

(1998) 09 KAR CK 0077

In the Karnataka High Court

Case No : Writ Petition No. 17164 of 1998

T.G. Chandrashekharappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

University Grants Commission Act, 1956 — Section 2, 26, 3
University Grants Commission Regulations, 1991 — Regulation 2

Citation : (1998) 6 KarLJ 326

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

Bench : Single Bench

Advocate : Smt. Manjula R. Kamadolli, for the Appellant; Smt. V. Vidya, High Court Government Pleader, Sri N. Devadas and Sri S.M. Patil, for the Respondent

Judgement

1. Heard Mrs. Manjula R. Kamadolli, learned Counsel for the petitioner, Mrs. V. Vidya, learned High Court Government Pleader for respondent

1, Mr. N. Devadas, learned Counsel for respondent 2 and Mr. S.M. Patil, learned Counsel for respondent 4.

2. The present writ petition has been filed by the petitioner for directions upon the 2nd and 3rd respondents to cancel the appointments of 4th and

5th respondents for the posts of Lecturer in History in constituent colleges of the respondent-Kuvempu University. His further prayer is to direct

the respondents to select him for the said post.

3. The petitioner was one of the interviewees like respondents 4 and 5 for appointment to the post of lecturer in the discipline of History against the

vacancies, which is three in number, in constituent colleges of the respondent-University. Admittedly, the said three posts had been reserved each

for Group-IIA, General Merit and Scheduled Caste. In the selection process, the

respondent-University selected Mr. K.N. Manjunath, who has not been made party in the present writ petition, respondents 4 and 5 to the said posts. Being aggrieved against the selection of respondents 4 and 5, he has approached this Court for the reliefs referred to above on the ground that he is better merited than respondents 4 and 5.

4. So far as selection of respondent 5 is concerned, the petitioner has no locus standi to question his selection inasmuch as respondent 5 is having requisite qualification and moreover he is a member of Scheduled Caste, for which one post was reserved as per roster point. Mrs. Manjula, learned Counsel for the petitioner, has also fairly concedes that the petitioner, who belonged to Group-IIIB category, has no right to question the appointment of respondent 5, who has been appointed against reserved post for Scheduled Caste.

5. So far as selection of respondent 4 is concerned, though she has secured 60.72% of marks in Master Degree Examination, which is greater than 58.48% of marks secured by the petitioner, but admittedly she has not passed the eligibility test for lecturership in Universities and Colleges conducted by the University Grants Commission, CSIR or similar test conducted by the UGC. Whereas, the petitioner has cleared the said examination. One of the grounds raised by him for assailing the appointment of the 4th respondent is that since the respondent-University has adopted the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of the University and Institutions affiliated to it) Regulations, 1991 (in short the "Regulations") therefore the 4th respondent cannot be held to be eligible for appointment as lecturer in the constituent colleges of the University. Therefore, for the said reason alone her appointment has to be declared as null and void.

6. Section 26 of the University Grants Commission Act, 1956 (in short the "Act") empowers the Commission to frame regulations on matters enumerated therein. Clause (e) of sub-section (1) of the said Section, which is relevant for the present purpose, reads as under:-

26. Power to make regulations.--(1) The Commission may make regulations consistent with this Act and the rules made thereunder.

(a)xxxxxxx;

(e) defining the qualifications that should ordinarily be required of any person to

be appointed to the teaching staff of the University having regard to the branch of education in which he is expected to give instructions;
(f)xxx xxxxxx.

6-A. Pursuant to the above powers, the Commission has framed regulations prescribing qualifications for appointment to the teaching post in the University or in institution or constituent or affiliated colleges recognised under clause (f) of Section 2 of the Act, which reads thus.-

2. Qualifications:

No person shall be appointed to a teaching post in University or in any of institutions including constituent or affiliated colleges recognised under clause (f) of Section 2 of the University Grants Commission Act, 1956 or in an institution deemed to be a University u/s 3 of the said Act in a subject if he does not fulfil the requirements as to the qualifications for the appropriate subjects as provided in the Schedule I:

Provided that any relaxation in the prescribed qualification can only be made by a University in regard to the posts under it or any of the institutions

including constituent or affiliated colleges recognised under clause (f) of Section 2 of the aforesaid Act or by an institution deemed to be a

University u/s 3 of the said Act with prior approval of the University Grants Commission:

Provided further that these regulations shall not be applicable to such cases where selections through duly constituted selection committees for

making appointments to the teaching posts have been made prior to the enforcement of these regulations.

7. Item (3)(a) of Schedule I of the Regulations provides eligibility for appointment to the post lecturer. It reads thus.-

Lecturer

(3)(a) Arts Sciences, Social Sciences, Commerce, Education, Physical Education, Foreign Language and Law.

Good academic record with atleast 55% marks or an equivalent grade at Master's degree level in the relevant subject from an Indian University or

an equivalent degree from a foreign University.

Candidates besides fulfilling the above qualifications, should have cleared the eligibility test for lecturers conducted by UGC, CSIR or similar test

accredited by the UGC.

8. Mr. Devadass, learned Standing Counsel for the respondent-University, states that Regulations framed by the University Grants Commission

binds the University and the University had been making appointments only in accordance with the said Regulations. He fairly concedes that

respondent-University should not have selected and appointed respondent 4 as lecturer in view of her disqualification inasmuch as admittedly she

has not passed the eligibility test for lectureship conducted by the UGC as noticed above. However, Sri Devadas submits that the University has

made a written request to the University Grants Commission for granting relaxation in favour of the 4th respondent with regard to clearing of the

eligibility test in terms of 1st proviso to Regulation 2 of the Regulations.

9. In my opinion, since proviso to Regulation 2 of the Regulations clearly spells out that the relaxation is permissible subject to prior approval of the

University Grants Commission and the same cannot be substituted by taking a plea of post facto approval. Therefore, the plea raised by the

University even on this score cannot be said to be tenable in law.

10. In the case of Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, , it has been held that in case the candidates do not

possess the requisite qualifications prescribed under the relevant regulations, then the appointment will be per se bad. Similar view has again been

taken by the Supreme Court in the case of Santosh Kumar Singh Vs. State of U.P. and Others, .

11. In the above view of the matter, the appointment of respondent 4 as lecturer is held to be legally impermissible since on the date of notification

she did not possess the requisite qualification meant for the appointment to the post of lecturer as provided under the Regulations and accordingly

her appointment order issued pursuant to the recommendations of Board of Appointment in History is quashed.

12. Before parting, it would be just and proper to direct the respondent-University to place the matter before the selection committee of the

University to consider the case of the petitioner by assessing his performance judiciously and take appropriate decision in accordance with law

within two months from today.

13. The writ petition is accordingly allowed to the extent indicated above. No

costs.

14. Let a copy of this order be made available to Mr. Devadas.