

(2015) 07 KAR CK 0165

In the Karnataka High Court

Case No : Writ Petition Nos. 111289-111290/2014(GM-RES)

Neeta Y. Patil and Others

APPELLANT

Vs

The Secretary and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Karnataka State Universities Act, 2000 — Section 28(1)(e), 39, 39(1), 9

Citation : (2015) 07 KAR CK 0165

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : Basavaraj Godachi, for the Appellant; Mahesh Wodeyar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J—Petitioners in these writ petitions have sought for quashing the order dated 12-11-2014 passed by the first respondent withdrawing the nomination of the petitioners as members of syndicate and nominating respondents 4 and 5 as members of the syndicate of Rani Channamma University.

2. In the writ petitions, it is contended that the first petitioner is a holder of Master Degree in Computer Management from Pune University. She also served in Kirthan and Pandit Information Technology and she worked in Bala Bharathi Project for publishing books for secondary schools for Maharashtra State Education Board and also served as a Guest Faculty in different colleges and renowned educationist. The second petitioner is a master degree holder in agriculture (M.Sc.-Agri.) from Tamil Nadu Agricultural University, Coimbatore. He worked as a Faculty and Associate of Research Activities in Agricultural Entomology in the University of Agricultural Sciences, Bangalore and Dharwad and also worked as Research Assistant with ICAR. He has totally 42 years of experience in the field of research and taking keen interest in the Educational Institutions.

3. Taking into consideration the educational background, the Governor of the State who is the Chancellor of the second respondent-University, on 26-03-2014 nominated the petitioners as members of the Syndicate in exercise of his power u/s. 28(1)(e) of the Karnataka State Universities Act, 2000 (hereinafter referred to as "the Act" for short). In pursuance of nomination as members of the Syndicate, the petitioners with all their enthusiasm started attending Syndicate meetings of the second respondent-University as the said University is a newly established University in the Border District of the Karnataka State. The petitioners have visualized many improvements and developments to be incorporated to bring the University to the level of modern University in the State. During the course of meeting, the petitioners noticed several irregularities in the functioning of University. Though some of the Professors are not eligible for extension of UGC pay scale, the said benefit has been extended in violation of the University Regulations. Without following the procedure prescribed under the law, the University has recruited 126 non-teaching staff to the University. Though the petitioners objected for the said agenda, without taking into consideration the objections raised by them in the Syndicate meetings, the appointment of 126 non-teaching staff was approved. Though the subcommittee consisting of the petitioners was constituted to examine the irregularities in the selection of non-teaching staff, without waiting for submission of the report, the appointment of non-teaching staff was confirmed. The payment of a sum of Rs. 1.85 crores has been made for the printing of answer papers without approval of the Syndicate. The Registrar during his medical leave, has entered into an agreement with the visiting Professor S.M. Jamdar, retired IAS Officer extending his term for a further period of two years is contrary to law. Though several irregularities were pointed out by the petitioners in the meeting with regard to functioning of the University, no action has been taken. The petitioners addressed a letter to the Vice-Chancellor to convey the meeting of Syndicate. The meeting date was fixed on 13-11-2014. However, one day prior to the meeting of the Syndicate, the first respondent by an order dated 12-11-2014 withdrew the nomination of petitioners as syndicate members of Rani Channamma University in exercise of power under Section 39(1) of the Act and nominated respondents 4 and 5 as members of the syndicate of the University by the order dated 12-11-2014. Being aggrieved by the same, the petitioners have filed these writ petitions.

4. Sri Basavaraj Godachi, learned counsel appearing for the petitioners contended that the order passed by the first respondent withdrawing the nomination of the petitioners as members of the Syndicate of Rani Channamma University is contrary to law. While nominating the petitioners as members of the Syndicate, their tenure was fixed for a period of three years. Before expiry of the said tenure, nomination of the petitioners cannot be withdrawn. The first respondent invoking the power under Section 28(1)(e) of the Act nominated the petitioners who are the eminent educationists. In the order of nomination, it has been clearly mentioned that their term is for a period of three years. Such being the case, nomination of the petitioners cannot be withdrawn by the first

respondent. However, the nomination of any members to any of the authorities shall be removed at any time by the Chancellor on the ground of misbehavior, misconduct only after holding enquiries. In the instant case, no enquiry has been conducted while removing the members of Syndicate. The order impugned in these writ petitions is passed in violation of principles of natural justice. There is no misconduct or misbehavior on the part of the petitioners. Hence, the order passed by the first respondent withdrawing the nomination of the petitioners invoking Section 39(1) of the Act is contrary to law. Since the petitioners have pointed out various irregularities in the management of the University as members of the Syndicate, the Syndicate shall have the power to manage the affairs of the University particularly in the administration of the fund, maintaining the proper accounts of the University, affiliation of the colleges, enact, amend or repeal the statutes and over-all control of the Universities is under the control of Syndicate. The petitioners are interested in the proper administration of the University. In view of pointing out the irregularities regarding functioning of the University, the petitioners were removed as members of the Syndicate even before expiry of their term of 3 years, which is contrary to law and sought for setting aside the same by allowing the writ petitions.

5. On the other hand, Sri Mahesh Wodeyar, learned counsel appearing for the first respondent, Sri Anoop Deshpande, learned counsel appearing for the respondent No. 3 and Sri Mruthyunjaya Tata Bangi, learned counsel appearing for respondent No. 4, and Ramesh Hoogar, learned counsel appearing for respondent No. 5 argued in support of the order passed by the first respondent.

6. Sri Mahesh Wodeyar, learned counsel appearing for the first respondent contended that the petitioners were nominated as syndicate members of the Rani Channamma University, Belgaum under Section 28(1)(e) of the Karnataka State University Act for a period of three years. They were holding the said posts during the pleasure of respondent No. 1 subject to Section 39(1) of the Act. Section 39(1) of the Act contemplates that any member nominated under this Act shall hold the office during the pleasure of the nominating authority. In the instant case, the petitioners were nominated by the first respondent under Section 28(1)(e) of the Act. The first respondent is empowered to withdraw the pleasure of nomination under Section 39(1) of the Act and also empowered to nominate other members to the syndicate under Section 28(1)(e) of the Act. Therefore, there is no irregularity or illegality in the nomination of respondents 4 and 5. The case of the respondents is that the petitioners are not the civil servants; they were not holding the civil posts and their nomination as members of the Syndicate has been under Section 28(1)(e) of the Act. Section 39(1) speaks about the holding of the post during the pleasure of the nominating authorities. There is no violation of Articles 14 and 16 of the Constitution of India or protection under Article 311 of the Constitution of India is not available. The petitioners have no legally vested right to demand that they shall be continued as members of the Syndicate for a fixed period of three years. The petitioners shall hold the office so long as the first respondent does not withdraw the

pleasure. He also contended that the issue raised in these writ petitions is covered by various judgments of this Court and also Hon"ble Supreme Court. He relied upon the judgment reported in A.M. Bhaskar and Others Vs. State of Karnataka and Others, (2013) 4 AKR 339 : (2013) ILR (Kar) 4182 : (2013) 5 KarLJ 519 : (2013) 4 KCCR 2988 : (2013) 3 LLN 663 ; Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, AIR 1993 SC 1440 : (1993) 4 JT 483 : (1993) 1 SCALE 663 : (1993) 2 SCC 242 : (1993) 2 SCR 34 ; Krishna Borate Vs. State of Maharashtra and Others, AIR 2001 SC 695 : (2001) 1 JT 631 : (2001) 1 SCALE 339 : (2001) 1 SCR 504 : (2001) 1 UJ 490 : (2001) AIRSCW 337 : (2001) 1 Supreme 323 ; Pu Myllai Hlychho and Others Vs. State of Mizoram and Others, (2005) 1 JT 263 : (2005) 2 SCC 92 : (2005) 1 SCR 279 ; Brij Mohan Lal Vs. Union of India (UOI) and Others, (2012) 4 SCALE 450 : (2012) 6 SCC 502 : (2012) AIRSCW 3906 and sought for dismissal of the writ petitions.

7. I have carefully considered the arguments addressed by the learned counsel for the parties, perused the order impugned and other relevant records.

8. The records clearly disclose that the first respondent nominated the petitioners as members of the Syndicate of Rani Channamma University, Belgaum in terms of Section 28(1)(e) of the Act. The petitioners are educationists and aware of the terms and conditions of their nomination under Section 28(1)(e) of the Act. Under Section 28(1)(e) of the Act, two members have to be nominated by the Chancellor from among eminent educationist, or persons from Commerce, Banking, Industry or other professions. Section 39(1) of the Act contemplates that any member nominated of any of the authorities under this Act shall hold the office during the pleasure of the nominating authority concerned. The petitioners were fully aware of the said fact. Having accepted their nomination as members of the Syndicate, it is not open to the petitioners to contend that their nominations have been withdrawn as members of the Syndicate without following the procedure prescribed or in violation of principles of natural justice. The appointment of the petitioners is pleasure appointment. Hence, it is not open to them to make any allegations with regard to action of the respondents. The Hon"ble Supreme Court in a judgment reported in 2012 SCC 502 referred to above held as under:

"The doctrine of pleasure, under our Constitution, deals with three different categories of posts. First, offices which are held during the pleasure of the President or Governor, as the case may be; second, offices held during the pleasure of the President or Governor but subject to some restrictions against removal; and third, offices held for a specified term but without immunity against the removal, except by impeachment. The third category of the post is not subject to the doctrine of pleasure. Having regard to the constitutional scheme, it is not possible to extend the type of protection against removal granted to one category of officers, to another category. In India, contrary to the law in England, even the doctrine of pleasure has limitations and restrictions.

It is believed that, where the rule of law prevails, there can be nothing like unfettered discretion or unaccountable action. The degree of reasoning required in support of the decision may vary. The degree of scrutiny during the judicial review may vary. But the need for reasoning exists. As a result, when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, this power should, however, necessarily be read as being subject to the fundamentals of Constitutionalism."

9. The Hon"ble Supreme Court in a judgment reported in *Pu Myllai Hlychho and Others Vs. State of Mizoram and Others*, (2005) 1 JT 263 : (2005) 2 SCC 92 : (2005) 1 SCR 279 held as under:

"23. Ordinarily, the "pleasure" doctrine comes into play when the appointment of a Crown servant is terminated. Lord Diplock in *Chelliah Kodeeswaran V. Attorney General of Ceylon*, AC at p. 1118, stated the English law as follows:

"It is now well established in British constitutional theory, at any rate as it has developed since the eighteenth century, that any appointment as a Crown servant, however subordinate, is terminable at will unless it is expressly otherwise provided by legislation."

24. The Constitutional protection and privileges available under Article 311 to a person who holds a civil post under the Union or States are not applicable to a member of a Council who is nominated by the Governor.

25. This Court in *Rash Lal Yadav (Dr.) v. State of Bihar* held that the principles of natural justice are not applicable in the absence of express words. That was a case where the removal from the Chairmanship of the Bihar Schools Board was challenged. Relying on an earlier decision in *A.K. KRAIPAK v. UNION OF INDIA* it was held that if the statute, expressly or by necessary implication, omits the application of the rule of natural justice, the statute will not be invalidated for his omission on the ground of arbitrariness.

26. Therefore, the contention of the appellants that these members of the Council were not heard before their nomination/appointment was terminated and hence illegal, cannot be accepted, as they held their office at the pleasure of the Governor."

10. Further, the Hon"ble Supreme Court in a judgment reported (1993) 2 SCC 243, while examining the "pleasure" doctrine in paragraph 12 held as under:

"In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations."

11. This Court in a judgment reported 2013 (5) KLJ 519 while examining Section 28(1)(e) and Section 39(1) of the Karnataka State Universities Act held as under:

"The petitioners have no legally vested right to demand that they be continued as the members of the Syndicate for fixed period of three years. The petitioners are neither elected nor appointed. They are nominated and they would hold the office so long as the Government does not withdraw its pleasure. The Apex Court in the case of OM NARAIN AGARWAL has held that the nominated members of a municipal board fall in a different class and that therefore they cannot claim equality with the elected members. The Apex Court has negated the submission that there would be a constant fear of removal at the will of the State Government and that it would demoralize the nominated members in the discharge of their duties."

The said judgment was confirmed by the Division Bench of this Court on 16th December 2013 in W.A. No. 31037/2013.

12. There is no dispute that the petitioners are nominated as members of the Syndicate under Section 28(1)(e) of the Act for a period of three years. However, their nominations have been withdrawn by the first respondent by its order dated 12-11-2014 in exercise of the power conferred on them under Section 39(1) of the Act. Sub-section (1) of Section 39 provides that any member nominated of any of the authorities under the Act, shall hold office during the pleasure of nominating authority. In the light of the above provisions, I find no infirmity or irregularity in the order passed by the first respondent. The petitioners have no vested right to continue in the posts, till the completion of period of three years, so long as their nomination is under the pleasure of the first respondent. The petitioners have not made out a case to interfere with the same. Accordingly, the writ petitions are dismissed.