

(2016) 06 KAR CK 0126

In the Karnataka High Court

Case No : Writ Petition No. 16233 of 2013 (S-RES)

Smt. K. Seethamma

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Citation : (2017) 2 AirKarR 803 : (2016) ILRKarnataka 3499 : (2016) 4 KantLJ 592 : (2016) 3 KCCR 2539

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Sri H. Subrahmanya Jois, Senior Counsel for Sri K.C. Shanthakumar, Advocate, for the Appellant; Sri Aditya Sondhi, Additional Advocate General for Sri D. Ashwatahappa, Additional Government Advocate, Sri T.P. Rajendra Kumar Sungay, Advocate, for the Respon

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In this writ petition, petitioner is calling in question notification dated 4.4.2013 issued by the State Government through the Department of Higher Education, vide Annexure-A, thereby withdrawing the ad hoc in-charge arrangement made by posting the petitioner to discharge the duties as Registrar of Bangalore University.

2. Facts leading to this writ petition, stated in nutshell are that petitioner is a Professor and Head of the Department of Economics in Bangalore University. As the post of Registrar was vacant, petitioner was posted there on 20.2.2013 to discharge the duties as an ad hoc and temporary arrangement. Indeed, one Professor B.C. Mylarappa had been appointed as Registrar of the University in exercise of powers conferred under Section 17 of the Karnataka State Universities Act, 2000 (for short, "the Act"). This appointment was challenged in W.P. No. 4340 of 2012 (S-RES) (P.M. Parameshwaramurthy and others v. State of Karnataka and others) by seeking a writ of quo warranto. A Division Bench of this Court allowed the said writ petition on 21.11.2012 and issued writ of quo

warranto ousting him from the post with immediate effect. A special leave petition was filed before the Apex Court in SUP (Civil) No. 450 of 2013. The Apex Court has passed an interim order on 10.1.2013 making it clear that any appointment nude to the post of Registrar would be only by way of adhoc arrangement, in this background, by issuing a notification dated 20.2.2013, petitioner was placed in-charge of the post of Registrar purely as an ad hoc arrangement. The order of appointment also made it clear that the appointment was subject to the decision of the Apex Court in the pending special leave petition.

3. It is also relevant to notice at this stage that one Professor R.K. Somashekar, Registrar (Evaluation) had filed W.P. No. 9347 of 2013 assailing the appointment of petitioner as per notification dated 20.2.2013. In the said writ petition, the Government justified the appointment of the petitioner. Later, Professor R.K. Somashekar withdrew the writ petition on 27.3.2013.

4. In the present writ petition, petitioner contends that without assigning any reasons, the State Government has issued the impugned notification withdrawing the ad hoc arrangement made appointing petitioner placing her in-charge of the post of Registrar.

5. It is contended by Mr. H. Subrahmanya Jois, learned Senior Counsel that impugned notification runs counter to the interim order dated 10.1.2013 passed by the Apex Court in SLP No. 450 of 2013 and is also opposed to Section 17 of the Act. In support of his contention, he has placed reliance on the following decisions:

1. Ravi Yashwant Bhoir v. District Collector, Raigad and others, (2012)4 SCC 407;
2. Ankush Shivaji Gaikwad v. State of Maharashtra, (2013)6 SCC 770;
3. A.K. Kraipak and others v. Union of India and others, AIR 1970 SC 150;
4. S.G. Jaisinghani v. Union of India and others, AIR 1967 SC 1427.

6. Learned Additional Advocate General Mr. Aditya Sondhi has strongly defended the impugned notification and has contended that petitioner has continued in the post of Registrar by virtue of an interim order obtained from this Court although her appointment was purely an ad hoc arrangement. He invites the attention of the Court to Section 17(1) of the Act to contend that State Government has power to appoint an officer not below the rank of Group-A officer of the Super Time Scale or a Member of the Faculty of any University working as a Professor for at least five years to be a Registrar of the University and petitioner who was holding substantive post of Professor was posted in-charge of the post of Registrar on purely temporary and ad hoc basis and therefore, petitioner had no right to continue in the post and the writ petition filed challenging the said order is misconceived. He has contended that question of hearing the petitioner before revoking or withdrawing such ad hoc arrangement is absolutely unnecessary. In this regard, he has relied on the following judgments of the Apex Court:

1. Punjab State Electricity Board and another v. Baldev Singh, (1998)5 SCC 450;

2. State of Uttar Pradesh and others v. Rekha Rani, (2011)11 SCC 441.

7. Having heard the learned Counsel for all the parties, the only point that arises for consideration is, whether the impugned notification suffers from any illegality warranting interference in exercise of the writ jurisdiction?

8. It is not in dispute that petitioner was working as Professor and Head of the Department of Economics in Bangalore University. While she was holding the said post, on account of a contingency that arose due to the order passed by this Court directing ouster of the occupant of the post of Registrar of Bangalore University issuing a writ of quo warranto, an ad hoc arrangement purely on temporary basis was made by placing the petitioner in-charge of the post of Registrar of Bangalore University as per notification dated 20.2.2013. It cannot be disputed that as it was purely an ad hoc arrangement, petitioner had no right in the post, let alone any vested right, to assert that she shall be continued with such ad hoc arrangement till such time a regular appointment was made or until the disposal of the special leave petition by the Apex Court.

9. The appointment order also does not state that her term of ad hoc appointment shall continue till the final disposal of the special leave petition by the Apex Court. Merely because the appointment order stated that the ad hoc and temporary arrangement would be subject to the disposal of the special leave petition, it cannot be asserted by the petitioner that until disposal of the special leave petition, she cannot be disturbed from the post. The interim order passed by the Apex Court was to ensure that until the grievance of the petitioner before it viz., Professor Mylarappa against whom a writ of quo warranto had been issued by this Court, was addressed, the post of Registrar shall not be filled by making regular appointment but, could only be filled up by making ad hoc and temporary arrangement. Petitioner herein is not concerned with the special leave petition pending before the Apex Court, nor she is a party there. Therefore, when the State Government made an ad hoc appointment of the petitioner placing her in temporary charge of the post of Registrar of Bangalore University, the Government neither intended that she shall be continued until a regular appointment was made or that she was to be continued in the post till the final disposal of the special leave petition. Such claim now made by the petitioner is wholly misconceived and untenable.

10. The decisions on which learned Senior Counsel for the petitioner has relied upon regarding absence of reasons in the impugned notification withdrawing the ad hoc and temporary arrangement made by posting the petitioner in-charge of the post of Registrar of Bangalore University have no application to the facts of the present case. In the case of Ravi Yashwant BHOIR, the Apex Court has dealt with the issue of removal of duly elected President of Municipal Council unceremoniously in a casual manner without adhering to the safeguards provided in law. In that context, the Apex Court has held that it was settled proposition of

law that even in administrative matters, reasons should be recorded as it would be incumbent upon the authorities to pass a speaking order. The object underlying assigning reasons and observance of principles of natural justice has been emphasised as it was aimed at preventing miscarriage of justice and to secure fair play in action.

11. There is no miscarriage of justice or unfair or arbitrary action in the instant case directed against the petitioner as she has not been disturbed or in any manner prejudiced to continue in her substantive post of Professor and Head of Department of Economics. The State Government was and is at liberty to make any appointment for the post of Registrar in accordance with law, whereupon the petitioner will have to automatically continue in her substantive post as she has no vested right to continue in the ad hoc appointment.

12. Similarly, other decisions cited by the learned Senior Counsel for the petitioner have no application to the facts of the present case, in as much as no proposition of law having application to the present case has been laid down by the Apex Court stating that even before a temporary arrangement or an ad hoc arrangement where under a person is asked to discharge additional duties of a post is altered or revoked he has to be heard, as otherwise it would tantamount to violating the rules of natural justice or results in unfair and arbitrary action on the part of the State. Such a contention put forward by the petitioner is wholly misconceived and untenable.

13. On the contrary, judgment on which learned Additional Advocate General has placed reliance in the case of Rekha Rani, clearly lays down at paragraph 13 as under:

"It is well-settled that a temporary employee has no right to the post vide State of Uttar Pradesh v. Kaushal Kishore Shukla, (1991)1 SCC 691. The respondent's service was not terminated as a measure of punishment. Hence no opportunity of hearing was necessary for terminating her service. The direction for her reinstatement is not sustainable as she was only a temporary employee and hence had no right to the post."

14. Similarly, the judgment in the case of Punjab State Electricity Board and another v. Baldev Singh (1998) 5 SCC 450 also lays down that as the appointment/promotion of the person concerned therein was purely on ad hoc basis, his discontinuance from such ad hoc appointment by passing an order by the Competent Authority and posting him to his substantive post could not be interfered with as he had no authority or right to the post in which he was posted on purely ad hoc and temporary basis. This judgment is applicable to the facts of the present case and therefore, petitioner who does not have any vested right to the post cannot make any legal grievance against the impugned notification.

15. It has to be stated at this stage that petitioner has occupied the post of Registrar of Bangalore University for the last three years although it was only an ad hoc and temporary arrangement, by taking advantage of the interim order of

this Court. Therefore, this Court cannot prevent the State from making alternative arrangement to fill up the post in accordance with law by making other temporary or ad hoc arrangements appointing any other suitable person.

16. Hence, the writ petition being devoid of merit is dismissed.