

(2011) 11 KAR CK 0131

In the Karnataka High Court

Case No : Writ Petition No. 16972 of 2007 (S-RES)

Sri. M.V. Sholapurkar

APPELLANT

Vs

University of Agricultural Sciences (UAS)

RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0131

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : P.A. Kulkarni, for the Appellant; B.V. Puttegowda, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy

1. Heard the learned counsel for the petitioner and the learned counsel for the respondent. The brief facts of the case are as follows:

2. The petitioner had joined the respondent - University as an Assistant Professor (Statistics) in the year 1984. He was earlier working as Research Assistant at the Population Centre, Malleshwaram, Bangalore between January 1974 and February 1984. That was a research organisation established under the World Bank Project and later formed part of the Ministry of Health and Family Welfare, Government of Karnataka. The petitioner was given the benefit of counting that service rendered, before joining the University for purpose of pay fixation, pension and pensionary benefits. This is evident from Annexure-"B" to the writ petition. The said service was also recognised in terms Statute No.66 as per Annexure-"C". It is the case of the petitioner that the petitioner was promoted along with others on 23.03.1992 to the cadre of Associate Professor and it was treated as a time bound promotion. The post of Assistant Professor (Statistics) held by the petitioner itself was upgraded for accommodating the petitioner as Associate Professor with effect from 21.01.1989. This promotion was ordered to be treated as "personal" to the petitioner. The notification was issued by the

University modifying the regulation 30(4-C)(1) whereby the minimum qualification required under merit upgrading scheme for the post of Professor was a Ph.D. Degree in the concerned field and post of Associate Professor was a Master's degree in the concerned subject. Further, one required a minimum of eight years continuous service in the respective cadre of which at least five years should be at the University, Bangalore for consideration of his case for the next higher cadre. It is the service rendered by the petitioner in the Population Centre as aforesaid which enabled him to be upgraded to a post in higher cadre. In the year 2001, three Assistant Professors working in the University filed a writ petition in W.P.No.6208-6210/2001 seeking a direction against the University in the matter of counting their past service rendered before joining the University. The petitioners therein cited the case of the present petitioner as being a precedent for counting their past services. This Court while disposing of the petition, observed as follows:

In view of the facts stated above and pursuant to the decision taken, by the Board of Regents (ref.6), Mr. Mukund Joshi, Associate Professor of Agronomy, is hereby informed that his request for according Time Bound Promotion under Statute 30(4-C) to the cadre of Associate Professor as was done in case of M/s. H. Gopalswamy, M.B. Rajegowda, M.V. Sholapurkar, M. Javarayigowda, N. Jayabalan and Girish cannot be considered as the University has initiated action to cancel the Time bound promotion accorded to them to the cadre of Associate Professor in violation of the Statute 30(4-C).

pursuant to which the University which was averse to considering the case of those petitioners in terms of the order only because the petitioner had been provided an upgradation of his cadre and hence, proceeded to hold that the upgradation of the petitioner was not in accordance with law and therefore sought to reverse the same and recover the benefits granted to the petitioner including the pensionary benefits granted to the petitioner. This was challenged by way of a writ petition in W.P.No.25864/2002 and this Court by an order dated 22.09.2006, quashed the notice by which the University was reserved liberty to recover benefits paid to the petitioner and to demote him from the post of Associate Professor after issuing fresh show cause notice and to take a decision after affording an opportunity of hearing to the petitioner. It is thereafter that a fresh show cause notice was issued and it was stated that the petitioner was not eligible for promotion when it was granted to him as stated earlier, and passed an order at Annexure-"M" to the writ petition which is under challenge.

3. In the first instance, there was an interim order of stay of operation of Annexure-"M" and even during the pendency of this petition, the petitioner had attained the age of superannuation. The respondent - University has even paid the pensionary dues to the petitioner on the footing that he was an Associate Professor. He has in fact drawn the same and he continues to draw pension on that basis. Therefore, the learned counsel for the petitioner would now submit that there is no scope for the University to hold that the petitioner was not

entitled to hold the post of Associate Professor, at this remote point of time, after the same was given effect to after having counted the service rendered in the Population Centre which, in any event, is not an academic exercise at this point of time. The legal position is well-settled that the benefits granted not at the instance or on a misrepresentation or fraud played by the employees, if the State has paid the same on its own accord, the same being recovered at a later point of time is held bad in law and applying this principle, the petitioner cannot be denied the benefits that have been conferred on him on the basis that he was in the cadre of the Associate Professor. Hence;" he would submit that at this point of time, the impugned order is deemed to be a nullity and that the petition be allowed, in any event formally quashing Annexure-"M".

4. The learned counsel appearing for the respondent on the other hand would vehemently oppose the petition and would assert that this Court having granted liberty to the respondent to conduct a fresh enquiry, a finding of fact has been arrived at with the leave of the Court that the petitioner was not entitled to be conferred with the post of Associate Professor and it is by virtue of which the respondent seeks to recover any benefits that have been paid to him. The fact that the petitioner had attained the age of superannuation during the pendency of this petition or that he has received the pensionary benefits consequent upon the same, is only by virtue of the interim order that was operating as on the date he attained the age of superannuation. If not for the interim order granted by this Court, the respondent was not in any way entitled for treating the post as Associate Professor in granting such benefit to him. Therefore, the respondent would be well advised in resisting the present petition and denying the benefit paid to the petitioner and therefore, would be entitled to recover the same.

5. Having regard to the above facts and circumstances, by sheer circumstances, the petitioner has attained the age of superannuation during the pendency of this writ petition. The question of addressing whether or not he was entitled to hold the post of Associate Professor which was conferred to him by the respondent - University even though it was on mistake or oversight, cannot be denied at this point of time. The question of amounts being recovered at this point of time, will not arise.

Therefore, the petition is formally allowed. The impugned order Annexure-"M" is rendered a nullity and is accordingly, quashed.