

(2001) 11 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 9517 of 2001

Prof. M.S. Ramaraju

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 22-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 KCCR 471

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Basavaprabhu S. Patil, for the Appellant; Rosa Paremal, Government Pleader for Respondents 1 to 3 and A.Y.N. Gupta, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—The Petitioner, Prof. M.S. Ramaraju, Principal, Seshadripuram Law College, Vyalikaval, is before this Court seeking for the following prayers on the following facts:

(i) Issue an appropriate writ or order, declaring that the Petitioner is entitled to the pay scales as are admissible to the posts of Reader and Principal in the Government colleges;

(ii) issue a writ of mandamus or any other writ or direction, commanding the Respondents to fix the pay of the Petitioner first in the cadre of Reader and thereafter fix his pay in the cadre of the Principal with effect from 17.6.1991 in the light of the pay scales revised from time to time since the date of his appointment and grant him all consequential benefits following therefrom;

(iii) grant such other reliefs this Hon'ble Court deems fit in the circumstances of this case including an order as to costs, in the interest of justice and equity.

2. The Petitioner holds a degree in Master of Law. He joined the 4th Respondent-

college as a Reader. The said college is recognised and affiliated to Bangalore University. The 5th Respondent-Bar-Council has granted approval of affiliation in respect of Three Year Day Law Course. On retirement of one Sri M.T. Ramalingaiah, the Petitioner was appointed as the Principal in terms of an order dated 8th June, 1991. He was granted a consolidated salary of Rs. 3,550/- per month. It was revised and he was paid Rs. 4,000/- in 1995. It was again raised to Rs. 5,000/- in the year 1997 and as on today he is getting Rs. 6,250/-. The Petitioner states that the service conditions are governed by the State Universities Act read with the Bangalore University Statutes and also the Bar Council of India Rules. In terms of these Statutes and Rules, according to the Petitioner, he is entitled for the scales recommended by the U.G.C. from time to time. The Petitioner has sought for the U.G.C. scales and the same is not being made available and hence he is before this Court.

3. Notice was issued pursuant to which the Respondents have filed their statement of objection. They say that the 4th Respondent is not a State and hence no writ is available. The Respondents further say that none of the private, unaided law colleges not belonging to the Government are paying scales recommended by the U.G.C. They also say that no relief can be granted.

4. Heard the Counsel for the parties.

5. Sri Basava Prabhu S. Patil, learned Counsel took me through the pleadings and took me through the material facts to contend that the Petitioner is entitled for U.G.C. Scale. He also refers to me the Judgments reported in AIR 1998 SC 295; K. Krishnamacharyulu and Ors. v. Sri Venkateswara Hindu College of Engineering and Anr. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, and a Judgment of this Court reported in S.S. Anand and Others Vs. The Management of Mahatma Gandhi Vidya Peeta (Regd.), Bangalore and Another,

6. Per contra, Mr. A.Y.N. Gupta, learned Counsel for the contesting Respondent reiterates the grounds with regard to the maintainability of the petition. He also refers to me Arya Vidya Sabha, Kashi and Another Vs. Krishna Kumar Srivastava and Another, 1976 (2) SCC 53 Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors. and Shankarappa Sharanappa Gaure Vs. The Deputy Director of Public Instructions, Bidar and others,

7. After hearing the parties, the following order is passed:

8. Admittedly, the Petitioner is working as a Principal of a Law College in Bangalore. The U.G.C. has fixed the pay scales to law colleges in terms of the notification issued from time to time. The Bar Council has stated that all teachers are to be paid as per the UGC norms. They further say that the affiliation is subject to certain conditions. One such condition being the payment of U.G.C. scales. The Bangalore University Statute provides for service conditions of teachers in the Colleges affiliated to Bangalore University. Clause 23(3) states "the pay and allowances of teachers shall not be less than the scales of pay and

allowances of teachers of corresponding status in the Government Colleges". The Bar Council of India has framed rules and Rule 10 of the Rules provide for "the salaries paid to the Principal, Full time and Part time teachers shall be according to the scales recommended by the U.G.C. from time to time". In the light of the Bangalore statute and the rules framed by the Bar Council of India, it is clear to me that the Petitioner is entitled for U.G.C. scales. The same has not been granted, which is admitted by the Respondents. Even the Bar Council has supported the case of the Petitioner in the matter of U.G.C. pay scales. In these circumstances, the Petitioner has made out a case for a direction at my hands with regard to the extension of U.G.C. scales payable to him. Hence a direction is issued to provide U.G.C. scale as was prevailing from time to time and as applicable to the Petitioner in the case on hand by the Respondents.

9. The Counsel for the Respondents has raised objections in the case on hand. According to him, the Petitioner has a remedy in terms of the Judgment of this Court in Shankarappa Sharanappa Gaure Vs. The Deputy Director of Public Instructions, Bidar and others, . It is true that this Court has ruled in the said case that a remedy of Section 131 is available. But in the case on hand, since the facts supports the Petitioner, no useful purpose is served by relegating the Petitioner to a remedy under the Education Act. Hence, the objection of alternative remedy is rejected.

10. The 2nd objection of the Respondents is that no writ can be issued to the Respondents. The Counsel for the Respondents strongly relies on the Judgment of the Supreme Court reported in Arya Vidya Sabha, Kashi and Another Vs. Krishna Kumar Srivastava and Another, That was a case dealing with a dismissal of an employee and it was a case of a direction with regard to reinstatement. On the facts of that case, the Supreme Court ruled that the Court cannot order reinstatement of a servant who has been dismissed by the College authorities. Similarly, the 2nd Judgment reported in 1976 (2) SCC 53 Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors. is also clearly distinguishable on facts. That was a case in which the Court was considering with regard to a body being a State or not within the meaning of Article 12 of the Constitution of India. It is not a case of the Petitioner that the Respondent is a statutory body. Therefore, this Judgment is also not applicable to the facts of the case. On the other hand, the Supreme Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, has ruled in para 14 as under:

They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authority. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has superadded protection by University decisions creating a legal right-duty

relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

13. In para 15, the Court notices the observation of Rt. Hon Lord Denning in the following words:

At one stroke the Courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particulars, in order to qualify, the applicant had to get the leave of a judge.

The statute is phrase in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the Courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are - and who are not - public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing.

14. Again in para 16, the Court rules as under:

There, however, the prerogative writ of mandamus confined only to public authorities to compel performance of public duty. The "public authority" for them means every body which is created by statute - and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose.

In paras 19 and 21, the Court rules as under:

The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter,

common law, custom or even contract". We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition".

In the said case, the Supreme Court has considered the Judgment of 1976 (2) SCC 53 (Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors.), which has been relied upon by the Counsel for the Respondents to come to this conclusion. The Supreme Court has ruled that in appropriate cases, writ can be issued even in respect of a Trust running college. Similarly, this Court in a recent Judgment reported in S.S. Anand and Others Vs. The Management of Mahatma Gandhi Vidya Peeta (Regd.), Bangalore and Another, has ruled in para 11, after referring to the Judgment in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, as under:

The expression "any person or authority" used in Article 226 of the Constitution are not confined only to statutory authorities and instrumentalities of the State, but cover any other person or body performing public duty and that what is important is the nature of the duty imposed on the body judged in the light of the positive obligation owed by the person or the authority to the person affected. If a positive obligation exists, a mandamus cannot be denied. Mandamus is a very wide remedy, which could be easily available to reach injustice to reach injustice wherever it is found.

15. In the light of these subsequent Judgments, I am of the view that the contention of the Counsel for the Respondents has no legs to stand. In the case on hand, Principal of College is only trying to enforce his statutory entitlement in this case. In these circumstances, the objections of the Respondents are unsustainable in law.

16. In the result, this petition is allowed. A direction is issued to the Respondents to provide UGC scale as applicable from time to time and in accordance with law. Parties to bear their respective costs.