

(2002) 11 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 43080 of 1995 (S)

H.S. Gangadhar

APPELLANT

Vs

The University of Agricultural Sciences and Others

RESPONDENT

Date of Decision : 11-11-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 1 KCCR 255

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : S. Vasantha Kumar, for the Appellant; D.N. Nanjunda Reddy, for R1-3, V. Lakshminarayana, for R10 and Sachindra Karanth, for R4, for the Respondent

Judgement

Kumar, J.—The petitioner has called in question in this Writ Petition the appointment orders issued to 4th, 5th and 10th respondents to the post of Assistant Professor in Soil Science and Agricultural Chemistry in the first respondent - University.

2. The first respondent - University issued a notification dated 30.6.1994 as per Annexure-C inviting applications for filling up of 9 posts (back log 3 and current 6) of Assistant Professor of Soil Science and Agricultural Chemistry. However, before processing the above notification the Government by its order dated 20.6.1995 made provision to apply for revised roster to the unfilled post treating them as fresh vacant post. As such the University issued a fresh notification dated 14.8.1995 inviting applications to the nine posts of Assistant Professors in Soil Science and Agricultural Chemistry. Out of the current 6 posts 3 posts were available to general category. In pursuance of these notifications the petitioner, respondents and others applied. In all 33 candidates were interviewed and out of which two candidates belonged to Scheduled Caste, 28 candidates belonged to general category and remaining three candidates belonged to Category-I. The petitioner is one such candidate who appeared for

interview in general merit category.

3. Under the statutes of the University of Agricultural Sciences, Bangalore, Rule 15 provides for constitution of the selection committee for appointments and the procedure to be followed by such selection committee. Accordingly, a selection committee consisting of eminent personalities in the field was constituted. According to Sub-rule 2(a) of Rule 15 the committee shall recommend in order of merit not more than three qualified persons for appointment after reviewing the applications and conducting the interview. Out of the qualified persons recommended by such selection committee the Board shall choose the best individual for appointment in all cases of appointment to be made by the Board. The selection committee has been provided with guidelines to be followed while selecting the candidates. The total number of marks is 100 and out of the same 20 marks is earmarked for past service, 15 marks is earmarked for special awards, 25 marks is earmarked for higher training and additional qualifications, 5 marks for personality, 15 marks for performance and expression in the interview, 20 marks for research paper. The third respondent-the administrative officer of the University is authorized to prepare the bio-data of each candidate to be interviewed as per the supporting documents produced by the said candidates. Annexure-H is the bio-data of all the candidates who appeared in the interview which is prepared by the third respondent which was taken into consideration by the selection committee while selecting the candidates. The interview was held on 31.10.1995. Thereafter, the selection committee recommended the names of 9 persons as per Annexure-J. The Board of Regents selected respondents 4, 5 and 6 in the general merit category as against three posts. The petitioner was not even recommended by the selection committee.

4. Even before the selection by the Board of Regents the petitioner preferred this Writ Petition contending that selection of 4th and 5th respondents by the selection committee is arbitrary and based on misleading information by the third respondent in the bio-data which is not correct and they have no merit and petitioner being more meritorious than respondents 4 and 5 he should have been selected, as such he sought for a declaration that selection of respondents 4 and 5 made by the second respondent under Annexure -J as candidates for consideration for appointment to the post as illegal and unenforceable and for other reliefs. The Writ Petition was filed on 8.12.1995. As no interim orders were granted in the said Writ Petition, the selection process continued and the Board of Regents appointed respondents 4, 5 and 6 to the aforesaid post. Therefore, the petitioner amended the Writ Petition thereafter and challenged the said appointment orders. It appears the tenth respondent had also filed a Writ Petition challenging the aforesaid selection in W.P. No. 42163/1995. During the pendency of the aforesaid proceedings, the first respondent issued the order dated 17.1.1996 appointing him as the Assistant Professor of Soil Science and Agricultural Chemistry subject to the withdrawing the Writ Petition in the High Court. On his withdrawing the said Writ Petition, he was appointed. On coming to know of the aforesaid appointment of the tenth respondent the petitioner has

challenged the said order of appointment also in this Writ Petition by way of an amendment.

5. The primary ground on which the petitioner is assailing the selection of these three candidates is as under:-

(1) Regarding 4th respondent Smt. Sarala Kumari:-

In the bio-data furnished by the third respondent there is total incorrect statement of facts about the fourth respondent's experience. According to the bio-data she has served as a Senior Research Associates from 13.2.1991 to 28.2.1993 at U.A.S. Bangalore, whereas actually she has worked as Senior Research Fellow for 6 months during 1991. The post of Senior Research Fellow is lower than Research Associates. Her claim in the bio-data that she has published six books is incorrect whereas she has published only two research papers.

(2) Regarding 5th respondent M. Rame Gowda: The fifth respondent has no experience at all. He has not published any article of research value nor any books except some popular articles. Hence, comparatively the petitioner who certainly has better credentials is excluded from the zone of consideration of 9 candidates and persons of lesser merit have been selected arbitrarily resulting in injustice.

(3) Regarding 10th respondent Hanumanthraju: The tenth respondent has been appointed in general merit group contrary to the notification though only three posts were advertised and three appointments had already been made by appointing respondents 4, 5 and 6. The purported exercise of power under statute 30(1) under the University Agricultural Science Act is clearly unauthorized and illegal for the reason that the extra fourth vacancy has never been notified nor candidates are considered by holding any interview or selection in the ratio of 1:3 which is mandatory. As such, the order appointing 10th respondent as per Annexure-K is illegal and liable to be set aside.

6. In so far as respondents 4 and 5 are concerned, in the body of the Writ Petition, the petitioner has clearly set out their credentials as set out in Annexure-H and also the factual facts according to him.

7. Respondents 1 to 3 filed a detailed counter denying the allegations made by the petitioner. In substance their defence is that the third respondent has prepared the bio-data of the fourth and fifth respondent as per the supporting documents produced by the respective respondents. The selection committee after being fully satisfied with the educational qualifications of the candidates has recommended the fourth and fifth respondents for appointment. The petition filed even prior to the issue of the appointment order is premature and the petitioner has no locus standi to maintain the Writ Petition. They have denied the allegation that candidates whose names are recommended are not having requisite qualification. It is asserted that the third respondent on the basis of the supporting documents made available to him had prepared the bio-data of fourth

and fifth respondents. Respondents 4 and 5 have been recommended by the selection committee which consists of persons having important and highly responsible position in the society. As such the decision of the committee cannot be substituted with regard to qualifications possessed by the persons recommended by the selection committee. The Selection Committee has been given certain guidelines for evaluating the candidature of each candidate and selections are made strictly on merit as judged by the academic record. Qualification, experience and performance of the candidate at the time of the interview were taken as the basis for the selection and the candidate who has scored high score in the selection process has been recommended for the post. The recommendations made by the selection committee was once again considered by the Board. Therefore, by evaluating the candidature of each candidate on every angle the Selection Committee has recommended the respondents 4 and 5 for appointed to the Board and the request of the petitioner to this Court to substitute its view with regard to qualifications held by the persons recommended or with regard to the merit of the persons recommended as against the decision of the Expert Committee and the Board is wholly misconceived. Therefore, they have sought for dismissal of the Writ Petition.

8. The tenth respondent has also filed detailed statement of objections setting out his credentials. It is his specific case that in the employment notification it has been clearly stated that the number of vacancies notified is subject to the alternations and also right to increase the vacancy was also reserved in the notification issued by the authorities. It is also open to the University to take decision depending upon the need to appoint persons out of the panel of names. Panel of names is valid for two years. Three vacancies were notified and four persons have been filled up out of the panel of names recommended by the Selection Committee. As the 10th respondent's name was one out of 9 names recommended by the Selection Committee, his appointment to the fourth vacancy though not notified is valid and legal. As the petitioner was not within the zone of consideration he has no right to challenge the appointment of the 10th respondent. Therefore, he has sought for dismissing the Writ Petition.

9. The selected candidates respondents 4 and 5 did not choose to file any statement of objections. On 2.8.2001 this Court directed the third respondent to produce the records before the Court without fail on 8.8.2001 and the said order was directed to be communicated to the third respondent by fax message and accordingly the said order was communicated. When this matter came up for hearing on 18.9.2001 the learned Counsel appearing for the third respondent produced the xerox copies of the part of the records which were summoned which did not contain notes prepared by the University Office which was kept before the Selection Committee. Thereafter, Counsel for the third respondent took time to produce the entire records and the case was adjourned to 28.9.2001. Time was sought to produce the documents and the case was adjourned to 5.10.2001. The Counsel was not present, party was not present and records were not produced. Thereafter, the case was adjourned to give one more

opportunity and the office was also directed to send one more fax message. On 12.10.2001 the learned Counsel for the University produced the bio-data prepared as well as the marks sheet and sought time to produce all the remaining materials on the basis of which the Selection Committee has awarded marks to the candidates and therefore the case was adjourned to 19.10.2001. Subsequently, the case was adjourned on six occasions at the request of the learned Counsel for the University. On 20.12.2001 however again the matter was heard, the Counsel for the University was absent, records were not produced, still it was adjourned to give them one more opportunity. On 17.1.2002 the Counsel for the University was absent, records were not produced and the advocate for the petitioner and the tenth respondent submitted their arguments and as a last chance the case was adjourned for hearing the University. On 8.2.2002 the learned Counsel for the University filed a memo seeking permission to retire and she was permitted to retire. Thereafter, the University engaged the services of Sri D.N. Nanjunda Reddy and produced all the relevant records summoned by the Court and he also submitted his arguments. At that juncture fourth respondent also engaged a Counsel and filed her statement of objections on 10.4.2002. However, the fifth respondent has remained absent throughout nor has he filed any statement.

10. Sri S. Vasantha Kumar, learned Counsel for the petitioner, contended that the Selection Committee without proper verification has acted on the basis of the information furnished by the third respondent which was patently incorrect and therefore they were misled in awarding higher marks to respondents 4 and 5. Thus, the selection of respondents 4 and 5 is arbitrary and unreasonable. In so far as the fourth respondent - Sarala Kumari is concerned she has worked as Senior Research Fellow only for six months during 1991 and not as Research Associate which is a higher post and in the report submitted before the Selection Committee it has been wrongly shown as having worked as Research Associate from 13.2.1991 to 28.2.1993 at U.A.S. ISS Trust, Bangalore, where she has worked, is not recognised by the University. As such, comparatively the past experience of the petitioner is of superior quality when compared to her.

10.1. In so far as Rame Gowda, the fifth respondent is concerned, he has not published any book or research paper at all but still he has been awarded marks on that account, thus the petitioner who has several publications to his credit has been seriously affected by such conduct of the Selection Committee.

10.2 In so far as 10th respondent is concerned admittedly he has been appointed to the fourth vacancy and the Selection Committee recommended only 9 persons to 3 vacancies and if the University wanted to fill up the fourth vacancy the Selection Committee ought to have recommended three names and therefore appointing Hanumantharaju to the fourth vacancy is contrary to the rules of the university and it is therefore liable to be set aside.

11. Sri D.N. Nanjunda Reddy, learned Counsel appearing for respondents 1 to 3, contended the Selection Committee consisted of eminent educationalists who

have expertise in selecting the candidates and on careful consideration of all the materials which were available before them and after proper verification in a judicious manner they have selected the candidates and therefore it is not open to this Court to sit in judgment over the judgment of the Selection Committee. Secondly, he contended in so far as the fourth respondent - Smt. Sarala Kumari is concerned she is better qualified when compared to the petitioner and therefore there is no illegality in her selection. In so far as the fifth respondent - Sri Rame Gowda is concerned though on the day he made the application none of his papers were published, his papers had been accepted for publication and some other papers he had sent for publication and therefore it cannot be said that he had no papers to his credit at all. In so far as tenth respondent - Hanumantharaju is concerned he submitted he was one of the candidates recommended by the Selection Committee as against vacancy of three posts; though his name was not in the waiting list still when a fourth vacancy arose as he was duly qualified and selected by the selection committee he has been appointed to the fourth vacancy, as such there is no substance in any of the contentions urged by the petitioner in challenging the appointments of respondents 4, 5 and 10.

12. Sri K. Sachindra Karanth, learned Counsel appearing for the fourth respondent, submitted it is incorrect to state that the post of Research Associate is higher than the post of Research Fellow. They are names given for posts given in the sponsored schemes. Otherwise there is no difference. Further he contended the Institutes of Social Studies Trust where she worked was a voluntary, non-profit research and educational organization which is in consultative status with the United Nations which is highly acclaimed with for its research and development activities and therefore the experience gained in that organization deserves higher weightage and the submissions contrary to the same by the petitioner is misconceived.

13. Sri V. Lakshminarayana, learned Counsel appearing for the tenth respondent, submitted in the notification issued calling for applications, the University had reserved the right to increase the vacancy and therefore though in the notification only three vacancies were notified it is open to the University to appoint among the persons recommended to the fourth vacancy. As such there is no illegality in the appointment of the tenth respondent. Further he submitted the tenth respondent had also filed a Writ Petition challenging the selection and it is at that juncture the University called upon the tenth respondent to withdraw the Writ Petition so that he could be appointed and on that representation he has withdrawn the Writ Petition. Lastly he submitted, the tenth respondent has satisfactorily completed the probationary period and he has been confirmed in the said post and as he has the requisite qualification, merit and has satisfied the eligibility criteria his appointment cannot be set aside at the instance of the petitioner who did not come within the zone of consideration at all and therefore he submits the Writ Petition is liable to be dismissed.

14. In so far as the fifth respondent is concerned he has remained absent. He has not disputed the statement of facts in the Writ Petition. It is submitted at the bar that the fifth respondent has left the services of the first respondent, as such he is no more interested in this litigation. He will not be affected in any way by the outcome of the Writ Petition.

15. In the light of the aforesaid statements, the points that arise for my consideration are:-

(a) Whether the proceedings of the Selection Committee are arbitrary and operated to deny the petitioner a just and reasonable consideration of his case for selection?

(b) Whether the selection of tenth respondent is contrary to the rules governing the selection?

16. Re.Point (a): (1) A Division Bench of this Court in the case of DR.K. KALYANARAMAN v. UNION OF INDIA AND ORS. ILR 1982 KAR 523 dealing with the power of selection by the Selection Committee and the judicial review of such selection process has held as under:-

" The right of the petitioner under Articles 14 and 16 of the Constitution is one for a just and reasonable considerations of his case. The power to select, is undoubtedly, that of the Selection Committee, but that power must be exercised and must indeed be shown also to have been exercised - in a reasonable manner. -Any arbitrary exercise of authority is the antithesis of Rule of law. Judicial review is to oversee the adherence by public authorities to the procedural concomitants of that right. This is done not only for the benefit of the aggrieved individual but in larger public - interest. An executive agency must be rigorously held to the standards by which it professes its action to be judged on pain of invalidation of its action done in violation of the procedural imperatives. This principle, apart from it being a concomitant of and an emanation from Article 14, is also a judicially evolved rule of administrative law. The principle assumes added significance in the context of the ever increasing dimensions of the State activity."

Again this Court observed as under: -

"It therefore becomes incumbent on the Selection Committee to disclose in its proceedings how the record of the selected candidate stood in relation to those not selected. Though both Respondent- 5 and petitioner are put in the list of selected candidates, however, there being only one post the second place assigned to him is really of no practical benefit. As to why the Committee preferred Respondent -5 is not discernible from the record of the proceedings placed before the Court. The stating of reasons in this behalf is "practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections." "Reasons" observed Supreme Court" are the links between the materials on which certain conclusions are based and the actual

conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly and just and reasonable". The obligation to give reasons is not an incident or consequent of any compulsion stemming from any particular provision in the relevant statutory Rules. The obligation stems from the duty to act fairly and in a reasonable way, as envisaged by Articles 14 and 16."

In the light of the aforesaid law declared by this Court I called upon the University to produce before me the materials which were produced before the Selection Committee as well as the score sheets maintained by the Selection Committee and accordingly they were produced before the Court.

17. In so far as the selection of fourth respondent, Sarala Kumari, is concerned the main attack is as against past services for which 20 marks is earmarked; she has been given higher marks as compared to the petitioner though the experience of the petitioner is of higher value than the fourth respondent. The score sheets maintained by the Selection Committee discloses as against this head past experience Sarala Kumari has been given 4.0 marks while petitioner has been given 4.0 marks. However, total marks given to them is 34.0 for Sarala Kumari and 27.0 for petitioner. The contention of the petitioner is in Annexure-H the report prepared by the third respondent and placed before the Selection Committee, it is shown that she has worked as Research Assistant from 13.2.1991 to 28.2.1993 at U.A.S., Bangalore which is factually incorrect. According to the petitioner she has worked as Senior Research Fellow for six months during 1991. According to him Research Fellow is of lower cadre when compared to Research Associate. Secondly, it was contended that I.S.S. Trust where she worked is a private institution and is lower when compared to where the petitioner was working. The petitioner has not produced any material to show that the post of Research Fellow is lower when compared to Research Associate. On the contrary, the fourth respondent contends those designations are nomenclatures given depending on the scheme or project in which they were working and they are all of equal status. Similarly, in so far as the status of Institute of Social Studies Trust is concerned, no material is placed before the Court to show that the said Institute has no good standing. On the contrary, the fourth respondent asserts that the Institute of Social Studies Trust is a voluntary nonprofit research and educational organization which is in consultative status with the United Nations which is highly acclaimed with for its research and development activities. The projects undertaken by it or entrusted to it by various International Organizations such as the United Nations, Norwegian Agency for Development Cooperation, Ford Foundation, World Bank, FAO, CINI, ILO and Mac Arther Foundation which fact is not disputed by the petitioner. What exactly is the status of research fellow and research associate, what is the status of U.A.S. and I.S.S. Trust are all matters which are well within the knowledge of eminent personalities constituting the Selection Committee. If the members of

the Selection Committee after going through the material placed before them and also out of their own experience have awarded marks as against the head past experience in their discretion it is not open to this Court to sit in judgment over the exercise of such discretionary power by the Selection Committee. The material on record do not disclose any arbitrariness or unreasonableness of the Selection Committee awarding marks to Sarala Kumari under the head past experience. Therefore, I do not find any substance in the contention urged by the petitioner in this regard. As such, her appointment cannot be interfered with.

18. In so far as the appointment of 5th respondent Rame Gowda is concerned the main ground of attack is he had no papers or publications to his credit at all and therefore the Selection Committee was thoroughly wrong in awarding any marks under the head research papers in his favour. In order to appreciate this contention I had a look at the score card. Under the head research papers 5th respondent - Rame Gowda has been given 9 marks whereas the petitioner has been given 12 marks. In order to find out whether the Selection Committee was justified in awarding 9 marks under this head, I looked into the application filed by Rame Gowda. Column No. 16 of the said application form deals with important scientific papers published (standard books published and research papers published in standard scientific journals should only be mentioned). It contains two columns, (1) title of paper published, and (2) name of journal in which published and date. This application is dated 30.8.1994. As against this column it is stated list of papers accepted and list of papers sent for publication are enclosed. Under the list of papers accepted it is mentioned.

(1) C.A. Srinivasamurthy, K.S. Niranjana, M. Ramegowda and S. Kumaraswamy "(1994) Forms of Potassium in selected soil series of Southern Karnataka" Paper accepted for presentation for Diamond Jubilee National Seminar to be held at IARI, New Delhi, from November 28 to December 1 1994. (2) L. Suseela Devi, K.S. Niranjana, M. Ramegowda and V.R. Ramakrishna Parma (1994) "Potassium fixing capacity of selected soils of Southern Karnataka". Paper accepted for presentation for Diamond Jubilee National Seminar to be held at IARI, New Delhi, from November 28 to" December 1, 1994. Then the other annexure deals with list of papers sent for publication which contains three publications. From this material it is clear on the day the application was filed none of the papers of Ramegowda had been published. Two papers had been accepted for publication and three papers had been sent for publication. The guidelines approved by the Board which is to be followed by the Selection Committee has an explanatory role for assignment of marks. Serial No. 6 deals with Research Papers (20 marks). It reads as under:-

6. Research Papers (20 marks) for the purpose of awarding marks under this item, the research papers published only in the recognized Scientific/ Professional journals of national and International repute should be taken into consideration. These can be classified as follows:

a) International Scientific/Professional journals

- b) National Scientific/Professional journals;
- c) Short Notes/Symposia notes/Conference Notes
- d) Books

From this it is clear if any marks has to be awarded as against the heading research papers, research papers of the candidate should have been published in the recognized scientific or professional journals of National and International repute only. Admittedly, on the date of the application no research paper of 5th respondent had been published either in National or International repute journal. The interview was held on 31.10.1995. Admittedly, even on that date three research papers sent for publication had not been published in any of the journals of National or International repute. In so far as the publication of papers which were accepted for said publication by the Indian Society of Soil Science for the Diamond Jubilee National Seminar is concerned no material is placed on record to show when that publication was made. Petitioner has asserted in his counter affidavit filed on 12.4.2002 that the Diamond Jubilee Souvenir was published subsequent to the interview date and therefore Selection Committee could not have taken note of the said publications. Secondly, he contends a souvenir released by an institute to commemorate the diamond jubilee of such institute cannot be equated to a journal of National and International repute. In fact the Indian Society of Soil Science do publish journals every quarter and these papers were never published in the said journals and therefore it is submitted that none of the papers of the fifth respondent were ever published in any journal of National and International repute, as such the Selection Committee was totally wrong in awarding 9 marks under this head to the 5th respondent. It is because of these 9 marks assigned to him he was selected and came into the zone of consideration. If that 9 marks is taken out he will be out of zone of consideration, as such his appointment order is liable to be set aside. I do find full substance in this submission of the petitioner. The power to select is undoubtedly of that of the Selection Committee but that power must be exercised and must be indeed shown to have exercised in a reasonable manner. The score card maintained by the Selection Committee disclose how the mind of the Selection Committee is applied to the said matter for decision. It reveals the rational nexus between the facts considered and the conclusions reached. After going through the score care it is clear that award of 9 marks under the heading research papers in favour of the fifth respondent is arbitrary, unreasonable and unjust. When the explanatory note for assignment of marks clearly stipulates that for the purpose of awarding marks under this item, the research papers published only in the recognized scientific/professional journals of National and International repute should be taken into consideration. However, the fifth respondent's research papers were not published at all in any journal muchless of National and International repute. The Selection Committee committed a grave error in awarding 9 marks under that head to the fifth respondent. This error apparent on the face of the record raises serious doubts as to whether the

deliberations of the Selection Committee are such as to inspire confidence and reassurance as to the reality, quality and justness of an effective consideration said to have been bestowed by the committee while considering the merit of the candidates who appear before it. The very fact that the fifth respondent against whom allegations are made has not chosen to rebut the said allegations and the fact that after sometime he quit the job and that he did not appear before this Court to substantiate his case gives an impression that all is not well in the selection process. Under these circumstances, it is not possible to say with any degree of confidence that the petitioner's case has received a fair and reasonable consideration at the hands of the Selection Committee and there is any rational nexus between the facts said to have been considered by the Selection Committee and the conclusions drawn by it. The proceedings of the Selection Committee cannot notwithstanding the eminence of its personnel, be upheld in so far as the fifth respondent's selection is concerned. It is not the eminence of the high status of the selectors which is involved. What is involved are the basic and larger considerations of public interest and the primacy and supremacy of the constitutional guarantees and the procedural safeguards against arbitrariness stemming from these guarantees. Therefore, under these circumstances, I am of the opinion the selection of the fifth respondent is arbitrary and is not based on facts. If 9 marks awarded under the heading "research papers" is excluded from the total marks of 33.0 awarded to the fifth respondent, he goes out of the zone of consideration, in which event he could not have been appointed to the post. Therefore, his appointment is liable to be set aside and accordingly it is set aside.

19. Re.Point (b):- In so far as appointment of tenth respondent is concerned it is undisputed that his name finds a place out of 9 persons selected by the Selection Committee for filling up three vacancies. His selection by the Selection Committee is not under challenge but the challenge of his appointment is purely on a legal ground. The Selection Committee is expected to select candidates in the ratio of 1:3 as per Rule 15 of the statutes. In other words to fill up three vacancies they were expected to select 9 names and recommend the same to the Board for being considered for appointment. The notification mentions only three vacancies. However, the said notification also provided that the University reserves the liberty to increase the vacancy. After the recommendation of 9 names, the Board selected three candidates, namely respondents 4, 5 and 6 and placed one person in the waiting list. Once the appointment orders are issued, the list sent by the selection committee lapses. If only any vacancy arise out of the three vacancies filled up the person in the waiting list should be appointed to the said post. In the instant case the tenth respondent is appointed to the fourth vacancy which arose after the selection by the Selection Committee. On the day the tenth respondent was appointed the list recommended by the Selection Committee had been lapsed. 10th respondent was not in the waiting list. Therefore, the fourth vacancy has been filled up by the University without notification and contrary to the rules governing recruitment. Merely because the

tenth respondent's name found a place out of the nine names selected by the Selection Committee as against the three posts notified it cannot be said that he is eligible to be appointed to the fourth vacancy which arose after selection process is over. The grievance of the petitioner is if the University wanted to fill up the fourth vacancy under Rule 15 of the statute they were expected to select three candidates and out of the three candidates so selected they should have appointed any one of them to the fourth vacancy. If such procedure had been adopted petitioner also had the chance to come within the zone of consideration and by not following that procedure they have deprived the petitioner a valuable right of being considered for the said post. The Supreme Court in the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, dealing with a right of a candidate for appointment has held as under:-

"A candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

Therefore, it is clear when the University wanted to fill up the fourth vacancy without calling for a fresh advertisement they should have called upon the selection committee to select three candidates under Rule 15 of the statute in which event the petitioner had a right to be considered for the said post which has been deprived by the procedure which the University has followed. Otherwise the University should have issued another advertisement calling for applications for that fourth vacancy in which event also the petitioner had the opportunity for applying for the fourth vacancy which has been deprived to him by not issuing a fresh advertisement. In either event his right for a just and reasonable consideration of his case has been denied to him. Therefore, under these circumstances though the tenth respondent had the necessary eligibility criteria as his selection is contrary to the University rules and regulations the appointment of the tenth respondent to the fourth vacancy is illegal and is liable to be set aside. However, it is made clear as the tenth respondent has the necessary merit and has satisfied the eligibility criteria and has been working for the last 7 years his services should not be dispensed with until the University issues a fresh notification for recruitment for the said post and recruitment is made in accordance with law. The tenth respondent also would be eligible to apply for the said post and his case also ought to be considered on merits.

20. Under these circumstances, I pass the following order: -

- 1) Writ Petition challenging the order of appointment of fourth respondent - Sarala Kumari stands dismissed.
- 2) The recommendation of the Selection Committee in so far as 5th respondent

Rame Gowda is concerned in Annexure-J and consequent his appointment as Assistants Professor in Soil Science and Agricultural Chemistry in the first respondent-University is hereby quashed.

3) The order appointing tenth respondent - Hanumantharaju as per Annexure-K is hereby quashed. However, the services of Hanumantharaju shall not be dispensed with till the University makes fresh recruitment in accordance with law and tenth respondent is at liberty to apply afresh for such post and his application also shall be considered on its merits.

4) Respondents 1 to 3 shall pay costs of Rs. 5,000.00 to the petitioner.