

(2011) 12 KAR CK 0097

In the Karnataka High Court

Case No : Writ Petition No"s. 40062 and 40063 of 2010 (S-RES) connected with
Writ Petition No"s. 40264 to 40279 of 2010 (S-RES)

Jayantha and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Karnataka State Universities Act, 1976 — Section 51, 51 B
Karnataka State Universities Act, 2000 — Section 10 (1)

Citation : (2012) 1 KarLJ 258

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : M. Subramanya Bhat for M/s. Subbarao and Company and Sri L.M. Chidanadaya, for the Appellant; Raghavendra G. Gayathri, Government Pleader, Sri M.N. Prasanna for M/s. P.S. Rajagopal Associates, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2. These petitions are heard and disposed of together by this common order as the issues that arise for consideration are identical.

It is the case of the petitioners that they were initially engaged on daily wages in the year 1991 by the second respondent-Mangalore University and had continued till such time they were appointed on temporary basis as peons in the scale of pay 840-1340 as per the official memorandum dated 6-2-1995. This was continued from time to time for over two years. Thereafter, yet another office order was issued dated 10-6-1997 and they were placed on a consolidated salary which effected their service conditions in time scale of pay which was converted into consolidated salary. The petitioners being aggrieved filed writ petition in W.P. Nos. 37787 to 37805 of 1997. Those petitions were disposed of by an order, dated 27-11-1998, issuing certain directions to the second respondent-

University. It was specifically directed that the second respondent shall consider the case of temporary employees who had completed 10 years of continuous service in order to regularise their services after obtaining appropriate directions from the State Government. The said direction was challenged by way of an appeal in Writ Appeal Nos. 1502 to 1520 of 1999. The Division Bench dismissed the appeals by a judgment dated 15-12-2000. It is thereafter that the second respondent had addressed a letter dated 10-7-2003 to the first respondent seeking permission to frame statutes to enable the University to regularise the services of the petitioners. It was found that their services were very essential. One more representation was made reiterating the request. These requests are at Annexures-D and E to the writ petitions. The second respondent did not show any inclination to consider the requests. The petitioners therefore, preferred one more writ petition in W.P. Nos. 25303 and 25304 of 2004 seeking a direction to the second respondent to regularise their services and also grant the benefit of pay scales and other allowances. During the pendency of that writ petition, an official memorandum dated 28-9-2005 proposing to regularise the services of 17 temporary employees including the petitioners, was issued by the University. This was duly approved by the Syndicate at its meeting dated 20-9-2005 as also by the then Vice-Chancellor as per his approval dated 28-9-2005. There was reference to a letter by the first respondent dated 3-2-2004. The State Government, however, did not issue any unconditional permission insofar as the proposal to regularise the services of the petitioners was concerned and was non-committal about the proposed regularisation. The first respondent had only indicated that the second respondent may consider the case of the temporary employees, including the petitioners, keeping in view the directions issued by this Court in W.A. Nos. 1502 to 1520 of 1999 and to take action at the "University level" keeping in view the provisions of the Karnataka State Universities Act, 1976 and Rules framed thereunder. The second respondent proceeded to regularise the services of the petitioners accordingly, in terms of the official memorandum dated 28-9-2005. When the writ petitions in W.P. Nos. 25303 and 25304 of 2004 which was pending came up for consideration, the respondents had stated that in view of the official memorandum dated 28-9-2005, the writ petitions would not survive for consideration. It was also contended by the learned Counsel for the respondents that since the services of the petitioners were regularised, the petitions may not be maintainable. Accordingly, the writ petitions were disposed of placing the submissions on record. On 30-11-2007, an official memorandum was issued by virtue of which the probationary period of the petitioners and others, whose services were regularised, was satisfactorily declared. Subsequently, the second respondent also framed draft statutes relating to counting the temporary service of non-teaching employees prior to their regular appointment for purposes of pensionary benefits. The draft statutes were duly approved by the Syndicate Finance Committee and the Academic Council in the meeting held on 16-1-2009, 18-2-2009 and 17-3-2009, respectively. A letter was then addressed to the first respondent seeking approval of the Chancellor of the aforesaid draft statutes. The first respondent did not,

however, grant approval to the said draft statutes. On the other hand, the first respondent issued a show-cause notice to the second respondent dated 10-11-2009 seeking explanation as to how the services of 17 temporary employees were regularised contrary to the law laid down by the Apex Court. An explanation was said to be offered on 25-11-2009 but the petitioners are unaware of the content of that explanation. The first respondent thereafter issued an order dated 30-11-2010 cancelling the regularisation of the services of the petitioners and others and directed the second respondent to recover the difference of salary paid to them in the regular scale of pay with a further direction to take disciplinary action against the officers/employees who were responsible for placing the proposal for regularisation of the services of the temporary employees before the Syndicate as well as the Chancellor pursuant to which the second respondent has proceeded to take action against the petitioners and it is being aggrieved by that circumstance that the petitioners are before this Court.

3. The learned Counsel for the petitioners would submit that the impugned order is illegal and is violative of Articles 14, 16, 19 as well as 21 of the Constitution of India. The impugned order proceeds on the basis that the regularisation of the services of the petitioners was contrary to the law laid down by the Apex Court, which is wholly incorrect. Firstly, as on the date of regularisation of the services of the petitioners, they had completed 10 years of service. Therefore, their appointments were against duly sanctioned posts, by following the recruitment rules. They were appointed on temporary basis in terms of the statutes framed by the second respondent, which were duly assented to by the Vice-Chancellor of the University as early as 1-6-1985. The initial appointment of the petitioners was certainly in conformity with the law laid down by the Apex Court. Secondly, it is pointed out that this Court in W.P. Nos. 37787 to 37805 of 1997, was pleased to issue directions which would safeguard the interest of the petitioners. In spite of those directions, the second respondent had failed to regularise the services of the petitioners which provoked them to file yet another set of writ petitions in W.P. Nos. 23303 and 23304 of 2004. It was during the pendency of those petitions that the official memorandum dated 28-9-2005 was issued by which the services of the petitioners and others were regularised and those writ petitions were disposed of to the knowledge of the Counsel representing the State Government as well as the University and there was no demur insofar as the contention that the services of the petitioners had been regularised as on the date of disposal of those petitions as having become infructuous. It is also contended that the second respondent had, before regularising the services of the petitioners and others, had sought direction from the first respondent and the first respondent in terms of letter dated 3-2-2004 Annexure-G, had directed the second respondent to take suitable action in terms of the directions issued by this Court keeping in view they are made aware of the intention of regularisation of the services of the petitioners and the State Government had been non-committal about the same. The second respondent however had proceeded to

regularise the services of the petitioners in view of the circumstances, namely, that the petitioners had been appointed even prior to 1995 and therefore they had continued in service for over 10 years and their services were duly regularised which was approved by the Syndicate as well as the Vice-Chancellor. Therefore, it is all along presumed that the action of the second respondent was proper and legal and the State Government which was aware of the developments, has only in the year 2007, taken exception to the regularisation of services of the petitioners when approval was sought of the Statutes providing for pensionary benefits to the petitioners. It is further contended that the regularisation of services of the petitioners being within the knowledge of the first petitioner as early as in the year 2005, the contention now put forward that the action of the second respondent is illegal and contrary to the law laid down by the Supreme Court, five years after the act on the part of the second respondent, is unreasonable and when the action of the second respondent can at best be construed as being irregular, but not illegal. In that, the law laid down by the Supreme Court has made a distinction between irregular appointments and illegal appointments. The State Government, proceeding to hold that the regularisation of the petitioners, is illegal, would be a basic error. It is reiterated that the petitioners' initial appointment on temporary basis was against duly sanctioned posts and they were appointed in terms of the Statutes framed by the University after undergoing a full-fledged selection process. The repeated demand on the part of the second respondent seeking approval of the appointment of personnel, was overlooked by the State Government and it had dithered in according approval for such appointments which compelled the University to recruit them on temporary basis in the initial stage and their services being continued, since there was need for such services, over the years and it is only on completion of 10 years that regularisation was sought to be made which was to the knowledge of the first respondent-State Government and therefore, the present stand of the State Government is wholly unreasonable and would result in miscarriage of justice if the impugned orders are allowed to stand.

4. The learned Government Pleader on the other hand has vehemently resisted the petition and would contend that the petitioners were employed temporarily by the second respondent invoking Section 51-B of the Karnataka State Universities Act, 1976 (hereinafter referred to as the "Act" for brevity), in which, the period prescribed for appointment is less than one year. However, they were continued from time to time. In the year 1997 itself, though they were appointed in the year 1995, the petitioners had approached this Court by way of writ petitions in which directions were issued not to terminate the petitioners and to continue them as temporary employees until regular recruitments were made and to give weightage to the number of years of service rendered by them and to consider their case for regularisation if they had completed 10 years of continuous service as on the date of disposal of the writ petitions. It is the case of the Government Pleader that none of the petitioners had completed 10 years of service when regularisation of their services were sought in the year 2003. It

is in that background that the State Government had replied in terms of a letter dated 3-2-2004, Annexure-G, expressing its dismay that there was no provision under which the petitioners' services could be regularised. On the other hand, the policy prevailing was that no temporary employee who had been appointed subsequent to 1-7-1984, could be considered for regularisation and in the absence of any provision for such regularisation, the request of the University seeking regularisation of the appointment of the petitioners would not be considered and further, that the question of regularisation of temporary employees was an issue pending before the Supreme Court and therefore, till such time the law was declared by the Apex Court, it would be unwise to consider the regularisation of the services of the petitioners. And had merely indicated that in that situation, it was for the University to take the risk of continuing the employment of the petitioners, in accordance with the Universities Act and Rules. The University having unilaterally permitted the regularisation of the services of the petitioners, has done so at its risk. The question of now redetermining such regularisation of services by the State Government would not arise as the State Government is bound to apply the law of the land which prohibits any such regularisation of such services when they were not recruited in the usual course as is the settled law. The Official Memorandum dated 28-9-2005 is not based on any statutes nor is it approved by the Chancellor and the approval of the Syndicate which approval was also seconded by the Vice-Chancellor, are wholly irrelevant and in any event, even after the approval by the Syndicate of the said official memorandum, it was never sent to the State Government seeking its approval and the petitioners having been continued by the University in their positions pursuant to the official memorandum dated 28-9-2005, would not clothe the petitioners with any legality in seeking such regularisation and the question of considering their services prior to such illegal regularisation, would not arise at all. It is in that background that the draft statutes insofar as the pensionary benefits, that was proposed to be conferred on the petitioners, has been stoutly rejected and further action has been proposed in terms of the impugned orders. He would further point out that the impugned orders are issued under the power conferred on the State Government in terms of Section 10(1) of the Karnataka State Universities Act, 2000 which provides the power to the State Government to annul the orders of the University if it is found to be inconsistent with the policy of the State Government. The University has been afforded an opportunity to explain itself of the illegal acts committed by it and reply dated 25-11-2009 that was issued by the second respondent-University in response to the show-cause notice would hardly justify its action as the same is not in conformity with the policy of the State Government nor is it in conformity with the law as laid down by the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, wherein the Apex Court has frowned upon circumstances where appointments of daily wagers and temporary employees were made without following the procedures and therefore, the second respondent-University, in the present case on hand, having acted against the policy of the State Government and without complying with the

procedure prescribed, would result in the appointment of the petitioners being illegal and hence, the question of either regularising their services or providing any benefits by virtue of such employment, would not arise and would seek to place reliance on a large number of decisions which are as follows.-

1. Md. Ashif and Others Vs. State of Bihar and Others,
2. Official Liquidator Vs. Dayanand and Others,
3. Post Master General, Kolkata and Others Vs. Tutu Das (Dutta),
4. Harminder Kaur and Others Vs. Union of India (UOI) and Others,
5. State of Karnataka and Others Vs. Sri G.V. Chandrashekar,
6. State of Bihar Vs. Upendra Narayan Singh and Others,
7. A. Manjula Bhashini and Others Vs. The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another,
8. Satya Prakash and Others Vs. State of Bihar and Others,
9. State of Orissa and Others v. Prasana Kumar Sahoo (2010)2 SCC (L and S) 765 : (2007) 15 SCC 129

5. The second respondent-University in turn has filed its statement of objections to support the petitioners and it is pointed out that the petitioners were appointed on daily wage basis as early as 1988 onwards. There was sanctioned vacant non-teaching posts in various categories in the various cadres in the University and the direct recruitment was not being permitted by the State Government and the need was urgent to fill up the posts on temporary basis and this was a course permissible u/s 51 of the Karnataka State Universities Act, 1976 and Statutes made thereunder. As stipulated in the statutes relating to temporary appointments of teaching and non-teaching staff, the University issued notice to the District Employment Exchange, Mangalore, calling for eligible candidates. As required under the statutes, the Vice-Chancellor constituted a selection committee to select suitable candidates. The Selection Committee assessed the merit and suitability of the eligible candidates sponsored by the Employment Exchange and based on their performance in the qualifying examination and interview, made a select list which was approved by the Vice-Chancellor. Thereafter, acting strictly on the approved list, the select list dated 6-2-1995 Annexure-A was prepared whereby the petitioners were appointed as Peons on temporary basis for a period of six months. Thereafter, their appointments were renewed from time to time also on temporary basis. By an official memorandum dated 6-8-1996, they were appointed on a consolidated salary, again for a period of six months. This was continued with a view to fill up the posts by regular direct recruitment. The University on 17-5-1997, invited applications and set the recruitment process in motion and thereby appointed the petitioners on temporary basis for a period of six months or until further orders, whichever was earlier. The University has taken recourse to this measure as it

was looking forward to complete the recruitment process within six months. Even before the last date for submission of applications under the recruitment notification dated 17-5-1997, the University received a circular dated 5-6-1997 from the State Government directing the University that in view of the economy measures in force, the University shall not fill up any non-teaching posts without prior permission of the State Government. The University sought permission of the State Government to fill up the posts by continuing the recruitment initiated. Even after the University explaining the facts, the State Government was unresponsive. Ultimately, the State Government by its letter dated 5-8-1998 permitted the University to fill up the backlog posts subject to the condition that filling of such posts will be within the existing grants and no additional grants would be made available. The State Government rejected the request of the University in respect of other posts and shut the doors on further correspondence. In that circumstance, the Mangalore University Non-teaching Employees' Association along with 18 non-teaching employees including the petitioners, approached this Court by way of writ petitions as already stated and this Court had directed as follows.--

It is open to the petitioners to participate in the selection process by applying for selection against the impugned notification dated 17-5-1997 and if they so participate, the University may consider giving suitable weightage for the temporary service rendered by them as may be applicable and subject to the relevant Rules.

6. In spite of this, the University could not proceed with the recruitment for want of permission from the State Government. The writ petitions were ultimately disposed of by an order dated 27-11-1998, in the following terms.-

Having regard to the facts and circumstances of the case and the submissions made by the University these petitions are disposed of with the following directions in order to safeguard the interests of the petitioners and at the same time, ensure that there is no violation of the rules relating to recruitment and reservation policy.-

(a) Services of petitioners shall not be terminated only for the purpose of replacing them with another set of temporary employees.

(b) The services of petitioners may be continued as temporary employees until regular recruitments are made, if there is need for their services.

(c) Petitioners will be entitled to apply for appropriate posts as and when the University invites applications for regular recruitment. At the stage of such recruitment, the University shall give the petitioners appropriate weightage for the number of years of service rendered by them and wherever necessary also give appropriate relaxation in age, having regard to the length of temporary service put in by the respective employees.

(d) In the case of persons who have already completed 10 years of continuous

service, the University may consider regularisation after obtaining appropriate directions/exemption from the Government in this behalf.

(e) Petitioners will be entitled to regular pay scales, as has been agreed before the Assistant Labour Commissioner.

Liberty is reserved to the petitioners to approach the appropriate authority in the event of any further grievance.

7. The State Government which was the first respondent in the said writ petitions, informed the University that it has already authorised preferring writ appeals against the judgment and instructed the University also to file a writ appeal. Accordingly, the University was compelled to file an appeal W.A. Nos. 443 to 461 of 1999. The writ appeals were dismissed holding that in the given facts and circumstances of the case, the Single Judge had given just and proper directions, which did not call for interference.

8. The Government, contrary to its letter dated 12-2-1999, did not to file any writ appeal. As against the very same order of the learned Single Judge, the petitioners in W.P. Nos. 37787 to 37805 of 1997 and connected cases, preferred writ appeals in W.A. Nos. 1502 to 1520 of 1999. The writ appeals were disposed of by a Division Bench with the following direction.-

In our view, the learned Single Judge has given just and appropriate directions in the given facts and circumstances of the case which do not call for any interference.

9. The University thereupon took up the matter with the State Government for implementation of the directions issued by this Court. The State Government clarified that the University has to consider the directions of the Court and to frame requisite statutes for implementation of the directions issued by the Court, if necessary. Beyond this, there was no response from the State Government to any further action being taken. The petitioners had made representations to the Government and the Government directed the University to take appropriate action. While the University sought permission of the State Government to frame appropriate statutes, this was not considered by the State Government. However, the State Government by an order dated 6-11-2003, ordered regularisation of 36 daily wage employees of Gulbarga University. The State Government informed the University that as special leave petitions preferred by the State Government in the matter of regularisation of services of daily wage employees appointed after 1-7-1984 were pending before the Supreme Court and the State Government has not framed any guidelines in that regard, the University may take a decision regarding implementation of the order passed by this Court in the writ appeals at its level keeping in view the rules of the Government in vogue and the Universities Act. The Syndicate thus examined the matter at its meetings and had resolved that the services of 17 non-teaching employees who had worked for more than 10 years, continuously, against sanctioned posts and are continuing as ad hoc employees, be regularised after obtaining the approval of

the State Government. Accordingly, the approval of the State Government was sought. While drawing its attention in respect of the daily wage employees of the Gulbarga University, the University requested the Government to permit the employees of the second respondent-University, especially since the temporary non-teaching employees were working for more than 10 years to be regularised against sanctioned vacant posts. The University thereafter taking into account the letter dated 3-2-2004 of the State Government directing the University may take a decision at its level and also keeping in view the regularisation of daily wage employees working in the Gulbarga University, the Syndicate as well as the Vice-Chancellor had approved the regularisation of the services of the petitioners who were initially on probation for two years and their probation was declared after the expiry of two years and they were treated as regular employees thereafter by an official memorandum dated 30-11-2007. In the matter of counting the temporary service for pensionary benefits, a statute was drafted and was submitted to the State Government. That proved to be the cause for the present impugned order. Therefore, the University would submit that there is no illegality committed by the University in regularising the services of the petitioners, for the above reasons. The learned Counsel for the University would further point out that the large number of decisions cited by the Government are all cases, without exception, which pertain to illegal appointments and not irregular appointments. In this regard, the Apex Court has made a distinction between such irregular and illegal appointment in considering whether temporary employees could be regularised in services after a lapse of period of time in the following words, in Umadevi's case:

One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in the cases of State of Mysore and Another Vs. S.V. Narayanappa, , R.N. Nanjundappa Vs. T. Thimmiah and Another, and B.N. Nagarajan and Others Vs. State of Karnataka and Others, , and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of Courts or of Tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the Light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional

requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

10. Regularisation of services of the petitioners is in conformity with the above said directions of the Supreme Court and the State Government which has faulted and annulled the decision of the University to regularise the services of the petitioners asserting that it has acted contrary to the judgment of the Umadevi's case is without reference to the above view of the Apex Court which is equally binding on the State Government. They were continued in temporary basis from time to time and final memorandum appointing them as temporary employees is issued in the year 1995. Therefore, it is not very relevant to consider whether the petitioners were indeed employed for over 10 years when the first proposal was made in the year 2003 seeking approval of the State Government to regularise their services. However, such proposal being renewed in the year 2005 and the State Government while it was placed on notice of the approval of the Syndicate as well as the Vice-Chancellor of such regularisation of services, it remained noncommittal in merely observing that there was no legal provisions under which the regularisations could be considered and that as a matter of policy, it was impermissible to regularise the services of the employee who was recruited subsequent to 1-7-1984 and since the very issue as to the regularisation of employees engaged after 1-7-1984 was pending consideration before the Supreme Court, the State Government has merely indicated that the University may proceed at its level keeping in view the directions issued by this Court in writ petitions and writ appeals that were disposed of prior to the said date and to consider the case of the petitioners at the University level. This was in terms of a letter dated 3-2-2004. It is pursuant to this that the University had proceeded to regularise the services of the petitioners in the year 2005. The State Government did not raise any objection at any point of time. In view of the subsequent writ petitions and writ appeals having been disposed of to the knowledge of the State Government after which the petitioners were regularised in service, those writ petitions having been rendered infructuous and even then, the State Government having not raised the issue with the respondent-University, it ought to be construed that the State Government approved the regularisation of services of the petitioners though it was not expressly stated in so many words. By its conduct the State Government has acquiesced in the regularisation of services of the petitioners who were indeed appointed against sanctioned posts after following the procedure prescribed for recruitment and it is only on account of the State Government not having approved the recruitment process, the issue was being taken up by the University and the University was compelled to appoint the petitioners on temporary basis. Therefore, it could not be said that the appointments were illegal, in the first place. The appointments having been regularised to the knowledge of the State Government, the same could not be held to be illegal. When the University sought approval of the draft statutes in respect of pensionary benefits and the counting of the years of service rendered prior to the regularisation of the petitioners which was proposed

and which was sent to the State Government for its approval, it is only at that stage the State Government has taken exception and has issued the show-cause notice which is the impugned order and the subsequent order that has annulled the decision of the academic Council as well as the Syndicate and the approval granted by the Vice-Chancellor.

11. Further, insofar as the State Government's contention that the regularisation of the petitioners is impermissible on account of their appointment being illegal, cannot be accepted in the light of the opinion expressed by the Apex Court in Umadevi's case which is extracted hereinabove. The distinction certainly is to be made between the illegal and irregular appointments. In the opinion of this Court, the appointment of the petitioners cannot be said to be illegal. It may be irregular since it was based upon the decision of the University to recruit the said petitioners because the State Government was not in a position to permit the regular recruitment process. In that view of the matter, the State Government now taking a stand that the entire action is vitiated as it was firstly inconsistent with the policy of the State Government as on the date their services were regularised and further that it is now rendered illegal in view of the decision in Umadevi's case, cannot be accepted. On both counts, it is no longer relevant that the petitioners were not appointed prior to 1-7-1984 and the petitioners' services having been regularised as early as in the year 2005 before the Umadevi's case was rendered and in the very judgment, it is laid down that if the appellants were regularised prior to the judgment and they had continued in service not by virtue of interim orders and they were appointed in respect of regular sanctioned posts, there is no illegality in such appointments, was the law laid down in Umadevi's case, which is in favour of the petitioners.

Accordingly, the petitions are allowed. The impugned orders are quashed. The respondent-State Government shall extend all consequential benefits to the petitioners.