
(1998) 07 KAR CK 0109
In the Karnataka High Court
Case No : Writ Petition No. 22360 of 1998

Sri. Mahmood Mirza

APPELLANT

Vs

Karnataka State Open University and Another

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Karnataka State Open University Act, 1992 — Section 2 (d), 3

Citation : (2000) 1 KCCR 46

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : G.S. Visweswara, for the Appellant; A.G. Holla, for Respondent 1 and V. Vidya, Government Pleader for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The Petitioner, who was employed as an Assistant Librarian in the establishment of the 1st Respondent-Karnataka State Open University, Mysore, (in short the "Open University") has approached this Court with a prayer to quash the office order dated 18/19.2.1998 (Annexure "B"), where he was relieved from service on completion of 58 years of age, which is the superannuation age fixed for non-teaching staff of the Open University.

2. According to the Petitioner, he can be superannuated only on completion of 60 years, which is the retirement age for the teachers of the Open University.

3. It is not in dispute that formerly the Petitioner was employed in the establishment of Mysore University as Assistant Librarian and was not performing any function of imparting instructions in any subject whatsoever. Moreover, he does not even possess the requisite qualification prescribed for the post of librarian. After establishment of the Open University u/s 3 of the Karnataka State Open University Act, 1992 (in short the Open University Act), the Government under its order dated 6.4.1995 (Annexure "A") transferred him from Mysore University to the Open University on the post of Assistant Librarian only which

was duly accepted by the Petitioner. Though I have serious doubts as to whether the Government has any power to pass order transferring a permanent employee from one University to another which are governed by respective legislative Acts but that question need not be gone into in the present writ petition because the said transfer order was never called in question by the Petitioner. Therefore, it has to be inferred that the Petitioner had agreed for deputation to the Open University and ultimately he was absorbed there only. It is also not in dispute that the Open University has adopted the Mysore University Employees (Conditions of Service) Statutes (Revised) 1984, being the statutes applicable to its employees, in entirety. Statute No. 3 thereof reads as under.

Age of Retirement.-(i) A person appointed as teacher and holding lien on a post of teacher of the University shall retire on superannuation on attaining the age of sixty years and any other employee shall retire on superannuation on attaining the age of fifty eight years:

Provided that where the date of such superannuation falls on a day other than the first day of the month, he shall retire on the afternoon of the last day of the month.

Teachers of the University means persons appointed for the purpose of imparting instruction in the University or in any college maintained by the University.

4. Two Division Benches of this Court in the cases of University of Mysore Vs. P. Maribasavaradya, ; B. Shamasundar and Others Vs. University of Mysore, have held that keeping in view the definition of the word "teachers" in the Karnataka State Universities Act, 1976, the Librarians, Deputy Librarians, etc., do not come within the definition of a teachers of the University as defined u/s 2(d) of the Act and therefore retirement age has to be treated only as 58 years. The definition of a "teacher" as set out in Clause (1) of Section 2 of the Open University Act is *pari materia* with the corresponding definition in the Karnataka State University Act. Therefore, the law laid down by this Court in the above two judgments will squarely apply to the Petitioner's case as well and it has to be held that the University has rightly relieved him by holding that he has superannuated on completion of 58 years of age.

5. Mr. Vishweswara, learned Counsel appearing for the Petitioner, in support of the prayer made in the writ petition relies on the Government order dated 27.6.1998 (Annexure"C"), by which the Government, keeping in view certain representations received from the Karnataka State College Librarians Association, Bangalore, had taken a decision to the following effect.

The Government is pleased to order that Librarian working in Universities and in their constituent colleges, Government Colleges and Aided Colleges are treated as academic and (non-vocational) staff

6. Under the above order, the Government is purported to have taken a decision treating the Librarians working in the Universities as well as in their constituent

colleges, government colleges, aided colleges as academic non- vocational staff. By relying on this order it has been submitted by the Petitioner that this order now overrides the provisions of the University Act and statutes and therefore the judgments of the Division Bench of this Court can have no application for determining the age of superannuation of persons like the Petitioner, who are working as assistant librarians since now they have to be treated as academic staff.

7. So far as the above submission is concerned, to my mind, in built fallacy is apparent. One has to clearly bear in mind that the Universities are established under the Acts of Legislature and are to be governed by the statutory provisions contained in said Acts and not by executive fiats issued by the State Governments in derogation of the statutory provisions. The State Government has clearly acted in a manner ultra vires powers in determining the status or grade of the employees of the University. The Universities are not the departments of the State Government. The Universities Act confers no power on the State Government to lay down terms of service of the employees of the Universities.

8. Moreover Chapter VII of the "Open University Act" makes special provisions for prescribing conditions of service of its employees. Section 28 thereof reads as under.

Section 28. Conditions of service of employees.(1) Every employee of University shall be appointed under a written contract and such contract shall not be inconsistent with the provisions of this Act, the Statutes and the Ordinances.

(2) The contract referred to in Sub-section (1) shall be lodged with the University and a copy of which shall be furnished to the employees concerned.

9. Bare reading of the above section makes it is clear that the age of retirement has to be determined under the respective statutes framed or adopted by the University and the State Government cannot under its purported executive powers modify the same. Therefore, the impugned order passed by the State Government under Annexure "C" treating all librarians working in Universities, and their constituent colleges, as academic (non-vocational) staff is clearly ultra vires the powers of the State Government and does not create any legal right in favour of such employees. The order is accordingly declared to be ultra vires and illegal to the said extent and accordingly of no legal consequence.

10. For the said reasons, the Petitioner is not entitled to the relief as claimed in the writ petition which is accordingly dismissed. No costs.