

**(1993) 02 KAR CK 0009**

**In the Karnataka High Court**

**Case No :** W.A. No's. 2378 of 1992 and 300 to 322 of 1993 and W.Ps. 28091, 28093 and 28096 of 1991 and 2340 of 1992

Mangalore University

APPELLANT

Vs

Dr. C. Kusumakara Hebbar

RESPONDENT

**Date of Decision :** 23-02-1993

**Acts Referred:**

Karnataka State Universities Act, 1976 — Section 49, 50, 51 A, 51 B

**Citation :** (1993) ILR (Kar) 827 : (1993) 1 KarLJ 569

**Hon'ble Judges :** K.A. Swami, Acting C.J.;A.J. Sadashiva, J

**Bench :** Division Bench

**Advocate :** P. Vishwanatha Shetty, for the Appellant; Ravi varma Kumar, for R-1 to R-24 and S.R. Nayak, Government Advocate for R-25, for the Respondent

## Judgement

K.A. Swami, Ag. C.J.

1. The Appeals are preferred against the order dated 7.10.1992 passed by the learned Single Judge in W.P.Nos.28080 to 28097/1991; 2340 to 2342/1992, 7797 to 7798/1992 and 7849/1992. Though the appellant has paid one set of Court Fee, it is submitted by Sri P. Viswanatha Shetty, learned Counsel for the appellant that the deficit Court fee of Rs.2300/- will be paid within a week. This submission is placed on record and the Appeals are treated as appeals against the Interim Orders passed in the aforesaid 24 Writ Petitions, and consequently, this Judgment will dispose of 24 Writ Appeals.

2. Before considering the validity of the interim order, there is one another aspect of the matter which requires to be disposed of.

3. During the pendency of the above Writ Appeals, the petitioner in W.P.No. 28091/1991 - B. Udaya - has been regularly appointed. Therefore, his grievance does not survive. Similarly, the petitioners in W.P.No. 28093/91 - Dr. V.M. Jali ; W.P.No. 28096/91 - K. Ramesh ; W.P.No. 2340/92 - K. Sridhara, have resigned their jobs. Therefore, their grievance also does not survive,

4. In view of the above circumstances, by consent of the learned Counsel appearing on both sides, W.P. Nos. 28091/91, 28093/91, 28096/91 and 2340/92 are treated as having been posted before us and they are disposed of as having become infructuous. Ordered accordingly.

5. Consequent on the disposal of the aforesaid Writ Petitions, the Writ Appeals arising out of the Interim Order dated 7.10.1992 passed in W.P.Nos. 28091/91, 28093/91; 28096/91 and 2340/92 viz., W.A.Nos. 310/93; 312/93; 315/93 and 317/93, stand disposed of as having become infructuous.

6. Now we shall take up the validity of the Interim Orders passed in the remaining matters.

7. The learned Single Judge has refused to vacate the interim order on the ground that the Inter-University Board and the State Government have not yet stated their case, therefore, pending that, the petitioners who have been appointed as Lecturers by the Vice-Chancellor in exercise of his power u/s 51-B of the Karnataka State Universities Act, 1976 (hereinafter referred to as the "Act") are entitled to be continued in service. Therefore, the learned Single Judge has rejected the request of the University for vacating the Interim Order. Hence the University has come up in these Writ Appeals.

8. The following facts are not in dispute:

The petitioners in W.P.Nos. 28080/91 to 28086/91 have been appointed as Lecturers u/s 51-B of the Act by the Vice Chancellor against the vacancy of Readers. Petitioner in W.P.No. 28087/91 has been appointed as Lecturer in Political Science against the vacancy of Professor. The petitioners in Writ Petition Nos. 28088 to 28090/91 and 28092/91 are appointed as Lecturers against the vacancy of Lecturers reserved for Scheduled Caste or Scheduled Tribe. The petitioner in W.P.No. 28094/91 is appointed as Lecturer against the regular vacancy reserved for Scheduled Caste or Scheduled Tribe. The petitioner in W.P.No. 28095/91 is appointed against the vacancy of Professor. The petitioner in W.P.No. 28097/91 is also appointed as Lecturer against the vacancy reserved for Scheduled Caste or Scheduled Tribe, but he does not belong to that category. We may also point out that the petitioners in W.P.No. 2341 and 2342 of 1992 - K. Laxman and Dr. B.R. Manjunath - are appointed against the leave vacancies of S. L. Belagali and Dr. R. Shankar. Sri S.L. Belagali had gone on study leave upto 31.6.1991 while Dr. R. Shankar had gone on leave upto 31.7.1992. Both of them have been appointed as Lecturers by the Vice Chancellor u/s 51-B of the Act. Similarly, the petitioner in W.P.No. 7797 of 1992 has been appointed in the vacancy caused due to the incumbent going on deputation and the petitioner in W.P.No. 7798/92 has been appointed as Lecturer in place of one S.D. Patil who has gone on study leave upto 31.12.1993. The last petitioner, i.e., the Petitioner in W.P.No. 7849/92 has also been appointed as Lecturer in Sociology against the vacancy of Reader.

In fact, all the appointments in question, have been made u/s 51B of the Act,

only.

9. At the outset, we would like to point out that Section 51 -B of the Act, enables the Vice Chancellor to make appointments temporarily to the posts of Lecturers and non-teaching staff as specified therein, for a period of six months only, that too if such posts are existing as on the date of making such appointments and the appointments to such posts cannot be made in accordance with Sections 49, 50 and 51A of the Act, without delay. The said Section reads:

"51B, TEMPORARY APPOINTMENT.-(I) Notwithstanding anything in Sections 49, 50 and 51A, the Vice Chancellor may make temporary appointments of not more than six months duration to posts of Lecturers and such non-teaching staff as may be specified in the statutes provided such posts are either temporary or appointments to such posts cannot be made in accordance with Sections 49, 50 and 51A without delay.

2) The appointments under Sub-section (1) shall be made in the manner prescribed by the Statutes."

From the aforesaid provisions contained in Section 51 -B of the Act, it is clear that the Vice Chancellor can make temporary appointments for not more than six months to the posts of Lecturers and non-teaching staff, as specified in the statute only if the temporary or permanent vacancies in the posts of Lecturers and non-teaching staff exist. It is also the basic principle of Service Law that no appointment to a post can be made unless a vacancy in such post exist. Therefore, the Vice Chancellor can in exercise of his power u/s 51B of the Act, make appointment for a period of six months provided vacancy in such posts exists and the same cannot be filled up in accordance with Sections 49, 50 and 51A of the Act, without delay.

9.1. A Division Bench of this Court, in RAJESHWARI C.B. v. THE CHANCELLOR AND ANR. 1989 (1) KLJ 351 has held that the appointments made u/s 51-B of the Act, do not confer any right on the appointees to seek regularisation of their appointment.

9.2. As already pointed out, barring a few appointments which have been made against the existing vacancies of lecturers, all other appointments in question are made by the Vice Chancellor without there being in existence any vacancy in the posts of Lecturers. The appointments have been made either against the vacancies of Readers or of Professors. Thus, the Vice Chancellor has exercised the power u/s 51-B of the Act, most arbitrarily and without due regard to the parameters of his power as contained in Section 51B of the Act, has made appointments to the posts of Lecturers as against the vacancies of Readers and Professors.

10. When the appointments are made without there being any vacancy of Lecturers and some of the appointments are made against the vacancies reserved for SC/ST in respect of which recruitment is in progress, to direct to

continue such appointees in the posts of Lecturers, would result in continuing them without there being any vacancies of Lecturers. This aspect does not appear to have- been brought to the notice of the learned Single Judge. In the circumstances, it is clear that if the Interim Orders are continued, it will result in continuing the petitioners as Lecturers without there being the posts of Lecturers, Therefore, we are of the view that the appointments of Lecturers are made in the vacancies of Readers and Professors, and in the leave vacancies and also of the appointment of persons not belonging to SC/ST in the vacancies of Lecturers reserved for SC/ST for which the recruitment is going on, as such the Interim Order cannot be continued.

11. However, it is submitted by Sri Ravi varma Kumar, learned Counsel for the respondents, who are the petitioners in the Writ Petitions, that Sri Bhaskar Shenoy K., - Petitioner in W.P.No. 7798/92 and Dr. Chandrakala Shenoy K., the Petitioner in W.P.No. 7797/92, who have been appointed u/s 51-B of the Act, in the vacancies of Sri S.D. Patil and Sri M.J. Hegde, respectively, can be continued until the permanent incumbents of the posts report to duty. As held by a Division Bench of this Court in RAJESWARI's case, the appointees do not have a legal right for regularisation of their services. We can only make an observation that it is open to the Vice-Chancellor to consider their request for continuing them in the said posts till the permanent incumbents report for duty.

12. It is also further submitted by Sri Ravi varma Kumar, that the petitioner in W.P.No. 28084/91 can also be continued because there is a vacancy of Lecturer arising in the Department of English by reason of the resignation of one Radha Achar. Similarly it is submitted that the petitioner in W.P.No. 28086/91 can also be continued because in the Department of Bio-Science, because one Dr. Rajasekhar has been appointed as Reader, therefore, a vacancy of Lecturer has occurred. Similarly it is submitted that the petitioner in W.P.No. 28094/91 can also be continued because with effect from 31.3.1993, a vacancy is going to occur on the retirement of Mrs. Madhavan. In respect of the petitioner in W.P.No. 2342/1991, it is submitted that one Dr. A.C. Narayan has been relieved on 3.6.1992 as Lecturer in Marine Geology. Therefore, the petitioner in WP.No. 2342/1992 (Dr. B.R. Manjunath) can also be continued.

13. In respect of the petitioner in W.P.Nos. 28080 and 28081/1991 it is submitted that there are vacancies of Lecturers in Commerce and Economics which have occurred consequent on the resignation of one Vijaya Prakash (Commerce Department) and N. Rangaswamy (Economics Department).

13. In respect of these submissions, all that we can say is that if there are vacancies in the cadre of lecturers, which cannot be filled up in accordance with the Recruitment Rules and nevertheless there is a necessity for having the services of Lecturers, it is open to the Vice-Chancellor to consider the requests of the aforesaid petitioners for making appointments u/s 51-B of the Act. But we make it clear that such appointments neither confer upon the appointees any right to the post, nor they will be entitled to seek regularisation as held by a

Division Bench of this Court in the case reported in 1989(1) Kar.L.J.351 referred to above.

14. Though Sri Ravi varma Kumar, learned Counsel for respondents 1 to 24, Sri S.R, Nayak, learned Govt. Advocate appearing for respondent-25 and also Sri P. Viswanatha Shetty, learned Counsel for the appellant have brought to our notice the Decisions in Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, ; Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, State of Haryana and others Vs. Piara Singh and others etc. etc., ; and Delhi Development Horticulture Employees" Union Vs. Delhi Administration, Delhi and others, In view of the conclusion reached by us as stated above, we do not consider it necessary to refer to them in detail. Therefore, we deem it unnecessary to consider the contentions based on the above Decisions.

15. For the reasons stated above, these Appeals, (except W.As. 310, 312, 315 and 317 of 1993, which are dismissed as having become infructuous) are allowed. The Order passed by the learned Single Judge in WP.Nos. 28080 to 28097/91; 2340 to 2342/92; 7797 and 7798/92; and 7849/92 dated 7.10.1992 (except WPs.28091/91; 28093/91; 28096/91 and WP.No. 2340/92) is set aside. Consequently, there would be no Interim Order in the aforesaid Writ Petitions. However, the setting aside of the Interim Order will be subject to the observations made in this Judgment.

16. One week to pay the deficit Court fee of Rs.2,300/-.

17. Sri S.R. Nayak, learned Government Advocate is permitted to file his Memo of appearance on behalf of the State in all the above Writ Appeals and also the Writ Petitions which have been disposed of in this judgment, within six weeks.

18. After we pronounced the Judgment, learned Counsel appearing for the respondents sought for suspending the operation of the judgment for a period of six weeks,

19. We are of the view that in the view we have taken, we do not see any justification to accede to the request made by the learned Counsel for the respondents. Accordingly, the request for suspending the Judgment is rejected.