

(1996) 06 KAR CK 0064
In the Karnataka High Court
Case No : Writ Petition No. 7325 of 1996

Sadat Ali Khan Zai

APPELLANT

Vs

Bangalore University

RESPONDENT

Date of Decision : 18-06-1996

Acts Referred:

Karnataka State Universities Act, 1976 — Section 51 B

Citation : (1997) ILR (Kar) 43

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : Mohammed Farooq, for the Appellant; M.N. Seshadri, for the Respondent

Judgement

A.J. Sadashiva, J.

1. Though this petition is listed for preliminary hearing, the same is taken up for final disposal with the consent of the Learned Counsel appearing on both sides.

2. The petitioner has filed this petition for quashing Annexure-A by issue of writ of certiorari and for a writ of mandamus directing the respondent to regularise the services of the petitioner in the civil Engineering Department as Teaching Assistant or to absorb the services of the petitioner in the concerned Civil Engineering Department as Lecturer since he possessed the requisite qualification.

3. The petitioner is a holder of Masters Degree in Civil Engineering. He passed his BE, during the year 1985 with First Class and, in the year 1986 he was appointed by the respondent-University as a Teaching Assistant in the scale of Rs. 600 to Rs. 1,300/- on temporary basis as per Annexure-C. It is his case that, till the date of presentation of the petition, the petitioner was working in the same cadre but on a consolidated salary of Rs. 2,100/- as fixed by the respondent-University in the year 1993. It is also on record that, during this period, he secured Masters Degree in Civil Engineering as per Annexure-B. The petitioner having been

appointed in the year 1986 was continued in his post as a Teaching Assistant from time to time by issuing separate orders appointing him every time for a period of six months.

4. The respondent by his note dated March 4, 1993 sent to the Finance Officer, Bangalore University, has stated that, in view of the fact that there are no posts of Teaching Assistant in the University, the services of the petitioner and persons similarly situated cannot be continued and further stated that the salary for the period of their working may be disbursed. In view of Annexure-A the note dated March 4, 1996 issued by the Registrar, the petitioner's services were discontinued. The petitioner having been aggrieved by the order of termination of his services has presented this petition for the reliefs mentioned in the first paragraph of this order.

5. Sri Mohammed Farooq, learned Counsel appearing for the petitioner has contended that, the note issued by the Registrar as per Annexure-A is without jurisdiction as he has no power to discontinue the services of the teachers of the University and his consequential relieving from the duties by the Head of Department is illegal and invalid. He next contended that, in view of the Decision of the Supreme Court in the case of Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, , the University may be directed to take appropriate action for regularisation of his services either in the cadre in which he has been working or in the cadre to which he is eligible.

6. Sri. M.N. Sheshadri, the Learned Counsel appearing for the respondent has contended that the petitioner has no legal right to seek for regularisation of his service as there is no cadre, such as Teaching Assistant in the University. He has further contended that the petitioner was appointed on contract basis for a period of six months and his appointment automatically comes to an end by efflux of time and no writ can be issued directing the University to continue the petitioner in his services as he has not been in service after the expiry of the period to which he was appointed.

7. It is true that the petitioner was appointed as a Teaching Assistant temporarily for a period of six months in the year 1986. It is also true that after the expiry of the period for which he was appointed, he was relieved from his service, but he was continued again temporarily for another period of six months; Similarly, he was continued as a Teaching Assistant on a consolidated salary of Rs. 2,100/- per month by various orders till 11.3.1996, the date on which he is stated to have been relieved of his duties. It is fairly admitted by Sri M.N. Sheshadri, the Learned Counsel appearing for the University that, though the petitioner was appointed as a Teaching Assistant, he was actually performing the duties of a teacher. It is dear from the fact that, the petitioner was continued in his services as a Teaching Assistant from 1986 till 1996 that there is a need for the Teaching Assistants or the Lecturers or the Guest Lecturers as the case may be. The petitioner must have been appointed temporarily for variety of reasons. One of such reasons being that, the Vice Chancellor the appointing authority is

empowered to appoint any person for a period not exceeding six months u/s 51-B of the Karnataka State Universities Act, 1976 (for short "the act") and, the authorities of the University have not taken any decision to make permanent appointments after determining the available vacancy or the required strength. Even though the petitioner was appointed temporarily for a period of six months by different orders, it cannot be said that he was terminated from his services immediately after the expiry of the period mentioned in each order. Annexure-A, though is in the nature of a note, since acted upon by the authorities concerned, amounts to an order of termination of the petitioner from his services. The Registrar is not empowered to terminate any member of the staff of the University under any provisions of the Act. Annexure-A and the consequential termination of the petitioner from his service is therefore invalid and has no legal effect.

8. Dealing with the second prayer, as regards the appointment of the petitioner to the post of Teaching Assistant or as a Lecturer, Sri M.N. Seshadri the Learned Counsel appearing for the University has contended that, the petitioner cannot be appointed as a Teaching Assistant, as such a cadre is not in existence in the University nor can he be appointed as a Lecturer as he was not appointed as a Lecturer at any point of time. The post of Lecturer shall be filled up only in accordance with the provisions of the Act, the rules and the statutes framed thereunder and the petitioner is not entitled for consideration at this stage for being appointed as a Lecturer.

9. As observed above, the fact that the petitioner is in continuous services of the University as a Teaching Assistant for a period of ten years establishes that there is a need for appointment of Teaching Assistants or the Lecturers as the case may be. Just because there are no teaching assistant posts in the cadre and recruitment rules of Teachers of Bangalore University, the practice in vogue for more than a decade cannot be discontinued all of a sudden, even if it is to be discontinued it is the duty of the University to take steps to provide for sufficient teaching staff to the University College of Engineering and while so doing the University shall consider the case of the petitioner and persons similarly situated for being absorbed to appropriate cadre for which they are found to be eligible. The Supreme Court in KARNATAKA STATE PRIVATE COLLEGE STOP-GAP LECTURERS ASSOCIATION v. STATE OF KARNATAKA AND ORS., considering a similar situation has held as follows:-

"Ad hoc appointments, a convenient way of entry usually from backdoor, at times even in disregard of rules and regulations, are comparatively recent innovations to the service jurisprudence. They are individual problem to begin with, become a family problem with passage of time and end with human problem in Court of law."

10. After considering the precarious conditions to which the teachers appointed on stop-gap basis were placed by the Management of the Private colleges in Karnataka, the Supreme Court has further held that:-

"While deprecating direction by the Government to break for a day or two and paying fixed salary to temporary employees we must condemn the practice of management of not making regular selection utmost within six months of occurrence of vacancy. Nor the helplessness of government can be appreciated as expressed in the counter affidavit that despite orders the management continued with it. If the Government could not take effective measure either by superseding the management or stopping grant-in-aid then either it was working under pressure from Management of the private aided institutions or it was itself interested in continuing such unfortunate state of affairs."

11. After striking down Clause-5 of the notification issued by the Government under the Grant-in-aid Code The Supreme Court has stated as follows:-

"Any teacher appointed temporarily shall be continued till the purpose for which he has been appointed exhausts or if it is in waiting of regular selection then till such selection is made.

Managements shall take steps whenever necessary, to fill up permanent vacancies in accordance with rules. Delay in filling up the vacancies shall not entitle the Management or Director to terminate the services of temporary teachers except for adequate reasons. But it shall entitle the government to take such steps including supersession of management or stopping grants-in-aid if permitted under law to compel the institutions to comply with the rules."

12. In State of Haryana and others Vs. Piara Singh and others etc. etc., , the Supreme Court considering the issue of regularisation of adhoc -temporary employees in Government services has observed as follows:-

"The normal rules, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/ appointment. If he gets selected, well and good but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/ temporary employee.

Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent

with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly....."

13. From the aforesaid decisions, it is dear that the temporary appointments cannot be terminated either until the purpose for which such appointments are made is exhausted or it is replaced by a regular appointment. From Annexure-A it is clear that the Heads of Departments concerned in the University Vishweswaraiah College of Engineering have represented to the University for continuation of the teaching assistants. Despite their representation, the Registrar for the reasons best known to him and in spite of the appointment of Teaching assistants being in vogue for more than a decade, decided not to continue their services solely on the ground that there is no post such as teaching assistant in the cadre and recruitment rules of Bangalore University. Such discontinuation by the Registrar is without authority of law as he is not empowered by the provisions of the Act. Secondly, it is against the law laid down by this Court and the Supreme Court as the services of the petitioner were discontinued without taking steps to fill up the vacancy without recording any finding that the purpose for which the petitioner and persons similarly situated were appointed was exhausted. It is also brought to my notice that there are many such appointments in the University. If the University fails to take steps to regularly appoint staff and other members in accordance with cadre and recruitment rules, it may result in an explosive situation. I do not want to express any opinion on such contingencies. It is sufficient if the University is directed to continue the services of the petitioner in the post he has been working as it is represented by the Heads of the Department that, such continuation is necessary in the interest of the students and to take steps either to absorb the petitioner to the post to which he is appointed by creating such cadre if necessary or to absorb them to the next immediate cadre if he is found eligible. This observation does not mean that the case of the petitioner shall alone be considered. It is open to the University to invite applications for making permanent appointments and to consider the case of the petitioner along with other applicants, if the petitioner also applies by providing due weightage for the services rendered by him and also in respect of the age limit if there is any.

Petition disposed of accordingly.