

(1988) 06 KAR CK 0072

In the Karnataka High Court

Case No : Writ Petition No. 8349 of 1988

Mangalore University Non-Teaching Employees Association

APPELLANT

Vs

Mangalore University

RESPONDENT

Date of Decision : 10-06-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (1), 162

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

Citation : (1989) 58 FLR 173 : (1988) ILR (Kar) 2219 : (1988) 2 KarLJ 239

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : V. Gopala Gowda, for the Appellant; P. Vishwanatha Shetty, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—This Writ Petition is by the Mangalore University Non-Teaching Employees Association, seeking a Writ of Mandamus directing the first respondent to appoint persons who are members of the Petitioner Association, who were appointed on temporary basis u/s 51B of the Karnataka State Universities Act 1976 (for short the Act) on the establishment of the Mangalore University, on permanent basis against the posts in which they are employed on temporary basis.

2. The facts of the case in brief are as follow. The Mangalore University is established under the provisions of the Act. The powers and functions of the University and of its authorities are regulated by the Act. The Act has prescribed the procedure for making permanent appointments to teaching and non-teaching posts in the Service of the University. Section 49 provides for constitution of a Board for making selection and appointment, to the teaching posts i.e., of Professors, Readers and Lecturers. Prior to the amendment of the Act by Act 23/86 Section 50 regulated the appointment to non-teaching and non-ministerial posts. That Section provided for constitution of a Board of Appointment for

making selection and appointment. Section 51 provided that appointment to Ministerial posts shall be made by the Vice Chancellor from the list of candidates selected by the Public Service Commission. Section 51B empowered the Vice Chancellor to make temporary appointments to teaching and non-teaching posts, as may be specified in the statutes, but for not more than six months" duration. By Act 23/86 Section 50 was amended, Section 51 was omitted and in Section 51B only reference to Section 51 was omitted. Section 50 as amended reads:

"50. Appointment of non-teaching and Ministerial Staff :-

(1) There shall be constituted a Board of Appointment to select candidates for appointment to the non-teaching posts and ministerial posts in the University.

(2) The Board shall consist of -

(i) the Vice-Chancellor - Ex-Officio Chairman ;

(ii) the Registrar

(iii) One person supervising the work of the Section for which recruitment is made nominated by the Vice-Chancellor and where there is no such person the Chairman of the Departmental Council of the concerned Section;

(iv) three persons nominated by the Chancellor in consultation with the State Government, one of whom shall be a person belonging to the Scheduled Castes or the Scheduled Tribes and the others shall be a person belonging to any socially and educationally backward classes of citizens declared as such by the State Government or any religious or linguistic minority. The term of such members shall be three years.

(2A) The quorum for a meeting of the Board shall be four.

(3) Such of the posts as according to the Statutes are to be filled by direct recruitment shall be filled from among persons selected by the Board in the order in which their names are arranged in the list prepared by the Board. Appointment to posts by promotion, deputation or transfer or on contract as may be prescribed in the statute in respect of any category of posts shall be made after consulting the Board.

(4) While preparing the list of candidates selected for appointment to the direct recruitment vacancies the Board shall comply with the orders issued by the State Government from time to time for reservation of posts for the Scheduled Castes, the Scheduled Tribes and other backward classes of citizens.

(5) All appointments shall be made by the Syndicate. In case of difference between the Board and the Syndicate the matter shall be referred to the Chancellor whose decision shall be final.

Provided that appointments to posts the maximum of the scale of pay of which does not exceed rupees two thousand and twenty-four shall be made by the Vice Chancellor.

(6) Notwithstanding anything in the preceding subsections, appointments to posts in the University equivalent 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."

Statutes have been framed regulating the making of temporary appointments. It reads:

"All the vacant posts in the various categories under non-teaching in the University shall be the specified vacant posts for making temporary appointments u/s 51B(1) of the Act.

The following procedure is prescribed regarding temporary appointments of not more than 6 months duration to posts of Lecturers and non-teaching staff.

The University may advertise the posts in local newspapers or get the names from the local employment exchange. The Vice-Chancellor shall constitute a Selection Committee consisting of 3 members, with Registrar as the Chairman and two other Members of which one shall be from the Department for which the selection is made. The Committee may select a suitable candidate or submit a panel of names and the final selection shall be made by the Vice-chancellor.

Selected candidates shall be appointed for a period of six months or until the vacancy is filled upto by regular appointment whichever is earlier."

Obviously, Section 51B as also the above statute are intended to meet an urgent situation in which appointing of a person to the services of the University against a teaching or non-teaching post immediately becomes expedient in the interest of the students or administration as the case may be, through advertisement in Local newspaper or notifying the vacancy to the Local Employment Exchange. This limited advertisement is prescribed as temporary appointments are required to be made for a period of not more than six months and is required to be replaced by regular recruitment.

3. The petitioner has stated that in exercise of the power u/s 51B of the Act, as many as 52 persons whose names are furnished in the statements were appointed in the first instance during the period 1982 to 1985 on the dates mentioned against their names, by the Vice Chancellor u/s 51B of the Act for a period of six months. The petitioner further states that at the end of six months, their services were being terminated and they were being reappointed once again for a period of six months and by this process they have been continued in service. Their contention is that once their services were continued beyond six months, they acquire a right to get permanent appointment, but instead of doing so the University has issued a notification dated 14-1-1987 (Annexure-B) inviting applications from all the eligible candidates for making permanent appointments to the various categories of posts numbering 42 against some of which the members of the petitioners' Association had already been appointed and in which posts, they have been working for 3 to 4 years or even more in the case of

a few persons.

4. The stand of the University is that selection for making permanent appointment to the non-teaching and ministerial posts have to be done by the Selection Board constituted in terms of Section 50 of the Act and the persons appointed u/s 51B of the Act acquired no right for regular appointment notwithstanding the fact that they had been continued in service beyond six months which itself is contrary to Section 51B of the Act and therefore University has issued the advertisement inviting the application from all the eligible citizens who intend to join the service of the University and this action of the University was in conformity with Section 50 of the Act and the fundamental rights to equality guaranteed to the citizens under Article 16(1) of the Constitution i.e., equality of opportunity in matters relating to employment under the State.

5. In my view the stand of the University is unexceptionable. It is too well settled that the power to make appointment under the State could be exercised, in the absence of a statutory provision regulating it subject to Article 14 and 16(1) of the Constitution. But once the matter is regulated by Law the State is bound to make appointments in accordance with Law. This principle is laid down by the Supreme Court in B.N. Nagarajan and Others Vs. State of Mysore and Others, Relevant portions of the Judgment reads:

"It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that Act or Rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to such rule or Act."

Again, in the case of Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char, the Supreme Court while upholding the power of the Mysore State Road Transport Corporation, established under the Road Transport Corporations Act 1950 to make recruitment and appointment evolving a rational basis, before regulations are framed, observed thus:

"The conjoint effect of Sections 14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions if any, given by the State Government u/s 34 and the regulation, if any, framed u/s 45(2)(c)."

In the case of R.N. Nanjundappa Vs. T. Thimmiah and Another, the Supreme Court held regularisation of the services of a person appointed on temporary basis, which nullifies the rules of recruitment was impermissible and such an action was violative of Articles 14 and 16 of the Constitution. The aforesaid pronouncements provide a complete answer to the contention of the petitioner. The University being a creature of statute and State as defined in Article 1.2 of the Constitution, is bound to act in accordance with the provisions of the Act and the Constitution. It can neither make temporary appointment in contravention of Section 51B of the Act and the Statutes or regular and permanent appointments in contravention of Sections 49 and 50 of the Act and the relevant Statutes. It is

clear, therefore, that regular recruitment into the services of the University to the various categories of non-teaching and ministerial posts could be made only in accordance with Section 50 of the Act, and the Statutes framed for the purpose and the temporary appointments made u/s 51B of the Act is limited only for a period of six months and if any person so appointed is continued in service beyond the period of six months, such continuance itself is a breach of Section 51B and it does not create any right in the person so continued.

6. The learned Counsel for the petitioners submitted that the Supreme Court in the case reported in *Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others*, has held that the Electricity Board could not refuse to appoint the persons recruited on a temporary basis on permanent basis. The facts of that case are entirely different and the principle laid down in that case is not apposite to this case. As can be seen from the said decision, in a situation when the Board was reeling under a strike by its workmen, the Board which was not only the appointing authority, but which was also the authority empowered to make regulations u/s 79 of the Electricity Supply Act 1948, laying down the method of recruitment, recruited several persons to its service to meet the emergency, on temporary basis giving an assurance to them that they would be absorbed later into the services of the Board as against clear vacancies as and when they arose or created. Subsequently, the Board failed to keep up its promise, and took the stand that the temporary employees should seek recruitment in accordance with the Rules. In the circumstances, the Supreme Court held that on the principle of promissory estoppel, the Board cannot be permitted to rely on the rules and defeat the assurances given to the employees who had come to its rescue during a period of crisis. In this case, Section 50 of the Act, the statutes governing temporary appointments, and also the orders of appointment admittedly contained the condition that appointment was for a period of six months or until regular appointment whichever was earlier. No one had or could promise them to make them permanent. The fact that temporary appointments were given to them again and again only discloses utter disregard to the Law by the authorities, but did not confer any right on the temporary appointees. As far this case is concerned, the ratio of the decisions in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, and *Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char*, and *R.N. Nanjundappa Vs. T. Thimmiah and Another*, applies on all fours and therefore it should be held that the University is bound to make recruitment on permanent basis only in accordance with Section 50 of the Act and the Statutes regulating the method of recruitment and persons appointed, on temporary basis u/s 51-B of the Act cannot claim any right for permanent absorption. They are bound to apply when the posts are advertised and compete along with others, for selection and appointment.

7. The above principle is also discernable from the Judgment of the Supreme Court in the case of *Rattan Lal and Others Vs. State of Haryana and Others*, . That was also a case in which teachers appointed on temporary basis without making regular recruitment and continued for a long time claimed the right to be

appointed on permanent basis without undergoing selection for recruitment in accordance with Law. The claim was not accepted. The Supreme Court deprecated the continuance of temporary employees over a long period without resorting to regular recruitment. On that view of the matter, the Court issued a Writ of Mandamus to the Government to make regular recruitment in accordance with Law. That is the only relief which can be granted to a person appointed on temporary basis or an eligible person who is aggrieved by the inaction on the part of the University to advertise the post and illegal action in continuing temporary appointments made against permanent vacancies, beyond six months and thereby depriving the eligible candidates equal opportunity in matters relating to employment under the State-guaranteed under Article 16(1) of the Constitution. In a similar situation in which temporary Lecturers appointed u/s 51B of the Act, by the Vice-Chancellor or the Mysore University; sought a direction to the University to appoint them as permanent Lecturers, their claim was negated by this Court, but a Writ of Mandamus was issued to make regular appointments in accordance with Law (See CHANDRA GOWDA v. THE REGISTRAR, MYSORE UNIVERSITY), W.P. No. 16282 to 16284 of 1986, DD 23-6-1987. The said decision applies on all fours to this case.

8. The learned Counsel for the petitioner relied on the Judgment of the Supreme Court in Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, . There is nothing in the said Judgment which supports the plea of the petitioner. The only question decided in that case was that there should be no difference in wages between permanent and temporary employees doing the same kind of work. This decision is based on the principle of equal pay for equal work which is not apposite to this case.

9. There are also, weighty reasons, which compel the rejection of the contention of the petitioner. Firstly the University being "State" as defined in Article 12 of the Constitution, in making recruitment to its service, it is bound to comply with Articles 14 and 16 of the Constitution. In the case of every permanent post and vacancy in the services of the University arising for being filled up, the University is under an obligation to give equal opportunity to all the citizens who have acquired prescribed eligibility and who are desirous of competing in the selection for appointment. The recruitment therefore has to be made by inviting applications by open and wide advertisement and by selection by the selecting authority. Substituting this method, by regularising the services of those appointed on temporary basis for six months after a limited local publication or through local employment, exchange would result in flagrant violation of Articles 14 and 16(1) of the Constitution and in grave injustice to all those more advertised, as there will be no scope for advertisement at all. Secondly, it would give room for nepotism and favouritism and in rendering Section 50 of the Act futile. Thirdly, the very object of selection after due advertisements and competition by the selecting authority which is to ensure the selection of most merited candidates as teachers and as other members of the Staff of the University, would be defeated resulting in incalculable injury to public interest, in

that, the excellence in education and efficiency in administration would greatly suffer. Further, I fail to see as to how just because a temporary appointment, which could be made and made for a period not exceeding six months u/s 51B of the Act is continued even after six months in violation of Section 51B of the Act, confers a right or basis to defeat the provisions of Articles 14 and 16 of the Constitution and Section 50 of the Act. Therefore, the contention of the petitioners has to be rejected.

10. Learned Counsellor the petitioner next submitted that in view of the provisions of the Industrial Disputes Act, persons appointed on temporary basis and who have worked for 240 days continuously have acquired a right to be appointed on permanent basis. This contention is wholly mis-conceived. All that the provisions of Section 25F of the Industrial Disputes Act provides is that the service of a person who had worked continuously for a period of one year or more as defined in Section 25B of that Act cannot be retrenched unless he is given one month's notice or one month's salary in lieu of notice and also he is given 15 days salary for every completed year of service. This provision only prescribes the condition precedent to be obeyed for terminating the services of such a workman and it does not confer any right on the workman for permanent absorption. Apart from that in view of Section 2(oo)(bb) of the Industrial Disputes Act, when the tenure of a person temporarily appointed u/s 51 -B is fixed by that Section as also by the relevant statute, at six months and the appointments were made under those provisions, termination of service of a temporary employee in accordance with the condition of appointment does not amount to retrenchment at all and consequently Section 25F would not at all be attracted (See Shankariah Vs. Karnataka State Road Transport Corporation,

11. Learned Counsel for the petitioners submitted that the Government had referred an industrial dispute between the petitioner and the Management of University (vide Annexure-1) and one of the points of dispute referred for adjudication was as to whether the temporary employees were entitled to be absorbed into the service of the University and pending adjudication of such a dispute the University can neither make regular recruitment nor terminate the service of temporary employees, and therefore this Court should compel the University not to make regular appointment in accordance with Section 50 of the Act and not to terminate the services of temporary appointees. The contention is patently untenable and extraordinary. That the extraordinary jurisdiction of this Court under Article 226 of the Constitution is meant to compel the State/ Statutory bodies to act in obedience to Law; but what the learned Counsel is asking this Court to, do, is to compel the University by a Writ to disobey the Law. Moreover, it should be pointed out that while it is true that the Industrial Tribunal has wide powers in matters relating to conditions of service of workmen, in that, it can create new conditions of service or alter existing conditions of service, it can do so, only if the matter is not regulated by Law. It has no jurisdiction to deal with matters covered by Law, and to make an award directing an employer to regulate the conditions of service otherwise than in accordance with statutory

provision. Law on this aspect is laid down by the Supreme Court in the case of *The Hindustan Times Ltd., New Delhi Vs. Their Workmen*, . In that case one of the questions for consideration was whether it was competent for the Industrial Court to consider a matter relating to condition of service covered by statutory provisions and to make an award directing the management to make a provision different from the one contained in the statute. The question was answered in the negative. Relevant portion of the Judgment reads:

"It is next contended that the Tribunal's directions as regards sickness leave offend the provisions of Delhi Shops and Establishments Act, 1954. Admittedly, a large number of workmen covered by the reference are governed by the provisions as regards leave under the Delhi Shops and Establishments Act, 1954. Section 22 of that Act fixes the maximum for sickness or casual leave with wages to a period of 12 days and further provides that such leave shall not be accumulated. It is thus clear that as regards those workmen to whom the Delhi Shops and Establishments Act, 1954 applies the Tribunal has acted illegally in fixing the period of sick leave at 15 days and permitting accumulation."

This decision was followed by a Division Bench of this Court in *A. BHOJARAJA SHETTY v. STATE OF MYSORE*, W.P. No. 2134 of 1967 DD 1-9-1972. In that case this Court held that when age of superannuation of Municipal Servants was fixed by a statutory provision, the Industrial Court had no jurisdiction to deal with the matter and make an award providing higher age of superannuation. Ratio of this decision was followed by this Court in the case of *HOTEL ASHOK v. INDUSTRIAL TRIBUNAL* 64 F.J.R. 240 @ 255. In the case of Hotel Ashok when the provisions of ESI scheme was applied to the workmen, Government referred a point of dispute for adjudication which called upon the Industrial Tribunal to decide to whether the management was justified in introducing the ESI scheme to its employees. This Court held, as the condition of service was regulated by Law, the reference was incompetent and that the Industrial Tribunal had no jurisdiction to decide the matter which was governed by the provisions of ESI Act. Relevant portion of the Judgment reads:

"If that is the position, when a binding settlement is in force, it is more so when the conditions of service are laid down by law and in this case by the provisions of the ESI Act, the Industrial Tribunal has no jurisdiction to hold that the management was not justified in implementing the provisions of the ESI Act and ask it not to implement it.

15. (1) In the case of *A. BHOJARAJA SHETTY v. STATE OF MYSORE* (W.P. No. 2134/1967 decided on 1-9-1972) a Division Bench of this Court held that when a condition of service like age of retirement was fixed by a statutory provision the Industrial Tribunal had no jurisdiction to decide whether the age of retirement so fixed by law was justified, and to hold that it was not justified and to fix a higher age of retirement. In view of the ratio of this Judgment, it is clear that the Tribunal had no jurisdiction to ask the management not to implement the provisions of the ESI Act."

From the aforesaid authorities, it is beyond doubt that the Industrial Court has no jurisdiction to make an award directing the University to make recruitment to non-teaching and ministerial posts in its service otherwise than in accordance with the provisions of Section 50 of the Act, Therefore, the prayer that the University should be directed not to proceed to make regular recruitment and to terminate the services of temporary appointees which it is bound to do in view of Section 50 and Section 51B of the Act read with the statutes governing regular and temporary appointments, cannot be granted.

12. Before concluding it is necessary to observe that the case also raises the question as to whether the petition by the association seeking individual relief to its members of the nature sought for in the petition is maintainable under Article 226 of the Constitution. As the petition fails on merits, it is unnecessary to decide that question.

13. In the result, I make the following :

ORDER

The Writ Petition is dismissed.