

(2007) 06 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 6373 of 2007

H.C. Mallaiah and Another

APPELLANT

Vs

Bangalore University and Another

RESPONDENT

Date of Decision : 29-06-2007

Acts Referred:

Karnataka State Universities Act, 2000 — Section 2 (12)

Citation : (2007) ILR (Kar) 3392 : (2007) 5 KarLJ 650 : (2007) 4 KCCR 2318

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—The present writ petition is a classical example of what anomalies can occur, if law is applied without examining the facts.

2. The petitioners claim to be working as instructors in the department of mechanical engineering, University Visvesvaraya College of Engineering - second respondent herein - and who are to retire on attaining the age of 58 years and the university has informed them accordingly in terms of the notification dated 27-11-2006 [Annexure-H] indicating that the petitioners 1 and 2 will retire on 30-6-2007 and 31-7-2007 respectively.

3. It is this notification that is questioned in this writ petition, inter alia, contending that the petitioners have been working as instructors, they are also teachers; that they may be treated on par with teachers who retire on attaining the age of 60 years and therefore informing them that they will be retiring on the dates mentioned in the notification dated 27-11-2006 is bad in law and a writ of certiorari may be issued quashing the said notification in so far as the petitioners are concerned and the university be directed to continue the petitioners in service till they attain the age of 60 years.

4. Notices had been issued to the respondents. University has entered appearance through counsel.

5. Sri Prasanna, learned Counsel for the petitioners submits that the matter is covered by the earlier decision of this Court in favour of the petitioner; that this Court had in an identical situation ruled that instructors are also to be taken as teachers and therefore they should be continued till they attain the age of 60 years and has placed reliance on the earlier decisions, one such is produced at Annexure-K to the writ petition, which is rendered on 5-4-2005 in WP No. 10545 of 2005, which order came to be affirmed by a Division Bench of this Court in WA No. 2704 of 2005 decided on 12-8-2005, and submits that in this view of the matter, this writ petition should be allowed straightaway.

6. Sri Vishnu D. Bhat, learned Counsel for the first respondent-university, on the other hand, submits that the provisions in the Karnataka State Universities Act, 2000 [for short, the Act], relating to the teachers viz., the definition clause Section 2(12) of the which reads as under:

2(12) "Teachers" means Professors, Assistant Professors, Readers or Lecturers imparting instructions in any University.

does not provide for such an eventuality; that the petitioners are not teachers in fact or in law; that the petitioners never have taught anything; that the petitioners joined the services of the university as Class-IV employees, have, in due course of time, given periodical promotions and presently occupy the post of instructor, it will be an anomaly if such persons are to be called as teachers who as per the definition are only Professors, Assistant Professors, Readers or Lecturers and not otherwise and it is only a Professor or Assistant Professor or Readers or Lecturer who imparts instructions alone is a teacher and not any other person who also imparts instructions and therefore submits that there is no occasion to consider the case of the petitioners to extend their services upto the age of 60 years.

7. Sri Prasanna, learned Counsel for the petitioners has also placed reliance on another reported judgment of this Court in the case of Dalappa Vs. Bangalore University and Another, and submits that the very provision viz., Section 2(12) of the Act came in for interpretation in that decision and this Court purporting to follow the judgment of the Supreme Court in the case of P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another, , has allowed the petition and held that persons like the petitioners are also teachers and therefore the petitioners should necessarily be extended the benefit of retirement only on attaining the age of 60 years, as is the case in respect of the teachers in the university. Submits that order of the learned Single Judge has been affirmed by the Division Bench in the case of Bangalore University Vs. Dalappa and Another, .

8. Sri Vishnu D. Bhat, learned Counsel for the first respondent-university, on the other hand, seeks to make a distinction of the case, pointing out that in the case of DALAPPA, the petitioners were functioning as teachers and also evaluating the answer scripts of students who wrote examinations of the university and therefore no comparison can be drawn between the petitioners herein and the

case of DALAPPA.

9. A perusal of these decisions relied upon by the learned Counsel for the petitioners indicates that this Court had proceeded on the premise that the definition of "teacher" in Section 2(12) of the Act is as under:

Section 2(12) reads as under:

2. Definitions - In this Act unless the context otherwise requires -

Xxx xxx xxx 2(12) Teachers include Professors, Readers, Assistant Professors, Lecturers and such other persons imparting instruction in the University or in any college declared as such by the statutes.

10. It is this decision and the interpretation based on such understanding of the provisions of Section 2(12) of the Act, which has been affirmed by the Division Bench and which view has been followed in the subsequent decisions of this Court.

11. In fact the definition as quoted in the case of DALAPPA is in pari materia with the definition of "teacher" as contained in the Andhra Pradesh Agricultural University Act in terms of Section 2(n), was under consideration before the Supreme Court in the case of P.S. RAMAMOHANA RAO [supra] is a definition of "teacher", which is an "inclusive definition" in all these decisions, as was noticed and interpreted. But unfortunately for the petitioners in this case, the definition of "teacher" as it occurs in Section 2(12) of the Act is noticed to be, as under:

2(12) "Teachers" means Professors, Assistant Professors, Readers or Lecturers imparting instructions in any University.

12. The definition of "teacher" as it occurs in Section 2(12) of the Act is an exhaustive definition and it says that "teacher" means only professors, assistant professors, readers or lecturers imparting instructions in any University. That means, it is only those persons who are professors, readers, assistant professors or lecturers who are imparting instructions, who can be called as teachers and not any other person imparting instructions. There is no scope for any further interpretation of the definition of teacher so as to include other classes of instructors as the word "teacher" is defined in Section 2(12) of the Act.

13. Unfortunately, this Court proceeded on a misconception that the definition of "teacher" as it contained in Section 2(12) of the Act and as quoted above was an inclusive definition. It is this mistake which has been perpetuated in all the subsequent decisions rendered by this Court.

14. A look at the provisions of Sections 2(12) of the Act, as well as Sections 53, 57, 73 and 78 of the Act, throws more light on the manner in which the phrase "teacher" as defined in Section 2(12) of the Act can be understood, which is only to indicate that it is a definition restricting the meaning to include persons mentioned in the definition section itself.

15. It is for this reason, I am not inclined to follow decisions relied upon by the learned Counsel for the petitioners, as all these decisions proceed on a mistaken impression of the definition of the word "teacher" in Section 2(12) of the Act to extend the benefit of the order in favour of the petitioners for the purpose of directing the university to positively continue them even beyond the age of 58 years, by issuing an interim order in this writ petition.

16. However, this writ petition is admitted for resolving the above said conflict which may otherwise continue, as I am of the view that the definition of Section 2(12) of the Act does not give any further scope for interpretation of this provision and the definition being (sic), there is no scope for adding any new categories to the definition of "teacher".

17. For resolution of this question and the conflict on this question, Rule is issued and the matter is referred to Division Bench.