

(2011) 09 KAR CK 0120
In the Karnataka High Court
Case No : Writ Petition No. 9892 of 2009

Sri L. Shreeharsha

APPELLANT

Vs

Kuvempu University and Dr. B.S. Mahadevaiah

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Citation : (2011) 09 KAR CK 0120

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : K. Manjunatha Rao Bhonsle, for the Appellant; T.P. Rajendra Kumar Sungay, for R1, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—The Petitioner and the 2nd Respondent were Lecturers in Government service and were serving at Sahyadri Arts and Commerce College, Shimoga (for short, the "College"), prior to 2.6.92, on which date, the said College was transferred to the 1st Respondent Kuvempu University (for short, the "University") Petitioner and 2nd Respondent opted to continue in the University service and as a result, they were continued in the said College, even after its transfer to the 1st Respondent University.

2. The 2nd Respondent joined service on 10.8.1974 and the Petitioner joined service on 14.8.1974. As per the seniority list published by the University, as on 31.1.1998, the 2nd Respondent being senior in service to the Petitioner was ranked at Serial No. 26 and the Petitioner has been ranked at Serial No. 27.

3. The 2nd Respondent was transferred and placed as Convenor in the P.G. Department (Sanskrit) of the University, as per an order dated 30.9.04.

4. Sri Venkoba K.V., who was the Principal of the College, attained the age of superannuation on 28.2.2009. Smt. Gayathridevi Sajjan S., Lecturer, having declined promotion to the vacant post of Principal of the College, on personal grounds, taking note of the 2nd Respondent working in the University, the

Petitioner who was next in the order of seniority, was placed in charge of the post of Principal of the College, pending decision of the Syndicate, in terms of the order dated 27.2.2009, as at Annexure-D. The Syndicate of the University, in its meeting held on 20.3.2009. considered the matter and decided to promote and appoint the 2nd Respondent as Principal of the College. Pursuant to the said decision of the Syndicate, the order dated 1.4.2009, as at Annexure-F was issued by the University, appointing the 2nd Respondent as the Principal of the College. Feeling aggrieved, the Petitioner has filed this writ petition, to quash the order of the University dated 1.4.09, as at Annexure-F and to direct the University to promote him as Principal of the College.

5. Sri K. Manjunatha Rao Bhonsie, learned advocate appearing for the Petitioner contended that, the 2nd Respondent having been appointed in the P.G. Dept of the University, "the Notification of the University as at Annexure-F, appointing the 2nd Respondent as Principal of the College is arbitrary and illegal may be quashed and that, the Petitioner being the seniormost Selection Grade Lecturer, being eligible and qualified to hold the post of Principal of the College be directed to be appointed to the said post in the College.

6. Sri T.P. Rajendra Kumar Sungay, learned Counsel appearing for the University, on the other hand, contended that, both the Petitioner and the 2nd Respondent are Selection Grade Lecturers in the College and the 2nd Respondent being senior to the Petitioner, the rankings in the Seniority List as at Annexure-R1 having not been questioned, the promotion and appointment of the 2nd Respondent to the vacant post of Principal of the College is justified. Learned Counsel submitted that, the Petitioner who is junior to the 2nd Respondent, cannot feel aggrieved on account of the appointment of the 2nd Respondent to the post of Principal which is based on seniority-cum-suitability. Learned Counsel submitted that, the 2nd Respondent was a Selection Grade Lecturer in the constituent College of the University and was working at the P.G. Department of the University, on transfer with a lien over the post in 3 College and hence, the decision taken by the Syndicate in the meeting held on 20.3.2009 to promote the 2nd Respondent to the vacant post of Principal of the College does not suffer from any arbitrariness and the consequential order issued as at Annexure-F is not illegal.

7. I have perused the writ papers.

8. The point for consideration is:

Whether the promotion and appointment of the 2nd Respondent as Principal of Sahyadri Arts and Commerce College vide Annexure-F is arbitrary and illegal?

9. Indisputedly, the Petitioner and the 2nd Respondent were Lecturers in Government service and were serving at the College prior to 2.6.92, the date on which the College was transferred to the University and both of them opted to continue in the University service and were continued in the College. The seniority list of the College published by the University, as on 31.1.1998, shows

that the 2nd Respondent and the Petitioner were Lecturers of the College. Undeniably, the 2nd Respondent joined service as Lecturer of the College earlier to the Petitioner. Names of the 2nd Respondent and the Petitioner appear at Serial Nos. 26 and 27 of the seniority list, as at Annexure-R1, which has not been questioned by the Petitioner

10. Pursuant to the order of the University dated 30.9.04, as at Annexure-A, the 2nd Respondent was transferred to the P.G. Department (Sanskrit) of the University. There is no absorption of the 2nd Respondent in the P.G. Department (Sanskrit) of the University after the issuance of the order at Annexure-A. On account of the said transfer, the lien of the 2nd Respondent to the post held by him in the College was not snapped.

11. The post of Principal of the College having fallen vacant with effect from 1.3.2009, on account of the incumbent having retired on 23.2.2009, the Petitioner was placed in charge of the post of Principal, pending decision of the Syndicate. The Syndicate of the University in its meeting held on 20.3.2009, noticing that, the seniormost Selection Grade Lecturer Smt. Gayathridevi Sajjan S. having declined her promotion to the post of Principal on account of personal reasons, the 2nd Respondent being the seniormost Selection Grade Lecturer, selected the 2nd Respondent as the Principal and as a result, the order at Annexure-F was issued on 1.4.2009. There being no dispute with regard to the 2nd Respondent being senior in service than the Petitioner, the decision of the Syndicate to appoint the 2nd Respondent to the vacant post of Principal, does not suffer from any arbitrariness. The Petitioner who is junior to the 2nd Respondent in service, cannot feel aggrieved with the promotion and posting of the 2nd Respondent as Principal of the College, which post has been filled up on the basis of seniority-cum-suitability,

12. Having considered the submissions made on behalf of the Petitioner and the University, I find no infirmity in the impugned decision/order of the University, calling for interference in writ jurisdiction.

The writ petition being devoid of merit, is liable to be dismissed. As a result, the "Rule issued" stands discharged and the writ petition stands dismissed.

However, in the facts and circumstances of the case, the parties are directed to bear their respective costs.