
(1979) 06 KAR CK 0021
In the Karnataka High Court
Case No : WP 12213/78

T. Ramesan

APPELLANT

Vs

Chancellor Bangalore University and Others

RESPONDENT

Date of Decision : 26-06-1979

Acts Referred:

Constitution of India, 1950 — Article 226(3)
Karnataka State Universities Act, 1976 — Section 24 (iv)

Citation : (1979) 2 KarLJ 337

Hon'ble Judges : Mahendra, J

Judgement

1. The petitioner who is a professor of Mathematics in the Bangalore University has in this writ petition challenged the nomination of Dr. O.R. Krishnaswamy, the third respondent as a member of the syndicate of the Bangalore University as per Ext."C" dated 28-9-1978.

2. Sri T. Ramesan the petitioner was appointed as a professor of Mathematics on 1-9-1966. Dr. O.R. Krishnaswami the third respondent was appointed as professor of Commerce on 28-6-1974, The petitioner is acting as a Dean of Faculty of Science with effect from 1-11-77, while the third respondent is acting as a Dean of Faculty of Commerce with effect from 26-9-1976. The Chancellor of the Bangalore University nominated the third respondent who is the Professor and Head of the Department of Commerce and Dean of Faculty of Commerce to be a member of the syndicate of the Bangalore University for a period of one year with effect from 21-9-1978 under S. 24(iv) of the Karnataka Universities Act, 1976 (hereinafter referred to as the Act) and this was notified by the Registrar of the Bangalore University in the notification dated 28-9-1978 Ext. "C". It is this notification that is challenged in this writ petition.

3. Sri B.T. Parthasarathy, the learned counsel for the petitioner submitted that the syndicate of the Bangalore University consists of one Dean by rotation according to the seniority, nominated by the Chancellor from among those who are not Principals of Colleges, for a period of one year and the seniority referred

to is a seniority in the cadre of Professors. According to him the petitioner who has been a Professor of Mathematics since 1966 is senior to the third respondent who has been Professor since 1974 and therefore it was his client who should have been nominated and not the third respondent as a member of the syndicate as required under S. 24(iv) of the Act. It is therefore his submission that the nomination as per Ext. "C" is contrary to law and is liable to be quashed. In support of his submission that it is the seniority in the cadre of Professors that is relevant in making nomination under S. 24(iv) of the Act he relied on a decision of this Court in Dr. K. Narasaiah v. Chancellor, Bangalore University, (1971) 1 Mys LJ. 65.

4. The learned Advocate General appearing for the State-the first respondent submitted that this Court in Narasaiah's case, (1971) 1 Mys LJ. 65, was considering the provisions of the Bangalore University Act, 1964, and it is distinguishable and that the seniority that is required to be taken while nominating a Dean as a member of the syndicate under S. 24(iv) of the Act is not the seniority in the cadre of Professors and therefore the nomination of the third respondent as a member of the syndicate by the Chancellor does not suffer from any vice or infirmity.

5. Sri Vijayashankar, the learned counsel appearing for the University-the second respondent submitted that the seniority referred to in S. 24(iv) of the Act is seniority as "Deans" and the third respondent has acted as Dean for a period longer than the petitioner and therefore the nomination of the third respondent as a member of the Syndicate by the Chancellor is in accordance with the requirement of Sec 24(iv) of the Act and therefore is not open to question. He further submitted that the petitioner has an alternative remedy under S. 48 of the Act and therefore this petition is not maintainable.

6. It is necessary to consider the relevant provisions of the Act which have a bearing on the rival contentions of the parties. The relevant provisions are:

Sec. 17. Deans,-(1) Every Head of a Department of studies who is a Professor shall, by rotation according to seniority, act as the Dean of the Faculty for a period of two years:

Provided that if in any Faculty there is no Professor, the seniormost Reader shall act as the Dean and if there is no Reader, such teacher as the Vice Chancellor may designate shall act as the Dean.

Sec. 20. Authorities of the University.

(a) x x x x x

(b) The Syndicate.

Sec. 24 The Syndicate-The Syndicate shall consist of the following members, namely;- (i) (ii) (iii)

(iv) One Dean, by rotation according to seniority, nominated by the Chancellor

from among those who are not principals of Colleges, for a period of one year.

Sec. 48. Disputes regarding membership.-(1) If any question arises whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Chancellor, (2) The decision of the Chancellor on that question shall be final and shall not be called in question in any court of law.

Sec. 63 Seniority.-Whenever in accordance with this Act or the Statutes any person is to hold an office or be a member of any Authority or body of the University according to seniority, such seniority shall be determined by the order in which the names are arranged in the seniority list pertaining to that cadre or class of posts.

7. According to Sri Vijayashankar, Sec. 48 provides for reference of any question as to whether a person duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Chancellor and the decision on that question is final and the Act itself provides for an alternative remedy and this writ petition is therefore not maintainable.

8. Sec. 48 provides that disputes regarding membership of any authority or body of the University being referred to the Chancellor for his decision. In this case it is seen from Ext. "C" that it is the Chancellor who has in exercise of his power under Sec. 24(iv) of the Act nominated the third respondent as a member of the syndicate, It is this nomination by the Chancellor that is questioned. Can such a dispute be referred to the Chancellor for a decision under Sec. 48. A reference of a question or a dispute that can be referred to an authority or a person for decision can only be a question or a dispute to which such an Authority or person is not a party. It can never be the intention that even when the decision of the Chancellor is questioned, the matter is again required to be referred to the Chancellor himself for decision. Sec. 48 of the Act does not provide for an alternative remedy to the petitioner to challenge the nomination of the third respondent by the Chancellor. He has therefore no alternative remedy as contended by the learned counsel for the third respondent.

9. The Syndicate is an Authority of the Bangalore University under the Act. The Chancellor is required under Sec 24(iv) of the Act to nominate one Dean, by rotation according to seniority, from among those who are not principals of Colleges for a period of one year. The dispute between the parties is as to what is meant by "according to seniority". These words "according to seniority" find a place in Sec. 17 and also Sec 24(iv). Sec 17 provides that every Head of Department of Studies who is a Professor shall, by rotation according to seniority, act as the Dean of the Faculty for a period of two years Sec 24(iv) provides for the nomination of one Dean as a member of the syndicate by the Chancellor from among those who are not principals of Colleges, for a period of one year. Whenever a person is to hold an office or be a member of any authority

or body of the University "according to seniority", such seniority is required to be determined as is provided under Sec 63. This section provides that such seniority of the person who is to hold an office or be a member of any authority or body of the University according to seniority, shall be determined by the order in which the names are arranged in the seniority list pertaining to that cadre or class of posts.

10. It is not in dispute that the petitioner has been a Professor for a longer period than the third respondent and the third respondent has acted as a Dean for a longer period than the petitioner. The controversy between the parties is as to whether the period during which the petitioner and the third respondent have been Professors or the period during which they have acted as Deans should be the basis for determining the seniority or ranking between them.

11. In service the term seniority has always reference to the length of service in a cadre or class of posts. A person should be appointed or should be holding a post before his seniority could be determined with reference to his length of service in that cadre or class of posts.

12. The Syndicate is an authority under Sec 20 of the Act. The Chancellor is conferred with power to nominate a Dean to be a member of this authority namely, the Syndicate and this nomination is by rotation according to seniority for a period of one year. A person can be a member of the Syndicate by rotation according to seniority under Sec 24(iv).

13. Sri Parthasarathy submitted that a Professor or if there is no Professor the seniormost reader and if there is no reader, such teacher as the Vice-Chancellor may designate acts as a Dean under Sec 17 of the Act and the Professor, reader or the lecturer as the case may be does not hold any post of a Dean, there being no post of a Dean but only acts as a Dean for the purpose of the Act. He therefore submitted that the question of determination of seniority between two persons with reference to the period they have acted as Deans does not arise and the seniority can only be determined with reference to the length of service in the post or class of posts held by the persons acting as Deans.

14. Sri Vijayashankar fairly conceded that Deanship is not a post and is not in any cadre. He however maintained that if Secs 17, 24 and 63 are read together, it would be clear that the Chancellor is required to nominate one Dean as a member of the syndicate according to seniority and the reference to seniority can only mean seniority amongst Deans. According to him the period during which a person has acted as a Dean can be the only basis and the person who has acted for a longer period as Dean has to be appointed as a member of the syndicate.

15. Deanship not being a post in any cadre or class of posts, the length of period for which a person acts as a Dean cannot be the basis for determining seniority between two persons acting as Deans. Under Sec. 17 every Head of the Department who is a Professor acts as the Dean of the Faculty. If there is no Professor in any Faculty, the seniormost Reader acts as the Dean of the Faculty.

and if there is no Reader, such other Teacher as is designated by the Vice-Chancellor acts as the Dean of the Faculty. It may be at a given time a Professor, a Reader and a Teacher have all acted as Deans of their respective Faculties and the Teacher for a longer period than the Reader and the Reader for a longer period than the Professor as Deans. While nominating a Dean as a member of the syndicate, the Chancellor under Sec. 24(iv) of the Act is required to appoint, according to the interpretation suggested by Sri Vijayashankar, the teacher and not the Reader or Professor. The Teacher, Reader and the Professor are in different cadres and the teacher has to be appointed as a Reader and then as a Professor. This could never have been the intention as is clear from a reading of Sec 63, which provides that when a person is to hold office or be a member of any authority or body of the University according to seniority, such seniority shall be determined by the order in which the names are arranged in the seniority list pertaining to that cadre or class of posts. The Chancellor has to nominate a Dean as a member of the Syndicate, an Authority of the University, according to seniority; such seniority has to be determined according to the seniority in the seniority list pertaining to the cadre or class of posts. Dean-ship not being a post in any cadre, it is the order in which the names of persons acting as Deans are arranged in the seniority list pertaining to that cadre or class of posts they belong that determines the seniority for purpose of nominating a Dean to be a member of the Syndicate.

16. Sri B.T. Parthasarathy relies on a decision of this Court in Dr. K. Narasaiah v. Chancellor, Bangalore University, (1971) 1 Mys. LJ. 65 in support of his submission that the seniority is to be reckoned with reference to the length of service in the cadre of professors. In this case this Court considered Ss. 16, 46 and 58 of the Bangalore Universities Act, 1964, which correspond to sections 17, 48 and 63 of the Universities Act, 1976. Dr. K. Narasaiah the petitioner and Dr. K. Venkatagiri Gowda the third respondent in that case were Heads of Department in the Faculty of Arts of the Bangalore University, the former became the Head of the Department of History on 7-2-1967 and was appointed as the Professor of History on 29-8-1968. The 3rd respondent was appointed as Professor of Economics on 10-7-1967 and he became the Head of the Department of Economics from 10-7-1967 itself. The petitioner was appointed as the Dean of the Faculty of Arts on 2-12-1970. The third respondent moved the Chancellor under Section 46 of the Bangalore University Act and complained that in terms of S. 16 of the said Act he and not the petitioner should have been appointed as the Dean of the Faculty of Arts. The Chancellor upheld the view of the third respondent and set aside the order appointing the petitioner as the Dean of the Faculty of Arts. This order was challenged by the petitioner before this Court.

Section 16 of the Bangalore University Act read:

"S. 16. Deans.- (1) Every Head of a Department of studies who is a Professor shall, by rotation according to seniority for a period of two years act as the Deam of the Faculty: Provided that if in any Faculty there is no Professor, the senior-

most Reader shall act as the Dean and if there is no Reader such teacher as the Vice-Chancellor may designate, shall act as the Dean".

The contention of the petitioner was that seniority for the purpose of becoming a Dean of the Faculty of Arts was the length of service as Head of the Department, while the contention of the third respondent was that the length of service as a Professor. Narayana Pai, C.J., speaking for the Bench has observed at para 11 of the Order as follows:

"The question posed is whether the seniority should be counted by length of service as a Head of Department or as a Professor. On one matter, there can be no doubt, namely, that the class of persons out of whom one gets "entitled to act as a Dean" is that of Head of a Department. If that is so, no person who is not the Head of a Department can become a Dean. Another matter on which also there could be no doubt whatever (so far as the main part of the sub-section is concerned) is that no person who is not a Professor can become a Dean. If the person who has put in the longest service as a Head of Department does not happen to be a Professor, he cannot become a Dean. There being a clear possibility of such a situation arising, the only proper inference to draw is that what is of materiality is that Professorship is a condition precedent. If in the illustration given the seniormost person as Head of Department is not a Professor, and there are more Heads of Department than one who are Professors, the obvious choice must be of the Professor who has put in longest service as Professor. The inference, therefore, is inevitable that length of service which is material for the purpose of the operation of sub-sec. (1) of S. 16 is length of service as Professor. That such is the clear intention of the statute is also indicated by what is found stated in the proviso which deals with cases where there is no Professor at all in any Faculty; according to the Proviso, the seniormost Reader shall act as the Dean, the Proviso does not say seniormost Head of the Department who is a Reader but seniormost Reader."

17. Sri Parthasarathy argued that the reasoning adopted by this Court in Narasaiah's case in interpreting section 16(1) of the Bangalore University Act, 1964, has equal application for interpreting S. 24(iv) of the Act, which provides for the nomination of a Dean as a member of the Syndicate by rotation according to seniority.

18. I think Mr. Parthasarathy is right in his contention and the reasoning adopted by this Court in Narasaiah's case is equally applicable when section 24(iv) of the Act is required to be interpreted.

It is clear that the words "according to seniority" in sec. 24(iv) of the Act has reference to seniority in the Cadre or class of posts of Professors who are not Principals of Colleges. The relative seniority of the petitioner and the third respondent has to be determined by the order in which their names are arranged in the seniority list pertaining to the cadre or posts of Professors. The Bangalore University has published a seniority list pertaining to the cadre of Professors

arranging the names of the Professors according to their seniority. The list is made available for my perusal by Sri Vijayashankar, learned counsel for the third respondent. According to this list, it is not disputed, that petitioner is senior to the third respondent. It necessarily follows that it was the petitioner and not the third respondent who should have been considered for nomination as a member of the Syndicate as required under section 24(iv) of the Act. The Chancellor of the Bangalore University has however nominated the third respondent only because he had acted as a Dean for a longer period than the petitioner, a senior in the cadre of Professors. The nomination of the third respondent is not in accordance with the requirement of section 24(iv) of the Act. The notification issued by the Registrar-Ext. "C"-is illegal and liable to be set aside.

19. In the result, (i) the Rule is made absolute;
(ii) the notification Ext. "C" dated 28-9-1978 is quashed;
(iii) in the circumstances of the case, no order as to costs.