

(2017) 03 KAR CK 0177
In the Karnataka High Court
Case No : 104060 of 2014 (S-DIS)

SHIVAJI

APPELLANT

Vs

THE CHAIRMAN & Ors

RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

Constitution of India, Article 16(1) -
Dissolution of a District or a Regional Council
Karnataka Education Act, 1983, Section
94(1) - Appeals

Citation : (2017) 03 KAR CK 0177

Hon'ble Judges : L.Narayana Swamy

Bench : SINGLE BENCH

**Advocate : DINESH M. KULKARNI, S.S.HATTIKATAGI, VIDYA D. KULKARNI,
SUBHASH B. SANKAD, SHIVARAJ P.MUDHOL**

Judgement

1. The petitioner is M.A. graduate from Karnataka University. He was appointed as part time lecturer in Kannada in June 1992 in the college of the respondents. The respondents issued notification calling for the applications for selection and appointment to the post of teaching and non-teaching staff, which included one post of Kannada lecturer. The petitioner was having requisite qualification and was also already working as part time lecturer in the very same subject and he also submitted his application for the said post on 14.06.1994, on considering the said application, the respondent-Institution issued interview letter on 20.06.1994, in which it is directed the petitioner to appear for interview on 28.06.1994. Pursuant to which the committee of the institution considered the case of the petitioner and has appointed him as a full time Kannada Lecturer by issuing appointment order on 28.06.1994. He was also insisted to pay Rs.90,000/- and the same was paid by the petitioner and that has been acknowledged by the respondents by issuing acknowledgement on 29.06.1995. Without issuing any reasons, the petitioner's services were discontinued in the year 2004. Hence, he filed appeal under Section 94(1) of the Karnataka

Education Act in EAT No.5/2007 before the District Judge Court at Belgaum. The said appeal came to be allowed and the respondents were directed to reinstate the petitioner and also to extend the benefits. The order of the appellate Tribunal was challenged before this Court in W.P.No.65319-20/2009 filed by the respondent-Institution and the petitioner also filed the Writ Petition No.66096/2009. Both the petitions were heard together and the matters were remanded back to the Tribunal for fresh consideration. On examining the case of the petitioner, the appellate Tribunal dismissed the appeal filed by the petitioner by its order dated 31.01.2014. Against which, the petitioner has filed this writ petition.

2. The grounds urged by the petitioner are that, the Tribunal has committed an error in not considering the materials produced by the petitioner, such as interview letter, appointment order, experience certificate and other documents to show that he has attended election duty and also worked as valuator of Kannada paper, which clearly show that the petitioner was appointed as permanent lecturer in Kannada language in the respondent - institution. The respondents also produced the resolution book and the attendance register and the same has been examined by the Tribunal and they have been relied by passing adverse order against the petitioner. Further, the signatures on the documents relied upon by the respondents should have been referred to the hand writing expert, which has not been done. Without doing the same, adverse order has been passed dismissing the case of the petitioner. In support of his case the petitioner examined two witnesses as PW2 and PW3. They have also supported the case of the petitioner, but their case has not been considered in its totality and while doing so, the Tribunal has committed an error. The learned counsel for the petitioner contends that the Tribunal has ignored the contradictions pointed out by the petitioner in Ex.R22 Acquittance Register. According to the respondent, one Mr.K.K.Sansule was appointed on 15.06.2011 but his name was appearing in the said register for the years 1998-99, 1999-2000. These are the inconsistencies and errors highlighted to the Tribunal, but the Tribunal has not considered the same. Accordingly, the case of the petitioner has been dismissed, which is arbitrary and violation of Article 16(1) of the Constitution of India.

3. The respondent - Institution filed statement of objections, wherein it is contended that the petitioner was not appointed on permanent basis, his appointment was on temporary and part time. Hence, the Tribunal has dismissed the appeal.

4. It is the case of the respondents that the petitioner had suppressed the fact that without true facts and materials the petitioner is not entitled for any relief either in law or on facts. The learned counsel for the respondents contended that the petitioner worked for considerable length in the second respondent institution, which is false. Accordingly, it is submitted that he was appointed on part time basis which he has misused. In respect of Rs.90,000/-, learned counsel

for the respondent submits that the institution was facing some financial problem. Accordingly, the petitioner himself has paid the amount voluntarily, it cannot be considered as if it was demanded by the respondent - institution. Apart from that the petitioner has attended the election duty and also worked as valuator of Kannada paper, which clearly shows that the petitioner was appointed as permanent lecturer in Kannada language in the respondent - institution. During the course of proceedings, the petitioner has admitted before the Tribunal that he got enrolled as an Advocate and he was practicing that itself shows that he has committed grave error in claiming that he was working as part time lecturer and also working as an advocate. Since the respondent Institution issued notification calling for the application to the several posts, in which the respondent No.3 was appointed for the post of Kannada Lecturer on 15.06.1994, since then the respondent No.3 is working. When such being the case, the question of consideration of the case of the petitioner and the fact that the petitioner is continuously working cannot be accepted. The respondent - Institution gave a paper advertisement in 2005 in Kannadamma Daily Newspaper on 29.05.1994 calling for the post of Kannada Lecturer on full time basis and the government has accorded permission to the respondent - Institution to issue such notification and also to appoint suitable candidate. Accordingly, the respondent No.3 was selected to the said post.

5. Learned counsel for the respondent No.3 submits that the respondent No.3 was appointed on 15.06.2001 as part time lecturer and on 16.07.2005, he was appointed on permanent basis, since then he was permanently working. His appointment was not challenged. Under this circumstance, the petitioner case is to be rejected.

6. Heard the learned counsel appearing for the parties and perused the writ petition papers.

7. The petitioner himself has examined as PW1. In his affidavit, he has reiterated the fact that he has pleaded in the petition. It is stated in his cross-examination that he was appointed for the post of Kannada lecturer on Part time basis in June 1994 in PU College run by the respondents. The respondents have collected Rs.90,000/-, which was also acknowledged by the respondent-Institution, a copy of the same has been produced. Subsequently a notification was issued on 28.05.1994 calling for the post of Kannada Lecturer, for which the petitioner also made application. On considering the said application, the respondent-Institution issued interview letter on 20.06.1994, in which it is directed the petitioner to appear for interview on 28.06.1994. Pursuant to which the committee of the institution considered the case of the petitioner and was appointed as full time Kannada Lecturer by issuing appointment order on 28.06.1994. I have examined the letter of appointment. He further submits that pursuant to the application submitted by the petitioner as per the notification, his candidature has been considered and he has been appointed as lecturer and he was further directed to report for duty within seven days. He has stated in the affidavit that he has paid

Rs.90,000/- to respondent Institution. A copy of the acknowledgement and the signature of the Secretary of the institution dated 29.06.1995 has been produced and marked as Ex.P3 and Ex.P3(a), which shows that the petitioner has paid Rs.90,000/-, which was required to the respondent Institution. Out of the same, he has paid initially Rs.50,000/- and subsequently paid Rs.40,000/-, in total the respondent institution has acknowledged Rs.90,000/- Ex.P4 is the service certificate issued by the respondent Institution, dated 28.07.1995 in which it is stated that he has served as Kannada Lecturer during the year 1992-93 to 1995-96, his services are to the satisfaction of the institution. Exs.P5, P6 and P7 are the letters addressed to the petitioner by the Principal directing him to attend examination duty, Ex.P8 is the document to show that he attended for election duty as returning officer and the petitioner was provided to conduct election for Gram Panchayat dated 23.02.2002. Ex.P9 is the another document to show that he was selected to conduct the election for Taluka Panchayat, Chikkodi Taluk and after completion of election, he has been relieved from the said duty. The said election commissioner issued Ex.P11 attendance certificate for having attended the election duty between 01.06.2002 to 02.06.2002, for which he has been paid Rs.200/-. Similarly, he has produced another document Ex.P12, experience certificate issued by the independent Pre University college, Yaxamba and Ex.P13 continuation of service as lecturer in the Pre University college, Yaxamba. In addition to this, the petitioner marked several other documents, attendance certificate, which is available in the LCR and the list of teaching and non-teaching staff for the year 1997-98, in which his name is forthcoming. The petitioner has also examined PW2 and PW3. PW2 is working as clerk in the respondent - Institution, in his evidence of affidavit at para-2 it is stated that he was working as an Assistant Teacher in English in Mahakaali High School, Examba from 1993 to 1996, the management had agreed to pay him Rs.300/- as pocket money in the inception. But the same was not paid, instead of paying the remuneration the management started demanding donation for meeting the expenses of the school. At para-3 he has stated that during the tenure of his service, one Shri S.R.Naik was also serving in the collegiate section much prior to his appointment. He has paid donation and therefore he was continued in the service. Shri R.R.Patil was not in Service in the institute, wherein he was working. The management had maintained two muster rolls one for those who had paid the donations and second to others, who have not paid the donations. In his chief examination at para-7 he was terminated by the institution without issuing any notice. He further denied the suggestion that Shri S.R.Naik was working on temporary basis and no documents are produced to show that Shri S.R.Naik was working in the institution and Shri S.P.patil was working in between 1993 and 1996. PW3 stated that he was working as Assistant Teacher in Mahalaali High School from the year 1990 up to 1993 and served as Head Master from the year 1993 to 1997. At para-2 it is stated that during the tenure, one Shri S.R.Naik was also serving in the collegiate section since 1992, Shri R.B.Patil, was never in the service, when he was serving in the institution. At para-3 it is stated that as the management did not pay the salary as agreed, he left the

service in the year 1997 and he knows Sri.S.R.Naik, who was appointed as Kannada Lecturer in the year 1992. The Trust collected donations from the employees and he had also paid the donation of Rs.40,000/-. He knows that Shri S.R.Niak also paid the donation of Rs.90,000/-. In the cross-examination, he has stated that in order to prove that Sri.S.R.Naik paid Rs.90,000/- there was no document. He has reiterated the fact that he was working as Head Master and he has denied the suggestion that Sri.S.R.Naik was working as lecturer and also denied that Sri.R.B.Patil was working between 1992 and 1995.

8. On the other hand, it is the case of the respondents that the petitioner had no appointment. The documents produced by him are interview letter, appointment order and also the letter for attending election duty of gram panchayat and taluk pachayat and also the information furnished by the respondents are concocted and which are not issued by the respondents. The petitioner instead of proving the genuineness of documents has relied on the said document and the same has been disposed of by the appellate Tribunal. It is his further submission that when the petitioner himself admits that he was practicing as an advocate in the Chikkodi Bar, the document has been produced as per Ex.R15, which itself shows that the petitioner was not working as permanent lecturer and he was appointed on temporary basis. He submits that in Kannadamma Daily newspaper, an advertisement was given calling for application for the post of Kannada full time lecturer and the date of interview was fixed as 03.07.1994. Petitioner has also examined respondent as RW1 the then Secretary. In his evidence on affidavit, it is stated that he was working as a secretary of the respondent Institution from 1993 till today, he knows the entire facts of the case. Hence, he comes forward to give evidence. At para-2 it is stated that "He is Secretary and respondent No.2 is the Chairman of the said Trust, which runs the Pre-University College at Examba village Taluk Chikodi, since 1990. It is totally incorrect to state that at the time of inception, the trust was not having sufficient funds and they collected some amount from the persons, who are all serving in the institution. It is totally false that the respondents have collected Rs.90,000/- from the petitioner and he was appointed as part time lecturer in Kannada in June 1992. At para-4 it is stated therein the Institution called for the application for the post of lecturers on 29.05.1994 because the college was started in the year 1990, was given permission by the Government in 1994. The petitioner did not apply as per the publication made in Kannadamma Newspaper dated 29.05.1994 to fill up the requirement of lecturer post including the Kannada lecturer. One R.B.Patil, was appointed as full time Kannada lecturer. He worked for about one year and he left the service. Thereafter, on 15th June 1995, the petitioner was appointed as a temporary lecturer in Kannada by passing resolution to that effect. The petitioner worked as part time Kannada lecturer upto 22nd June 2000 and voluntarily left the post without informing the Management and Principal. The management waited for him for long time but he did not turn up. On enquiry, it is found that the petitioner had completed his LLB and he also obtained Sanad to practice legal profession and has become a member of Advocates" Bar Association at Chikodi.

In para-6 he stated that the signature occurring on the postal acknowledgement - Ex.P15 is not his. The respondents never orally asked the appellant to wait for reinstatement as alleged. In para-9, he has stated that in Kannadamma Daily Newspaper dated 29.05.1994, an advertisement was given calling for application for the post of Kannada full time lecturer and the date of interview was fixed as 03.07.1994. On receipt of the applications, the Management informed all the applicants by letter dated 29.06.1994, under the certificate of posting, to attend the interview on 03.07.1994. The interview letters were not on the postal cards. On 03.07.1994 four persons were attended the interview for Kannada lecturer post, they are R.B.Patil, A.S.Vaggyagol, D.V.Matapati and R.J.Chougale. Out of these four candidates, R.B.Patil was selected and on 03.07.1994 itself an appointment order was given to R.B.Patil vide order bearing reference No.65/1994-95, dated 03.07.1994. He has been subjected for cross-examination, in para-2 he has deposed that S.R.Naik was appointed in the year 1992. It is sated that while filing the appeal, he has sated that S.R.Naik was appointed in the year 1992. With reference to Ex.P7, he has deposed that he has admitted the strength of teaching and non-teaching staff in the year 1996-97 and 1997-98. Hence, the list of teaching and non-teaching staff was marked as Ex.P7. He further deposed that even in Ex.P7 also by inadvertence the name of the petitioner has been referred as permanent. He denied for accepting Rs.90,000/- from the petitioner and also he denied the suggestion for having accepted Rs.90,000/-. In Para-3, he has deposed that the petitioner has used the letter heads and other documents of the institution and created the documents. It is admitted in the cross-examination that at para-8, S.R.Naik, the petitioner herein has sent to the election duty and also sent for valuation, for which he has received the attendance certificate to that effect. The said S.R.Naik, petitioner herein worked in the institution till 2000 and he was also working as lawyer and he was working till 1998. The respondents also examined RW2, he was working as a clerk in the office of P.U.College Examba run by Mahakali Vidyavardhak Trust from 1990 till today. He deposed that there is some error in the staff list for the year 1998-99, the petitioner was wrongly shown which is the typing error. The petitioner was never employed as permanent lecturer in office of P.U.College run by the respondent Trust. One Kumar Krishnappa Mangasuli, who is appointed as a lecturer in Kannada subject in P.U.College run by respondent Trust from 15.06.2001, but he was teaching the students of Kannada subject in the college honorary from 1997. He has also subjected to cross-examination, nothing has been elicited in the cross-examination. The petitioner sought information containing the list of teaching and non-teaching staff for the year 1995-96, for which information has been furnished to the petitioner and in the information, namely the list of permanent staff working in the year 1995-96 was furnished in which the name of the petitioner was found place at Sl.No.5 and shown the designation as lecturer, the qualification is shown as M.A. and in column permanent or temporary, it is written as "permanent". It is on that basis the petitioner's counsel submitted that information officer of the Government has furnished the list of teaching and non teaching staff to the petitioner. These are

the documents placed on record by the petitioner.

9. Submission of both the learned counsel for the parties seriously examined and also gone through documents produced by the parties. As per the public notification calling for the application to the various posts, the petitioner got appointed and has issued appointment order, which also bears the signature of the Secretary of Institution, the same has not been denied. Further it is the case of the petitioner that pursuant to the application submitted by the petitioner as per the notification, his candidature has been considered and he has been appointed as lecturer, for which appointment order has been issued on 28.06.1994, in which he was directed to report for duty within seven days. It shows that the petitioner was appointed as lecturer. He was also insisted to pay Rs.90,000/- and the same was paid by the petitioner and that has been acknowledged by the respondents by issuing acknowledgement on 29.06.1995. In addition to this, PW2 and PW3 who are independent witnesses also submitted in the chief examination deposed that the institution was in financial crises, for which they have insisted the donation. In order to prove the appointment of the petitioner, he has relied upon the documents showing the certificate for attending the election duty of Gram Panchayat and Taluk Panchayat, for which he has received Rs.200/- for attending the election duty and also the attendance certificate for attending the valuation for PU examination. In addition to this, he has sought information from the Public Information Officer to provide list of teaching and non-teaching staff, in which the name of the petitioner has been referred at Sl.No.5 and shown the designation as lecturer, the qualification is shown as M.A. and in column permanent or temporary, it is written as "permanent". It is on the basis of the petitioner's counsel submitted that information officer of the Government has informed the list of teaching and nonteaching staff to the petitioner. In view of the information furnished by the P.U. Department, the petitioner was appointed on permanent basis through the notification issued calling for the applications to the post of lecturer. It was the information furnished by the Education Department, in which the petitioner is referred as permanent Kannada Lecturer.

10. The next question would be the petitioner has admitted that he was practicing advocate. It is true that as per the Bar Council Act, once a person has enrolled himself as an Advocate, he shall not carry on or do any other job except that profession, without prior permission from the Bar Council, or the practice is suspended. Here, the Court, being aware of the said action and admission made by the petitioner, two things to be compared. Firstly, the petitioner admits that he was practicing as an Advocate; and the other thing that he was appointed as permanent lecturer and was dismissed from service without there being any compliance of principles of natural justice. When these two actions of the respondent are looked into, it is to be held that the respondent has committed a grave error and have played fraud on this Court and also on the petitioner. I use the term "fraud" because, in the list of teaching and non-teaching has been prepared by the respondent, in which clandestinely they have deleted the name

of the petitioner. This is clear from the information furnished by the Public Information officer of the Pre-University Board on the basis of the records which was furnished by the respondent-Institution itself to the PUC Board. In the list furnished by the respondent-Institution, petitioner's name has been shown at Sl.No.5 as was working as Kannada Lecturer on permanent basis, which carries more weightage. Upon evaluating the contradictory statement, one of the petitioner and another made on behalf of the respondent-Institution, I hold that fraud has been committed by the respondent-Institution. The action of the respondent-Institution is to be condemned, accordingly it is condemned.

11. It is common understanding that a person cannot sit idle. Dismissal from service does not mean that one should starve for life. One has to work for his own survival as also for the livelihood of his dependents. Since, for his livelihood he started practicing; and that does not mean that it is illegal. In that view of the matter, the petition needs to be allowed.

12. It is also submitted by the respondent that the appointment of R.B. Patil has not been challenged. It is true, for all the purposes, the petitioner should have challenged the appointment of the selected candidate-R.B. Patil. But the prayer made by the petitioner is that since he was not dismissed in compliance of principles of natural justice and without holding any enquiry he is relieved from service, he is to be reinstated into service as such by virtue of his appointment on permanent basis. Under this circumstance also this petition needs to be allowed. It is made clear that the respondent-Institution should take action against the selected candidate-R.B. Patil. The petitioner states, as also it has been admitted by the respondent-Institution that the institution is running several Pre-University Colleges and if that is the case, it is the duty of the respondent-Institution to take prior permission from the Government and Pre-University Board and in case the permission is given, it could accommodate the selected candidate-R.B. Patil in any one of its Institutions.

13. Though all these materials were produced by the petitioner before the Education Appellate Tribunal, the Tribunal has not given serious thought to it. The documents and exhibits produced by the petitioner or the respondent are original in nature. PWs 2 and 3 have admitted to the fact that the petitioner was working on permanent basis in the respondent-Institution. The appointment order has been produced, report for having attended the election duty is also produced. More than that the petitioner has produced endorsement issued by the Public Information Officer of the Government; and when such documents and materials are produced before the Tribunal, I do not understand as to why the Tribunal disbelieved the same. For the foregoing reasons, the order of the Education Appellate Tribunal needs to be set aside and accordingly it is set aside. In my considered opinion, the appointment of the petitioner shall be prolonged. Hence, it is declared that the dismissal of petitioner by the respondent is illegal, arbitrary and in violation of Articles 16(1) of the Constitution of India. His appointment as permanent lecturer in the respondent-Institution is restored.

Respondent-Institution is directed to accept the petitioner and to take him on rolls. It is also directed to pay all the consequential monetary benefits to the petitioner and the same is to be borne by the respondent- Institution only. Compliance shall be in six months from the date of receipt of certified copy of the order. Writ Petition is accordingly allowed.