

(2006) 09 KAR CK 0016
In the Karnataka High Court
Case No : Writ Appeal No. 2583 of 2005

T.G. Chandrashekharappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Karnataka State Universities Act, 2000 — Section 53, 53 (4), 53 (6)

Citation : (2007) 1 KarLJ 38

Hon'ble Judges : Cyriac Joseph, C.J.; D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : T.G. Chandrashekarappa, for the Appellant; A.N. Venugopala Gowda, Government Advocate for R1, T.P. Rajendrakumar Sungay, for R 2 and J.S. Shetty, for R 3, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This Writ Appeal is directed against the order of the learned Single Judge dated 24-3-2005 dismissing Writ Petition No. 14355 of 2003, filed by the appellant.

2. A learned Single Judge of this Court in terms of the impugned order declined to interfere with the order of the second respondent - Kuvempu University, issued on 13-2-2003 (copy at Annexure-F to the writ petition], appointing the third respondent as Lecturer in the department of history at the Sahyadri Arts and Commerce College, Shimoga, against the vacancy which had been notified inviting applications in terms of the notification dated 18-10-2002 ((copy at Annexure-C to the writ petition] issued by the university.

3. It is aggrieved by this order of dismissal of the writ petition, the present writ appeal, urging that the writ petition should have been accepted by this Court; that the learned Single Judge is not right in dismissing the writ petition; that the university has not made proper selection to fill up the vacancy of the post of lecturer in history; that the members of the selection board have not acted either

in a fair manner or in consonance with the provisions of Sections 53(4) and 53(6) of the Karnataka State Universities Act, 2000 [for short, the Act}; that the selection board has not followed the norms in terms of the Statute framed by the university for the purpose of conduct of interview in exercise of its power u/s 53(6) of the Act; that the selection of the third respondent should be quashed and the university be directed to appoint the petitioner to the post

4. The brief facts leading to the above appeal with its chequered history are as under: It appears the appellant has been working as lecturer in temporary capacity, either part time or stop gap or guest lecturer, in one or the other college affiliated to the second respondent university ever since 1986. It appears that the appellant has not been in employment only for the past year or two. Unfortunately for the petitioner, his efforts to get himself a permanent post of lecture in history has eluded him and it is for securing the post, the present effort also.

5. It appears from the pleadings that the petitioner was an applicant aspiring for the post of lecturer in history even prior to 1999 and the petitioner had questioned the validity of the order appointing one Dr Shobha and such litigation had culminated in the order dated 27-1-1999 passed in WA No 5153 of 1998, inter alia, directing the university to re-advertise the post of lecturer in history and fill up the post in accordance with law. It transpires that notwithstanding such direction issued by this Court in the writ appeal, the university had not taken steps to fill up the post of lecturer in history on a regular basis and the present appellant had approached this Court by filing WP No 39300 of 2000, seeking for a suitable direction to the university in this regard. This petition came to be allowed by this Court in terms of the order dated 4-4-2002 (copy at Annexure-B to the writ petition] and the university had been directed to advertise the post within two months from the date of order etc.

6. It appears that the university had not promptly complied with this direction, as the notification inviting applications to fill up the post of lecturer in history in general category vacancy came to be notified by the university only as per its notification dated 18-10-2002 (copy at Annexure-C to the writ petition]. The appellant was an applicant. But as the appellant was not called for interview, he had again approached this Court by filing WP No 44298 of 2002 seeking for a direction to select the appellant against the post which had been notified and for which he had applied. In this writ petition, this Court had issued an interim direction to interview the appellant also and even during the pendency of the writ petition, the appellant had been interviewed along with ten other eligible candidates who had been short-listed for interview. Such interview was held on 9-12-2002.

7. Writ Petition No 44298 of 2002 came to be disposed of by this Court in terms of order dated 11-2-2003 [copy at Annexure-D to the writ petition], recording the submission of the learned Counsel for the university that as the appellant has already been interviewed and the university was ready to consider the case of

the appellant also on merit This court, without going into anything further, though it appears several contentions had been urged, disposed of the writ petition recording the statement made on behalf of the university as an undertaking given to the court and ordered accordingly.

8. Thereafter, the selection board forwarded its evaluation of the performances of the candidates at the interview and the marks obtained by each of the candidates in terms of the statute framed by the university u/s 53(6) of the Act It is of some significance to note here that though as per the Statue, the number of candidates to be shortlisted for interview are ten candidates for a post, in view of the direction issued by this Court in the writ petition filed by the appellant herein and the undertaking of the university, the selection board had interviewed eleven candidates, including the appellant and had forwarded evaluation report and marks obtained by these eleven candidates.

9. It is thereafter, the university, on the basis of such evaluation by the selection board had proceeded to appoint the third respondent to the post of lecturer in history in terms of the order dated 13-2-2003. which was promptly questioned by the appellant by filing writ petition.

10. The learned Single Judge noticed that the procedure followed by the university is not only in consonance with the requirements of proviso to Section 53(6) of the Act, but also the statute framed u/s 53 of the Act; that the selection board has kept in mind the relevant considerations while awarding marks to the candidates under different heads; that the appointment of third respondent was purely based on merit, as the third respondent had secured 31 marks as per the evaluation of the selection board at the time of interview, whereas the appellant had secured 21.5 marks; that in fact the appellant had only been ranked as the fifth candidate in the merit list and though award of marks had also been questioned in the writ petition, the learned Single Judge found no scope for examining this aspect, as the court cannot sit in appeal over the wisdom or judgment of the selection board in awarding marks under different heads based on the qualifications, performance etc., of the candidates and accordingly dismissed the writ petition finding no scope for disturbing the selection/appointment made by the university in favour of third respondent. It is questioning this order of the learned Single Judge and the appointment of the third respondent the present writ appeal.

11. The appellant, who had been represented through counsel earlier, has dispensed with the services of the counsel and has appeared in person. We have heard the appellant, Sri A N Venugopala Gowda, learned Government Advocate for first respondent-State, Sri T.P. Rajendrakumar Sungay, learned Counsel for second respondent-university and Sri J.S. Shetty, learned Counsel for the third respondent.

12. The principal contention that was urged by the appellant is that the selection board has not awarded proper marks at the interview to the appellant based on

the qualifications and merit of the appellant. The other contention is that when in terms of the Statute framed u/s 53(6) of the Act, the number candidates that were required to be shortlisted for interview was subject to a maximum of 10 candidates for one post and as the appellant was also required to be interviewed in terms of the directions issued by this Court in WP No. 44298 of 2002, as per the undertaking of the university, the university should have necessarily replaced the appellant in place of the 10th candidate; that the third respondent, who was the tenth candidate amongst the shortlisted candidates, should have been replaced by the appellant and in such an event, the appellant can take the place of third respondent and therefore he should have been appointed.

13. This argument, we find, cannot be accepted, as if the Statute should be strictly followed, the appellant could not have been interviewed at all, as at the time of shortlisting the candidates, the appellant was ranked 20th and interviewing of the appellant was more by way of a concession and in the special circumstance as was permitted and directed by this Court in the order passed in WP No 44298 of 2002, which could never not be to the detriment of other eligible candidates and therefore this contention was not one which this Court could entertain, but is only to be rejected.

14. After noticing the submissions of the appellant, we had passed the following order on 28-7-1996:

Having heard the appellant at length, prima facie, we find that in view of Annexure-D-Judgment in writ petition No. 44298 of 2002 which was accepted by the appellant, he is not entitled to again urge the contentions based on Section 53(4) of the Karnataka Universities Act. In the light of the said judgment, the appellant's right is limited to the consideration of his case by the selection committee along with other candidates on merits and in accordance with the statutes. The appellant contended that the selection committee did not award him marks as per the statutes made u/s 53(6) of the Karnataka Universities Act. His grievance is mainly regarding marks awarded in category (D) mentioned at page 134 of the paper-book. According to the appellant, he was not given sufficient marks for books containing original work and participation and presentation of papers at recognised international/national conferences/seminars. Since the appellant has no case that he is a member of any recognised professional international/national bodies, he is not entitled to any mark in that respect. He is not also entitled to any marks in respect of publication in reputed international/national journals as he has no such publication.

Having regard to the above circumstances, we would like to peruse the proceedings of the selection committee to examine whether any injustice was done to the appellant and whether the appellant was deliberately excluded by the selection, committee as alleged.

Learned Counsel for the University is directed to make available the proceedings of the selection committee on 03.08.2006. This case will be posted before this

Bench on 03.08.2006 at 4.00 p.m. for further hearing.

15. In the light of this order when the matter was taken up for further hearing, the only question that we proceeded to consider is about the proper awarding of marks in favour of the appellant by the selection board.

16. The appellant's contention to demonstrate that the marks awarded to him by the selection board is not correct, in the sense the selection board had not awarded full and proper marks to the appellant under different heading which has been categorized into five heads in terms of the statute framed u/s 53(6) of the Act, is that the selection board has an element of discretion in awarding marks only under the head "interview" for which 20 marks had been earmarked and in respect of earlier four heads viz., (i) Academic Qualifications -10 marks; (ii) NET/SLET - 5 marks for marks obtained in the qualifying examination and 5 marks for additional qualifications; (iii) teaching experience - maximum marks of upto 15 marks with one mark for each year's experience; (iv) research and publications with maximum possible marks of 15 with marks earmarked against subject heads publication in international/national journals - 5 marks, books containing original work, not compilations, compendia, guide books etc., 5 marks; participation and presentation of papers at recognized international/ national conferences/ seminars 3 marks; membership of recognized professional international/ national bodies - 2 marks, the selection board has no discretion in awarding any marks less than the maximum marks permitted under different heads and sub-heads.

17. Submission of the appellant is that when once the selection board finds that the candidate is entitled for any marks under any of these sub-heads, the candidate should be awarded the maximum marks provided for under particular sub-heading and there cannot be any reduction in awarding of marks. Submission is that when admittedly the petitioner had qualified for awarding of marks under the heading "Research and Publications" and had to his credit books containing original works and when he had presented papers in national conferences/seminars, he should have been awarded maximum marks under this sub-heading, which is 5 and 3 marks respectively i.e. together the appellant was entitled to 8 marks under the heading "Research and Publications" and award of any marks less than this is not in consonance with the statutes.

18. In this regard the appellant has drawn our attention to the marks sheet, a copy of which is produced at Annexure-M to the writ petition, and submitted that amongst the four persons who had constituted the experts in the selection board, the pattern of awarding marks by each of the expert member in favour of the appellant under this heading viz., heading (d) was 4, 4, 5 and 2 respectively by each of the expert members and this is clearly wrong and therefore the selection process is vitiated. Submission was that all the members should have necessarily awarded maximum marks to the candidates purely based on the statute but have awarded marks in a rather haphazard manner etc.

19. The pattern of marks under the statute is as under.

(i) Marks in the qualification (a) Marks in the qualifying examination

Split marks

Max. marks

i) 55-60

2

5

A

ii) 60

3

iii) 61-65

4

v) 65 above

5

(b) Additional qualification

i) M Phil

3

5

B

ii) Ph.D

5

ii) NET/BLET

5

iii) Teaching experience: Regular full time only (01 mark for each year)

15

C

iv) Research and Publications

1) Publication in reputed international/ national journals

5

15

D

2) Books containing original work Not compilations, compendia, Guide books etc,.

5

3) Participation and presentation of papers at recognized International/national conferences/ seminars

3

4) Membership of recognized professional international/ national bodies

2

v) Interview:

a) Knowledge of subject

5

b) Communication skill

5

20

c) Proficiency in language

5

E

d) Use of diverse teaching methods

5

e) Potential for research

5

Total Maximum Marks

20. Such submission on the part of the appellant was strongly countered by Sri T.P. Rajendrakumar Sungay, learned Counsel for the second respondent university, as also Sri J.S. Shetty, learned Counsel for the third respondent. Sri A.N. Venugopala Gowda, learned Counsel appearing for the State has generally supported the order passed by the learned Single Judge and submits that the dismissal of the writ petition is justified.

21. As the appellant is appearing in person and had expressed very strong apprehension of possible inconsistency in award of marks by the experts to different candidates and only to see that the appellant does not go with any feeling of his case having not received a full and complete consideration, we directed the learned Counsel for the university to make available the original

proceedings of the selection board awarding marks to different candidates and the Registrar of the university was also directed to be present before the court and accordingly the Registrar of the University appeared before us and also placed the original records and file containing the award of marks in favour of each of the candidates interviewed by the four experts.

22. We have perused the original records and the pattern of awarding marks by the experts to each of the candidates interviewed by them. We are fully satisfied that the members of the selection board have evaluated the performance of each candidate solely based on the merit and have awarded marks depending upon the performance and their qualifications. A perusal of even the marks sheet as produced by the very appellant at Annexure-M to the writ petition, which is a true reflection of the records, has fully satisfied us that the selection board has gone about its business in a proper and methodical manner and there is no deviation or violation of any of the requirements to be followed. This in fact is the finding of the learned Single Judge also. We do not find any scope or justification to doubt the award of marks by the selection board, but on the other hand, it is quite in order.

23. We are not inclined to accept the submission of the appellant that under head (d) i.e. head relating to awarding of marks for research and publications, a candidate will automatically become eligible for the maximum marks earmarked under different sub-headings, the moment a candidate has some work to his credit under the sub-heading. It cannot be said that the quality of publication or quality of original work produced in the form of a book by a candidate or the quality of papers presented by a candidate in seminars at national/international level, which are to be taken into consideration will be uniform in respect of all candidates and same marks should be given under these heads. It necessarily depends on the quality and the level at which the work is produced and the participation has taken place and can definitely be a subject matter of evaluation by the expert members of the selection board. We find that the understanding of the members of the selection board is also this. In fact all the members of the selection board have awarded marks to each of the candidates on the basis of their evaluation of the quality of work by each of the candidates under the sub-heading (d).

24. We fully agree with the view taken by the learned Single Judge in the matter of awarding such marks by the selection board and its expert members, that this Court cannot sit in appeal as to the correctness or otherwise of the actual marks awarded by the members of the selection board to each of the candidates. Accordingly, we find no merit in this appeal and the appeal is dismissed.