

(2005) 11 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 46069 of 1999

J. Ashoka

APPELLANT

Vs

University of Agricultural Sciences and Others

RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 16 (1)

Citation : (2006) ILR (Kar) 768 : (2006) 1 KarLJ 258 : (2006) 1 KCCR 589

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Ravivarma Kumar, for Robert D'Souza, for the Appellant; B. Rudra Gowda, for Respondent-1 and G.S. Bhat and Associates for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In this writ petition, the petitioner is challenging the appointment of the 3rd respondent to the post of Assistant Professor of Sericulture. The 1st respondent-University has appointed respondent 3 herein vide order dated 22-5-1999 as Assistant Professor. Petitioner has sought for a declaration that he is entitled to be appointed to the post of Assistant Professor of Sericulture under the general merit quota and a direction be issued to appoint him as such.

2. The facts which are essential for the disposal of the case can be set out as under:

By a Notification dated 14-8-1995, applications were invited by the respondent-University to fill up the vacancy in the post of Assistant Professor of Sericulture. Petitioner who holds a Master's Degree in Agriculture, i.e., M.Sc. (Agri.) from the University of Agricultural Science, Dharwad and who has been working as Assistant Professor of Sericulture in the University of Agricultural Science at Dharwad since 1991 applied for the post. The third respondent herein was also one of the applicant along with others. The Selection Committee constituted for

the purpose prepared a panel of candidates in the order of merit and recommended their names for selection. In the said list the name of the petitioner was at Sl. No. 1 while that of the others namely, Sri R. Narasimharaju, Dr. K.C. Narayanaswamy and the third respondent Dr. (Mrs.) Fathima Sadathulla were placed at Sl. Nos. 2, 3 and 4 respectively. The Board of Regents selected the third respondent and one Dr. K.C. Narayanaswamy for the post of Assistant Professors of Sericulture. Petitioner who was placed at Sl. No. 1, along with one R. Narasimharaju, whose name was shown at Sl. No. 2 in the list recommended by the Selection Committee approached this Court by filing Writ Petition Nos. 6360 and 6361 of 1996. The said writ petition was allowed on 13-8-1996 holding that the Board of Regents has not exercised its power in a reasonable manner as it did not assign any reason for preferring respondent 3 and another candidate Dr. K.C. Narayanaswamy who were placed below in the select list. Thus, while setting aside the appointment of the two candidates made on 18-12-1995 a direction was issued to the respondent-University to reconsider the case of the petitioners therein and as also that of the other two candidates, viz., Dr. (Mrs.) Fathima Sadathulla, the third respondent herein and Dr. K.C. Narayanaswamy. However, as Dr. (Mrs.) Fathima Sadathulla (the third respondent herein) had been continued in service in the University she was ordered to be continued until the matter was considered afresh and if the University could find a way out to accommodate her either in the existing vacancy or by creating one they were given liberty to do so. This direction was issued to enable the 5th respondent therein to continue in the service of the University. As the fourth respondent Dr. K.C. Narayanaswamy had not joined the service despite his appointment, it was held that his case need not be reconsidered. The petitioners in the said writ petitions viz., Sri J. Ashoka (petitioner herein) and Sri R. Narasimharaju were directed to be absorbed straightaway in service. The respondent-University preferred a writ appeal against the said order. The Division Bench of this Court by order dated 16-2-1999 passed in W.A. Nos. 8289 and 8290 of 1996 allowed the appeal in part. While directing the appellant-University to reconsider the case of Sri J. Ashoka and R. Narasimharaju along with Dr. K.C. Narayanaswamy and Dr. (Mrs.) Fathima Sadathulla for appointment to the post of Assistant Professor of Sericulture in the light of the recommendation made by the Selection Committee in accordance with law, it was directed that the services of Dr. (Mrs.) Fathima Sadathulla, the third respondent herein shall be continued till fresh appointment orders were issued. The directions issued by the learned Single Judge to absorb the petitioner herein and to accommodate Dr. (Mrs.) Fathima Sadathulla either in the existing vacancy or by creating one came to be set aside. The Division Bench agreed with the finding recorded by the learned Single Judge that the selection of Dr. (Mrs.) Fathima Sadathulla and Dr. K.C. Narayanaswamy by the Board of Regents in preference to Sri J. Ashoka and Sri R. Narasimharaju without assigning any reasons offended Articles 14 and 16 of the Constitution of India and therefore the appointments made were liable to be quashed.

3. Pursuant to the directions issued by this Court, the Board of Regents has

reconsidered the matter on merits on 30-3-1999 and has resolved to select afresh the third respondent Dr. (Mrs.) Fathima Sadathulla as Assistant Professor of Sericulture. It is useful to extract the resolution passed which is at item No. 2-D of the Minutes of 271st (Spl.) Meeting of the Board of Regents held on 26th and 27th March, 1999, copy of which is produced at Annexure-H.

Item 2-D. Appointment of Assistant Professor in the Department of Sericulture.-- (in the pay scale of Rs. 2200-75-2800-100-4000)

After judicious examination of the directions issued by the Hon"ble High Court of Karnataka dated 13-8-1996 in Writ Petition Nos. 6360 and 6361 of 1996 filed by Mr. J. Ashoka and Mr. Narasimharaju, respectively, challenging the appointment of Dr. K.C. Narayanaswamy and Dr. Fathima Sadathulla as Assistant Professors of Sericulture under General Merit Category and the orders dated 16-2-1999 of the Hon"ble High Court of Karnataka dismissing the Writ Appeal Nos. 8289 and 8290 of 1996 filed by the University to defend its action, the Board decided to quash the appointments of the following two candidates:

1. Dr. K.C. Narasimhaswamy as Assistant Professor of Sericulture; and
2. Dr. (Mrs.) Fathima Sadathulla as Assistant Professor of Sericulture (vide Order No. AO/Est.I(1)/Appt/95-96, dated December 18, 1995).

However, the Board while reconsidering the panel, decided to select afresh Dr. (Mrs.) Fathima Sadathulla as Assistant Professor of Sericulture, considering Ph.D. qualification, length of regular service as Assistant Professor possessed by her and also on humanitarian grounds.

Since Dr. K.C. Narayanaswamy has already been appointed as Assistant Professor of Sericulture vide Order No. AO/EST-I(1)/Appt./98-99, dated 16-11-1998, the Board did not find any reason to consider his case for this position.

Pursuant to the resolution, the impugned appointment order dated 22-5-1999 is issued in favour of the third respondent which is challenged in this writ petition by the unsuccessful petitioner.

4. Learned Senior Counsel appearing for the petitioner Sri Ravivarma Kumar has contended that the resolution passed by the Board of Regents selecting the third respondent suffers from patent illegality inasmuch as totally irrelevant materials are taken into consideration and the case of the petitioner is not at all considered while resolving to select the third respondent who is ranked lower in the panel of select list recommended by the Selection Committee. Elaborating his contentions, Counsel submits that once the Selection Committee empanels the candidates in the order of merit and sends its recommendation, the Board of Regents shall have to follow the order of merit. He places reliance on the judgment of this Court in Dr. Mrs. G. Durga Nageswari Vs. University of Agricultural Sciences, , in this regard. He further submits that the reason why the petitioner who is at Sl. No. 1 in the list recommended by the Selection Committee is not chosen is not forthcoming resulting in non-application of mind

to the merit enjoyed by the petitioner. He has further contended that the factors taken into consideration for preferring the third respondent such as possessing Ph.D qualification, length of regular service and humanitarian considerations were all irrelevant and hence the entire decision of the Board of Regents is vitiated. In support of his contention he has relied upon the following judgments:

- (i) Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, ;
- (ii) State of Mysore Vs. C.R. Sheshadri and Others, ;
- (iii) P.M. Latha and Another Vs. State of Kerala and Others, ;
- (iv) Dr. (Mrs.) G. Durga Nageswari's case.

5. Counsel appearing for the respondent-University Sri Rudra Gowda contends that the action of the Board in selecting the third respondent is strictly in accordance with the relevant statutes framed by the University. He contends that the matter was remitted back for reconsideration by this Court in W.P. Nos. 6360 and 6361 of 1996 and as confirmed in W.A. Nos. 8289 and 8290 of 1996, as the earlier selection made by the Board was not supported by any reasons. Placing reliance on Statute 15(4) of the Statutes framed by the University, Counsel contends that the Board has the power to select the best candidate as per the provisions of the Statute and has, in the present circumstances, exercised its power judiciously by assigning cogent reasons as to why the third respondent was preferred. He submits that a perusal of the resolution would disclose that the Board of Regents, after considering the entire panel of select list, has preferred the 3rd respondent as she possessed Ph.D in Sericulture and was found more suitable for the post of Assistant Professor of Sericulture. The other aspects considered by the Board were that she had been working in the University since the date of her initial appointment and that if she was not preferred she would lose all avenues of alternative appointment whereas the petitioner herein who was already appointed in a regular post of Assistant Professor and was working in another University in the same post as Assistant Professor would not be put to any hardship. It is his submission that the Board was well-within its province in examining the matter keeping in mind these humanitarian considerations also without ignoring the merit. Counsel further contends that the Board has preferred a person possessing an additional qualification of Ph.D in Sericulture to a candidate who only possessed a Master's Degree. Having regard to the nature of the functions of an Assistant Professor, possessing deeper knowledge of the subject and the third respondent having Ph.D to her credit, was found well-suited and more equipped for the post in question, which cannot be considered as an arbitrary or unreasonable method adopted or of taking irrelevant materials into consideration.

6. Learned Counsel appearing for respondent 3, Sri G.S. Bhat has contended that the third respondent's basic degree is in Sericulture and she has done her Ph.D in Sericulture, whereas, the petitioner took Sericulture as an additional subject while doing his degree. It is his submission that the Board has reconsidered the

entire panel as is clear from the resolution itself. That the Board has not considered the names of each candidates but has considered the entire panel recommended by the Selection Committee and has preferred the third respondent, having regard to the qualifications she possessed. It is his submission that the third respondent has been serving as Assistant Professor since 1995 and that if her appointment is disturbed she would be losing all avenues of reappointment on account of age bar. It is his farther submission that since the Board of Regents has considered the matter and assigned cogent reasons as to why it preferred the third respondent, the decisions of the Board cannot be a subject-matter of judicial review. In this regard he submits that there is absolutely no failure of justice insofar as the action taken by the Board of Regents in preferring the third respondent to the petitioner as the petitioner is holding a regular post of Assistant Professor in the Agriculture University at Dharwad and his non-selection has in no way affected his interest, whereas if the third respondent were to be ignored it would have deprived her of her livelihood and would have rendered her jobless for the rest of her life despite possessing such a high qualification of Ph.D and therefore these considerations which have obviously weighed in the mind of the Board cannot be termed as irrelevant and hence there is no failure of justice so as to call for interference by this Court. He has relied on the following judgments:

- (i) Veerappa Pillai Vs. Raman and Raman Ltd. and Others, ;
- (ii) Seetharamiah Vs. Land Tribunal, ;
- (iii) The University of Mysore and Another Vs. C.D. Govinda Rao and Another, ;
- (iv) The Secretary, Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others, ;
- (v) Tariq Islam Vs. Aligarh Muslim University and Others, .

7. Having heard the learned Counsel for the parties the points that arise for consideration is:

Whether the action of the Board in preferring the third respondent and appointing her for the post of Assistant Professor of Sericulture suffers from any error or illegality so as to warrant interference by this Court?

8. Undisputed facts would reveal that a panel of names was prepared by the Selection Committee for the post of Assistant Professor of Sericulture. The name of the petitioner was placed at Sl. No. 1 in the order of merit. The third respondent's name was at Sl. No. 4. The Board of Regents preferred the third respondent Dr. (Mrs.) Fathima Sadathulla to the others who were placed above her without assigning any reason. This was found fault with and the matter was remitted back for reconsideration to the Board by this Court. The observations made and directions issued by the Division Bench of this Court at paragraph 7 of the order dated 16-2-1999 passed in W.A. Nos. 8289 and 8290 of 1996 are usefully extracted hereunder:

7. The appeal is partly allowed accordingly. The rest of the order passed by the learned Single Judge is confirmed. We direct the appellants to reconsider the case of the respondents 1 and 2 and respondents 4 and 5 for the appointment of Assistant Professor of Sericulture in the light of the recommendations made by the Selection Committee in accordance with law and in the light of the principles laid down, within three months from this date. Respondent 5 is entitled to continue in the post till fresh appointment orders are issued.

9. Therefore what emerges from the directions issued by the Division Bench is that the matter had to be reconsidered in the light of the recommendations made by the Selection Committee in accordance with law and in the light of the principles laid down. The principles laid down as referred to by the Bench are found in the reference made at para 4. While referring to the reported decision in the case of Dr. Durga Nageswari, the Division Bench of this Court has observed as under:

4. x x x

As can be seen from Clause (2) of Statute 30, the Selection Committee constituted for the purpose is required to make recommendations of names for appointment in the order of merit not more than three qualified persons for appointment. Clause (4) of Statute 30, however, empowers the Board of Regents to choose the best individual for appointment in the case of appointment to be made by the Board.

Clause (4) of Statute 30 must be read along with Articles 14 and 16(1) of the Constitution, for the reason, the University of Agricultural Sciences is State as defined in Article 12 of the Constitution and hence bound by the Articles included in the Fundamental Rights Chapter. Therefore, when under Clause (2) of Statute 30, a Selection Committee constituted for making selection on the basis of the performance of the candidate at the interview recommends the names in the order of merit, the power of the Board of Regents to choose best among them means normally it should proceed in the order of merit as arranged by the Selection Committee and if it is of the view that any person placed lower is best, it can do so, but it has to record reasons. If reasons are recorded then it can be said that the provisions of Articles 14 and 16(1) are complied with. But if a person placed below is appointed without assigning any reason, there is no other alternative than to hold that such a selection and appointment is arbitrary and is violative of Articles 14 and 16(1) of the Constitution.

10. What emerges from the ratio laid down, as extracted herein above, in the case of Dr. G. Durga Nageswari is that when the Selection Committee makes recommendation on the basis of performance of the candidates the power of the Board of Regents to choose the best among them is normally prescribed in the order of merit as arranged by the Selection Committee.

11. No doubt, in the normal circumstances, it is expected to proceed in the order of merit as arranged by the Selection Committee. However, if for reasons to be

recorded the Board is of the view that any person placed below the list is best suited, it is entitled to prefer the said person. What is emphasised in the case of Dr. G. Durga Nageswari is that the Board was required to record reasons for preferring a person who is placed lower in the merit list. If reasons are recorded then it would not violate Articles 14 and 16 of the Constitution. If however no reasons are recorded and a person placed lower in merit by the Selection Committee is preferred, then it would amount to violating Articles 14 and 16 of the Constitution. In the instant case, the Board of Regents has reconsidered the matter in the meeting held on 26th and 27th of March, 1999. The Minutes of the said Meeting would clearly indicate that the Board has considered the "panel" meaning the panel of names found in the select list and decided to select Dr. (Mrs.) Fathima Sadathulla as Assistant Professor of Sericulture considering her Ph.D qualification, length of regular service and also on humanitarian grounds. Learned Counsel for the petitioner has contended that none of these reasons which have weighed in the mind of the Board to prefer Fathima Sadathulla are relevant and germane for the purpose of selecting the best suited person. In this context, the question is whether this Court can examine if the Board, for good reasons, has proceeded to select and appoint Dr. (Mrs.) Fathima Sadathulla in preference to the petitioner or it ought to have preferred the petitioner who was placed at Sl. No. 1 in the select list. The adequacy or otherwise of the reasons for preferring the 3rd respondent cannot be gone into by this Court. However, the contention urged by the learned Counsel for the petitioner that the consideration that are taken into account by the Board are totally irrelevant and irrational needs to be examined. The main reason why the 3rd respondent is preferred, as is discernible from the resolution passed and the decision taken is that the 3rd respondent has secured additional qualification of Ph.D in the subject. The appointment is for the post of Assistant Professor of Sericulture. Petitioner, no doubt, has got post-graduate qualification which is a prescribed qualification. The 3rd respondent has obtained the higher qualification namely Ph.D in the same subject. If the Board has taken that aspect into consideration and has come to the conclusion that the person possessing Ph.D in the subject is best suited for the job of Assistant Professor in Sericulture compared to the others who were only post-graduates in the subject, it cannot be said that the decision arrived at is impelled by irrelevant consideration.

12. The next contention urged by the learned Counsel for the petitioner is that the Board has erred in taking equitable and humanitarian consideration while preferring the 3rd respondent to that of the petitioner. He has placed reliance in this regard on the judgment of the Apex Court in the case of P.M. Latha. Taking support from the said judgment he contends that the qualifications other than that prescribed in the advertisement cannot be considered on the ground that it is a higher qualification. He further submits that equity cannot override written and settled law. In the said case, the wrongful appointment of B.Ed. candidates instead of candidates who held Trained Teacher's Certificate as prescribed in the notification was set at naught on the ground that when the notification prescribes

Trained Teacher's Certificate as a qualification for teaching children in primary classes, whereas B.Ed, degree is the qualification prescribed for teaching students of classes above primary, it could not be said that B.Ed. qualification being higher qualification, the candidates possessing B.Ed. qualification would also be eligible to be considered for selection and be included in the select list. In the instant case, the facts are totally different. The 3rd respondent possesses the qualifying post-graduate degree coupled with additional qualification of Ph.D in the same subject. The instant selection is for the post of Assistant Professor of Sericulture. It deeper knowledge of the subject coupled with possessing the qualifying degree, as prescribed in the notification inviting application is possessed by the candidate and if the Board takes into consideration all these factors including the qualification of Doctorate in the said subject, it cannot be said that the Appointing Authority has taken irrelevant materials into consideration. At the same time, it cannot also be said that in the instant case the Board has been swayed away by humanitarian and equitable consideration overriding the written and settled law as held in the aforementioned decision of the Apex Court. In fact at paragraph 13 of the said judgment, the Apex Court has held as under:

Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. The Division Bench forgot that the extending relief on equity to B.Ed. candidates who were unqualified and yet allowed to compete and seek appointments contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have secured a better position in the rank list to get appointment against the available vacancies, had B.Ed. candidates been excluded from the selections. The impugned judgment of the Division Bench is both illegal, inequitable and patently unjust

13. Thus, it is to be seen that what is frowned upon the extension of equitable considerations contrary to law and contrary to the terms of the advertisement. The B.Ed. candidates were not qualified but yet they were extended the benefit in the said case. Whereas, in the instant case, the Board has taken into consideration equitable and humanitarian consideration in the context that the 3rd respondent would be deprived of all alternative avenues of securing other appointment, having regard to the age bar and other factors. Whereas, the petitioners is discharging his duty in a secured job in another University as Assistant Professor, the post for which he has now applied. Therefore, if equitable and humanitarian consideration have also weighed in the mind of the Board without sacrificing the requirements of law and merit, it cannot be said that the Board has erred in preferring respondent 3. If humanitarian and equitable considerations are added at balance with the mandatory legal requirements without sacrificing the requirement of excellence in merit, it cannot be said that the outcome of the decision of such a process is arbitrary, unreasonable or is guided by extraneous and irrelevant consideration. Though, Counsel for the petitioner has placed reliance on the decision of the Apex Court in Ashok Kumar

Sharma's case, C.R. Seshadri's case and Shankar Rao Vs. Chancellor, Karnataka University, , the facts involved and the ratio laid down therein have no application to the facts of the present case and the controversy raised. In fact, a perusal of Statute 15(4) framed by the University shows that out of qualified persons recommended by the University, the Board shall choose the best candidate. Therefore, it cannot be said that the Board did not have the power to examine the panel of names and decide to choose the best suited candidate.

14. Yet another contention canvassed by the learned Counsel for the petitioner is that the case of the petitioner, his academic excellence and experience have not been considered by the Board while choosing the 3rd respondent. It is relevant to note here that a perusal of the impugned resolution passed by the Board, as extracted herein above, would clearly show that the Board has considered the panel of names submitted by the Committee. In that process, it has found that the 3rd respondent is best suited. Consideration of individual names and recording reasons for rejecting each one of them cannot be said to be a mandatory requirement. If reasons are given as to why a particular candidate is preferred and if there is material to show application of mind of the Board to the entire panel of selected candidates then it is not necessary to go into other details. When appointments made by the Board of the Universities constituted under the statutes is challenged before this Court, normally the Court should be slow to interfere with the decision taken and the opinion expressed by the experts who constitute the Board unless there are allegations of mala fides against them. Generally, it is wise and safe for the Courts to leave the decision of such academic matters to the experts and the repository of the powers and functions as per the statutes, particularly when they are more familiar with the problems they face in the academic field than the Courts generally can be. What is only required to be considered is as to whether the action of the Board is in contravention of statutory or binding rules of statutes of the University. In considering the panel of names and appointing the 3rd respondent the Board was not acting like a quasi-judicial Tribunal deciding disputes referred to it for decision and therefore as held by the Apex Court in the case of University of Mysore, the decision taken and opinion expressed by the Board will not be interfered subjecting it to the same judicial scrutiny as is done in regard to decisions of the quasi-judicial bodies or Tribunals.

15. Though several other judgments are cited by the Counsel appearing for respondent 3, they are not relevant to the facts involved in the instant case.

16. For the foregoing reasons, I am of the considered view that no exception can be taken to the action of the Board in resolving to appoint respondent 3 as Assistant Professor of Sericulture. The said decision and the consequent order of appointment issued to the 3rd respondent cannot be found fault with. Hence, the writ petition is dismissed with no order as to costs.