation of the names only from the category of readers, for the post of Dean, this itself shows that the second respondent wanted to bypass the petitioner and appoint some other person as a Dean, ignoring his seniority in the Department.

5. As regard to the enquiry, he also submitted that, though 59 allegations were made against the petitioner, only two allegations were held proved, they were also minor allegations. The Syndicate itself did not choose to punish the petitioner, it only observed that, warning be given to the petitioner and warning does not amount to punishment. Even then nearly after two years, though the petitioner was senior, his case was not considered. When the file was put up for giving status of Deanship to the petitioner, the said file unnecessarily was placed before the Vice-Chancellor, then before the Syndicate and it was kept pending

without any decision being taken thereon. Hence, he submits that, the post for which the petitioner is automatically becomes entitled to function as Dean, is unnecessarily denied by the intervention of the Syndicate as well as by the Vice-Chancellor. Hence, he submits that, a direction may be issued to the respondent - University to confer the status of Deanship forthwith.

6. On the other hand, Sri. Kantharaja, learned Counsel appearing for the respondent - University submitted that, though the petitioner was a senior most Professor in the Faculty of Education, however, it is not in dispute that there was an enquiry against him and enquiry resulted in passing of a resolution by the Syndicate warning the petitioner not to repeat the same. As such, the file was put up before the Vice-Chancellor and the Vice-Chancellor thought it fit to place the same before the Syndicate for its decision and when the matter was pending before the Syndicate, this Writ Petition has been filed. However, he submits that, the interpretation of the provisions of Section 20 of the Act is necessary.

7. In the light of the above submissions, the points that arise for consideration are:

1. Whether the post of Dean requires an appointment by the Syndicate or Vice-Chancellor?

2. Whether the Deanship is the recognition on the basis of seniority of a Professor, in the absence of Professor, Reader in the said Department and not a post for which an appointment is necessary?

8. To understand the nature of post, it is relevant to refer to the provisions of the Act. Section 11 of the Act defines as to who are the Officers of the University. The Dean is also one of the Officers of the University.

9. Amongst several offices, some of the offices require appointment in terms of the provisions of the Act. For example, Vice-Chancellor is appointed in consonance with the provisions of Section 14, i.e., the State Governments would constitute a Search Committee, and based on the Search Committee recommendation, the State Government would forward a panel of three names in alphabetical order to the Chancellor and the Chancellor keeping in view of the merit, equity, social justice and with the concurrence of the State Government, appoints one person from amongst the panel of three names as Vice-Chancellor. Similarly, in the case of Registrar u/s 17, is appointed by the State Government from amongst the person belonging to All India Services. Similarly, the Registrar (Evaluation), Finance Officer. However, insofar as the Dean is concerned, Section 21 reads as under:

21. Dean.- (1) A Professor in each Faculty according to seniority shall by 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 as 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 does not 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.

Under Section 21 of the Act, the Deanship is not treated as post, nor it has conferred any right on any other authority to appoint a person as a Dean of the Faculty of the Department. It is a recognition of a person, who is senior most person (Professor, in his absence the Reader). This recognition is for a limited period and would confer on the next senior in the faculty by rotation.

10. It is not in dispute that, the petitioner is the senior most Professor in the Faculty, Department of Education, the Deanship is only for a period of two years, the honour of Deanship is conferred on the senior most Professor in recognition of his service rendered in the said Department and it will fall back on the next senior most person by rotation, it is a status symbol. Having regard to the service rendered by the Professors or the Readers, as the case may be, the legislation has thought it fit, not to entrust the confirmation of Deanship to any other authority, has left it to the Professors or Readers, as the case may be, to act as Dean based on the seniority. Hence, there is no procedure of appointment to the office of Deanship is concerned. Neither the Vice-Chancellor nor the Syndicate has been conferred with any right in the matter of conferring the status of Deanship on a Professor, in his absence on a Reader, who is senior most person in the Faculty. It is an arrangement within the Department from amongst the Professors or the Readers in the said Department to recognize one of them as a Dean. Further, to confer the same status, the office is tenure office only for a period of two years, by rotation, goes to the next senior person in the faculty.

11. However, without any justification, the Vice-Chancellor by treating the Deanship as a post, directs the Registrar to select amongst the Readers to be appointed as a Dean. Even the Syndicate also treats the Deanship as a permanent post for which the appointment is required to be made, which is otherwise not even contemplated by the Legislation itself.

12. It is also clear from the provisions of the Act that, wherever, the appointment is necessary, the procedure is contemplated, however, no such procedure is contemplated.

13. From the reading of Section 21 of the Act, it only shows that, the Professors,

Readers, who are academicians, whose services were to be recognized in the Department and to confer the status of Dean as one of the Officers of the University, senior most amongst them is treated as Dean and it is he, who acts as a Dean and does not require any authorization as such from any of the authority to act as a Dean. As such, to act as a Dean, neither the Vice-Chancellor nor the Syndicate has been conferred with any power under the provisions of the Act to appoint or otherwise.

14. As far as powers of the Syndicate is concerned, Section 29 of the Act deals with the power of the Syndicate. The Syndicate is only conferred with right of appointment insofar as it relates to the post for which it has been conferred with such power to appoint, but not in respect of the office of the Deanship for which separate provision has been made. The Syndicate cannot assume its power to treat the Deanship as post, and interfere with the same. Section 29 of the Act does not override the provisions of Section 21 nor it controls the said provisions.

15. However, for the purity of the post, a clarification is required to be made that in case a person though he is senior most, however, suffer from the charge of allegation of moral turpitude, such person may not function as a Dean, though may be senior, but if the person is otherwise senior and eligible, he can act as a Dean for a period of two years and Deanship is only on the basis of rotation, there is no other way of choosing the Deanship from amongst the Professors or the Readers in the respective Faculty. It is respective Faculties have been given such right to have the Deanship one amongst themselves.

16. Insofar as the enquiry held against the petitioner is concerned, the petitioner though was alleged with 59 charges, two charges were held as proved against him, but in respect of two charges also, Syndicate felt that he should not be punished except warning and warning is concerned, it is not a punishment. Hence, the petitioner does not suffer from any ineligibility or seniority, he is admittedly senior most amongst the Professors and such being the case, for his experience, recognition for Deanship, the Deanship should have been followed as and when he became entitled to act as a Dean. Hence, a direction is necessary to be issued. However, learned Counsel for the respondent - University submitted that, the petitioner has been appointed as Dean during the pendency of this writ petition. Hence, further direction may not be necessary, but as regard to position of law insofar as the Deanship is concerned, I pass the following;

ORDER

The Syndicate or the Vice Chancellor does not get any right to appoint the Dean of any Faculty, the senior most Professor, in his absence, the Reader, if he is not suffering from any allegation of moral turpitude, automatically becomes entitled to act as a Dean of that Faculty for a period of two years, and it will go to the next senior Professor or Reader, as the case may be, by rotation.

With this observation, the writ petition stands disposed of.