



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2024

R

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

WRIT APPEAL NO. 1429 OF 2016 (S-RES)

BETWEEN:

SMT. VIJAYALAKSHMI H S,
D/O SHIVAJI HITNIKAR,
AGED ABOUT 47 YEARS,
WORKING AS LECTURER IN HINDI,
KAMALA NEHRU WOMEN'S COLLEGE,
SHIVAMOGGA.
RESIDING AT NO.5, NANDINI BAKERY UPSTAIRS,
VIDYANAGAR, N.H.ROAD, SHIVAMOGGA,
SHIVAMOGGA DISTRICT.

...APPELLANT

(BY SRI. VIJAYA KUMAR., ADVOCATE)

AND:

1. THE PRINCIPAL SECRETARY,
HIGHER EDUCATION DEPARTMENT,
M.S.BUILDING, BANGALORE-560 001.
2. THE COMMISSIONER,
DEPARTMENT OF COLLEGIATE EDUCATION,
PALACE ROAD, BANGALORE-560 052.
3. THE REGIONAL JOINT DIRECTOR,
DEPARTMENT OF COLLEGIATE EDUCATION,
PALACE ROAD, BANGALORE.
4. THE PRINCIPAL,
THE KAMALA NEHRU MEMORIAL
NATIONAL COLLEGE FOR WOMEN,
SHIVAMOGGA.





5. THE SECRETARY,
NATIONAL EDUCATION SOCIETY,
BALRAJ URS ROAD,
SHIVAMOGGA.

...RESPONDENTS

(BY SRI. C.N. MAHADESWARA, AGA FOR R1-R3;
SRI. M. NARAYANA BHAT., ADVOCATE FOR R4 & R5)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED
IN THE WRIT PETITION 29574/2013 DATED 24/2/16 AND ETC.

THIS WRIT APPEAL, COMING ON FOR ORDERS THIS DAY,
KRISHNA S DIXIT.J., DELIVERED THE FOLLOWING:

JUDGMENT

This intra-court Appeal seeks to call in question a learned Single Judge's order dated 24.02.2016 whereby, the Appellant's W.P.No.29574/2013 (S-RES) has been negatived. In the said writ petition, what was challenged by the Appellant is the order dated 15.05.2013 whereby, her Revision Petition No.16/2012 filed u/s 131 of the Karnataka Education Act, 1983, having been negatived by the Educational Appellate Authority-1st Respondent, the prayer for her absorption in service was rejected.

2. Learned counsel appearing for the Appellant vehemently argues and that is supported by the learned counsel appearing for the Management i.e., Respondent



Nos.4 & 5 that the vacancy in the post in question arose on 31.05.1996 on one Mr.Shankareshwar Bhat having demitted office on attaining the age of superannuation and to that vacancy, the Appellant came to be appointed vide order dated 01.06.1996 by the competent body of the institution as Hindi lecturer on part time basis. This was preceded by a due selection from the open market. The weekly teaching load comprised of sixteen hours. He further submits that the learned Single Judge grossly erred in assuming that three conditions which Rule 3 of the Karnataka Educational Institutions (Collegiate Education) Rules, 2003 enacts having not been complied with, the absorption cannot be granted, when two of them are admittedly satisfied; compliance with the third is demonstrable from the record. That being the position, counsel argues that the impugned order suffers from errors apparent on the face of the record and therefore, interference in appeal is warranted.

3. Learned AGA appearing for the official Respondents per contra contends and vehemently opposes



the Appeal making submission in justification of the order of the learned Single Judge and the reasons on which it has been constructed. He emphasizes that the post in question was not admitted to the Grant-in-Aid; when it is stated to have been admitted to the Grant, the subject of Home Science was yet to be institutionalized and that happened only in 1990. So contending, he seeks dismissal of the Appeal.

4. Having heard the learned counsel for the parties and having perused the Appeal papers, we are inclined to grant indulgence in the matter for the following reasons:

a) Since the claim of the Appellant is structured essentially on the language of Rule 3 of 2003 Rules, it is desirable to reproduce the same:

"Rule -3: Absorption of part-time lecturer in Private Aided First Grade Colleges:-

(1) Notwithstanding any thing contained in the Karnataka Education Act, 1983 (Karnataka Act 1 of 1985) and the Karnataka Educational Institutions (Collegiate Education) Rules, 2003, or any other rule relating to recruitment of lecturers in Private Aided



Institutions made or deemed to have been made under the provisions of the Karnataka Education Act, 1983, the management may absorb the services of a part time lecturer in the college in which he was or is working or in any other aided First Grade College under the same management with the approval of the Commissioner within the sanctioned strength and approved grant-in-aid post of lecturers having full time work load in the Aided First Grade College.

Provided that where a part time lecturers cannot be absorbed under sub-rule (1) for want of vacancy he may be absorbed as and when a vacancy arises due to death, retirement or resignation or otherwise of a lecturer in the same aided First Grade or any other aided First Grade College under the same management:

Provided further that appointment shall not be made in these rules against any posts earmarked to be filled from among the candidates belonging to the Schedule Castes or the Schedule Tribes in accordance with the reservation provided by or under any law or any order, unless there are candidates belonging to those castes or tribes available from among the part time lecturers to be absorbed and such posts shall be treated as backlog and shall be filled accordingly.

(2) For absorption of part-time lecturers under these rules, the college in which the part-time lecturers was or it working has to be taken as one unit.

(3) In respect of the stop-gap lecturers and part time lecturers working in the same



college, the stop gap lecturers will have a precedence over the part time lecturers for absorption under these rules.”

b) The text & context of Rule 3 of 2003 Rules leaves no manner of doubt that it has been promulgated with the intent to protect the tenure of long serving lecturers in aided institutions so that the expertise gained by them would avail to the community of students and does not go waste. The learned Single Judge therefore should have approached the matter with this angle, and that having not happened, there is an error apparent on the face of the record, in construing rule of the kind as an iron jacket that does not have elbow joints. A Writ Court cannot act like a surgeon who would rather have the patient dead in accordance with rules of surgery than live contrary to, to say it metaphorically.

c) There is force in the submission of learned counsel appearing for the Appellant – lecturer that two of the three conditions namely, there being a sanctioned post and there existing a regular vacancy are satisfied needs to



be straightaway accepted. As already mentioned above, Mr. Shankarashwara Bhat was already holding the post which is specifically mentioned in the records to be a sanctioned post and he got superannuated on 31.05.1996. Thus, a vacancy having accrued, the appellant came to be appointed on 01.06.1996 after following the selection process. Therefore, the finding of the learned Single Judge that none of the conditions is complied with, is liable to be faltered.

d) The vehement contention of learned AGA that till 1990, the subject of Home Science was not institutionalized and therefore, the absorption cannot be granted even if the Appellant was appointed to the existing vacancy in the sanctioned post, does not much impress us. The thrust of the Rule is there being a sanctioned post, there existing a regular vacancy & there being a candidate working in the post in question after being appointed thereto. Which subject came to be institutionalized when, would in our considered view pale



into insignificance when we are not specifically shown that the Grant-in-Aid was subject specific. Even otherwise, such requirement cannot be construed as mandatory and we hold accordingly, no contra Ruling having been notified to us.

e) To the above we add that, absorption would secure favourable conditions of service to the teachers and that in turn would proliferate their interest in the discharge of their duties. It hardly needs to be stated that it is the teachers that mould fate of a Nation and they play a pivotal role in Nation building. It is on record that during the World War – II, although the salaries of several segments of civil servants were downgraded, that of the teachers were not only left unaffected but came to be considerably enhanced by the British regime by virtue of Burnham Agreement. Therefore, while denying benefits of service to the community of teachers, the State and its authorities should be extra cautious.



In the above circumstances, this Appeal having been favoured, the impugned order of the learned Single Judge is set at naught. Further, the Appellant's W.P.No.29574/2013 (S-RES) having been allowed, a Writ of Mandamus issues to the official Respondents to give effect to the Management's order of absorption of the Appellant – lecturer to the post in question with effect from the date which she is otherwise entitled to.

This order to be complied with and a compliance report should be filed by the official Respondents with the Registrar General of this Court within an outer limit of three months failing which, stringent action may follow against the erring officials.

Costs made easy.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Cbc/bsv
List No.: 1 Sl No.: 13