

(1995) 09 KAR CK 0057

In the Karnataka High Court

Case No : Writ Petition No"s. 17633-34 of 1992 etc.

Parameshwarappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 25-09-1995

Acts Referred:

Citation : (1996) ILR (Kar) 252 : (1996) 5 KarLJ 256

Hon'ble Judges : Saldanha, J

Bench : Single Bench

Advocate : B.V. Nagarathna, for Kesvy and Co, for the Appellant; Chidananda Ullal, Government Advocate for R-1 to R-3, for the Respondent

Final Decision : Allowed

Judgement

Saldanha, J.—This group of Petitions raises one common point which is one both of interest as also of considerable legal significance. I refer to the latter aspect of the matter for the reason that the petitioners are members of the teaching profession and there are several similarly situated persons to whom this Judgment will apply even though they may not have moved this Court through specific Petitions. Briefly stated, the question that is posed for decision is as to whether the U.G.C. scales of salary that were made applicable with effect from 1.1.86 would apply to Lecturers who are attached to the Pre University Course (hereinafter referred to as the "P.U.C."). The objection on the part of the Government is a two fold one. In the first instance, it is contended that the P.U.C. has nothing to do with the University in so far as even the examination is conducted by a separate Board and that therefore, the petitioners do not come within the categorisation of University teachers. The second contention that is raised is that the P.U.C. is run by what is known as the Junior College and that this Institution is distinguishable from the regular College which conducts the Degree Courses. The Government has contended therefore that viewed at from either angle, the petitioners cannot be categorised as University Teachers and if this is the position, that the U.G.C. scales will not and cannot apply to them. The

petitioners who are aggrieved by this decision have moved this Court through the present set of Petitions and it is their contention that they are entitled to a direction that the U.G.C. scales be made applicable to them from the effective date i.e., 1.1.1986.

2. The petitioners' learned Advocate has seriously attacked the classification as a result of which the petitioner is disqualified from receiving the U.G.C. scales principally because she contends that it is arbitrary and discriminatory. For this purpose, she has relied heavily on the factual position whereunder she contends that all these petitioners are on the teaching staff of what is known as I Grade Colleges or in other words Composite Colleges. Such institutions conduct classes from the P.U.C. upto the Degree level. Petitioners' learned Advocate therefore submits that the distinction sought to be made between the P.U.C. Lecturers and the rest of the Lecturers is an artificial distinction and not a real one in so far as the Institution is one and the same. At this stage, the learned Government Advocate has seriously assailed the factual classification by pointing out that it is not a question as to whether the College is run from the same set of buildings or class rooms but the fact is that the P.U.C. Board is different from the University and he submits that if a careful examination is done it will be evident that the P.U.C. classes are conducted in a segregated area which is set aside and known as the Junior Colleges. He likens the situation to some of the educational institutions which may be running Schools and Colleges together, wherein within one campus different classes are conducted right from the 1st standard upto the Degree level and where different categories of persons deal with each set of students. It is his contention therefore that even if in these Composite Colleges the Institution is one and the same or the classes are conducted within the same campus that a distinction is still permissible between the Junior College and the Regular College. As regards the aspect of classification, he submits that it can only be attacked if it is arbitrary and unreasonable and he submits that there is absolutely nothing arbitrary in the matter of drawing a barrier between the P.U.C. Lecturers and those taking the Degree classes because they deal with two different sets of students. The courses are dissimilar and admittedly, the P.U.C. classes as far as academic standards and curriculum is concerned, are a step lower than the Degree classes.

3. In this context, the petitioners, learned Advocate has placed reliance on a Decision of the Supreme Court reported in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and has laid emphasis on the 5th test set out by the Court at page 549. The Supreme Court had occasion to refer to an earlier Decision of the Court reported in *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, wherein the Court was dealing with a situation involving the exercise of discretion by the Government while implementing a particular provision. Petitioners' learned Advocate demonstrates that in the present instance the Notification issued by the Government of India is clear and unambiguous in so far as it specifies that it shall apply to "all teachers". She therefore submits that the error has occurred in the application and that the

respondents were wrong in creating a sub-classification among the Lecturers and holding that those of them who belong to the Junior College and were attached to the Pre University Classes would not qualify for the U.G.C. scales. The learned Advocate has pointed out two very significant aspects of the matter to the Court, the first of them being that for purposes of qualifying to teach the P.U.C. class, the academic proficiency that is expected from the teachers is virtually on par with their counterparts who teach the Degree classes. Secondly, she has illustrated that in the majority of cases if not all of them, the same set of Lecturers is required to teach both the P.U.C. and the Degree Classes and that therefore, the distinction sought to be made by the respondents, that they are two separate categories is unreal and erroneous. She I submits that the distinction is liable to be struck down on the ground of arbitrariness in so far as it fails to pass the test of reasonableness, and that it is not based on any rational principles. The sequester is that since the action is arbitrary, it discriminates against an entire class of persons such as the petitioners who are singled out for being deprived of the benefit of the U.G.C. scales without there being any valid justification therefor.

4. In this context, the second ground of attack that has been canvassed is that the discretion has been wrongly exercised. In this regard, the learned Advocate has relied on a passage from the Halsbury Laws of England, 4th Edition, Volume. 1, page 35 (Para 33) which embodied the following principle:-

"A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests; hence it must be prepared to consider making an exception to the general rule if the circumstances of the case warrant special treatment."

5. Dealing with the aspect of self imposed Rule of Policy, the learned Advocate has illustrated how arbitrary and harsh the consequences of this decision are by pointing out that if one were to apply the reverse test, it would be interesting to note that some of the Lecturers are in fact getting the benefit of the UGC scales while they teach the P.U.C. classes only because of the fact that they are categorised as being on the staff of the regular College and thereby, are essentially persons who are qualified to teach the Degree classes. As far as this submission is concerned, the learned Government Advocate has defended the action on the ground that this is a valid exercise of discretion. He once again reiterates the position that the appointments in the P.U.C. Colleges are approved of by the P.U.C. Board and not by the University. He submits that before the discretion can be found fault with it will be necessary for the Court to ascertain whether or not the petitioners can be categorised as persons coming under

the definition of University Teachers. It is his submission that dehors the fact that these may be Composite Colleges, that the petitioners have nothing to do with the University in so far as they were neither appointed nor approved of by the University, that the U.G.C. scales by their very definition only apply to University Teachers and that therefore, the Government was fully justified in having withheld these benefits from the category of persons who are not University Teachers.

6. There is a third ground of attack from the petitioners' side in so far as, almost in response to the aforesaid objections that have emanated from the State quarters, the learned Advocate has submitted that irrelevant and extraneous circumstances and criteria have been taken into consideration for purposes of arriving at the decision. In this context, reliance is placed on two Decisions of the Supreme Court the first of them reported in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, wherein under slightly different circumstances, the Court was constrained to observe that a decision which proceeds on the basis of factors other than strictly relevant considerations is liable to be quashed. In the second Decision reported in *Rohtas Industries Vs. S.D. Agarwal and Others*, the Court had occasion to hold that the decision or the one on collusion must be based on adequate material. In this context, the learned Advocate points out that there are categories of non-teaching staff attached to these institutions such as Librarians, Physical Instructors etc. to whom the U.G.C. scales have been made applicable whereas in the case of the Lecturers who form part of the teaching staff, a super technical approach is adopted and the scales are disallowed only on the basis of the descriptive nature of the course namely the Pre University Course. The submission is that in a serious matter like this which concerns the careers of a large number of persons belonging to the teaching profession, that the respondents ought to have taken into consideration the surrounding circumstances, the factual data and all relevant material before arriving at a decision instead of having jumped to a conclusion purely on the basis of the designation of the Course alone. As far as these submissions are concerned, learned Government Advocate sought to counter them by contending that where there are two clear cut Institutions which form part of the Composite College which is why it has got this designation, that the only material which is relevant and which has been taken into account is the fact that the Director has examined the dispute from the angle as to whether or not the course is conducted by the University and whether the Junior College or the P.U.C. Course is in any manner run by, supervised by or examined by the University. He has argued in the reverse by pointing out that the other considerations according to him are irrelevant and that these are the only material aspects for purposes of deciding the issue.

7. There are two other angles to this case, the first of them being that the petitioners' learned Advocate has made a grievance that the petitioners' rights have been taken away without their being given an adequate opportunity to represent their cases. She has placed strong reliance on a Decision of the

Supreme Court reported in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, The principle laid down by the Supreme Court in that case was that even while dealing with a decision of a quasi judicial Tribunal, that it is impermissible to make a decision adverse to a party without giving him a reasonable opportunity of meeting the allegations against him. The petitioners' learned Advocate contends that the petitioners are seriously prejudiced in so far as they have been relegated without giving them a chance to point out to the authorities that for purposes of categorisation they must rank on par with the other members of the staff of a Composite College. As far as this aspect of the matter is concerned, the only reply which the learned Government Advocate could put forward was that this is not a case where any adverse orders were being passed against the petitioners in the sense that unlike disciplinary proceedings etc., that this was a purely administrative decision which did not require any prior notice to the petitioners. I do concede that an administrative order of this type is distinguishable but there is some substance in the petitioners' grievance that if the Government decided despite the wording of the Central Government directive to deprive the petitioners of the U.G.C. scales, that the Department ought to have informed them of what is working in the Government mind and given them an opportunity to represent against it. The advantage of following such a procedure would have been that the petitioners would have been able to point out all that they have done now before this Court and the present litigation would undoubtedly have been avoidable.

8. The last head of challenge is that the bar of Promissory Estoppel will come in the way of the respondents in so far as the petitioners have already altered their position to their prejudice and by depriving them of their U.G.C. Scales, that the Department is putting them in an impossible situation. Reliance is placed on the decision of the Supreme Court reported in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, which is the leading case on the point of promissory estoppel. A parallel is sought to be drawn from the principles laid down in that Decision and it is argued that the petitioners having opted for the U.G.C. Scales cannot thereafter be deprived of the same as there is no legal justification therefor. To my mind, the submission under this head is relatively weak and does not really require to be pressed because the petitioners would basically succeed or lose on the main ground namely the aspect of rational classification. The learned Advocate sought to reinforce her argument by pointing out that no distinction is made as far as Government Colleges are concerned between the two categories of staff and secondly, that the U.G.C. Scales were effectively slightly higher emoluments which the Central Government is essentially funding in so far as 80% of the financial burden comes from the Central Government and it is only 20% contributed by the State. Learned Advocate submits that in these circumstances it was virtually a beneficial scheme promulgated by the Central Government and that it is most unfortunate that the implementation of the schemes vis-a-vis persons like the petitioners are concerned is being impeded by the State Government.

9. The Decision of this case does not require any very elaborate consideration. The basic grounds of attack of challenge that have been presented on behalf of the petitioners are both justified and well founded. It is true that the learned Government Advocate has put up a spirited opposition to these Petitions in so far as he has tried to demonstrate that Junior Colleges and the Degree Classes are two Institutions distinct and apart from each other regardless of where they are situated or whether they are part of the same College and that consequently, the staff attached to the two Institutions have validly been segregated into two separate classes. We are here concerned with only a set of cases concerning the Composite Colleges and to my mind, one cannot apply either technical, artificial or unreal tests while examining and deciding this issue. One would have to ultimately look to the structure of the teaching profession as a whole and there is considerable substance in the contention that if the persons who are sought to be put into two sectors are similarly qualified and if their teaching functions are interchangeable as in fact they are, and further more, if the Institutions are virtually linked up, that for purposes of evaluating the emoluments payable to them, segregation would not be permissible. The law envisages that a classification must be based on real and valid considerations and that it must also take cognizance of all relevant material. Undoubtedly, thanks to the wisdom of a few persons who are constantly experimenting with the educational field and are responsible for most of the disasters that has resulted, we have this unique situation of a course which is called the Pre University Course. According to the authorities this course is neither School nor College and is likened almost to the proverbial situation of being neither fish nor flesh, One needs to go back a few years for purposes of noting that as far as the School curriculum was concerned, that it remains unchanged and that it is only as far as the structure of the basic classes are concerned, or the Collegiate education is concerned, that the changes have been made. A student, under the old scheme after passing out from school came immediately within the jurisdiction of the University under what was at that time known as the Intermediate Course. Certain changes were thereafter made mainly in the nomenclature and a separate Board has been set up to hold a P.U.C. Examination. One cannot go only by the designation of this Course because one needs to examine the content of it and in particular the academic standards, the curriculum and as far as the present Cases are concerned, the qualifications and proficiency level that are expected from the teachers or Lecturers who take these classes. If the objection of the respondents with regard to the gradation is to be upheld, to my mind, it would lead to a situation of absurdity because even as far as the Degree Classes are concerned, there are different proficiency levels which are expected from the teachers who take the Junior classes as against the Senior ones and to my mind, therefore, such a classification would be wholly artificial, unreal and impermissible. The true nature of the job functions is the deciding criteria and it is for this reason advisably, that the Central Government being conscious of the nomenclatures prevalent in different parts of the Country prescribe that the U.G.C. Scales would be applicable to "all teachers". This Court cannot uphold the contention or the

decision of the respondents which limits the application of the term "all teachers" only to those who teach the Degree Classes in the Composite College because to my mind, the entire set of staff attached to those Colleges will have to be treated equally. In the absence of these, the decision would be hit by the vice of arbitrariness in so far as it would be guilty of hostile and invidious discrimination against one small class of teachers attached to the P.U.C. levels. I am conscious of the fact that by categorising all these teachers or Lecturers on an equal footing, the Court is overriding the distinctions sought to be made by the State. I do not accept the contention that the University has nothing to do with this class of teachers because the respondents were constrained to admit that even though the approvals come from the P.U.C. Board, the College is treated as one entity and that for all administrative purposes such as grants etc., it comes under the jurisdiction and control of the University. This in fact is the ultimate and decisive factor which virtually concludes and clinches the matter in favour of the petitioners.

10. Under these circumstances, the petitioners are entitled to succeed. Rule is accordingly made Absolute. It is directed that the petitioners and all others similarly situated who are attached to the Composite Colleges shall be entitled to the U.G.C. scales with effect from 1.1.86. It would undoubtedly be necessary to take corrective action in the matter and since there may be several persons and since the records span several years, I propose to grant reasonable time to the respondents to implement the direction of this Court. This shall be done in two stages to minimise the prejudice that would result to the petitioners thereby.

11. In the instant case, it shall not be difficult for the respondents to recompute the monthly salary payable to the petitioners which will undoubtedly have to be enhanced. This exercise shall be completed within a period of one month as a result of which the higher salary shall become applicable on and from the date on which the salaries for the month of October 1995 are disbursed. Petitioners shall ensure that the requisite paper work such as the submission of bills, papers etc., is complied with by them in order to ensure that there is no delay in the implementation of this direction.

12. As far as the arrears are concerned, the petitioners shall ensure that the requisite paper work is completed at the very earliest and the respondents shall accordingly arrange to compute and pay to the petitioners the arrears which shall be done as expeditiously as possible but in any event before 31.3.1996. The petitioners belong to the teaching profession and to my mind they have been wrongly deprived of the benefits to which they were legitimately entitled to. This Court would have been justified in awarding interest to them which is not being done. It is further directed that if there is any delay for whatever reason in the implementation of these directions within the prescribed timeframe, that the respondents shall be liable to pay interest computed at the rate of 18% per annum compounded to the petitioners if the deadlines are breached.

13. The Petitions are accordingly allowed. Rule is made Absolute to this extent.

In the circumstances of the case, there shall be no order as to costs.

14. The respective Colleges are formal parties to these Petitions. Though they are not appearing separately, the directions of this Court shall be communicated to them and the responsibility of ensuring that the requisite papers, bills are forwarded within the prescribed time shall be complied with by the Principals of these Colleges without any delay.