

(2003) 02 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition No. 15092-15095 of 2002

Somanna and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Karnataka State Universities Act, 1976 — Section 8 (8)

Citation : (2003) ILR (Kar) 2886 : (2003) 4 KCCR 413 SN

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Chandrakanth R. Goulay, for the Appellant; L.K. Srinivasa Murthy, AGA for R1 and Basavaraj Kareddy, for R2, for the Respondent

Final Decision : Allowed

Judgement

Vishwanatha Shetty, J.—Though these petitions are posted in orders list, with the consent of the learned Counsel appearing for the parties, these petitions are taken up for final hearing and disposed of, by this order.

2. The petitioners in these petitions are all employees of 2nd respondent-University. In these petitions, they have prayed for quashing of order dated 31st January, 2002, a copy of which has been produced as Annexure-F, passed by the 1st respondent and also they have prayed for quashing of show cause notices, a copy of which has been produced as Annexures-G, H, J and K issued to the petitioners by the 2nd respondent pursuant to order Annexure-F passed by the State Government.

3. The few facts which are not in dispute in this petition may be stated as hereunder:

The 2nd respondent-University regularised the services of the petitioners by means of order dated 24th May, 2000, a copy of which has been produced as Annexure-B, subject to the approval of the State Government. The University pursuant to order Annexure-B passed by it regularising the services of the

petitioners recommended to the State Government to approve the decision taken by the University recognising the services of the petitioners. However, when the matter was forwarded to the 1st respondent-State Government, the 1st respondent in purported exercise of power conferred on it under sub-section (8) of Section-8 of the Karnataka University Act (hereinafter referred to as the "Act") directed the 2nd respondent- University to nullify the order of regularisation of services of the petitioners made after issuing show cause notices to them. Subsequent to the said order Annexure-F, the University issued show cause notices Annexures-G, H, J and K to the petitioners respectively. Aggrieved by the said order and show cause notices, these petitions are presented.

4. Sri Chandrakanth Goulay, learned Counsel appearing for the petitioners submitted that the order impugned Annexure-F and show cause notices impugned in these petitions are liable to be quashed on two grounds. Firstly, he submitted that since the services of the petitioners were regularised by the University by means of its order dated 24th May, 2000, a copy of which has been produced as Annexure-B, it was not permissible for the 1st respondent to pass order Annexure-F. Elaborating his submission, the learned Counsel appearing for the petitioners submitted that in respect of four other employees of the University their services came to be regularized by this Court by means of its order dated 7th April 2000 made in Writ Petition No. 2248-2252/2000 which order was also affirmed by the Division Bench of this Court in Writ Appeal No. 5861/2001, disposed of on 1st February 2001, a copy of which has been produced as Annexure-C; and the said decision having reached finality, it is not permissible for the 1st respondent to take a different stand so far as the petitioners are concerned. He further submitted, the decision rendered by this Court in the Writ Petitions and writ appeal referred to above being binding on the respondents, the order made regularising the services of the petitioners is not liable to be cancelled. Secondly, he submitted that since the impugned order Annexure-F came to be passed without hearing the petitioners and giving an opportunity to them, the said order is also liable to be quashed on the ground that the same to be passed in disregard of principles of natural justice.

5. However, Sri L.K.Srinivasa Murthy , learned Addl. Government Advocate tried to support the impugned order. While he is unable to dispute that the petitioners were not heard by the 1st respondent while passing the impugned order, he pointed out that since the 1st respondent had directed the University to issue show cause notices to the petitioners before taking any final decision, it was not necessary for the 1st respondent to have heard the petitioners before passing the impugned order. In this connection relying upon subsection (8) of Section-8 of the Act he submitted that sub-section (8) of Section-8 of the Act does not contemplate of giving of an opportunity to the parties who are likely to be affected on account of decision that may be taken by the State. According to him, it is only the University which is required to be heard. Since that has been done in this matter, the petitioners cannot have any grievance. However, he is unable to dispute that in respect of four other employees, the decision of this

Court made in Writ Petitions referred to above was affirmed by the Division Bench of this Court in the Writ appeal referred to above.

6. In the light of rival submissions made by the learned Counsel appearing for the parties that the only question that would arise for consideration in this petition is as to whether the impugned order Annexure-F and show cause notices Annexure-G, H, J and K impugned in these petitions are liable to be quashed?

7. As noticed by me earlier, it is not disputed by the learned Additional Government Advocate that under identical circumstances in respect of four other employees this Court in Writ Petition No. 2248-2252 / 2000 dated 7th April 2000 has directed regularisation of their services in the University in view of the fact that they had put ten years of service. The decision of this Court made in the said Writ Petitions was also affirmed by the Division Bench of this Court. It is useful to refer to observation made by the Division Bench of this Court speaking through by His Lordship Ashok Bhan J as he then was at Paragraph - 5 and 6 of the judgment has observed as follows:

"5. State has come up in appeal. The University Employer of the respondents has not preferred an appeal. University has accepted the order and by Office Order No.GUG/ADM/EST 1/ NT/2000-01/522 dtd 24th May-2000 had decided to regularise the service of the daily-wage employees of the Gulbarga University subject to the approval of the Government.

6. We, agree with the view-taken by the single Judge. An employee, who has put in 10 or more-years of service is entitled to be considered for regularization of service. The need is not temporary. Some of the respondents-writ petitioners may-have been over-aged by now. It seems need is permanent. The respondents cannot be kept on temporary/adhoc-basis for an indefinite period."

As rightly pointed out by the learned Counsel appearing for the petitioners that when the services of few other employees who were similarly situated like the petitioners came to be regularized by the University in the light of the judgment of this Court referred to above, there is absolutely no justification to treat the petitioners who are similarly situated differently. Therefore, while I find considerable force in the first submission of the learned Counsel appearing for the petitioners, since I am inclined to quash the impugned order Annexure-F on the short ground that the petitioners were not heard by the 1st respondent-State Government before passing the impugned order, I find it unnecessary to consider the said submission of the learned Counsel appearing for the petitioners on merits. In order Annexure-F, the 1st respondent-State Government has come to a conclusion that the appointment of the petitioners is illegal. Nodoubt having come to that conclusion the 1st respondent directed the University to issue show cause notices to the petitioners, in my view, in the light of the specific finding recorded by the 1st respondent that the regularisation of services of the petitioners is illegal, the show cause notices directed to be issued to the petitioners by the University is only an empty formality. It cannot be disputed

that the Order passed by the University regularising the services of the petitioners has conferred valuable rights on the petitioners so far as right to continue in services in the 2nd respondent-University is concerned. Any order made nullifying the said right, it cannot be disputed would result in civil consequences. Under these circumstances, though there is no provision contemplated under Sub- Section (8) of Section-8 of the Act or in any other provision of the Act to hear the persons who are likely to be affected on account of the decision of the Government, in my view, the persons who are likely to be affected are required to be heard. In the case of MARTANDAPPA B HOSALLI AND OTHERS VS. STATE OF KARNATAKA AND OTHERS, W.P. No. 166618-691/2000 I have taken the view that persons who are likely to be affected on account of the decision to be taken by the Government in exercise of its power conferred on it u/s 8(8) of the Act is required to be heard. In the said Writ Petitions at Paragraph-8 of the said judgment. I have observed as follows:

8. However, it is no doubt true that this Court in the case of GANGADHAR (supra) while considering the affect of proviso given to sub-section 8 of Section 8 of the Act has taken the view that the persons likely to be affected are not required to be heard. In my view, the said observation in the said case mainly proceeded on the basis of the statement made by the University in the statement of objections conceding that the appointment of the petitioner in the said case as Administrative Officer in the services of the University was not in conformity with the provisions of the Act and the University statutes. This is clear from the observation made at paragraph 23 of the judgment. It is useful to refer to the relevant portion of the observation made at paragraph 23 which reads as hereunder:

"23. There is yet another reason to hold that the impugned order is not in violation of principles of natural justice. In the instant case, the University concedes in its objection statement that the appointment of the petitioner as Administrative Officer in the services of the University is not in conformity with the provisions of Act and University Statutes."

No doubt, in paragraph 22 of the judgment, this Court has also observed that since the University was heard, the person affected need not be heard. However, the said observation seems to me was made by this Court, as observed by me earlier, in the backdrop of the admission made by the University conceding the appointment of the petitioner, in the said case, as Administrative Officer in the services of the University was not made in conformity with the provisions of the Act and the University Statutes. This is clear from the view taken by His Lordship who has rendered the decision in the case of NAGARAJA (supra) while considering Section 306 of the Municipalities Act wherein his Lordship has observed that "Section 306 of the Act may be silent with regard to the hearing of persons who will be affected by the orders made by the State Government except the Municipal Council, but when certain rights are created in a person passing any order that would directly or indirectly affects his interest." Such

person should be heard. However, if the observation made by this Court in the case of Gangadhar (supra) is to be understood as contended by the learned Additional Government Advocate as this Court is laying down the law that a person affected need not be heard, in my view, the said enunciation of law would not be correct in the light of the judgment of the Hon"ble Supreme Court in the case of STATE OF HARYANA (supra) and in the case of GOVERNMENT OF MYSORE (supra) referred to by me earlier and also in the light of the decision of the Hon"ble Supreme Court in the case of Baldev Singh and Others Vs. State of Himachal Pradesh and Others, . In the case of Baldev Singh (supra) the Hon"ble Supreme Court has laid down that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, such rules would apply. It is useful to refer to the observation made in the said case, which reads as hereunder:

"It is a fact that the Orissa Act provides in clear terms a right of hearing whereas Section 256 of the Himanchal Act makes no such provision, but the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply..."

In the case of GOVERNMENT OF MYSORE (supra), the Hon"ble Supreme Court has observed that it is one of the fundamental rules of our Constitution set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers; and if there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. Therefore, the impugned order is liable to be quashed on the short ground that the same came to be passed in disregard of the principles of natural justice.

Regarding second question:

In view of my conclusion that the impugned order is liable to be quashed on the ground the same came to be passed in violation of the principles of natural justice, it is not necessary to consider the second question referred to above. All contentions urged on merits are left open to be considered by the State Government."

Therefore for the reasons given in the Writ Petitions and Writ Appeal referred to above and for the very reason given by me in the case of MARTANDAPPA B HOSALLI (Supra), I am of the view, the impugned order Annexure-F is liable to be quashed. Consequently, the notices impugned in these petitions are also liable to be quashed. 8. In the light of the discussion made above, I make the following:

ORDER

i) Order Annexure-F dated 31st January, 2002 passed by the 1st respondent so far as the petitioners are concerned are hereby quashed; and consequently, the show cause notices Annexures G,H, J and K issued to the petitioners by the 2nd

respondent are hereby quashed.

ii) The respondents are directed to reconsider the matter afresh in the light of the observation made above, after hearing the petitioners and giving an opportunity to them and in accordance with law.

8. In terms stated above, these petitions are allowed and disposed of. Rule is issued and made absolute.

9. Sri L.K.Srinivasa Murthy, learned Addl. Government Advocate is given four weeks time to file his memo of appearance.