

(1994) 07 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 6604 of 1994

H. Raghavendrachar

APPELLANT

Vs

The Registrar, Karnataka University, Dharwad and Another

RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : AIR 1995 Kar 91 : (1994) ILR (Kar) 3530 : (1994) 4 KarLJ 538

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : G.S. Kannur and Y. Lakshmikanth, for the Appellant; T.N. Raghupathy, for the Respondent

Judgement

1. By this petition under Art. 226 of the Constitution of India, the petitioner has sought relief of quashing of the intimation/ letter reference No.KU/Aca/PH.D/93-94/ 6801, dated 24-1-94, issued by the first respondent i.e., the Registrar of the Karnataka University, Pavate Nagar, Dharwad, Annexure-N to the writ petition. The petitioner further sought, the direction in the nature of writ of mandamus directing the respondents to register the petitioner for Ph.D., in Law.

2. The brief facts of the case are that the petitioner having completed his degree course from the Karnataka University in Law, i.e., LL.B., joined LL.M., course and completed the LL.M., course also successfully in the II Class. According to the petitioner's case as regards LL.B, Part-1 he secured pass class; in L.L.B., Part-II, he obtained Second Class and in LL.B., III year he has been successful, but in pass class having obtained 49 per cent of marks and LL. M., he successfully passed in II class. The petitioner has annexed the copies of the marks cards of B.Sc., LL.B., and LL.M., degree examinations, as Annexures to the writ petition. The petitioner's case is that after having completed his LL.M., course he joined Vukki Sannarudrappa Law College, Bellary, which was at that time, according to the petitioner's case affiliated to Karnataka University. The petitioner's case is that he joined the post as a full time Lecturer in January, 1981. The petitioner's

further case is that since then he is continuing as full time lecturer in that Vukki Sannarudrappa Law College. The petitioner's case is that he intended to join the course of Doctorate in Law. He obtained "No objection" certificate from the college authorities in which he was working as Lecturer in Law. The petitioner chose his subject as "Internal Democracy in Trade Unions -- Hyderabad-Karnataka Region" and sought the official guidance of Dr. Visweswaraiah, Professor of Law, University Law College, Dharwad and submitted his thesis to Dr. Visweswaraiah. The petitioner submitted his application for his registration to Ph.D., Course in law. The copy of the application which he has addressed to the University authorities is dated 7-12-92 and that true copy of the proforma of the application for registration along with ordinance has been annexed at Annexure-H. According to the petitioner, petitioner addressed a letter to the Registrar to expedite the petitioner's application for registration in Ph.D., (Law), but did not receive any reply and then made another application on 4 April, 1993 with a request to expedite the matter. The petitioner's above mentioned application was rejected. The petitioner was not earlier informed and then he moved another application, Annexure-H to the Registrar of the University, giving reference to KU/ACA/Ph.D/8440, dated-11-3-1993 stating in it that he has heard, but he has not received any communication, that his earlier application has been rejected. So he requested that his matter, may be considered and application for registration may kindly be accepted. On 24-1-94, according to the petitioner's case, petitioner received a letter from the Registrar of the Karnataka University, in which it has been mentioned as under:--

"I am to inform you that your request for Ph.D., registration under the guidance of Dr. S. S. Visweswaraiah, is not reconsidered as per Ordinance-174(b). The same has been already informed to the Chairman, Department of Law, K.U., Dharwad, under this office letter No. KU/Aca/Ph.D, 8440, dated 11-3-1993"

According to the petitioner's case, he had no other remedy and so he had approached this Court by filing the writ petition. The petitioner has challenged the order that the opposite parties have rejected the petitioner's application for registration in Ph.D., without applying their mind as appears from Annexure-N, According to petitioner's case, vide., ground No. 4, the opposite parties had not applied their mind to the facts of the case as Ordinance-174(b) did not apply to the petitioner as he did not happen to be either an Engineering or a Medical candidate and it has further been alleged in the writ petition that the opposite parties had not considered the petitioner's case in the context and in the light of Ordinance-174(a) of the Ordinances, as such rejection of petitioner's application amounts to illegal refusal to grant registration in Ph.D., course. The petitioner in ground No. 4(2) has stated, as has been mentioned earlier that the petitioner had teaching experience as full time lecturer of 13 years and as such the petitioner has been entitled to the relaxation of that condition of second division, on account of the fact that he has got teaching experience as full time lecturer in the Law College. As such the petitioner has claimed that he has been entitled to registration in Ph.D., (Law) course, as according to Ordinance-174(a) the

condition of second division is not to be insisted in cases of candidates who have put in 5 years experience of teaching in the subject; On, these grounds the petitioner has claimed that he has been entitled on the date of moving of his application for registration in Ph.D, courses. That being so the opposite parties have illegally and arbitrarily refused to perform their duty of registering the petitioner to that course and deprived him of his right for education, particularly when he had been so entitled.

To this petition, on behalf of the opposite parties i.e., the Karnataka University, state ment of objection has been filed and according to the statement of objections filed on behalf of the first respondent i.e., Registrar of the Karnataka University, Dharwad, it has been stated that the petitioner is not entitled to get the relief claimed and no mandamus should be issued in his favour. According to the case of the first respondent, the petitioner has not been eligible for registration for Ph.D., in law in the Karnataka University. It has been admitted in paragraph 3 that petitioner had submitted application for registration to the Degree in Philosophy in Law, but according to the case of opposite party No. 1, there has been no delay in taking decision on the application filed by the petitioners by the University, on 11-3-1993 and the same was communicated to the Chairman, Department of Law (P. G.), Karnataka University, Dharwad, informing him that the petitioner's application for registration has been rejected. It is further been asserted that vide, letter dated 14-1-1994, Annexure-N, petitioner has been informed that the petitioner's application for registration had already been rejected. But there appears to be a typographical mistake therein and it has been stated in the counter-affidavit that the typographical mistake has been to the extent that instead of mentioning as Ordinance-174 (a) by typographical mistake Ordinance-174(b) has been mentioned. I may mention it that the same typographical mistake has been committed in writing para-4 of the counter-affidavit or the statement of objection, because the relevant portion of paragraph-4 reads :--

"In this connection there is a typographical error inasmuch as, instead of mentioning O.174(b) it has been mentioned as O.174(a)".

As I have mentioned earlier there is again mistake. Instead of Ordinance-174(a), the figure (b) has been typed in Annexure-N as well and this above quoted part of Paragraph-4, instead of I74(a), O. 174(b) has been typed. I read it just vice versa instead of reading O.174(b), it has been mentioned as O. 174(a). The case of the opposite party is that under Ordinance-174(a), a candidate must secure second class at both the bachelor and master degree courses in the same faculty of the University or any other recognised University. The condition of obtaining second division can be relaxed in case of teachers who are in service in the P. G. Departments of the University, constituent colleges of affiliated colleges, provided the candidates have at least 5 years experience in teaching or in research work. So according to the opposite parties, the petitioner's application for registration in Ph.D., course, in law, had been rejected on the ground that petitioner did not

possess second class degree in both bachelor of law and Master's degree course in law and he had only passed LL.B., examination in pass class. It has further been stated that the college in which the petitioner presently been teaching has not been affiliated to Karnataka University, Bangalore. The opposite party has in paragraph-5(b) at page-3 has admitted that the college in which the petitioner has been teaching the law as a full time lecturer has been affiliated to Gulbarga University in the State of Karnataka and as such there was no question of any relaxation of the qualification of second class degree in Bachelor in law and Master in law and as his Degree in Bachelor of Law has not been in the second class, but it was in pass class only, the petitioner has been refused and denied registration. According to the opposite party, the petitioner's application for registration has rightly been rejected. It has further been asserted that second class degree in Bachelor of Science cannot be and could not be taken into consideration, as in the present case the petitioner-applicant has sought registration in the course of law and lastly in paragraph-8 it has been denied that it is wrong to say the opposite parties have acted arbitrarily or in violation of the principles of doctrine of equality in violating Articles 14 and 16 of the Constitution.

I have heard learned counsel for the petitioner Sri G. S. Kannur assisted by Sri Y. Lakshmikanth an Advocate of this Court. On behalf of the University-respondents, I have heard Sri T. N. Raghupathy.

On behalf of the petitioner my attention has been invited to the Ordinance-174(a), by both the counsel appearing for the petitioner and the respondents. The petitioner claimed that as per Ordinance-174(a), the Condition" of obtaining second class degree stands relaxed on account of the fact that he has been in service in the department of the affiliated college, the college affiliated to Gulbarga University in the State of Karnataka. His teaching experience has been more than the requisite one, of almost 12 years in 1992-93 and now it has become of 13 years, while the requisite condition is of the teaching experience of 5 years. Learned counsel submitted that in view of this relaxation provision, as the petitioner fulfilled the requisite condition, the rigidity of second division is to be relaxed and that being so, the petitioner as well has been entitled for being registered in Ph.D., Law Course, but he has wrongly been deprived. While learned counsel for the opposite party submitted before me that ordinarily essential conditions for admission to degree of Doctor in Philosophy are that the candidate must have to his credit at least second class degree in both Bachelor and Master Degree course, in the subject concerned of either Karnataka University or of any other recognised university. This essential condition stated did not stand relaxed. Learned counsel for the opposite party submitted, as regards the present petitioner, as the relaxation is only available to persons who have got teaching experience of 5 years in the subject in the Post Graduate Department of the Karnataka University or colleges affiliated thereto or constituent colleges thereof, and to no other University or to lecturers of constituent or affiliated colleges of any other University in the State of

Karnataka. Learned counsel submitted that a reading of the ordinance only indicates that this relaxation can only be made available to the teachers having teaching experience of 5 years or more. The other condition that the teacher or the the person concerned should be or have been teacher in the subject in the Post Graduate Department of Karnataka University and the petitioner not having been the teacher either in the Karnataka university or any of its constituent or affiliated colleges, the petitioner was not eligible to be admitted to the Ph.D., course in Karnataka University and as such there was no illegality or arbitrariness on the part of the opposite party in rejecting the petitioner's application for registration and as the petitioner has not been so entitled, the learned counsel for the respondent submitted that the petitioner's writ petition is liable to be dismissed as there is no obligation cast on the opposite parties to register him in the Ph.D., degree course. During the course of arguments learned counsel for the opposite parties have brought to my notice the subsequent notification issued by the University on June 1, 1994 and placed reliance for persuasive value, in order to interpreted the provisions of Ordinance-174(a).

I have applied my mind to the contentions and the submissions made by the learned counsel for the parties respectively. Before I proceed to examine the varacity or the submissions made, I think it would be just and proper to quote the Ordinance 174(a), as it existed at the time and on the date on which the application for registration in Ph.D., course in law was made by the petitioner i.e., 14-12-92. It reads a under:

"O.174(a) Candidates for admission to the Degree of Doctor of Philosophy in all the subjects except those under the Faculties of . Engineering and Medicine should have obtained at least a second class at both the Bachelor's Degree examination and the Master's Degree examination of this University or that of any other recognised University. However this condition is relaxed in the case of teachers who are in service in the Postgraduate departments of the University, constituent colleges and affiliated colleges and who have at least 5 years teaching/research experience. Candidates with research publications/experience will be given preference, subject to the following conditions."

A bare reading of this Ordinance-174(a) shows that for admission to the Degree of Doctor of Philosophy, in a subject, a candidate is required to have to his credit at least a second class in both the Degree i.e., Bachelor's degree and in Master's degree examination. It is immaterial whether he has passed B.A., or M.A., from Karnataka University or from any other recognised University. Degree of Karnataka University in Bachelor in law or Master in Law for the purposes of registration in Ph.D., course is essential and that ordinarily both the degrees should have been obtained after having passed the examination in second division and ordinarily a candidate if he does not possess second class in both degrees, he no doubt cannot be said to be eligible for admission to the Ph.D., course. The ordinance further makes a relaxation of this condition and it provides that this condition however, is relaxed in the case of teachers who are in service

in the Postgraduate departments of the University, constituent colleges and affiliated colleges and who have at least 5 years teaching/research experience. It is not disputed that in the present case, the petitioner's LL.B., degree is in pass class, while his Master's degree in Law is in second class. It is also not in dispute the fact that the petitioner has been working as Lecturer in the college affiliated to Gulbarga University and he has been teaching the law course as a full time lecturer since 1981 and in December, 1992 he had more than 5 years teaching experience in law college affiliated to Gulbarga University. The main point in dispute between the petitioner and the opposite parties is whether petitioner is entitled to the relaxation that is provided under Ordinance-174(a), I mean to say latter part of that ordinance, whether this relaxation is confined only to the teachers teaching in the Karnataka University and constituent colleges thereto or colleges affiliated thereto or this benefit is also available to the teachers who are in service in the Postgraduate departments of other Universities or the constituents colleges of affiliated colleges thereto. I mean to say that other recognised universities or colleges attached thereto. The basic contention of the learned Counsel for the opposite parties is that the expression "the University", constituent colleges and affiliated colleges refer to only Karnataka University, Dharwad and its constituent and affiliated colleges. While the contention of the petitioner is that the University does not so indicate or confine it to Karnataka University. Learned Counsel for the petitioner's contention is that, the expression "the University" referred to in the earlier part of this ordinance refers to not only the Karnataka University but to other Universities also. He submits that degree in Bachelor of Arts or law or the like in the philosophy course of Karnataka University or of other recognised Universities have to be given recognition for the purpose of admission. The expression "The University" has got to be interpreted in the context of the earlier part and it is not confined to the Karnataka University. It is one of the well settled principles of law that if the expression and the language used in the provisions of an Act or Rule or ordinance is very clear and it does not lead to any conflicting interpretations and that there is no vagueness therein, then it has got to be given effect to, as it comes to be, but where two or more constructions do appear, the language has to be interpreted keeping in view the context of the other provisions of the Act as well as it has got to be interpreted in a manner that may run in consonance with the spirit of the constitution of the provisions of constitutional law. The expression "the University" is important. In Black's Law Dictionary, 5th Edition at page 1324, the expression "The" has been defined as under":-

"The - An article which particulars the subject spoken of, Grammatical niceties should not be resorted to without necessity, but it would be extending liberty to an unwarrantable length to confound the articles "a" and "the".

Here as mentioned in this dictionary, it is an article that particularises the subject spoken of. Now the question is what is the subject spoken of and the subject spoken of refers to the subject. Here it refers to the expression "this i.e., Karnataka University" and also to any other recognised University. This includes

in itself both the Universities i.e., Karnataka University or any other recognised University, the degrees of which have been provided with second class degrees and (sic) especially for a person to be registered in Ph. D., course. Thus, I so construe this provision in the light of spirit of the constitution and in the context of the entire language of the provision of Ordinance-174(a). Apart from that this construction really lends support to the spirit of the constitution and it is in consonance with the spirit of the Constitution of India.

The preamble of the Constitution ordains the object for which the constitution and laws under it have got to be framed and it indicates the object that has to be achieved by the entire system working under the basic document of law i.e., constitution of the Country i.e., the Constitution of India. The preamble of the Constitution reads as under:-- -

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist, Secular Democratic Republic and to secure to all its citizens..... and to promote among them all, Fraternity assuring the dignity of the individual and the unity and integrity of the Nation."

One of the object is to promote feelings of unity and integrity of the Nation in addition to assuring dignity of the individual. Feelings of national integrity, unity have got to be perpetuated. The feelings regionalism, communalism has got to be curbed. Narrow-mindedness or sectarian approach in the name of a particular University or college particular religion or region, (sic) if it is perpetuated by an interpretation, while the other ones leads to the wider horizon of promoting national integrity, in my opinion the interpretation that promotes national integrity has got to be followed. In Karnataka there are Universities as Karnataka University, Dharwad University in Gulbarga, Bangalore University and the like. If we accept the interpretation suggested by learned counsel for the respondent, then it will lead one to narrow sectarianism based on one college or University or other in the State of Karnataka itself, and people will be deprived even if they otherwise satisfy the essential condition and this condition will also run contrary to the very spirit of the provision. Here it carries no sense that when degrees of Universities --Karnataka University or other recognised Universities can be considered for the purpose of registration, if a person has passed in second division, for Ph. D. Course. There appears no reason why a candidate having teaching experience in Post-graduate department of a University other than Karnataka University, Dharwad or constituent colleges and colleges affiliated thereto in the same State of Karnataka should be deprived of the benefit of relaxation provided under Ordinance No. 174(a). There appears no rationale behind it. So far as the rationale behind grant relaxation to teachers having 5 years standing is concerned, relaxation of condition provided in their favour no doubt has not certain rationale basis. To deprive a teacher with more than five years teaching experience in Post-graduate department of University other than Karnataka University or colleges affiliated to a University other than Karnataka University, it appears unreasonable, for he would be deprived of the benefit

without any rhyme or reason particularly in the context of fact that the degrees from those other Universities are considered as good for eligibility for admission (sic).

Thus having considered, in my opinion the expression "The University" and the constituent colleges and affiliated colleges here means that the candidate if he is a teacher teaching in Post-graduate department of the University or a constituent college of a University either. Karnataka University or any other recognised University or colleges affiliated thereto and he has got requisite experience of 5 years, or more then in the case of that person, the condition will be deemed to have been relaxed and in that case, as that of the petitioner. The petitioner at the time when he applied has been fully eligible for being admitted or for being registered in Ph. D., course in Law, subject only to the condition that if there are more candidates, then the seats available, then inter se merits might be considered. But the petitioner being the only one eligible candidate, who had applied for admission or for registration in Ph.D., there has been no good ground to reject his application, as he has been fully qualified on the basis of relaxation principle. No other reason has been shown either in the counter affidavit or in the course of the arguments by the learned Counsel on behalf of the respondents, for rejection of his application for registration in Ph.D. Course in Law of the respondent-University. That being the only ground, the very basis of rejection being illegal and based on non application of mind, the order of rejection of petitioner's admission to that course, in my opinion is an act on the part of the opposite parties to refusal to perform the public duty cast on the opposite parties. The course for which the petitioner had applied was the year 1993-94 and at that time he had been eligible. The amended ordinance, to which my attention had been invited by learned Counsel for the opposite party dated 1-6-1974 cannot be taken into consideration for the purposes of interpreting the old ordinance. Had the old ordinance being like that, there would not have been any amendment. For amendment no doubt the scope of relaxation being reduced and confined to particular teachers of particular University. Whether that is good or bad at present is not a question for me to consider now and, therefore, no opinion being expressed. But that document is of no help to the petitioner or to the Court in interpretation of the earlier ordinance of 1974(a), which was applicable at the time when petitioner has sought registration. The question that when a person is qualified on a particular date to be granted the relief his claim in the application can be deprived of the same because of some fault or wrong on the part of the opposite parties or some delay in the disposal of the petition. In my opinion that will tantamount to denial of justice to the party, if there was error or wrong on the part of the public authority.

It is well settled principle of law as laid by the Supreme Court in Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others, and in the decision of the Privy Council in Rodger v. Comptoir d'Escompte De Paris (1871) 3 PC 465, wherein with respect to the jurisdiction of the Court the exercise of jurisdiction by the Court it has been laid down in respect of Court that it is the foremost duty of the Court to

see that no person or litigant is made to suffer because of the error or mistake of the Court or of its officials. This doctrine I may say is not confined in its application to Courts but applies to all public institutions in a State in a welfare State. It is the duty of all the public functionaries and public institutions to see that because of their wrong ordinary citizens are not made to suffer. Keeping this principle in view, I am of the opinion that let no wrong be done to petitioner and if done to the petitioner by the order dated 11-3-1993 or order dated 14-1-1994, Annexure N, be rectified by quashing of the aforesaid orders by this Court in exercise of its power under Article 226 of the Constitution.

As I have found that the opposite parties have wrongly denied the petitioner registration to Ph.D., course when he was entitled at the time when he applied as well as subsequent thereto even when writ petition had been filed and there has been failure on the part of the public body to inform the petitioner of its decision, it is necessary to issue a writ of mandamus, directing the opposite parties to register the petitioner to the course of Ph.D., in Law and his Registration should be deemed from the date of rejection of his application and not from the date subsequent thereto. The registration though may be done in pursuance of this order within a reasonable time and the Court expects within a period of not more than one month from the date of service of the copy of this order by the petitioner. But his admission should be deemed to have been given with effect from the date of the rejection of the application for registration. Let a writ of mandamus be issued to the opposite parties to comply with the above direction. The letter dated 11-3-1993 and order 24-1-1994, contained in Annexure-N respectively are held to be inoperative and void.

This petition is allowed. The cost of the petition should be borne by the parties.

Petition allowed.