

(2006) 09 MAD CK 0074

In the Madras High Court

Case No : Writ Petition (MD) No. 7471 of 2006 and M. Ps. 1 to 3

Dr. S.L. Sasikala

APPELLANT

Vs

Registrar, Manonmaniam Sundaranar University and Dr. A.P. Lipton, Principal Scientist, Central Marine Fisheries Research Institute, (Indian Council of Agricultural Research)

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Manonmaniam Sundaranar University Act, 1990 — Section 24, 45, 45(1), 62, 62(1)

Citation : (2006) 09 MAD CK 0074

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : C. Selvaraj for S. Mani, for the Appellant; M. Sureshkumar, for 1st Respondent and Issac Mohanlal, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—Prayer in the writ petition is to issue a writ of Certiorarified Mandamus calling for the records pertaining to the

resolution dated 20.7.2006 passed by the first respondent, insofar as item No. 19 appointing the second respondent as Professor of Centre for

Marine Science & Technology, Manonmaniam Sundaranar University and quash the same and direct the first respondent to appoint the petitioner

temporarily as Professor of Centre for Marine Science & Technology in Manonmaniam Sundaranar University till the post of Professor is filled up

as per the statute.

2. The brief facts necessary for disposal of the writ petition as stated in the affidavit in support of the writ petition are as follows.

(i) Petitioner passed M.Sc. (Zoology), M.Phil (Zoology) and Ph.D. on the Vitellogenesis of the fresh water field crab *Paratelphusa Hydromous*

with special reference to the effect of vertebrate hormones in 1989 and thereafter completed Post Doctorate Research at Sophia University, Tokyo, Japan in 1990. Petitioner joined as a Research Associate at University of Madras in Zoology department and worked there from July, 1990 to December, 1991. After serving as Principal Investigator, Young Scientist Project at New Delhi from December, 1991 to November, 1993 in the Centre for Marine Science and Technology, petitioner was appointed as a Senior Lecturer in July, 1995 in the first respondent University. Petitioner was further promoted as Reader under the Career Advancement Scheme in July, 1999 and now she is working as Reader in the said Department of the first respondent University.

(ii) Petitioner states that she had published 11 publications and conducted three National seminars and two workshops. Petitioner also published the Book in ""Marine Biodiversity"" and also attended four Workshops in National level and two Workshops in International level.

(iii) According to the petitioner, the Centre for Marine Science and Technology (hereinafter called as ""CMST"") was headed by one Dr. M. Peter Marian as Head of the Department and he passed away on 29.4.2006. In that vacancy one Dr. N. Chandrasekar was appointed as in-charge Head of the Department. On 20.7.2006 petitioner submitted a representation and prayed for designating her as Head of the Department, followed by two reminders. According to the petitioner, she is the only qualified and senior-most person working in CMST.

(iv) Further case of the petitioner is that as per Section 45(1) of Chapter IX of the Statute of Manonmaniam Sundaranar University Act, in a department where there is no Professor, an Assistant Professor or a Reader may be appointed as Head of the Department. Petitioner being a Reader, she ought to have been appointed as in-charge Head of the Department. Dr. N. Chandrasekar being an outsider of the department, petitioner filed a writ petition and obtained interim stay.

(v) In this writ petition, petitioner is challenging the resolution dated 20.7.2006 appointing the second respondent as Professor in CMST, Rajakkamangalam on invitation and deputation basis for a period of three years with salary protection. The said resolution is challenged on the ground that as per Section 45 of Chapter IX of the Manonmaniam Sundaranar

University Act, petitioner alone should have been considered for appointment as Head of the Department as she is the senior-most Reader working in CMST and even if the post is to be filled up by open competition, the persons working in the Department/Centre shall be considered, while preferring outsiders.

(vi) It is also stated in the affidavit that the procedure prescribed by the UGC stating that the Selection Committee alone is empowered to fill up the

post is not followed and the second respondent is invited to be a Professor for three years on deputation basis. It is further stated that the second

respondent is not having regular teaching experience as he is a Scientist of the Central Government Organisation, when compared to the petitioner,

who is a Reader. According to the petitioner, the action of the first respondent in inviting the second respondent to be a Professor of CMST is

colourable exercise of power and the first respondent University is going to incur extra expenditure of Rs. 5,40,000/- and therefore the petitioner

has filed the above writ petition to quash the impugned resolution dated 20.7.2006 insofar as item No. 19 is concerned.

3. (a) The first respondent has filed counter affidavit wherein it is stated that the Institute of Artemia Research Training at Rajakkamangalam,

Kanyakumari District, is a sole Centre for India started on 20.3.1990 by the Madurai Kamaraj University in collaboration with International

Artemia Research Centre of State University of GHEND, Belgium and Marine Product Export Development Authority, Ministry of Commerce,

Government of India, Cochin and Office of the Deputy Salt Commissioner, Madras. The Centre was transferred on 27.7.1992 from Madurai

Kamaraj University to Manonmaniam Sundaranar University and named as "Centre for Marine Science & Technology" in 2003. It is one of the

advanced research Centres of the University and the Centre is supported by various funding agencies like Department of Biotechnology (DBT),

Department of Ocean Development (DOD), Council for Scientific and Industrial Research (CSIR), Department of Science and Technology

(DST), Indian Council for Agricultural Research (ICAR), etc.

(b) It is further stated that presently the Centre offers two post graduate courses (M.Sc. Marine Biotechnology & M.Sc Microbiology) and three

M. Phil programmes (Coastal Aquaculture, Marine Biotechnology & Microbial

Technology). About 125 post graduate students are pursuing their academic programmes and the Centre has about 50 research scholars, working for their Ph.D.

(c) According to the first respondent, the second respondent is having 30 years of experience in research with ten years of PG experience in

teaching and he is more appropriately qualified as he holds M.Sc. Degree in Biology and Ph.D. Degree in Microbiology of the Madurai Kamaraj

University. Insofar as the Post Doctorate Research in Sophia University, Tokyo, secured by the petitioner, it is only for a limited period of three

months and her post doctoral work has not resulted in publications and projects.

(d) Petitioner was given promotion as Reader under Career Advancement Scheme in July, 1999 by giving relaxation of two norms out of five

norms and after her promotion as Reader, petitioner applied for 11 different posts within five years period in various Universities viz., various

departments of Madras University; Department of Ocean Development, New Delhi; Periyar University, Salem; and Tiruvalluvar University,

Vellore. According to the first respondent the said conduct of the petitioner reveals that she has no commitment to promote the interest of CMST

and she was not found suitable either to the post of Reader or even for Lecturer post by anyone of the University/Institutions. The first respondent

also disputes the publications made by the petitioner and the seminars conducted.

(e) As per the counter affidavit, petitioner was granted permission to participate and present papers in the International Conference on ""World

Aquaculture 1997"" held from 19.2.1997 to 23.2.1997 at U.S.A. and the petitioner over stayed there without prior permission of the University

and thereby she has violated the Manonmaniam Sundaranar University Conduct Rules and on-duty payment claimed by the petitioner for her over

stay period was disallowed by the University and a memo was also issued to the petitioner on 7.8.1997. According to the first respondent, the

petitioner was not given the designation of Head of the Department due to the proven dereliction of duty, irregular attendance, unauthorised

absence of duty, tampering of records, etc, and therefore one Dr. N. Chandrasekar was designated as Professor in-charge of the Centre in July,

2006. The petitioner's guidance in M. Phil was also adversely commented as two

students submitted dissertation on similar lines.

(f) Taking note of the said demerits of the petitioner, the Syndicate in its meeting held on 20.7.2006 unanimously resolved to invite the second

Respondent to the newly created post of Professor on invitation for three years and the creation of the said post is with a legal backing under

Chapter IV, Section 24 of the Manonmaniam Sundaranar University Act, 1990. The second respondent is an outstanding Scientist, Scholar,

Academician at the National and International level and previously one Dr. Lazarus, Principal Scientist in CMFRI, Cochin was appointed as

Professor in the Centre for Marine Science & Technology in April, 1993 and he continue to be in service upto June, 2001. The second respondent

is having 30 years of research experience and more than 10 years of Post Graduate Teaching experience, contributed 30 publications in standard

journals and he got many credits when compared to the petitioner.

(g) According to the counter affidavit, there is no provision in the Manonmaniam Sundaranar University Act, 1990, that senior-most professor shall

be appointed as Head in-charge and as per the UGC regulation 2000, the minimum qualification for appointment of professor as per the norms is

as follows,

An eminent scholar with published work of high quality actively engaged in research, with 10 years of experience in post graduate, and/or

experience in research at the University/National level institutions including experience of guiding research at doctoral level

or

An outstanding scholar with established reputation who has made significant contribution to knowledge.

The second respondent is having all required qualifications prescribed under UGC regulation and the petitioner has not stated the correct

provisions of the Manonmaniam Sundaranar University Act, 1990, particularly Section 62(1), which contemplates appointment of Professor by

special mode. The comparative merits and demerits of the petitioner and second respondent is also stated in the counter affidavit.

4. The second respondent also filed a counter affidavit wherein he has narrated his merits and qualifications.

5. A reply affidavit has been filed by the petitioner wherein the petitioner's

qualifications and other details are reiterated.

6. Heard the learned Senior Counsel appearing for the petitioner, first respondent as well as the second respondent.

7. Petitioner is admittedly a Reader in the Centre for Marine Science and Technology. The post of Professor is a promotional post and the same is

also admitted. Promotion to the post of Professor is not automatic and it is to be made on the basis of merits and ability. Section 62 of the

Manonmaniam Sundaranar University Act, 1990, empowers the Syndicate to select a person on special mode of appointment, which reads as

under,

62.(1) The Syndicate may invite a person of high academic distinction and professional attainments to accept a post of Professor in the University

on such terms and conditions as it deems fit, and on the person agreeing to do so, appoint him to the post.

(2) The Syndicate may appoint a teacher or any other member of the academic staff working in any other University or organisation for

undertaking a joint project in accordance with the manner laid down in the ordinances.

From a reading of the above section it is clear that the Syndicate is empowered to invite a person of high academic distinction and professional

academics to accept the post of Professor in the University. The Syndicate, which is a highly academic body, considered the merits and ability of

the second respondent and invited him on deputation to function as Professor of the Department for three years.

8. Section 24 of the Manonmaniam Sundaranar University Act, 1990, deals with the powers of the Syndicate. Sub-clause (27)(a) of Section 24

authorises the Syndicate to appoint Professor, which reads as follows,

24(27)(a) to appoint the University Lecturers, University Readers, University Professors and the teachers of the University, fix their emoluments, if

any, define their duties and the conditions of their services and provide for filling up of temporary vacancies.

Hence, the Syndicate of the first respondent University has acted within its power to appoint/invite a Professor on merits.

9. The wisdom of the Syndicate in inviting the second respondent, which is an expert body, cannot be gone into in this writ petition as it is for the

academic body to find out the academic career of the contending candidates and it is their prerogative to select or not to select a particular person.

Since the power of special mode of appointment is contemplated under the Manonmaniam Sundaranar University Act, I feel there is nothing wrong

in passing the impugned resolution inviting the second respondent to be the Professor of CMST.

10. The contention of the learned Senior counsel for the petitioner that her promotional chances are affected due to the special mode of

appointment cannot be accepted particularly when her merit and ability are found not adequate to hold the post of Professor by the Syndicate, as

explained in the Counter affidavit. Section 62 of the Manonmaniam Sundaranar University Act, 1990, also contemplates special mode of

appointment and the same having been exercised by the Syndicate by inviting the second respondent, the petitioner is not entitled to state that the

power is exercised in colourable manner. When the special mode recruitment is made, this Court cannot interfere in that decision because it is the

decision taken by the Syndicate, which is an expert body.

11. (a) The Honourable Supreme Court in the decision reported in Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and

Others, in para 17 held thus,

17. Rulings of this Court were cited before us to hammer home the point that the court should not substitute its judgment for that of academicians

when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge

decisions of academic bodies. But University organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law

unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the court keeps its hands

off; but where a provision of law has to be read and understood, it is not fair to keep the court out. In The University of Mysore and Another Vs.

C.D. Govinda Rao and Another, , Gajendragadkar, J. (as he then was) struck the right note:

What the High Court should have considered is whether the appointment made by Chancellor had contravened any statutory or binding rule or

ordinance, and in doing so, the High Court should have shown due regard to the

opinions expressed by the Board and its recommendations on which the Chancellor has acted.

The later decisions cited before us broadly conform to the rule of caution sounded in Govinda Rao. But to respect an authority is not to worship it unquestioningly since the bhakti cult is inept in the critical field of law. In short, while dealing with legal affairs which have an impact on academic bodies, the views of educational experts are entitled to great consideration but not to exclusive wisdom. Moreover, the present case is so simple that profound doctrines about academic autonomy have no place here.

(b) In *Osmania University represented by its Registrar, Hyderabad, A.P. Vs. Abdul Rayees Khan and Another*, (para 9) the Honourable Supreme

Court held that the views expressed by the Educational Experts in the affairs of administration or selection of candidates cannot be interfered with by the Courts.

(c) In the decision reported in *Thapar Institute of Engineering and Technology and Another Vs. Gagandeep Sharma and Another*, , the Honourable

Supreme Court in para 16 held thus,

16. The learned Single Judge further held that to prescribe the academic standards falls exclusively in the domain of special bodies like the Senate,

Board of Governors and Syndicate etc. The court would normally not interfere with such prescribed standards and especially when they are

intended to improve the academic standards in their respective institutes. The scope of judicial review in such matters would be very limited.

(d) The same view was taken in the subsequent decision of the Supreme Court in the decision reported in *P.M. Bhargava and Others Vs.*

University Grants Commission and Another, .

12. Applying the above referred decisions of the Honourable Supreme Court to the facts of this case, particularly to the resolution of the Syndicate

in inviting the second respondent to function as Professor of the CMST, I find no illegality in the impugned resolution and the writ petition deserves

to be dismissed. Accordingly the writ petition is dismissed. No costs. Connected miscellaneous petition are also dismissed.