

**(1991) 01 KAR CK 0054**

**In the Karnataka High Court**

**Case No : W.P. Nos. 12276 to 12282/1990**

F.C. Mahesh and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

**Date of Decision : 07-01-1991**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (1991) 1 KarLJ 284**

**Hon'ble Judges : H. G. Balakrishna, J**

## **Judgement**

Balakrishna, J.-Except petitioner-7 who was working as a part-time Teacher in Government High School, Besur, Somawarpet Taluk, Kodagu District and who was relieved before the writ petition was filed, all other petitioners were working as part-time Teachers in Government Institutions in Hassan District, out of whom petitioner-3 was relieved during the pendency of the writ petition. Significantly, these Teachers had been appointed to full time posts on part-time basis and at the inception they were receiving pay which was much lower than that the petitioners would have been entitled, had they been appointed on full time basis. It is stated that the ulterior motive behind the enlistment of the services of the petitioners on part-time basis was indirectly a measure of exploitation by denying equal pay for equal work.

2. During the pendency of the writ petitions, the 3rd petitioner was relieved of his post in an arbitrary manner. The 7th petitioner whose services were dispensed with unceremoniously had to approach this Court for relief by writ petitions. It appears that these petitioners were being appointed for a specific academic year only on a temporary part-time basis and this exercise was repealed every year of their service. Though petitioner-5 is a part-time Teacher in a Pre-University College, her predicament is not at variance with the predicament of the other petitioners. In course of time it is possible that these petitioners may suffer from one disability or the other in meeting the requisite qualifications for appointment to full time posts, in which they have been working on part-time basis, unless certain measures are taken by the State Government

to regularise their services by framing appropriate rules having due regard to the number of years of service these petitioners have put in. The nature of duty and function which they have been discharging, though on a part-time basis, are in no way different from the nature of duty and function which they would have otherwise discharged had they been appointed on full time basis. Future, probable handicap in the nature of age bar may also be staring in the face of some of these petitioners. In any event it could be said that their condition is unenviable and therefore, commends a fair and sympathetic treatment, as otherwise they are confronted with vulnerability to future insecurity in service.

3. In the above circumstances, the point is, whether the petitioners are entitled to a mandamus directing respondent-1 to consider regularisation of the petitioners services, even by framing special rules in that behalf?.

4. At the out-set it is to be observed that the avoidance of recruiting Teachers on full time basis to full time posts in accordance with the Cadre and Recruitment Regulations, if any, is contrary to well recognised policy, but where the posts are filled up by recruiting Teachers on part-time basis, so long as the nature of the functions and duties are the same, such Teachers ought to be paid pay scale and allowance on equal basis inasmuch as due recognition to the principle of equal pay for equal work has to be given under the Constitution and there could be no artificial distinction or discrimination in this regard between the part-time Teachers and full time Teachers so far as monetary benefits are concerned. Though it may not be the intention of the State to make any such discrimination and make the part-time Teachers suffer, in effect and action, it is seen that the same adverse consequences however, un-intended are facing the petitioners because the State has permitted the utilisation of the petitioners to render teaching service in full time posts by engaging them on part-time basis inconsistent with the requirements of the regulations. By paying less and by not treating the petitioners on par with full time Teachers, in a way, the State may be securing its own interest of carrying out measures of austerity and economy at the cost of the poor Teachers. But such action, conduct and policy would run counter to the letter and spirit of the Constitution which guarantees equal pay for equal work. The fact that these petitioners who have no other alternative have to accept part-time assignments for full time posts, for want of choice and have been working for a pretty long time in the full time posts rendering full time service, cannot be lost sight of. There is nothing on record to believe that the petitioners are not duly qualified for being appointed as full time Teachers. If on account of delay in considering the case of the petitioners, for either regularisation of their service or for entertaining their application for appointment as full time Teachers, agebar comes in, the petitioners are not to be blamed for such a situation. Even if such a situation arises impeding the prospects of these petitioners being appointed on a regular basis in the full time posts on account of the age bar, nothing prevents the State from making necessary provisions by special rules to overcome the handicap, in view of the utilisation of the services of these petitioners, though on a part-time basis by all these Government

Institutions. In the circumstances, it would not be unfair and unreasonable to say that the petitioners should be treated on par with Teachers appointed on a full time basis, as if the petitioners themselves had been enjoying the status of full time Teachers from the inception. It stands to reason that the petitioners having worked for such a long time and having been in a sense exploited in the absence of alternative employment, should be seeking the just relief of mandamus to the State Government to regularise their services, supported by special rules, if necessary.

5. The question whether the petitioners are entitled as of right to have their services regularised and not deemed to have been appointed on regular basis in the matter of regularisation of their part-time services on full time basis, is really not the moot point for consideration. What is of relevance is the predicament in which the petitioners had been placed on account of the casual manner in which they have been appointed and paid salary on part-time basis in posts where services are being rendered by them as if they were inducted on a full time basis. What cannot escape attention is that the nature of duties and functions they have been discharging all along are in no way different from the nature of duties and functions of Teachers appointed regularly on full time basis. What is worse is the sense of insecurity that is troubling the petitioners on account of the temporary term of office that is being given to them from time to time on the basis of academic year without assurance of permanency. Lease of life is being given to the petitioners at the end of each academic year totally at the mercy of the State Government. This I am afraid is not consistent with the avowed policy of the State aimed at promoting public interest.

6. Apart from the fact that the case of the petitioners has to be considered on the basis of equity and good conscience, the Constitution mandate flowing from Article 21 of the Constitution also has to be borne in mind. Persons like the petitioners are entitled not only to means of livelihood but also adequate means of livelihood and dignity of the individual cannot be assured on empty sentiments of status without means. If the services of the petitioners are not perpetuated, it would be a negation of the spirit of the Constitution, particularly in the context of an egalitarian order against the back drop of a welfare State. Hence the following order:-

These writ petitions are allowed and a mandamus is hereby issued directing the State Government (respondent-1 herein) to take immediate steps to consider the regularisation of the services of these petitioners by framing special rules, if such special rules are necessary for effecting regularisation, within a period of 3 months from the date of receipt of the copy of this order. Pending such action, the respondents are directed to continue them in service and extend the monetary benefits to the petitioners as are applicable to permanent employees in full time posts of the same cadre and service. In so far as petitioners-3 and 7 are concerned, it is hereby directed that petitioner-3 shall be reinstated and given the same treatment as the other petitioners and in respect of petitioner-7, the

State shall consider his case for appointment as a Teacher in any of the Government High Schools, in any existing vacancy within 90 days from the date of receipt of the copy of this order.

Accordingly, the writ petitions are disposed of.