

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE RAJESH RAI K

WA No. 1590 of 2023(S-RES)
C/W
WA NO.1591 of 2023(S-RES)

IN WA NO.1590 of 2023

BETWEEN:

SRI. PRAKASH PAGOJI,
S/O. RUDRAPPA,
AGED ABOUT 55 YEARS,
WORKING AS DEPUTY REGISTRAR,
KARNATAKA SANSKRIT UNIVERSITY,
PAMPA MAHAKAVI ROAD,
CHAMARAJPET,
BANGALORE - 560 018.

...APPELLANT

(BY SRI. H. SUBRAMANYA JOIS, SENIOR COUNSEL FOR
SRI. VIRUPAKSHAIAH P H, ADVOCATE)

AND:

1. KARNATAKA SANSKRIT UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
PAMPA MAHAKAVI ROAD,
CHAMARAJPET,
BANGALORE - 560 018.
2. BOARD OF APPOINTMENT FOR
(NON-TEACHING/MINISTERIAL AND

**WA No.1590 of 2023 C/W
WA No.1591 of 2023**

OTHER STAFF) SELECTION,
REPRESENTED BY ITS REGISTRAR,
PAMPA MAHAKAVI ROAD,
CHAMARAJPET,
BANGALORE - 560 018.

3. SRI. GANGADHARAPPA B.O,
S/O. OMKARAPPA,
AGED ABOUT 49 YEARS,
RESEARCH ASSISTANT KIKS,
UNIVERSITY OF MYSORE,
MANASAGANGOTHRI,
MYSORE - 570 006,
R/A NO.455, 15TH CROSS,
G BLOCK, RAMKRISHNANAGAR,
MYSORE - 570 020.

...RESPONDENTS

(BY SRI. ABHINAV RAMANAND A, ADVOCATE FOR R1
SRI. V.LAXMINARAYAN, SENIOR COUNSEL FOR
SRI. A NAGARAJAPPA, ADVOCATE FOR C/R3
R2 IS SERVED AND UNREPRESENTED)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER
DATED 15/12/2023 IN WP NO.21896/2013 PASSED BY THE
LEARNED SINGLE JUDGE BY DISMISSING WP NO.21896/2013
FILED BY THE RESPONDENT NO.3/PETITIONER, ETC.

IN WA NO.1591 of 2023

BETWEEN:

SHIVAMURTHY M,
S/O. MARULASIDDAIAH M,
AGED ABOUT 53 YEARS,
WORKING AS ASSISTANT REGISTRAR,
KARNATAKA SANKRIT UNIVERSITY,
PAMPA MAHAKAVI ROAD,
CHAMARAJPET,
BANGALORE - 560 018.

...APPELLANT

(BY SRI. H. SUBRAMANYA JOIS, SENIOR COUNSEL FOR
SRI. VIRUPAKSHAIAH P H, ADVOCATE)

AND:

1. KARNATAKA SANSKRIT UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
PAMPA MAHAKAVI ROAD,
CHAMRAJPET,
BANGALORE - 560 018.
2. BOARD OF APPOINTMENT FOR
(NON-TEACHING/MINISTERIAL AND
OTHER STAFF) SELECTION,
REPRESENTED BY ITS REGISTRAR,
PAMPA MAHAKAVI ROAD,
CHAMARAJPET,
BANGALORE - 560 018.
3. SMT. SHAILASHREE R,
D/O RAMANNA,
AGED ABOUT 43 YEARS,
R/A NO.37, ANJENAYASWAMY TEMPLE STREET,
MARIAPPA GARDEN,
BENSON TOWN,
BANGALORE - 560 036.

...RESPONDENTS

(BY SRI. ABHINAV RAMANAND A, ADVOCATE FOR R1
SRI. V LAXMINARAYAN, SENIOR COUNSEL FOR
SRI. A NAGARAJAPPA, ADVOCATE FOR C/R3
R2 IS SERVED AND UNREPRESENTED)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER
DATED 15.12.2023 IN WP NO. 28172/2013 (S-RES) PASSED BY
THE LEARNED SINGLE JUDGE BY DISMISSING WP NO.
28172/2013 (S-RES) FILED BY THE RESPONDENT NO.3/
PETITIONER, ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 12.08.2024, COMING ON FOR
PRONOUNCEMENT THIS DAY, **V KAMESWAR RAO J.,**
DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE V KAMESWAR RAO
AND
THE HON'BLE MR JUSTICE RAJESH RAI K

CAV JUDGMENT

(PER: THE HON'BLE MR JUSTICE V KAMESWAR RAO)

These two appeals arise from a common order dated 15.12.2023 passed by the learned Single Judge disposing of two writ petitions being WPs No.21896/2013 and 28172/2013 filed by the respondents No.3 in both the appeals, whereby the learned Single Judge has allowed the writ petitions by stating in paragraphs No.28 to 30 as under:

"28. As a consequence, the appointment of Prakash Pagoji as Deputy Registrar and of Shivamurthy as a Section Officer cannot be sustained and same are quashed.

29. The respondent University is directed to consider the applications of the petitioners along with other applicants and appoint the most meritorious among them. The University shall consider only those candidates (including the petitioners) who are eligible keeping in mind the decision rendered in this case relating to the nature of employment.

30. Writ Petitions are, accordingly, allowed."

2. The facts in WA No.1590/2023, as noted from the record are, that the 1st respondent-Karnataka Sanskrit University had issued a notification dated 16.07.2012 calling applications from eligible candidates for selection to the post of Deputy Registrar in the University. The age limit was also prescribed as 35 years. Further, relaxation was provided to the candidates belonging to backward classes/SC/ST category persons and to a candidate who is holding post under Government or Local Authority or Corporation established by the Government under a State Act or Central Act and owned or controlled by the Government. The relaxation was to be given to the number of years during which he is or was holding such post or five years, whichever is less.

3. It was the case of the appellant before the learned Single Judge that he satisfies the criteria for selection to the post of Deputy Registrar. The appellant was called for the interview conducted by the Selection Committee and on the basis of the recommendation in the meeting held

on 27.09.2012, respondent-No.1 issued appointment order in favour of the appellant.

4. The case of respondent No.3 before the learned Single Judge was, that the appellant, who was born on 22.06.1968, was aged 44 as on the date he made the application and as such, over-aged as the age requirement was 35 years. He, however, would have been entitled for an enhancement in age by five years if he had worked in the Union/State Government or that he was working in a Governmental Undertaking or a Local Authority. His case was also that, the appellant was working as an Assistant Professor in CLY Sanskrit College, an aided institution at Dharwad and an employee of an aided institution cannot be considered as an employee of the Union or State Government or a Local Authority to claim the benefit of an enhancement in the age limit.

5. The facts in WA No.1591/2023, as noted from the record are, that it was the case of the respondent No.3 before the learned Single Judge that the appellant, who had been appointed as a Section Officer, was born on

04.03.1971 and was thus, aged 42 years as on the date of notification and was consequently, age barred. It was contended that the appellant was working in an aided institution as a Sanskrit Teacher and he would not get the benefit of enhanced age limit and therefore, his appointment was illegal.

6. The case of the University i.e., respondents No.1 and 2 before the learned Single Judge was, even Sri. Gangadharappa (respondent No.3 in WA No. 1590/2023) has secured the benefit of an enhanced age limit though he was working in an aided institution and therefore, he cannot be permitted to contend that the appointment of Sri. Prakash Pagoji (appellant in WA No.1590/2023) was illegal. To this, the only plea on behalf of Gangadharappa was, he was working as a Research Assistant at the University of Mysore under a special scheme and his entire salary was being borne by grant given by the Government under a special scheme and therefore, Gangadharappa would have to be considered as an employee of the State Government.

7. In any case, the learned Single Judge has posed for himself a question as to whether the appellants herein i.e., Prakash Pagoji and Shivamurthy were eligible to be appointed?

8. The learned Single Judge has referred to Rule 9 sub-clause (3) of the statutes governing the Cadre and Recruitment of the Employees of Karnataka Sanskrit University, which grants an exemption to the age limit and reads as follows:

"(3) Notwithstanding anything contained in sub-rule (1) the maximum age limit for direct recruitment shall be deemed to be enhanced in the following to the extent mentioned, namely;

(a) in the case of candidate who is or was holding a post under the University or Government or local bodies (Corporations/City Municipal Councils or Undertakings of Government) by the number of years he/she is or was holding such post; the number of years holding such post or 10 years, whichever is less correspondingly age will be relaxed.

(b) in the case of candidate who is an ex-servicemen discharged from service by

reason of demobilization, retrenchment or retirement, by the number of years of military service rendered by him shall be enhanced."

9. In paragraph No.17 of the impugned order, the learned Single Judge says that it is only a candidate, who is working under the University or the Government or the Local Bodies such as Corporations/City Municipal Councils or Undertakings of the Government, would be entitled to the benefit of higher age limit corresponding to the number of years they had rendered their services there, subject to the maximum of 10 years. In paragraph No.18, the learned Single Judge stated that, the exemption granted is in respect of the age limit in the specified category of candidates i.e., candidates who worked either in a University or under the Government or a Local Body. The exemptions have to be considered strictly and cannot be enlarged to bring within its purview institutions other than those prescribed. In paragraphs No.19 to 27, the learned Single Judge has stated as under:

"19. It is to be borne in mind that a private educational institution would always be a private

institution even if it was receiving grant-in-aid. It is, no doubt, true that on receiving grant-in-aid, the private institution would be subjected to a certain degree if controlled by the Government. However, the said control by itself would not translate into the Government becoming the employer.

20. It is also to be borne in mind that even if the appointment and the removal would be subject to the approval of the Government, the contract of appointment between an employee of a private educational institution and its employee would always essentially remain, and the contract of employment between a private entity and an individual cannot be equated to an employment of a person under a University or Government or local bodies.

21. The argument of the University that it was entitled to consider even those candidates who were working in an aided institution, cannot be accepted since, as stated above, the exemption clause would always have to be construed strictly and an exemption clause cannot be enlarged to the convenience of a particular individual. The statutes specifically provide for an enhanced age limit only to persons who were under the direct employment of a University or a Government or a local body, and this benefit cannot be utilized by persons merely because their employer was getting grant-in-aid from the Government.

22. *If the post held by Prakash Pagoji in a private aided institution cannot be construed as a post that was held by him under the University or Government or local bodies, obviously, he would not be entitled for an enhanced age limit of 45 years, and consequently, his appointment as Deputy Registrar cannot be sustained.*

23. *The learned Senior Counsel put forth an argument that Gangadharappa was also working in an aided institution and therefore, he had taken the benefit of enhanced age limit while applying and he cannot, therefore, turn around and contend that the appointment of Prakash Pagoji was illegal.*

24. *Learned counsel appearing for Gangadharappa has filed a Memo dated 10.10.2023 and along with it, he has also produced an order dated 15.06.2011, by which he has produced a service certificate dated 05.07.2023 issued by the Kuvempu Kannada Adhyayana Samsthe, Manasagangotri, Mysuru, which is a Department of the University of Mysuru and in this, it is stated that the petitioner was appointed as a Research Assistant on 26.05.2011 and by orders dated 26.05.2011 to 25.05.2012, 29.05.2012 to 28.05.2014 and he had been working from 03.06.2014 till 05.07.2023.*

25. *The counsel has also produced a corrigendum, in which it is stated that the petitioner had been appointed as a Research Assistant under a Special Scheme for working in Vishwakosha and for the*

purposes of his pay the head of account was changed, and it is also indicated therein that his entire salary was paid by the Government.

26. It is, therefore, clear that Gangadharappa will have to be considered as an employee of the University and not that of an aided institution. This argument, therefore, that Gangadharappa was not entitled to challenge the recruitment cannot be accepted. As a consequence, reliance placed upon the decision of the Hon'ble Supreme Court rendered in the case of R.K. Jain V. Union of India [(1993) 4 SCC 119] to the effect that only an aggrieved person, in service jurisprudence, can canvass the legality or correctness of an action, would not be of any benefit.

27. In the case of Smt. Shilpashree also, respondent No.4 Shivamurthy was not eligible to apply since he was aged 42 years. However, it is his contention that he was working in an aided institution and therefore, he would get the benefit of an enhanced age limit. As already held above, an employee of an aided institution cannot equate of account was changed, and it is also indicated therein that his entire salary was paid by the Government."

Submissions:

10. The submission of Sri. H.Subramanya Jois, learned Senior Counsel for the appellant in

WA No.1590/2023 and WA No.1591/2023 is primarily that, the learned Single Judge has clearly erred in allowing the writ petition by not taking into perspective the fact that the appellants herein are qualified and satisfy all the criteria for selection to the post of Deputy Registrar/ Section Officer in terms of notification dated 16.07.2012. Rule 9(3)(a) of the Statutes governing the Cadre and Recruitment of the Employees of Karnataka Sanskrit University stipulates maximum age limit for direct recruitment shall be enhanced if the candidate is holding a post under the University or Government or Local Bodies (Corporations/City Municipal Councils or Undertakings of Government) by the number of years holding such post or 10 years, whichever is less. Considering the fact that the appellant (in WA No.1590/2023) is entitled for relaxation of age limit under Rule 9(3)(a), was selected to the post of Deputy Registrar and as such, setting aside the appointment of the appellant is wholly illegal. He also stated that, the appellant was appointed as English Teacher on 01.07.1995 by the Government in CLY Sanskrit College, Dharwad. He worked on the said post till

10.06.1999. Thereafter as Assistant Professor from 11.06.1999 till 26.09.2012. The said institution is an aided institution whereby the Government is providing aid to the teaching and non-teaching staff of the institution and the same is under the control of respondent No.1 and as such, having worked in an aided institution for over 17 years, the appellant is entitled to relaxation of age limit as contemplated under Rule 9(3)(a) of the Statutes. In fact, it is his submission that the State Government, by notification dated 15.10.2010, had brought all the teaching and non-teaching staff of the Sanskrit Colleges, Schools and Mahapatshalas in the State under the control of respondent No.1-University. As such, the appellant herein having discharged his duties in an aided institution as English Teacher and Assistant Professor under the respondent No.1-University, is entitled to the benefit of relaxation of age as contemplated under Rule 9(3)(a) of the Statutes. In other words, it is his submission, as the appellant previously held the post under the University, the respondent No.1-University had rightly provided relaxation of age and appointed the appellant to the post

of Deputy Registrar. He also stated that, the respondent No.3, who was unsuccessful in the appointment proceedings conducted by respondent No.1, had no locus to challenge the appointment of the appellant by filing the writ petition. Respondent no.3 even though not eligible and qualified to the post of Deputy Registrar, learned Single Judge has passed the impugned order directing to consider the application of the respondent No.3 along with other applicants. In this regard, he has stated that the learned Single Judge had failed to appreciate the fact that respondent No.3 has discharged his services as a Research Assistant under a special scheme in Vishwakosha and the pay of the respondent No.3 was not by the Government. In fact, the services of respondent No.3 was not in an aided institution or under the University. However, the learned Single Judge has erroneously accepted the version of respondent No.3 that he is working under the University and that the entire salary is being paid by the Government and hence, he is also an employee of the Government. That apart, it is his submission that pursuant to the appointment order dated 27.09.2012, the appellant herein

has been working as Deputy Registrar in the University and he has discharged his duties for a period of more than 12 years, the learned Single Judge ought not to have passed the impugned order quashing his appointment.

11. Sri. Subramanya Jois would make similar submissions on behalf of the appellant in WA No.1591/2023 also. At the outset, it may be stated here, the post in question in WA No.1591/2023 is that of a Section Officer. In this case also, age limit for appointment to the said post is 35 years for general candidates, but relaxation was provided to candidates belonging to backward classes, persons who are employed in Central or State Government, which stipulates that any employee working under the University or Government or Local Bodies shall be given relaxation of upto 10 years. Appellant and respondent No.3 had filed their applications to the post of Section Officer. According to Sri. Jois, the appellant is eligible, qualified and satisfies all criteria for appointment to the said post and was rightly given relaxation under the Rules. In this regard, he stated that

his name was recommended by the Selection Committee and on the basis of the said recommendation, respondent No.1-University in its meeting held on 30.10.2012, approved the recommendation of respondent No.2-Committee and issued appointment order and hence, there is no illegality in the same. He stated that, the appellant was aged 42 years at the time of filing application to the post of Section Officer. He also relied upon Rule 9(3)(a) of the Statutes to contend that, a person holding the post under the University or Government or Local Bodies is entitled to relaxation by the number of years holding such post or 10 years, whichever is less. Since the appellant was discharging his duties as Sanskrit Assistant Teacher from 01.12.1996 till 30.10.2012 in Sree Shankara Vilasa Sanskrit Patashala, Mysore, which is an aided institution under the control of the respondent No.1-University, was entitled to relaxation of 10 years. Respondent No.3, also filed an application for selection to the said post. In his case, the Selection Committee found that the appellant is more qualified than the respondent No.3 and as such, gave appointment to the appellant. Such an appointment

could not have been interfered with by the learned Single Judge. He also stated that, all the Sanskrit Patashalas in the State of Karnataka are under the direct control of respondent No.1-University. In that regard, a notification had been issued on 15.10.2010 to the effect that the teaching and non-teaching staff of the Sanskrit Patashalas and Colleges would come under the respondent No.1-University. As such, the appellant being an employee in an aided institution under the University, was entitled to the benefit of relaxation of age. The conclusion arrived at by the learned Single Judge that the post held by the appellant in an aided institution cannot be construed as a post held under the University or Government or Local Bodies is wholly unsustainable. That apart, the appellant having worked in respondent No.1-University since 2012, setting aside the appointment of the appellant is inequitable.

12. The submission of Sri. Jois in WA No.1590/2023 is also that, the respondent No.3 who was an unsuccessful candidate, was appointed as a Research Assistant under a

special scheme in Vishwakosha and the stand of the respondent No.3 that his entire salary was paid by the Government, was accepted by the learned Single Judge to the effect that he is an employee of the University and passed the impugned order, which according to Sri. Jois is clearly untenable. He stated that the claim of respondent No.3 that he is an employee of the University is totally incorrect and very recently, the Mysore University has issued several documents to the effect that respondent No.3 is only a temporary Research Assistant on consolidated salary, working in the Mysore University for a limited period. He stated that, from the documents furnished by the Mysore University, the said temporary appointment was extended from time to time. In that sense, respondent No.3 cannot be considered as an employee of the University for him being considered for the position of the Deputy Registrar. Hence, the impugned order of the learned Single Judge directing the consideration of the application of respondent No.3 along with other applicants and to appoint meritorious among them is clearly unsustainable.

13. In support of his submissions in both the appeals, Sri. Subramanya Jois has relied upon the following judgments:

- i. ***H.C. Puttaswamy and Others -Vs.- The Hon'ble Chief Justice of Karnataka High Court, Bangalore and Others [1991 Supp (2) SCC 421];***
- ii. ***Shainda Hasan -Vs.- State of Uttar Pradesh and Others [(1990) 3 SCC 48];***
- iii. ***J.C. Yadav and Others -Vs.- State of Haryana and Others [(1990) 2 SCC 189];***
- iv. ***M.V. Thimmaiah and Others -Vs.- Union Public Service Commission and Others [(2008) 2 SCC 119];***
- v. ***Bhupinderpal Singh and Others -Vs.- State of Punjab and Others [(2000) 5 SCC 262];***
- vi. ***O.P. Lather and Others -Vs.- Satish Kumar Kakkar and Others [(2001) 3 SCC 110];***
- vii. ***The University of Mysore -Vs.- C.D. Govinda Rao and Another [AIR 1965 SC 491];***

- viii. ***Oxford University Press -Vs.- Commissioner of Income Tax [(2001) 3 SCC 359];***
- ix. ***State of Gujarat and Others -Vs.- Raman Lal Keshav Lal and Others [(1980) 4 SCC 653];***
- x. ***D.S. Prabhuswamy and Others -Vs.- Karnataka State Road Transport Corporation and Another [1991 Supp (2) SCC 433];***
- xi. ***Buddhi Nath Chaudhary and Others - Vs.- Abahi Kumar and Others [(2001) 3 SCC 328];***
- xii. ***Basavaiah (Dr.) -Vs.- Dr. H.L. Ramesh and Others [(2010) 8 SCC 372];***
- xiii. ***Shri Ishan Alloy Steels Ltd. -Vs.- Jayaswal Neco Ltd. [(2001) 3 SCC 609].***

14. Sri. V.Lakshminarayana, learned Senior Counsel appearing for respondent No.3 in WA No.1590/2023 would justify the order of the learned Single Judge by stating that the notification dated 16.07.2012 being very clear that the maximum age for the appointment to the post of Deputy Registrar for general category is 35 years and that

age relaxation in terms of clause-3(1) of the notification is upto 5 years. So, the age relaxation cannot be beyond 40 years and the appellant being aged 44 years on the date of submission of the application, was concedingly not eligible. He also stated that, the Official respondents failed to notice that the appellant is not entitled for appointment to the post of Deputy Registrar in view of the false declaration made by him in the application stating that no criminal cases are pending against him. In this regard, respondent No.3 had, in his writ petition, referred to an FIR filed against the appellant wherein the charge sheet had been filed, even on merits, he stated that the appellant being an employee of an aided institution, could not have been construed as an employee working in a University or State Government or Local Body. He heavily relied upon the conclusion drawn by the learned Single Judge in the impugned order.

15. Sri. Lakshminarayana would also, by drawing our attention to the affidavit filed by respondent No.3, contend that the departmental enquiry against the

appellant-Sri. Prakash Pagoji has been initiated with the issuance of articles of charge on 03.06.2015 and even on this day i.e., the date of affidavit filed by him on 12.08.2024, the departmental enquiry is pending consideration before the appropriate authority. In support of this submission, Sri. Lakshminarayana has relied upon document No.IV which is charge sheet dated 03.06.2015 issued to the appellant. In support of the submission of Sri. Jois that the post of Research Assistant is not a permanent post, Sri. Lakshminarayana would submit, the portion of the C and R of the Mysore University shows Research Assistant as a cadre post and it is in existence and the respondent No.3 is working on the same from 26.05.2011 till date. In support of his submission, he has drawn our attention to document No.V wherein the post of Research Assistant has been shown as part of the recruitment rules. That apart, he also stated that in respect of the appellant in WA No.1591/2023-Sri. M.Shivamurthy, he was not qualified and was aged about 42 years, which is clear from the communication received from the Indian Audit and Accounts Department.

According to him, once the statute is framed, the Government loses its power to prescribe qualifications regarding recruitment and conditions of service of employees. The power of the Government is to lay down the policy decisions like reservations or approval of a budget, etc. No control or directions can be exercised by the Government through the Executive Order which would be contrary to the statute if the field is occupied by the statute.

16. Similar submissions have been made by Sri. Lakshminarayana on behalf of respondent No.3 in WA No.1591/2023 that, the appellant in WA No.1591/2023 was admittedly aged 42 years on the date of submission of the application. Therefore, he was not eligible for even applying to the post of Section Officer. The appellant being an employee of an aided institution, could not have claimed age relaxation as he does not fall within the criteria prescribed under clause 3(1) of the notification. Moreover, the learned Senior Counsel contends, as respondent No.3 was eligible for being within the age limit,

she should have been appointed as against a person who was over-aged and not eligible.

17. In support of his submissions in both the appeals, Sri. Lakshminarayana has relied upon the following judgments:

- i. ***Hirandra Kumar -Vs.- High Court of Judicature at Allahabad and Another [(2020) 17 SCC 401];***
- ii. ***Employees' State Insurance Corporation -Vs.- Union of India and Others [(2022) 11 SCC 392];***
- iii. ***State of Odisha and Others -Vs.- Sulekh Chandra Pradhan and Others [(2022) 7 SCC 482];***
- iv. Order dated 02.05.2024 in WP No. 12527/2024 and connected matters passed by the High Court of Andhra Pradesh;
- v. ***Zonal Manager, Bank of India, Zonal Office Kochi and Others -Vs.- Aarya K.Babu and Another [(2019) 8 SCC 587];***
- vi. ***Bedanga Talukdar -Vs.- Saifudaullah Khan and Others [(2011) 12 SCC 85];***

- vii. ***Sanjay K.Dixit and Others -Vs.- State of Uttar Pradesh and Others [(2019) 17 SCC 373];***
- viii. ***P.K. Ramachandra Iyer and Others -Vs.- Union of India and Others [(1984) 2 SCC 141];***
- ix. ***Public Service Commission and Others - Vs.- Arvind Singh Chauhan and Others [(2009) 9 SCC 135];***
- x. ***Pramod Kumar -Vs.- U.P. Secondary Education Services Commission and Others [(2008) 7 SCC 153];***
- xi. ***Shankar K.Mandal and Others -Vs.- State of Bihar and Others [(2003) 9 SCC 519];***
- xii. ***Union of India and Others -Vs.- S. Vinodh Kumar and Others [(2007) 8 SCC 100];***
- xiii. ***Director, Doordarshan Kendra, Trivandrum and Others -Vs.- S. Kuttan Pillai and Others [(1998) 8 SCC 736];***
- xiv. ***M. Purandara and Others -Vs.- Mahadesha S. and Others [(2005) 6 SCC 791];***

- xv. ***State of Orissa and Another -Vs.- Mamata Mohanty [(2011) 3 SCC 436];***
- xvi. ***The Secretary to Government -Vs.- Dr. Parappa Shankarappa Mundinamani and Others [WA No.968/1998 and connected matters, decided on 30.09.1999];***
- xvii. ***The University of Agricultural Sciences -Vs.- Sri. Dr. digambarappa and Others [WA No.100263/2022 and connected matters, decided on 24.06.2022];***
- xviii. ***State of Uttar Pradesh -Vs.- Preetam Singh and Others [(2014) 15 SCC 774].***

18. Sri. Abhinav Ramanand.A, learned counsel for respondent No.1 in both the appeals would justify the appointments of the appellant(s) as Deputy Registrar/ Section Officer. He justifies, the Board was rightly constituted and the decision taken by the Board is justified. According to him, there is one post of Deputy Registrar. The said post has to be filled by promotion from the cadre of Assistant Registrar. If the Officers are not eligible for promotion, then by direct recruitment. The statutes governing the Cadre and Recruitment of the

Employees of Karnataka Sanskrit University prescribes age limit for appointment. Rule 9(1) lays down the general age limit for appointment to various posts in the University. Rule 9(3) is an exception to Rule 9(1). Rule 9(3) clearly postulates that the maximum age limit for direct recruitment as laid down in sub-rule (1) to Rule 9 shall be enhanced under certain conditions. Clause (a) of Rule 9(3) provides that in case of a candidate who is holding the post in the University, the age limit shall be relaxed by the number of years the candidate has held the post or 10 years, whichever is less. Therefore, the fact that the appellant in WA No.1590/2023 was already holding a post in respondent No.1-University and the age restriction/age limit is concerned, shall be relaxed by 10 years. In that sense, the relaxation was rightly granted. Even the reference made with regard to criminal case pending against the appellant, respondent No.1-University had not received any information about any criminal case pending against the appellant. He concede that the information received from the Commissioner of Police, Hubli-Dharwad, show the case came to be settled on

07.10.2011, so, the appellant had not been convicted, nor there is any criminal case pending against him as on the date of application.

Analysis:

19. Having heard the learned counsel for the parties and perused the record, the short issue which arises for consideration is, whether the learned Single Judge is justified in setting aside the appointment of the appellants herein as Deputy Registrar/Section Officer respectively in the respondent No.1-University and giving consequential directions?

20. It is a conceded position that as per the advertisement, the maximum age prescribed for appointment to the above posts is 35 years for general candidates. Admittedly, the appellants herein were aged 44 years and 42 years on the relevant date.

21. The notification issued by the respondent No.1-University on 16.07.2012 though stipulates relaxation in the maximum age in case of candidate who is or was

holding post under Government or a Local Body or Corporation established by a State Act or a Central Act and owned or controlled by Government by the number of years during which he is or was holding such post or five years, whichever is less, the same is at variance with the Rule 9(3)(a) of the Statutes governing the Cadre and Recruitment of the Employees of Karnataka Sanskrit University in as much as the said provision which we have reproduced in paragraph No.8 above stipulates 10 years as the age relaxation.

22. In any case, whether it is five years or ten years, would have no bearing insofar as the issue raised in the present appeals i.e., whether the appellants are entitled to the age relaxation beyond 35 years. The case of the appellant in WA No.1590/2023 is primarily that, as he was working as Assistant Professor in CLY Sanskrit College, an aided institution at Dharwad, as such he is eligible for relaxation in the age. The said plea was rejected by the learned Single Judge by holding that the Statutes specifically provide for an enhanced age limit only to

persons who are under the direct employment of a University or a Government or a Local Body and this benefit cannot be utilized by persons merely because their employer was getting grant in aid by Government. We agree with the said conclusion drawn by the learned Single Judge for the reason that Rule 9(3)(a) and (b) of the Statutes which we have reproduced above clearly stipulates that it is a candidate who is or was holding a post under the University or Government or local bodies (Corporations/City Municipal Councils or Undertakings of Government) shall be entitled to the age relaxation. In that sense, what is contemplated is, holding of a post under the University or Government or Local Bodies. This we say so because, the appointment of Deputy Registrar/Section Officer is in the Karnataka Sanskrit University and it is the experience related to working in a University which will be relevant for holding the post of Deputy Registrar/Section Officer. Though reliance has been placed by Sri. Jois by referring to the notification issued on 15.10.2010 to state that all the employees of the Sanskrit colleges, schools, mahapatshalas have been

brought into the limits of Karnataka Sanskrit University and as such, they become the employees of the University, the plea is unmerited. The Government Order is primarily regarding transferring Sanskrit Colleges in the State to the jurisdiction of Karnataka Sanskrit University, which were previously looked/under the administrative control of the Higher Education Department. It means that the Karnataka Sanskrit University shall have the overall supervision on the working of the Sanskrit colleges, schools and mahapatshalas. The same cannot be construed to mean that all the colleges, schools and mahapatshalas have become part of the Karnataka Sanskrit University. The colleges and mahapatshalas continue to exist as separate entities different from a University.

23. The provision of relaxation in respect of candidates holding the post under the University or Government or Local Bodies need to be strictly construed. If the intent of the rule making authority is that even a person who is working in an aided college would be

entitled to age relaxation, then the rule would have expressly said so. That being not the case, to read into the provision that such relaxation would be applicable to the teachers working in an aided school, is unsustainable. If that be so, mere bestowing the benefit of grant in aid on a college would not be conclusive to say that such college is a University. The college is under the University for the reason that, grant in aid is provided to such college by the University and the college is regulated insofar as the curriculum/standards of education under the regulations framed by the University and nothing more. In other words, it is one thing to say that an employee is working in the University and another that the employee is working in an aided college which is recognized/affiliated to a University. Similar is the position in respect of the appellant in WA No.1591/2023 in as much as he was also working in an aided institution, therefore he would not get the benefit of enhanced age limit. Even the submission of Sri. Abhinav that, as the appellants were working for the University, they were rightly given the age relaxation, is also unmerited. This we say so because Rule 9(3)(a)

states it is candidate who is or was holding post under the University who shall be entitled to the benefit of age relaxation and not a candidate who worked for the University. In other words, the post on which a candidate is working should be a post under the University, i.e., University being the employer and not in the College where they were appointed.

24. One aspect which need to be dealt with is, the plea advanced by Sri. Jois insofar as the eligibility of respondent No.3 in WA No.1590/2023. The notification issued on 16.07.2012 for the post of Deputy Registrar contemplates that a candidate applying for the said post must be a degree holder from a recognized university with minimum five years of service in the cadre of Assistant Registrar, whereas we find that the position held by respondent No.3 in the said appeal was of Research Assistant, that too in an aided institution. There is nothing on record to show he was working as Assistant Registrar. In that sense, his eligibility to the post of Deputy Registrar is *prima facie* doubtful. Similarly, insofar as the appellant

in WA No.1591/2023 (Sri. M.Shivmurthy) is concerned, he was working as Assistant Teacher and not Senior Assistant which is the eligibility.

25. Sri. Jois had relied upon many judgments in support of his contentions. Insofar as the judgment in the case of **H.C. Puttaswamy** (supra) is concerned, Sri. Jois had relied upon this judgment to put forward his case that in the eventuality a case justifies a humanitarian approach, then appellants deserve justice ruled by mercy. This submission of Sri. Jois is primarily for the reason that the appointment of the appellants having been made in the year 2012 and 12 years have elapsed, it would be too late in the day to set aside their appointments as Deputy Registrar/Section Officer. We are not impressed by the said submission of Sri. Jois for the reason, the appointments made in the year 2012 were challenged by respondent No.3 in both the appeals in the year 2013 itself. The writ petitions remained pending in this Court for almost 10 years when the impugned order was passed by the learned Single Judge. Pendency of the writ

petitions cannot either enure to the benefit of the appellants or for that matter to the prejudice of respondents No.3 who had challenged the appointment of the appellants immediately thereafter. Similar is the proposition for which Sri. Jois has relied upon the judgment in the case of **Shainda Hasan** (supra) wherein the Supreme Court noted the submission made on behalf of the respondents that asking the appellant to leave the job after sixteen years would be doing injustice to her. It directed the Lucknow University and its Vice Chancellor to grant necessary approval to the appointment of the appellant. The reasoning given while dealing with the judgment relied upon by Sri. Jois in the case of **H.C. Puttaswamy** (supra) shall hold good in this case as well. The judgment has no applicability in the facts. On a similar proposition, Sri. Jois had also relied upon the judgment in the case of **J.C. Yadav** (supra). We have seen the judgment and for the reasoning given by us while considering the judgment of **H.C. Puttaswamy** (supra), the judgment is clearly distinguishable on facts. Insofar as the judgment in the case of **M.V. Thimmaiah** (supra) on

which reliance has been placed by Sri. Jois on the proposition that the recommendations of the selection committee should not normally be interfered unless there is *malafide* or apparent error or violation of statutory rules is concerned, the said judgment shall not help the case of the appellants for the reason that the consideration of the appellants beyond the permissible age limit of 35 years was contrary to the statutes framed by the University governing the Cadre and Recruitment of the Employees of Karnataka Sanskrit University and in that sense, the impugned action of the University being in violation of the rules, the learned Single Judge has rightly set aside the appointments. Insofar as the judgment in the case of ***Bhupinderpal Singh*** (supra) is concerned, we have seen the same. In the said judgment, the Supreme Court had invoked its power under Article 142 of the Constitution to save the appointments which were otherwise wrong. The Court directed the Government to give posting orders to those who had been given appointment letters but were not allowed to join. Hence, the said judgment has no applicability. Insofar as the judgment in the case of

O.P. Lather (supra) is concerned, we have seen the judgment. The same has no applicability to the issue which arises for consideration in the present appeals. Insofar as the judgment in the case of **C.D. Govinda Rao** (supra) is concerned, the same was relied upon by Sri. Jois in support of his submission that the respondents No.3 in both the appeals could not have taken the ground about the effect of the statutory rules and ordinances for the first time in appeal and also on the proposition that the High Court in exercise of Article 226 of the Constitution, when Board of experts appointed by the University for selection of candidates had made recommendation, the interference is uncalled for. Suffice to state, the conclusion of the Supreme Court was in the fact situation, moreso when in paragraph No.10, the Supreme Court has held as under:

"10. It appears that in one of the affidavits filed on behalf of appellant No. 1 reference was made to the rules framed under the Mysore University Act (No. 23 of 1956), and it was added that the appointment to the post of Reader in question had to be made in accordance with the regulations framed by the University Grants Commission under s. 26 (1)(e) of

the University Grants Commission Act, 1956. This was disputed by the respondent, and in that connection, he alleged in a vague manner that all the appointments made by appellant No. 1 were regulated by the ordinances and rules framed under the Mysore University Act. Then, he alleged that the ordinances made in this regard by the Senate in their meeting held on August 19, 1959, were approved by the Chancellor in his letter dated January 22, 1960. Having made these allegations, no attempt was made in the High Court to produce these ordinances and to show when they came into force. It appears that the statutory rules framed by appellant No. 1 under s. 26 (1) received the approval of the Chancellor on January 22, 1960, but we do not know even today when they were published in the Gazette. Similarly, the ordinances framed were approved by the Chancellor on the same day, but we do not know when they came into force. The statutory rules, thus, framed and approved, come into force on the date of the publication of the Mysore Gazette, and the ordinances come into force from such date as the Chancellor may direct (vide s. 42(5) of the Mysore University Act No. 23 of 1956). Therefore, though some reference was made to the ordinances, no attempt was made to show when the ordinances came into force and no arguments appear to have been urged, on that account. The judgment delivered by the High Court in the present proceedings is an elaborate judgment and we think it would be

legitimate to assume that it does not refer to the statutory rules and ordinances for the simple reason that neither party relied on them and the High Court had, therefore no occasion to examine them. In any case, we do not think it would be open to the respondent to take a ground about the effect of the statutory rules and ordinances for the first time in appeal. The petition, which he originally filed, when read with the affidavit made by him, does support this view and unambiguously shows that he confined his attack against the validity of the appointment of appellant No. 2 solely to the ground that appellant No. 2 did not satisfy the qualification prescribed by the notifications by which applications had been called for by appellant No. 1. That is the basis on which the High Court has dealt with this matter and that is the basis on which we propose to deal with it.

26. Whereas in the case in hand, the appellants have challenged the very consideration of the appellants for appointment to the post of Deputy Registrar and Section Officer by granting relaxation to the age which otherwise was not permissible in the facts of the case. Hence, the judgment has no applicability. Similarly in the case of **Oxford University Press** (supra), Sri. Jois has relied upon paragraphs No.33 and 34 of the judgment in support

of his contention that the Courts must always seek to find out the intention of the legislature, the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. In other words, the taxation statutes where literal interpretation leads to a result not intended to subserve the object of the legislation another construction in consonance with the object should be adopted. Suffice would it be to state that, in the said case, the Supreme Court was considering an issue relatable to income tax and the judgments referred by it in paragraphs No.33 and 34 on the above proposition was relatable to income tax and it cannot be applied to a service issue, moreso when the Rule 9(3)(a) clearly stipulates the entitlement of the benefit of age relaxation and as such, the judgment is distinguishable. Insofar as the judgment in the case of ***Raman Lal Keshav Lal*** (supra) is concerned, the reliance was placed by Sri. Jois for the proposition that the Court should not interpret statutory provisions unless compelled by their language in such a manner as would involve their unconstitutionality

because the legislature is presumed to enact a law which does not contravene the Constitution. The said case was in the context, whether Panchayat service would be considered as part of Civil Service under the State. The said judgment has been relied upon by Sri. Jois in support of his submission that a person working in an institution which is provided grant in aid, is entitled to the age relaxation and the learned Single Judge could not have interpreted otherwise. This submission does not appeal us moreso when the Rule 9(3)(a) which we have reproduced in paragraph No.8 is very clear. That apart, the provision need to be interpreted in the context that the appointment of Deputy Registrar/Section Officer is being made in the University, hence in that sense, any person who is working in any University and intends to apply for the said post(s), can also apply. It is in that sense, that stipulation would come into play and not where a person is working in an aided institution. The said judgment has no applicability. Insofar as the judgment in the case of ***Buddhi Nath Chaudhary*** (supra) is concerned, Sri. Jois had relied upon paragraphs No.4 and 6 on the same

proposition that the appellants having worked for many years, equitable consideration be extended in favour of the appellants. We have dealt with the said proposition while considering the judgment in the case of **H.C. Puttaswamy** (supra), the same reasoning shall hold good to this case as well. Insofar as the judgment in the case of **D.S. Prabhuswamy** (supra) is concerned, the same is also relied upon for the proposition that equitable consideration must be extended to the appellants as they have put in ten years of service since their appointment on the post of Deputy Registrar/Section Officer. We are not impressed by the said proposition for the reasons already stated while considering the judgment in the case of **H.C. Puttaswamy** (supra). Insofar as the judgment in the case of **Basavaiah (Dr.)** (supra) is concerned, the same is for the proposition that when recommendations have been made by the expert committee, Courts should not endeavour to sit in appeal over the decisions of experts. There is no dispute on the proposition of law as advanced by Sri. Jois, but the fact is the very consideration of the appellants being contrary to the

statutory rules, the said proposition would not hold good in the facts of this case. Insofar as the judgment in the case of **Shri Ishan Alloy Steels Ltd.** (supra) is concerned, the issue in the said judgment was primarily related to Negotiable Instruments Act, 1881 ('NI Act' for short), wherein 'the bank' has been defined under clause (a) of the proviso to Section 138 of the NI Act. We see no applicability of the judgment to the facts of the present case.

27. Having noted the judgments relied upon by Sri. Jois, we are of the view that Sri. Lakshminarayana is justified in relying upon the judgment in the case of **Hirandra Kumar** (supra), wherein the Supreme Court has, in paragraph No.27, held as under:

"27. These judgments provide a clear answer to the challenge. The petitioners and the appellant desire that this Court should rollback the date with reference to which attainment of the upper age-limit of 48 years should be considered. Such an exercise is impermissible. In order to indicate the fallacy in the submission, it is significant to note that Rule 12 prescribes a minimum age of 35 years and an upper age-limit of 45 years (48 years for reserved

candidates belonging to the Scheduled Castes and Tribes). Under the Rule, the age-limit is prescribed with reference to the first day of January of the year following the year in which the notice inviting applications is published. If the relevant date were to be rolled back, as desired by the petitioners, to an anterior point in time, it is true that some candidates who have crossed the upper age-limit under Rule 12 may become eligible. But, interestingly that would affect candidates who on the anterior date may not have attained the minimum age of 35 years but would attain that age under the present Rule. We are adverting to this aspect only to emphasise that the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule-making authority to discharge that function while framing the Rules."

Even the plea on behalf of the petitioners therein for the Supreme Court to exercise its jurisdiction under Article 142 of the Constitution of India, was negated by the Supreme Court in paragraphs No.31 and 32, which we reproduce as under:

"31. In the alternative, it has been urged on behalf of the petitioners that since they have been granted permission to appear at the examinations in pursuance of the interim directions that were issued during the pendency of these proceedings, the Court may exercise its jurisdiction under Article 142 of the Constitution of India to direct that the results be declared.

32. We are unable to accede to that request. For one thing, there would be other candidates who have not approached this Court and who would have been in the same position of not meeting the age criterion. Moreover, allowing a group of candidates to breach the age criterion by taking recourse to the power under Article 142 of the Constitution of India would, in our view not be appropriate inviting, as it does, a breach of the governing Rules for the U.P. Higher Judicial Service."

Even in the case of **Director, Doordarshan Kendra, Trivandrum** (supra), the Supreme Court has, in paragraph No.7, stated as under:

"7. In the impugned judgment, the Tribunal has referred to Note I below clause 12 of the recruitment rules wherein provision has been made for relaxation in age up to 35 years for government servants. The Tribunal has directed that the respondents are entitled to the benefit of relaxation

of age in view of the said provision so as to enable them to be considered for regularisation. In our opinion, the said direction given by the Tribunal cannot be upheld. The matter of regularisation of the respondents including the question whether they should be given relaxation in the matter of age has to be considered only in accordance with the provisions contained in the scheme as notified vide OM dated 9-6-1992 as modified by OMs dated 17-3-1994 and 5-7-1994 and they cannot be granted relaxation in age dehors the said provisions. The appeal is accordingly allowed and the impugned judgment of the Tribunal is set aside and it is directed that the matter of regularisation of the respondents will be considered by the appellants in accordance with the scheme as notified vide OM dated 9-6-1992 as modified by OM dated 17-3-1994 and OM dated 5-7-1994. Such consideration shall be done within a period of two months. No orders as to costs."

It is also a settled law in terms of the judgment of the Supreme Court that, any appointment which is contrary to the recruitment rules is *void ab initio* and cannot be approved after a lapse of time.

28. In view of our discussion above, we find no infirmity in the learned Single Judge setting aside the

appointment of the appellants to the post of Deputy Registrar/Section Officer. But, insofar as the direction of the learned Single Judge for consideration of the application of the respondent No.3 in WA No.1590/2023 is concerned, his eligibility is *prima facie* doubtful as he was working as Research Assistant and not Assistant Registrar which is the requirement under the notification dated 16.07.2012. The respondent-University shall first determine his eligibility under the notification on the date when he had submitted the application, pursuant to the above notification and if eligible, it shall pass a speaking order and thereafter, proceed in terms of the direction of the learned Single Judge in paragraph No.29 of the impugned order. In the eventuality it is held, the respondent No.3 in WA No.1590/2023 was not eligible, his case shall not be considered at all. It is made clear, the eligibility of respondent No.3 in WA No.1591/2023 is not contested; her case shall be considered as per the direction of the learned Single Judge.

29. With the above observation, the writ appeals are ***dismissed.***

30. In view of disposal of the appeals, pending IAs are *disposed of* as infructuous.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(RAJESH RAI K)
JUDGE

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