
(1989) 03 KAR CK 0014
In the Karnataka High Court
Case No : W.P. Nos. 3508 to 3521/1989

H.N. Krishnappa and Others

APPELLANT

Vs

Bangalore University

RESPONDENT

Date of Decision : 27-03-1989

Acts Referred:

Citation : (1989) 3 KarLJ 550

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-At the stage of preliminary hearing, emergent notice was ordered to the respondent-Bangalore University. Accordingly, it has entered appearance through its Standing Counsel. Time was once granted for filing statement of objections, if any. But so far, no Statement of objections is filed. However, time is sought for filing objections. Having regard to the fact that these petitions can be disposed of on a short point based on undisputed facts, which are borne out from the records of the University which are produced, by the petitioners, it is considered not necessary to grant further time. Hence rule is issued and the petitions are heard for final disposal.

2. In these petitions under Article 226 of the Constitution, the petitioners have sought for the following reliefs:

A. To issue a Writ of Certiorari or any other appropriate writ, order or direction quashing the resolution at item No. 21 passed by the Syndicate at its meeting held on 1-2-1989 dated 9-2-1989 in SYN: S1:13/SYN/1988-89 produced herewith at Annexure-E and also the consequent revised provisional seniority list issued on 21-2-1989 in the cadre of Junior Assistants by the Respondents in Official Memorandum No. EST.E.4Misc. 88-89 produced herewith at Annexure-.

B. To issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent to implement the Resolution of the Syndicate passed at its Extra-ordinary Meeting held on 19-2-1987-Annexure-B and to give proforma promotions to the cadre of Junior Assistants as stated in

Annexure-B and all other consequential benefits including the monetary benefits flowing therefrom.

3. Annexure-E is a resolution of the Syndicate dated 1-2-1989 pertaining to item No. 21 passed in its 106th Meeting accepting the Recommendations of the Committee constituted to consider the grievance of the officials in connection with the provisional seniority list of non-teaching staff. Annexure-G is an Official Memorandum dated 21-2-1989 issued pursuant to the aforesaid resolution dated 1-2-1989 passed by the Syndicate as per Annexure-E. The petitioners have also sought for issue of a direction in the nature of mandamus to the respondent to implement the U.O.No. EST. E.4.Misc. 83-84 dated 12-3-1987 (Annexure-B) issued pursuant to the Resolution of the Syndicate passed in its Extraordinary Meeting held on 19-2-1987 accepting the recommendations made by the Grievance Committee.

4. The documents produced along with the writ petitions indicate that a Grievance Committee was appointed under the Chairmanship of Sri Mysoremath, a Member of the Syndicate, to go into the grievances of the officials relating to the seniority and other matters. The committee interviewed the aggrieved officials and heard them and submitted its report on 18-2-1987 as per Annexure-A. It is not necessary to go into the details of the report.

5. On the basis of the report submitted by the Grievance Committee headed by Sri Mysoremath, the Syndicate passed a resolution in its Extraordinary Meeting held on 19-2-1987 and accepted the report of the Committee headed by Sri Mysoremath except in respect of creation of supernumerary posts. Accordingly, the University fixed the seniority of Sri Chikkaiah and others as Junior Assistants notionally as per Annexure-B dated 12-3-1987 bearing No. EST. E.4.Misc. 83-84. On the basis of the resolution of the Syndicate dated 19-2-1987, the University also issued on 2-6-1988 a revised provisional seniority list of Junior Assistants in Bangalore University as on 1-9-1982 as per Annexure-c.

6. Several officials aggrieved by the provisional seniority list, filed their objections. In view of the objections received to the provisional seniority list, the Vice Chancellor thought it necessary to appoint a Committee to examine the objections received against the provisional seniority list of Junior Assistants published on 2-6-1988. Accordingly, he appointed the Committee consisting of a Special Officer (Services), Legal Officer of the University and a Retired Law Secretary with Registrar of the University as the Chairman and the Deputy Registrar of the University as the Convenor of the Committee. The Committee considered the objections and submitted a report on 20-12-1988 as per Annexure-D. After the report was submitted by the Committee consisting of the officials referred to above, the Syndicate in its 106th Meeting held on 1-2-1989 at item No. 21 and passed a Resolution accepting the report as per Annexure-E. On the basis of the said Resolution, an Official Memorandum dated 21-2-1989 as per annexure-G has been issued.

7. The Official Memorandum dated 21-2-1989 bearing No. EST.E.4.Misc. 88-89 Annexure-G is a Revised Seniority List of Junior Assistants prepared on the basis of the report made by the Committee of Officers on 20.12.1988. Annexure-I contains the seniority list of Junior Assistants. Annexure-II contains the seniority list of promotees whose promotions were effected from 24-4-1971 onwards in excess of the quota fixed for promotion. Annexure-III contains the calculation of quota between the direct recruits and promotees. No doubt Annexure-G-the Official Memorandum-further states that any official aggrieved by the seniority published thereunder may submit his objections within a period of 15 days from the date of the Official Memorandum.

8. The aforesaid facts make it clear that the Resolution of the Syndicate dated 19-2-1987 and the order dated 12-3-1987 Annexure-B issued on the basis of the Resolution of the Syndicate dated 19-2-1987 fixing the seniority of Chikkaiah and others as Junior Assistants notionally, do not subsist, because subsequent thereto a Committee consisting of officials referred to earlier was constituted and it submitted a report as per Annexure-D which was accepted by the Syndicate as per Annexure-E on 1-2-1989. Therefore, the prayer made by the petitioner that the University be directed to implement the order dated 12-3-1987 bearing U.O.No. EST.E.4. Misc. 83-84 (Annexure-B) does not survive because the seniority fixed under that order is superseded by the subsequent developments viz., the report made by the Committee of Officials referred to above as per Annexure-D and the resolution dated 1-2-1989 passed by the Syndicate as per Annexure-E at item No. 21 accepting the Report-Annexure-D.

9. However, it is submitted by Sri U.L. Narayana Rao, learned Counsel for the petitioners that after the Committee consisting of the officials referred to above made their report dated 20-12-1988 as per Annexure-D recommending certain norms for determination of the seniority which affected the position assigned to the petitioners in the provisional seniority list with which the petitioners were not aggrieved, no opportunity was given to them to file their objections, if any. In other words, the submission made is that when as a result of acceptance of the report made by the Committee as per Annexure-D, the petitioners were to be kicked down in the ranking as proposed in the seniority list, as such they were entitled to have an opportunity to file their objections. The contention is based upon a decision of the Supreme Court in *Union of India and another v P.K. Roy and others*, A.I.R. 1968 S.C. 850.

It is submitted that the opportunity that is afforded in Annexure-G to file objections to the seniority list published thereunder after accepting the report dated 20-12-1988 made by the Committee of Officials, is no opportunity in the eye of law because the Syndicate has already accepted the Report. The opportunity contemplated by Annexure-G at the most may amount to make a grievance as to whether or not the principles laid down in the report dated 20-12-1988 made by the Committee of Officials and accepted by the Syndicate, are properly applied. But it does not amount to affording an opportunity to state

as to whether the principles stated by the Committee of Officials are valid in law.

10. Therefore, the question that necessarily arises, as to whether the opportunity afforded by the Official Memorandum-Annexure-G dated 21-2-1989 to file objections to the revised seniority list is sufficient in the eye of law?

11. The facts stated in the preceding paragraphs make it clear that there was a Grievance Committee appointed earlier which made its report on 18-2-1987 as per Annexure-A and the same was accepted by the Syndicate in its Extraordinary Meeting held on 19-2-1987 and pursuant to that, the University issued an order on 12-3-1987 bearing No. EST.E.4. Misc. 83-84 fixing the seniority of Chikkaiah and others as per Annexure-B. Pursuant to the aforesaid resolution of the Syndicate, dated 19-2-1987, the University also reviewed the seniority of certain officials and published the revised provisional seniority list of Junior Assistants in the University as on 1-9-1982 and on 2-6-1988 as per Annexure-C. Those who were aggrieved by the provisional seniority list of Junior Assistants proposed in Annexure-C filed their objections. As far as those who were not aggrieved by the ranking assigned therein, there was no question of filing any objections.

12. The objections filed by the officials were referred to a Committee of Officials appointed by the Vice-Chancellor consisting of certain officials. This Committee of Officials reviewed the entire matter and evolved its own principles and on the basis of those principles, it made a report. Those principles are contained in paras 4 and 4.1 of the Report and the recommendations of the Committee are contained in para 5.13 of the report which are as follows:

"4. GENERAL PRINCIPLES ADOPTED BY THE COMMITTEE:

4.1 Before considering the objections and determining the interse seniority of officials in the cadre of Junior Assistants, certain general issues arose. The Committee discussed these issues in detail and decided to adopt the following principles for regulating seniority:

1) All appointments either by direct recruitment or by promotion made prior to 24-4-1971 were made during the "no rule" period and are deemed to be regular. It is not necessary for the Committee to consider the correctness of these appointments. Besides the Committee is informed that all persons appointed to the cadre of Junior Assistants prior to 24-4-1971 have already been promoted to the next higher cadre. The Committee, has, therefore, confined its scrutiny to appointments made on or after 24-4-1971.

2. Appointments were made to the Cadre of Junior Assistants by adopting one of the following methods;

a) By regularisation of local candidates.

b) By permitting Typists to change their cadre.

c) By merger of clerk-cum-typists with the Junior Assistants.

- d) By transfer of officials from other Universities.
- e) By making appointments under the Scheme for providing appointment on compassionate grounds.
- f) By promotion from lower cadres.

All appointments made under categories (a) to (e) above are treated as appointment by direct recruitment for regulating the quota prescribed in the recruitment rule."

Para 5.13: The Analysis of the objections leads to the following conclusions:

- 1) The Syndicate's decision dated 19-2-1987 and the U.O. dt. 12-3-1987 issued in consequence thereof cannot be implemented.
- 2) The interse seniority of direct recruitment and promotees would have to be reviewed applying the quota rule in accordance with the general guidelines issued in this regard by the State Government.

"Therefore, the orders issued in U.O. dt. 12-3-1987, giving deemed dates of promotion to 52 officials would have to be rescinded. As a corollary to this, the deemed dates of promotion given to Sriyuths B.V. Ramesh, Thimmegowda, Veeranna and Linge Gowda w.e.f. 11-7-1979 in the University Order dated 6.5.1983 would have to be cancelled for the reasons explained in paragraph 5.5 above."

13. Thus from the report of the Committee of Officials, it is clear that the earlier Resolution dated 19-2-1987 passed by the Syndicate and the provisional seniority list prepared on that basis under the University Order dated 12-3-1987 and 2-6-1988 (Annexures-B and C) are given a go by. The Syndicate has accepted the report dated 20-12-1988 (Annexure-D) of the Committee of Officials without any reservation and has prepared the Seniority list as per Annexures-I, II and III to the Official Memorandum dated 21-2-1989 Annexure-G. It is true, that it was open to the Vice-Chancellor to have the objections filed to the provisional seniority list prepared as per Annexure-C, examined by a Committee constituted by him and to have that report placed before the Syndicate and seek opinion of the Syndicate thereon, as the ultimate authority was the Syndicate in the matter.

In *Board of Education v Rice*, 1911 AC 179, the House of Lords pointed out that it is open to a functionary, who has to decide an administrative matter, of the nature with which we are concerned in these petitions, to obtain the material on which he has to act in such manner as may be feasible and convenient. The House of Lords also added a rider to the effect that in doing so, it must be seen that the "affected party has a fair opportunity to correct or contradict any relevant and prejudicial material". The same principle was reiterated in a subsequent case in *Local Government Board v Arlidge*, 1915 AC 120 by Lord Chancellor.

14. The report dated 20-12-1988 of the Committee of Official has set at naught the previous resolution of the Syndicate and changed the basis on which the provisional seniority list was prepared. The Syndicate before accepting the report dated 20-12-1988 should have published the report of the Committee of Officials and called for objections or suggestions, if any, by those who are affected. The Syndicate did not choose to do so. It straight away accepted the report in its extra-ordinary meeting held on 1-2-1989. Thus the Syndicate accepted the norms laid down by the Committee of Officials in their report and the recommendations made by it, without affording an opportunity to the persons affected. The fact that the official Memorandum dated 21-2-1989 (Annexure-G) affords an opportunity to the aggrieved officials to file their objections to the seniority list published under it, does not satisfy the requirement of law of fair and reasonable opportunity. It only amounts to giving post-decisional opportunity. No doubt in certain cases law permits post-decisional opportunity. Those cases are not the normal cases. Cases in which urgent decisions are required to be taken and the delay that is likely to be caused by giving an opportunity is likely to cause irreparable injury or result in causing grave threat to public safety or security or tranquility, thereby likely to result in great danger to the life, liberty and property of a citizen, a post decisional hearing is permissible. Whereas in the case of preparation of seniority of officials no such threat or urgency is involved. These cases are normal cases in which no emergency whatsoever is involved. In case's like this, affording of an opportunity after accepting the recommendations or principles which affect adversely the officials, would be only an empty formality. Further in a case like this, post-decisional opportunity to make a representation would only amount to giving an opportunity to file objections or representation as to whether the norms laid down by the Committee of Officials and the recommendations made by them in their report dated 20-12-1988 as per Annexure-D are correctly applied because those norms and recommendations have already been accepted by the Syndicate without affording an opportunity to the aggrieved persons. Thus there is a clear violation of principles of natural justice. The officials were entitled to an opportunity to state as to whether the principles laid down by the Committee and the recommendations made by it were correct or not. It is a settled position of law that in a matter like this "the extent and application of the doctrine of natural justice cannot be imprisoned within the straight jacket of a rigid formula". (See P.K. Roy's case).

15. Therefore, in my view, the Syndicate before accepting the report Annexure-D dated 20-12-1988 made by the Committee of Officials ought to have published the same and called for objections and suggestions, if any, from the concerned officials. After taking into consideration the objections and suggestions made by the officials, it should have decided whether to accept the report in toto or with modifications or not in the light of the suggestions made and objections raised by the concerned officials. Thereafter, on the basis of its resolution, the seniority list ought to have been prepared, and an opportunity should have been given to the

concerned officials to make representations as to whether the decision of the Syndicate has been correctly and properly applied in preparing the seniority list.

In *Union of India v P.K. Roy*, A.I.R. 1968 S.C. 850, after the provisional seniority list was prepared and the objections were received the same were sent to the Union of India. Thereafter no opportunity whatsoever was given to the officials whose position came to be altered in the final seniority list published. Therefore, it was held that final seniority list was bad because no opportunity was afforded to those whose ranking came to be altered to their disadvantage in the final seniority list. The relevant observations are as follows:

"With regard to the final gradation list published on April 6, 1962, the contention of Mr. Ashoke Sen was that the basis upon which the "assumed date" was given in column No. 6 was not set out either in that notification or in the principles specified in the preliminary gradation list. On this point, the Solicitor-General said that the final gradation list was prepared and the "assumed date" in column No. 6 was inserted on the principle of "kicking down". It was also pointed out by the Solicitor-General that in the Conference of the Chief Secretaries, it had been agreed that in determining inter-State seniority, the principle to be taken into account was length of continuous service, whether temporary or permanent in a particular grade. The argument was stressed that the principle could be applied only on the basis of "kicking down" and that principle was implicit in the preparation of the final gradation list. We are, however, not quite sure whether the Solicitor General is right in his contention on this point. We think that the final gradation list could have been prepared on the basis of the principle agreed upon in the conference of the Chief Secretaries both on the method of "kicking down" was adopted in preference to the alternative principle. It was argued by Mr. Ashoke Sen that in regard to both these matters the respondents have a right of representation and the final gradation list should have been published after giving them a further opportunity to make a representation. Normally speaking, we should have thought that one opportunity for making a representation against the preliminary list published would have been sufficient to satisfy the requirements of law. But the extent and application of the doctrine of natural justice cannot be imprisoned within the straight jacket of a rigid formula. The application of the doctrine depends upon the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case. (See the decision of this Court in *Shri Bhagwan v Ram Chand*, 1965-3 SCR 218 at p.222=AIR 1965 SC 1767 at p. 1770). In view of the special circumstances of the present case, We think that the respondents were entitled to an opportunity to make a representation with regard to the two points urged by Mr. Ashoke Sen before the final gradation list was published. As no such opportunity was furnished to the respondents with regard to these two matters, we hold that the combined final gradation list dated April 6, 1962, so far as category 6 is concerned, is ultra vires and illegal and that part of the notification alone must be quashed by grant of a writ in the nature of certiorari. The rest of the

notification of the State Government dated April 6, 1962 with regard to other categories will stand unaffected. So far as category No.6 is concerned, the Central Government is directed to give an opportunity to the respondents to make a representation in regard to the two points mentioned in this paragraph and thereafter take steps to finalise and publish the list in accordance with law."

16. That being the position and in the view I take the report dated 20-12-1988 Annexure-D of the Committee of Officials, ought not to have been accepted by the Syndicate without affording an opportunity to the concerned officials. The O.M. Annexure-G dated 21-2-1989 cannot be sustained as the same is prepared on the basis of and pursuant to the resolution of the Syndicate dated 1-2-1989 accepting the report Annexure-D of the Committee of Officials.

17. For the reasons stated above, these writ petitions are allowed in the following terms:

i) The resolution dated 1-2-1989 passed by the Syndicate of the respondent-University in so far it relates to item No. 21 of the proceedings of its 106th Meeting produced as Annexure-E is quashed.

ii) The O.M. dated 21-2-1989 bearing No. EST. E4.Misc. 88-89 with Annexures-I, II and III produced as Annexure-G is hereby quashed.

iii) A Mandamus shall issue to the University to call for the objections and suggestions to the report dated 20-12-1988-Annexure-D-made by the Committee of Officials and decide the matter after taking into consideration the objections and suggestions, if any, filed by the concerned officials.

iv) Compliance in Four Months.

Writ Petitions allowed.