
(2014) 03 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No. 2862/2014 (S-R)

Dr. R. Muni Reddy

APPELLANT

Vs

Bangalore University and State of Karnataka

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Citation : (2014) 3 AKR 190 : (2014) 3 KarLJ 417 : (2014) 2 KCCR 1757

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : M. Naga Prasanna, Advocate for the Appellant; T.P. Rajendra Kumar Sungay, Advocate for R1 and Smt. M.S. Prathima, H.C.G.P. for R2, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—The material facts lie within a narrow compass. The petitioner joined service of the Bangalore University (for short, "the University") during 1985 as a temporary Lecturer in Department of Physical Education and was regularised by an Order dated 21.03.1994 and earned promotion as Reader/ Associate Professor on 21.03.1998. On 08.09.2004, in response to a Notification issued by the University regarding vacancy of the Director, Physical Education, petitioner made an application and having been selected, was appointed on 04.08.2006 vide Annexure-G, as Director of Physical Education in Bangalore University. A Notification having been issued with regard to retirement of the petitioner on attaining the age of 60 years and the petitioner having submitted a representation dated 07.11.2013 vide Annexure-S, contending that he is entitled to continue up to the age of 62 years and the University having issued a Notification dated 04.01.2014 vide Annexure-V, this writ petition was filed, to quash the said Notification and to direct the University to continue the petitioner in service till he attains the age of 62 years i.e., up to 31.03.2016 and grant consequential benefits.

2. Government of Karnataka by its proceeding dated 05.04.1991 extended

revised UGC pay scales to Librarians and Physical Education personnel working in the Universities and the petitioner got revised UGC pay scale by an order dated 08.02.1993. In support of the prayer made in this writ petition, petitioner relies on the Judgment rendered in the case of Bangalore University Vs. Dalappa and Another, . Respondent-University, on the other hand contends that the Director, Physical Education, does not belong to teaching faculty and the retirement age applicable to the non-teaching staff is 60 years and the petitioner having been appointed as Director of Physical Education, under S. 57 of the Karnataka Universities Act, 2000 has no lien on the post held by him earlier and hence, has no legal right to claim the benefit of enhancement of the age applicable to the teachers i.e., superannuation age of 62 years. Reliance is placed on the decision in the case of State of Karnataka vs. C.K. Pattamashetty, (2004) 6 SCC 685 and it was submitted by Sri T.P. Rajendra Kumar Sungay, that in the facts and circumstances of the case, Annexure-V does not warrant interference.

3. Annexures-M, N, P and R, when perused, it becomes clear that the petitioner is also doing teaching work in the University and the said documents have not been contradicted nor any explanation offered by the respondent - University, to hold otherwise.

4. A Division Bench of this Court had the occasion to consider the relevant provisions of the Karnataka Universities Act, 2000. In Dalappa's case, (supra), Dalappa was sought to be retired by the University, on attaining the age of 58 years, which decision was questioned in W.P. No. 5170/2002, on the ground that he was in the teaching cadre and is entitled to continue in service till attaining the superannuation age of 60 years. The University, on the other hand contended, that Dalappa having entered service as a Laboratory Assistant, was promoted to the cadre of Workshop Superintendent and the post held by him cannot be treated as teaching post and he is not entitled to continue till completion of 60 years. The writ petition upon consideration having been allowed on 06.02.2003 (reported in Dalappa Vs. Bangalore University and Another,), the University filed Writ Appeal No. 2917/2003 and the Division Bench considering the rival contentions and also the ratio of law in the decision rendered in Pattamashetty's case, (supra), inter alia has found as follows:

6. In the light of the rival submissions advanced by the learned counsel for the parties, the only question that would arise for consideration in this appeal is as to whether the learned Single Judge was justified in taking the view that the respondent was in the teaching cadre and as such entitled to be in service till he attained the age of 60 years. While we are unable to accede to the submission of the learned counsel for the appellant that the respondent was not in a teaching cadre, we find considerable force in the submission of the learned counsel for the respondent that though the post held by the respondent was described as workshop superintendent, he was actually holding a teaching post. The learned Single Judge in the impugned order, after examining the definition of teacher provided u/s 2(12) of the Act and the guidelines laid down by AICTE at Clause

8.11 referred to above, has taken the view that though the nomenclature of the post held by the respondent was of workshop superintendent, he was in the teaching cadre. It is not disputed by the University that the respondent was actually teaching in the college. Though the respondent at paragraphs 4, 5 and 6 of the petition has asserted that he was assigned teaching work by the University, the same has not been denied in the statement of objections. Further, nothing is placed on record by the University to show that the services of the respondent was utilised in any manner other than teaching in the University and the assertion made by him that he was carrying out teaching work in the University was not correct. Sri Malimath is unable to dispute this position. It is common knowledge that the nature of teaching varies depending upon the nature of the training imparted in an educational institution. While some areas of study may require a class-room lecture, in some areas of study like engineering, it may require teaching in a workshop with reference to the machinery or other instruments or giving practical training outside the classroom. Therefore, when in the context of the nature of the duties discharged by the respondent, it is possible to take the view that the respondent was in the cadre of a teacher in the University, merely because the respondent was designated as a workshop superintendent, it will not be correct to take the view that he was not a teacher in the University. Therefore, we are of the view that though a person in the service of the University is not designated as a professor, assistant professor, reader or lecturer, still if he is teaching in the University or his services are utilised by the University as a teacher, he could be treated as a teacher. The Supreme Court in the case of P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another, , while considering whether an instructor in an educational institution can be treated as a teacher has observed as follows:

20. We are unable to agree. It may be that the Physical Director gives his guidance or teaching to the students only in the evenings after the regular classes are over. It may also be that the University has not prescribed in writing any theoretical and practical classes for the students so far as physical education is concerned. But as pointed by us earlier, among various duties of the Physical Director, expressly or otherwise, are included the duty to teach the skills of various games as well as their rules and practices. The said duties bring him clearly within the main part of the definition as a "teacher". We, therefore, do not accept the contention raised in the additional counter affidavit of the University.

7. This Court in the case of Jayashree Nayak Vs. State of Karnataka and Others, after referring to the judgment of the Supreme Court has at paragraph 7 taken the view that a Physical Instructor is a teacher:

7.....It is not in dispute that the petitioner was appointed as a Physical Culture Instructor on 11th September 1989. The discharge of duties by the petitioner as a Physical Culture Instructor in my view has to be considered as a teaching staff. In fact this view also is supported by the decision of the Supreme Court in the

case of Ramamohana Rao (supra) relied up by Sri Holla. In the said decision, at paragraph 10 the Supreme Court has observed as follows:

10. From the aforesaid affidavit it is clear that a Physical Director has multifarious duties. He not only arranges games and sports for the students every evening and looks after the procurement of sports material and the maintenance of the grounds but also arranges inter-class and inter-college tournaments and accompanies the students team when they go for the inter-University tournaments. For that purpose it is one of his important duties to guide them about the rules of the various games and sports. It is well known that different games and sports have different rules and practices and unless the students are guided about the said rules and practices they will not be able to play the games and participate in the sports in a proper manner. Further, in our view, it is inherent in the duties of a Physical Director that he imparts to the students various skills and techniques of these games and sports. There are large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and the techniques of these games apart from the rules applicable to these games.

8. Therefore, we are of the view that the learned Single Judge having regard to the nature of the duties assigned and discharged by the respondent in the University, was fully justified in taking the view that the respondent was a teacher in the University. In our considered view, as rightly pointed out by the learned counsel for the respondent, the decision of the Supreme Court in the case of C.K. Pattamashetty (supra) relied upon by Sri Malimath has no bearing to the facts of the present case. In the said case, the question that came up for consideration before the Supreme Court was whether a librarian in the University could be considered as a teacher. In that context, the Supreme Court has taken the view that a librarian in the University cannot be considered as a teacher. The said judgment of the Supreme Court was also considered by this Court in the case of R. Shamsunder (supra) relied upon by the learned counsel for the respondent. In the said decision, this Court while considering the question whether a lab instructor is a teacher in the University, distinguishing the judgment of the Supreme Court in the case of C.K. Pattamashetty (supra) has taken the view that the lab instructor is a teacher. It is useful to refer the observation made at paragraphs 20 to 22 of the judgment which reads as hereunder:

20. Learned counsel for the respondent has placed reliance on the decision of the Apex Court in the case of State of Karnataka vs. C.K. Pattamashetty and Another reported in (2004) 6 SCC 685. In that case, the person concerned was appointed on honorary basis by the Karnataka University as honorary teacher. He was later selected to the post of Librarian. Referring to the Statute framed by the Karnataka University, which dealt with the meaning of the word "appointed teachers of the University", the Apex Court held thus:

A bare perusal of the aforementioned definition would, thus, clearly show that

the appointed teachers with the University have been categorised in two categories; one who are salaried employees and the others who work on honorary basis. Those who were appointed to work on honorary basis, therefore, cannot be placed in the same class as that of the salaried employees. In that view of the matter, we are of the opinion that the respondent herein, who was appointed to work as visiting Professor on honorary basis, could not claim the financial benefits of the salaried employee of the University as a Lecturer or other teachers of the University.

21. In paragraph 15, the Apex Court has further observed as under:

If the respondent herein was not appointed as a member of the teaching staff by the University, the High Court, in our opinion, committed a manifest error in directing the University to treat the post held by him to be a teaching post. Such a direction by the High Court was unwarranted. If the respondent had undertaken the teaching work voluntarily knowing fully well that he would not be entitled to have any financial gain thereby, he cannot be granted the same benefits only because he undertook teaching job pursuant thereto. He, thus, could not be given any financial benefit of a teacher, including the benefit of a age of superannuation.

22. It is thus clear from the observations made by the Apex Court in the aforementioned decision that the employee concerned was appointed on honorary basis. He had undertaken the work as a teacher voluntarily. He wanted to claim the same status as that of a regular teaching staff recruited as salaried employee and in that context the Apex Court has held that such benefits cannot be extended to the said employee. The facts of that case further disclose that the respondent employee was only appointed as a visiting Professor in the year 1986 and was later on appointed as a Librarian in the year 1994. Having accepted the said post of Librarian without any demur, the employee in the said case sought for the benefit of the age of superannuation of teaching staff as prescribed. Therefore, the facts involved in the said case and the law laid down therein is not applicable to the facts in the present case. The facts of the present case being similar to the one involved in Dalappa's case, the decision of the learned Single Judge wherein the definition of the terms "teacher" examined in the context of the nature of the duties discharged by the concerned employee have been held to be determinative factor. Therefore, the contentions advanced by the learned counsel for the respondent cannot be accepted. For the foregoing discussions, I hold that the action of the University in issuing the impugned notification purporting to retire the petitioner on attaining the age of 58 years is unsustainable.

9. Therefore, in the light of the discussion made above, we are not able to accede to the submission of Sri Malimath that the learned Single Judge was not justified in taking the view that the respondent was a teacher in the University and granting the relief sought for by him in the writ petition. Therefore, this appeal is liable to be rejected. Accordingly, it is rejected...

(Italicised by me for emphasis)

5. The judgment of the Division Bench in the case of Dalappa, (supra), is binding on me and is clearly applicable to the instant case, particularly, keeping in view the ratio of the decision in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , wherein, Apex Court has enunciated the importance of doctrine of binding precedent as follows:

8. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.

(emphasis supplied)

6. In Union of India and another Vs. Paras Laminates (P) Ltd., , Apex Court has held as follows:

9. It is true that a bench of two members must not lightly disregard the decision of another bench of the same Tribunal on an identical question. This is particularly true when the earlier decision is rendered by a larger bench. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of Tribunals or courts have a right to expect that those exercising judicial functions will follow the reason or ground of the judicial decision in the earlier cases on identical matters. Classification of particular goods adopted in earlier decisions must not be lightly disregarded in subsequent decisions, lest such judicial inconsistency should shake public confidence in the administration of justice.

(emphasis supplied)

7. The importance of consistent opinion in judicial system was emphasized by Apex Court in Hari Singh Vs. State of Haryana, as follows:

10. It is true that in the system of the justice which is being administered by the courts, one of the basic principles which has to be kept in view, is that courts of coordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on a question of law. If courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy.

8. The issue in the present writ petition is not different from the issue raised and canvassed by the respondent-University in Dalappa's case.

9. Sri Rajendra Kumar Sungay, submitted that the judgment in the case of

Dalappa (supra) has not attained finality, since the appeal filed by the University is pending in the Apex Court, in CC No. 3806/2006. It is trite that decision rendered by a Court of Record is binding on parties to the litigation and becomes precedent for very same Court as well as Courts sub-ordinate to it and pendency of appeal does not take away precedent value of such decision.

10. Annexures-W and X, show that the age of superannuation of the persons working in the Physical Educational Department was enhanced by the Mysore and Mangalore Universities respectively, from 60 to 62 years. In the circumstances, the decision of the 1st respondent vide Annexure-V, to retire the petitioner upon attaining the age of 60 years being arbitrary and contrary to the decision rendered by this Court in the case of Dalappa (supra), cannot be upheld.

In the result, the writ petition is allowed. Impugned Notification dated 04.01.2014, as at Annexure-V is quashed and the 1st respondent - University is directed to continue the service of the petitioner till he attains the superannuation age of 62 years.

No costs.