

(1990) 09 KAR CK 0050
In the Karnataka High Court
Case No : W.A. No's. 1269 and 1270 of 1990

University of Mysore

APPELLANT

Vs

P. Maribasavaradya

RESPONDENT

Date of Decision : 21-09-1990

Acts Referred:

Karnataka State Universities Act, 1976 — Section 2 (7), 2 (8), 50

Citation : (1990) ILR (Kar) 3671 : (1990) 3 KarLJ 468

Hon'ble Judges : Mohan, C.J.;Shivaraj Patil, J

Bench : Division Bench

Advocate : N. Devadas, for Kesvy and Co, for the Appellant; B. Veerabhadrapa, for the Respondent

Final Decision : Allowed

Judgement

Shivaraj Patil, J.—The facts briefly stated, necessary for disposal of these appeals, are these:-

2. The Oriental Research Institute is one of the non-teaching Institutions of the Mysore University. The 1st respondent joined the said Institute as a Research Assistant on 17-9-1957 as a local candidate and his services were regularised by the order dated 31-5-1965. The 2nd respondent was appointed as a Research Assistant Class-II on 1-6-1965 in the same Institute. Later he was promoted as Research Assistant-Class-I in the Institute of Kannada Studies. Since the beginning nature of the work of the 1st respondent has been reproducing the work on palm leaves. Nature of the work of the 2nd respondent was confined to carrying on the reproduction of old Kannada works. Both the respondents have not done the work of teaching at any time.

3. Qualification prescribed for the post of Research Assistant Class-I and Class-II are as follows:-

1.

Research Assistant Class-I:

Master's degree in Kannada or Sanskrit and experience in editing old kannada works of atleast two Vidwan Examination with general education upto SSLC or a good knowledge of South Indian Scripts and experience in editing old works.

2.

2. Research Assistant Class-II

Master's Degree in Sanskrit or Kannada a good knowledge of South Indian Scripts and experience in the preservations of antiquities Training in Alchital keeping or two Vidwan Examinations of which atleast Kannada Pandit Exam and one Sanskrit Vidwan Exam or a-good knowledge of South Indian Scripts, preferably general education upto SSLC."

4. The Syndicate of the Mysore University by virtue of the powers under the provisions of the Mysore Universities Act, 1956 passed a Resolution dated 21-1-1975 resolving that the age of superannuation of teachers and academic staff shall be 50 years. This Court in the case of B.V. Narasimhacharya in W.P. No. 2928/1981, declared that the Research Assistant is to be treated as a member of an academic staff and as such entitled to continue in service till he completes the age of 60 years and the said order was also confirmed in Writ Appeal No. 165/1983.

5. The Karnataka State Universities Act, 1976 (for short the "Act") repealed the Mysore Universities Act, 1956. Under the Act, the Senate was empowered to make statutes providing for the conditions of service including the emoluments of the employees of the University as per Section 35(m) of the Act. Section 23 of the Act gives power to the Senate to make, amend or repeal Statutes. In exercise of this power the University made Statutes governing the conditions of service of employees called "Mysore University Employees (Conditions of Service) Statutes, 1984". These Statutes came into force on 28-3-1988. Statute No. 3 speaks of age of retirement. As per the said Statute, age of retirement of a Teacher and a person holding lien on the post of a Teacher of the University is 60 years and for any other employee the age of retirement is 58 years.

6. Section 2(7) of the Act defines "Teachers" thus:-

"2(7). Teachers includes, Professors, Readers, Lecturers and other persons imparting instructions in any affiliated College."

Section 2(8) of the Act, defines:

"Teachers of the University means persons appointed for the purpose of imparting instructions in the University or in any College maintained by the University."

The above referred Statutes, 1984 have incorporated the same definition of Teachers of the University and they further define "employee" means any person

appointed to any class of post in the University of Mysore.

7. In view of the provisions contained in these Statutes of 1984 the University by its order vide Annexure-E permitted the respondents to retire from the service of the University with effect from 31-1-1989 and 31-8-1989 respectively as they attained the age of superannuation of 58 years on the said dates.

8. Respondent-1 filed Writ Petition No. 1836/1989 and respondent-2 filed W.P. No. 12317/1989 challenging the order Annexure-E permitting them to retire from service, contending that they being Research Assistants were declared as academic staff by this Court in the case of B.V. Narasimhacharya and as such they were entitled for the benefit of the University Resolution dated 21-1-1975 (Annexure-A) and that they cannot be included in the category of other employees of the University under the Statutes. They also challenged the validity of Clause-3 of the Statutes as violative of Articles 14, 15 and 19(1)(g) of the Constitution of India.

9. The learned Single Judge accepting the contentions of the respondents allowed the Writ Petitions holding that they being Research Assistants of the Oriental Research Institute and the Institute of Kannada Studies of the University belong to the academic staff of the University and that they do not belong to the category of "other employees" as contemplated in Statute No. 3 of the Statutes, 1984 and that they come in the category of Teacher or Teachers of the University.

Having taken such a view the learned single Judge declared that the age of superannuation of the respondents was 60 years as per the Resolution dated 21-1-1975 and that the respondents shall be allowed to continue in service till they attain the age of superannuation of 60 years. The learned single Judge further directed the University to take steps to amend the Statutes so as to place the Research Assistants in the category of Teacher or Teachers of the University insofar as they relate to the age of superannuation. The appellants being aggrieved by the common order dated 19-9-1989 passed by the learned single Judge in W.P. No. 1836/1989 c/w W.P. No. 12317/1989 have filed these two Writ Appeals.

10. We propose to dispose of these two Writ Appeals by this common order.

11. Sri N. Devadas, learned Counsel for the appellants vehemently contended: (1) the claim of the respondents based on the Resolution dated 21-1-1975 passed under the provisions of the Mysore Universities Act, 1956 was unsustainable in view of the Mysore University Employees (Conditions of Service) Statutes, 1984 framed under the Karnataka State Universities Act, 1976;

2) In view of the definitions of "Teachers" and the "Teachers of the University" contained in Section 2(7), 2(8) and in Statute No. 3 of the Statutes 1984, the respondents cannot at all be included in the category of Teachers.

3) The Statutes of the University providing for different ages of retirement for Teachers and other employees is valid.

In support of this contention he relies on the case of AIR India Vs. Nergesh Meerza and Others, .

4) The learned single Judge having observed in paragraph-12 of his order that the Statutes 1984 are made by the Senate in accordance with the provisions contained in the Act, ought to have upheld the order of the University in retiring the respondents on attaining the age of superannuation of 58 years.

12. Sri B. Veerabhadrapa, learned Counsel for the respondents in opposition urged that the order of the learned single Judge is unexceptionable and quite justified on facts and circumstances of the case. He strongly relied on the decision in the case of Railway Board Vs. A. Pitchumani, in support and justification of his submissions. He further submitted that in view of the Judgment of B.V. Narasimhacharya's case, the respondents were entitled to continue in service till they complete the age of 60 years.

13. The only point that arises for consideration is:-

Whether the impugned order dated 28-1-1989 (Annexure-E) permitting the respondents to retire from service is valid and sustainable in law?

In view of the clear definition contained in Section 2(7) and 2(8) of the Act and Statute No. 3 of 1984 Statutes, there is no scope to construe the respondents as Teachers of the University. We need not stretch or strain the definition of the "Teachers of the University" so as to include the respondents when the only particular class of persons are included in the said definition without leaving any scope to include other class of persons. In other words the respondents stood excluded from the definition of the University Teachers and fit in the category of other employees.

14. The qualifications prescribed for the post of Research Assistants Class-I and II also indicate that they are not intended for the purpose of teaching. The appellants in their return filed in the Writ Petitions have categorically stated that the job of the respondents was to copy the old scripts in the form of new manuscripts so as to edit them and print them in the form of modern books. They were not assigned any teaching work and as a matter of fact they have never taught any subject as such in the University. Thus, even on facts they were never considered as Teachers of the University. Further, the respondents were not the persons appointed for the purpose of imparting instructions within the meaning of "Teachers of the University" as defined in Section 2(8) of the Act.

15. The respondents were also not appointed as Teachers u/s 49 of the Act. The method of recruitment of teaching staff is entirely different from the non-teaching staff. The post of Research Assistants are filled up as per the provisions of Section 50 of the Act. Having regard to the nature of work, mode and the manner of recruitment, classification of their category and conditions of service, the respondents cannot be placed on par with the Teachers. When the respondents constitute separate class, they cannot complain of any

discrimination. The Research Assistants who are unequals to the Teachers of the University cannot contend that they are discriminated as such. They cannot be considered as equals in the matter of attaining the age of superannuation. Any such attempt in view of the definitions contained in Section 2(7), 2(8) and Statute No. 3, would amount to re-writing them to that extent. When the academic body dealing with the affairs of the University in its wisdom has framed these Statutes 1984, probably taking into consideration all aspects of the matter in exercise of the powers conferred under the Statute, it is not open to add, amend or abridge such statute particularly when the Statutes in question are framed in accordance with law, as observed by the learned single Judge himself in para-12 of the order.

16. It is now well settled that provisions can be made providing different ages of retirement for different class of people. The learned single Judge having referred to the case of Bishun Narain Mishra Vs. State of Uttar Pradesh and Others, of his order held thus:-

"I have already pointed out that the conditions of service can be modified and applied to those who have been in service even prior to the modification of the conditions of service because the service under the University is not a matter of contract but it is a matter of status as it is governed by the Act and the statutes relating to service conditions. This aspect is also considered by the Supreme Court in Roshan Lal Tandon Vs. Union of India (UOI),

In this view of the matter, the learned single Judge concluded thus, in paragraph-19 of his order which reads thus:-

"19. The fact that the statutes apply and are applicable to all those who have been in the service of the University on the date the statutes come into force would not make them retrospective. Thus point No. 2 is answered in the negative."

17. When the Act, 1976 has repealed the Mysore Universities Act, 1956 and the Statutes 1984 have been framed under the new Act, it is not possible to accept the contention of the respondents that they must be permitted to retire on their attaining the age of 60 years basing their claim on the Resolution dated 21-1-1975 (Annexure-A) passed under the provisions of the Old Act, 1956.

18. The decision in the case of Railway Board AND ANR. v. V.A. Pitchumani in our opinion does not help the respondents. In the said case, the employees similarly situated and the nature of work being the same, were sought to be treated differently in the matter of attaining the age of superannuation, merely on the ground that the employees who had throughout been under the Indian Railway administration were entitled to continue in service till they attained the age of 60 years and other employees of the Indian Railway Administration but whose previous services were with the Company were to retire at the age of 58 years. The facts of the case on hand clearly show that the Teachers of the University and the employees of the University belong to two distinct and separate classes.

As already stated above they are not similarly situated in several respects. Even the nature of their work is altogether different. In this case we are dealing with the service conditions of the Teachers and employees of the University keeping in view the Act and the Statutes governing them.

19. In view of what is stated above, we are unable to subscribe to the view taken by the learned single Judge that the interpretation placed by the University that the academic staff that is Research Assistants of the Oriental Research Institute fall within the category of "employees" as defined in the Statute is violative of Article 14 of the Constitution. Hence, we are clearly of the view that the order bearing No. ETA (A4)/990/87-88 dated 28-1-1989 (Annexure-E) issued by appellant-1 in W.P No. 1336/1989 is valid and sustainable in law.

20. In the result, we allow these Writ Appeals and set aside the order of the learned single Judge dated 19-9-1989 passed in W.P. Nos. 1836/1989 connected with W.P. No. 12317/1989.