

**(2001) 10 KAR CK 0035**

**In the Karnataka High Court**

**Case No :** Writ Appeal No's. 8566 to 8568 of 1996 (S)

Saraswathi and Others

APPELLANT

Vs

The University of Mysore and Another

RESPONDENT

**Date of Decision :** 15-10-2001

**Acts Referred:**

**Citation :** (2001) 6 KarLJ 469

**Hon'ble Judges :** K.L. Manjunath, J;K.H.N. Kuranga, J

**Bench :** Division Bench

**Advocate :** Padmarajaiah for R.S. Ravi, for the Appellant; S.G. Bhagawan and Udaya Holla, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

1. On 8-2-1993 the University of Mysore invited applications in eight sets to fill up certain posts in different departments, namely Professors, Readers and Lecturers. The appellants, Dr. Saraswathi and Subha Chandra and the second respondent, Dr. Padma Shekar filed applications as candidates for the post of Reader in Jainology. The second respondent was selected as Reader in the Department of Jainology which was challenged by the appellants herein before this Court in Saraswathi and Anr. V. University of Mysore and Anr.. The learned Single Judge has dismissed the writ petitions upholding the appointment of the second respondent as Reader in the Department of Jainology and Prakrit. The said order is now challenged before us.

2. The learned Counsel for the appellants Sri Padmarajaiah has raised two valid grounds before us. According to him the very constitution of Board of Selection u/s 49 to fill up the post of Reader was contrary to the provisions of Section 49 of the Karnataka State Universities Act, 1976 (hereinafter referred to as the "Act").

3. To substantiate his case, he contends that as required u/s 49 of the Act there were no experts either in Jainology or in Prakrit. Therefore, the very constitution of Board of Selection was bad in law.

4. The second point raised by the learned Counsel for the appellants is that the second respondent did not possess the required qualification to appoint her as Reader in Jainology. He contends that the second respondent did not possess the qualification of five years of teaching experience in Jainology and therefore the selection of the second respondent was bad in law and requests this Court to set aside the order passed by the learned Single Judge and to cancel the appointment of the second respondent as Reader in Jainology and Prakrit and to direct the first respondent-University to appoint one of the appellants as Reader in Jainology and Prakrit.

5. Per contra, the learned Counsel for the University and the second respondent contend that in regard to the constitution of the Board of Selection, the appellants cannot now contend that the Board of Selection is bad in law. According to them the appellants having participated in the interview, cannot challenge the constitutionality of Board of Selection. It is also contended that even if the appellants were not aware of the Board of Selection, at least the appellants could have challenged their appointment immediately after coming to know of their selection. It is further contended that even if it is the case of the appellants that till the date of interview they were not aware of the details of the members who were in the Selection Board, the appellants should have challenged the appointment of Board of Selection at least before the selection of the second respondent. It is further contended by them that it is too late to contend that the first respondent has not constituted the Board properly. They further relied upon Section 64 of the Act. Relying upon this section, they request the Court to turn down the contention urged by the learned Counsel for the appellants.

6. In regard to the second point, the learned Counsel for the respondents contend that as per the notification dated 8-12-1993 the second respondent had the prescribed qualifications. Therefore, the selection of the second respondent cannot be questioned by the appellants contending that she did not possess five years of teaching experience in Jainology or in Prakrit. Therefore, they contend that ground No. 2 urged by the appellants' Counsel also need not be considered by this Court. It is also contended by them that as per the notification dated 8-12-1993 the minimum qualification required to be appointed as Reader in any particular subject is as hereunder:

"Readers Good academic record with a Doctoral Degree or equivalent published work. Evidence of active engagement in (1) Research; or (2) Innovation in teaching method; or (3) Production of teaching material.

About 5 years of teaching and/or research, provided that at least 3 years were as Lecturer or in an equivalent position. This condition may be relaxed in the case of candidates with outstanding record of teaching/research".

7. It is contended by the second respondent that she did possess the minimum qualification prescribed by the University as per the notification. It is also

contended by the second respondent that the appellants have not challenged the notification dated 8-12-1993 which has been issued by the University pursuant to the amendment of 1986.

8. Per contra, the learned Counsel for the appellants contends that the amendment of 1986 has to be read as part and parcel of the Statutes of 1978. Therefore, the appellants' Counsel contends that the appointment of the second respondent is required to be quashed.

9. The learned Counsel for the first respondent in regard to the challenge made to the Constitution of Selection Board is concerned, has relied upon the judgment of this Court in Ekanath Ekbote Vs. The Gulbarga University and another, . Relying upon this judgment, he requests this Court to negative the contentions urged by the learned Counsel for the appellants. It is not in dispute that the appellants herein have participated in the interview conducted by the Selection Committee. They did not raise their little finger before the University prior to their participation in the interview. Even if we accept the contention of the appellants that the appellants were not aware of the qualification of the members of the Board of Selection as required u/s 49 of the Act, at least they have come to know about the said illegality on the date of the interview. Therefore, the appellants could have challenged the selection of Committee by filing a writ petition forthwith. Admittedly the appellants have not done it. Even in these writ petitions they have not challenged the appointment of the Selection Board by the University. What is challenged before this Court is the appointment of the second respondent and not the validity of the constitution of the Board. The appellants herein have requested this Court to quash the order of appointment of the second respondent and in her place to select anyone of these two appellants. Therefore, it is clear that the appellants have not challenged the validity of the Selection Board. If really the appellants were aggrieved by the very constitution of the Board, their prayer in the writ petitions would have been to set aside the constitution of the Board. When such a prayer is not made, it is not open to the appellants to contend that the University did not constitute the Board in accordance with Section 49 of the Act. Even otherwise, the said arguments need not be considered by us in view of the conduct of the appellants and also on the ground that no prayer is sought for in the writ petitions. It is also important to note that even if there is illegality in constituting the Board of Selection, such illegality cannot be questioned by the appellants in view of Section 64 of the Act. As per Section 64 of the Act, the constitution of the Selection Board cannot be invalidated merely on the ground that there is a defect in the constitution. Therefore, in view of Section 64 and in view of the fact that there is no challenge to the constitution of the Selection Board, point No. 1 urged by the learned Counsel for the appellants are held against the appellants. Then the next question that arises for our consideration is whether the second respondent had the required qualification to be appointed as Reader in Jainology and Prakrit.

10. Notification of 8-12-1993 in regard to the appointment of Readers had

already been referred by us. As per this, the candidates are required to hold Doctoral Degree or equivalent, published work and five years of teaching experience/research, provided that at least three years were as Lecturer or in an equivalent position.

11. Mr. Padmarajaiah does not dispute the fact that the second respondent is having a teaching experience of more than five years. What is contended by him is that the second respondent is not having five years of teaching experience in Jainology and Prakrit. Therefore, he contends that the second respondent did not possess the requisite qualification.

12. When the notification dated 8-12-1993 is silent, when the appellants as well as the second respondent have submitted their applications pursuant to the notification, when the appellants have not challenged the notification before the interview, the ground urged by the appellants cannot be accepted by us, since the appellants have not questioned the notification of 1993. The notification of 1993 has been issued by the first respondent pursuant to the amendment brought out by the first respondent in the year 1986 to the then existing Statute of 1978. The amendments have come into existence with effect from 23-8- 1986. From 1986 till today, the Statute has not been questioned by any person. Even the appellants have not questioned the amended Statute of 1986 and even the notification has not been questioned by the appellants even in the writ petitions. The notification of 1983 is strictly in accordance with the amended provisions of 1986. When the notification is strictly in accordance with amended Statute, we cannot hold that the second respondent did not possess required qualification. The learned Single Judge in the course of his order has observed that the second respondent even though did not possess the required qualification, the same has been relaxed by the Board of Selection. According to us as per the notification dated 8-12-1993 the second respondent had possessed the required qualification. Therefore, there was no necessity for the Board of Selection to relax any one of the conditions therein. According to the first respondent, the Selection Board did not relax the conditions as there was no necessity for them to relax the same while selecting the second respondent. Therefore, in the circumstances, we see no merit in the appeals. Accordingly, these appeals are dismissed.