

CASE NO.:
Appeal (civil) 4903 of 2000

PETITIONER:
VINODAN T. & ORS.

Vs.

RESPONDENT:
UNIVERSITY OF CALICUT & ORS.

DATE OF JUDGMENT: 26/04/2002

BENCH:
S. Rajendra Babu & Ruma Pal

JUDGMENT:

With
C.A. NOS. 4904/ 2000, 4905/2000, 4906/2000

J U D G M E N T

RUMA PAL, J

The appellants in the several appeals, seek to assail the cancellation of a rank list prepared for the post of Assistant Grade-II by the University of Calicut, the respondent No.1 before us. The appellants had been selected pursuant to a notification issued on 1st November 1991 inviting applications for preparation of a panel for appointment as Assistants Grade-II in the University. The selection was made after a written test and interviews and a rank list was prepared on 25th October 1995. The appellants' claim is that the rank list should have been operative for a period of three years and that the respondents were bound to appoint them to vacancies which had arisen within that period.

The appellants in CA 4906/2000 challenged the action of the University in curtailing the period of the validity of the rank list to two years before the High Court of Kerala by filing a writ petition. The learned Single Judge disposed of the writ petition on 7th January, 1998 by noting the submission of the University that:

"as and when necessity arises for employing more persons, the University is prepared to make appointments from Ext.P1 rank list. But it is made clear that such appointees will not have any claim either for future appointment or for regular appointment. It is purely a stop-gap arrangement pending regular recruitment to the post".

These appellants challenged the order of the Single Judge by filing an appeal before the Division Bench of the High Court. The other appellants before us filed Original Petitions also assailing the action of the University.

The University filed an application in the pending proceedings for permission to engage 40 to 50 assistants on a provisional basis for

three months to meet the exigencies of work arising in connection with the annual examination. By an order dated 18th March, 1999 the Division Bench granted the University:

"permission to engage purely on daily wages basis 40 to 50 Assistants on work need basis. Petitioners in OP 8743/98 and 22212/97 and the appellants in WA 520/98 will be sent notices and if they respond to the said notice they may also be considered for appointment among the 50 persons on daily wages basis".

Pursuant to this order, the appellants were served notices by the University and were appointed on daily wage basis.

The Division Bench disposed of the appeal and the Original Petitions by a common judgment on 6th April, 2000. The Division Bench was of the view that the issue had become academic but at the same time directed that:

"when the next process of selection starts, it would be appropriate if they (the appellants) are given some credit for the services rendered by them and also making relaxation so far as their ages are concerned in case they have become over aged in the meantime. It goes without saying that they have the right to appear at the requisite test and interview so that the question of giving credit for the services rendered by them and relaxation of age can be considered by the University".

Not being satisfied, the appellants impugned the decision of the High Court before this Court by way of separate special leave petitions. Leave was granted by this Court on 4th September, 2000 and the status quo was directed to continue until further orders.

In support of their case, the appellants have relied on a resolution said to have been taken on 10th May, 1986 by the Syndicate fixing the validity of rank lists for all future selections at three years. Therefore, according to the appellants, all vacancies in the post of Assistant Grade II till 1998 should have been filled up by the respondents. The appellants' claim that had the rank list continued for a period of three years at least 209 vacancies could have been filled by appointment of those whose names were in the 1995 Rank list. They have relied upon a letter dated 18th November, 1997 written by the Controller of Examinations to the Registrar of the University intimating that there were 33 vacancies of Assistants and 4 vacancies of Clerical Assistants in Pareeksha Bhavan which were required to be filled up without any further delay. The appellants' grievance is that instead of filling up these vacancies a decision was taken by the Syndicate on 26th November, 1997 limiting the validity of the rank list prepared in 1995 to two years and cancelling the list altogether for no rational reason. In the alternative it is urged that the appellants had been serving continuously for the last several years and therefore should be regularised in service.

The respondents on the other hand have contended that there was no stipulation either in the rank list or in any University statutes stipulating that a rank list would be valid for three years. It was further stated that the University follows the procedure of the Kerala Public Services Commission and other Universities. According to Rule 13 of the Kerala Public Service Commission Rules of Procedure, the validity of a rank list was for a minimum period of one year and maximum period of three years. It is submitted that the Syndicate was fully empowered to fix the period of the rank list at 2 years. It is

stated that the decision to cancel the rank list was taken in view of the prevailing circumstances which included: a) carving out of the major part of the territorial jurisdiction of Calicut University to form a new University by the name of Kannur University on 9th November, 1995, so that a large number of colleges which had been affiliated to Calicut University were transferred to the jurisdiction of Kannur University; b) the abolition of the Pre-Degree Courses by the Government of Kerala and the consequent depletion of posts. c) a ban on the appointment of non-teaching staff in the University by the Pre-Degree Course (Abolition) Ordinance which was succeeded by the Pre-Degree Course (Abolition) Act 1997 for a period of three years from the commencement of the Act. The Act came into force with effect from 3rd June, 1997. It is submitted that in any event the appellants had no right to insist on regular appointment merely because they formed part of the rank list. The respondents also submitted that in any event the appellants could not claim regularisation because they had worked temporarily as daily wagers. According to the respondents what was preserved by the order of status quo directed by this Court on 4th September 2000 was the situation prevailing under the orders of the High Court viz. provisional need based appointment as a purely stop-gap arrangement pending regular recruitment to the posts. Although the University had retained the appellants who were serving on 4th September, 2000 as daily wagers with "short breaks", the University did not need to engage assistants on daily wages any more. It is stated that two rank lists were prepared in 1995. The main list contained the names of 378 candidates. There was also a Supplementary List containing the names of 394 candidates from various communities. Sixty five candidates have been appointed from the main list and eight from the supplementary list. The last candidate appointed was ranked at Serial No. 66 in the main list. There were many candidates above the appellants who were more meritorious and that regular appointments could only be made after applying the rules of communal reservation.

We may start with a consideration of the basis of the appellants case viz. the validity of the rank list for three years i.e. from October 1995 to October 1998. The learned Single Judge found that there was nothing on record to show that the rank list was valid for three years a finding which was not upset on appeal. The appellants now seek to rely on the minutes of the proceeding of the Syndicate of the University on 10th May, 1986 in which a resolution was taken to the following effect:

"*85.220 : Considered the question of enhancing the maximum period of validity of the ranked list of selected candidates for appointment, up to three years.

Resolved that the new rules fixing the validity of ranked list for three years, be approved for implementation for all future selections. The Validity of existing lists will be two years only".

According to the respondents this resolution related to the Supplementary List for communal reservation and not to the general list. This has not been effectively traversed by the appellants. But assuming that the Syndicate had the power to resolve in 1986 that the general rank list would be valid for three years, they must equally be conceded the power to amend that decision. Admittedly they did so by the resolution passed on 26th November, 1997 by which they cancelled the rank list for the reasons stated.

The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established

by judicial precedent. Even if vacancies exist, it is open to the concerned authority to decide how many appointments should be made. However the selected candidates have a right to compel such authority (i) not to make appointments by travelling outside the list and (ii) to make the selection for appointment strictly in the order the candidates have been placed in the list. This Court has placed two further restrictions on the exercise of power by the appointing authority, namely that the appointments to the vacancies must be made in accordance with the Rules, if any, relating to reservations and also that the appointing authority cannot scrap the panel of selected candidates during the period of its validity, except for well founded reasons .

It is not the appellants case that the University has made any appointments to the post of Assistants outside the Rank List or not strictly in order of merit. Let us then look at the justifiability of the reasons given by the respondents for cancelling the 1995 rank list. On 24th April 1997, the State Government affirmed a policy decision taken in December 1996 to de-link pre-degree courses from colleges in the State in a phased manner. The respondents have produced a circular of the same date which contains the decision and notes that the process would involve identification of pre-degree batches in the college for de-linking, issue of executive orders, orders stopping admission for the batches proposed to be discontinued and suitable deployment of the staff both teaching and non-teaching which may be rendered surplus. For protecting the service interests of the existing teaching and non-teaching staff, it was also decided that further appointments of teaching staff and non-teaching staff in the colleges and university should be stopped immediately. The circular also states that though the decision in this regard was taken in December, 1996 "it is reported that the private colleges and universities have been resorting to recruitment of teaching and non-teaching staff which may become a great financial burden for Government in future".

Following this Circular, the Pre-Degree Course (Abolition) Ordinance, 1997 was issued in exercise of powers under Article 213 of the Constitution of India. The Ordinance (Ordinance No. 10 of 1997) provided for a phased abolition of the pre-degree course. For this purpose an Empowered Committee was set up consisting of

- a) the Principal Secretary to Government, Higher Education Department Chairman
- b) the Vice-Chancellor of one of the Universities in the State nominated by the Government Member;
- c) the Secretary to Government, General Education Department Member
- d) the Director of Collegiate Education Member Secretary;
- e) the Director of Public Instruction Member;
and
- f) the Director of Higher Secondary Education-Member

The Empowered Committee was to specify from time to time the colleges which were to do away with the pre-degree course. Any college so specified and which did not comply with the directive to abolish the pre-degree course under Section 3 of the Ordinance was

debarred from affiliation. Section 6 of the Ordinance further provided for an absolute ban on appointment of staff etc. in the following words:

" Notwithstanding anything contained in the University laws or in any agreement on contract, no appointment of non-teaching staff in any college shall be made for a period of three years from the date of commencement of this Ordinance:

Provided that, in the exigencies of service, such appointment may be made, with the previous approval of the Committee."

The Ordinance was replaced by the Pre-Degree Course (Abolition) Act, 1997 (Act 3 of 1998). The Act substantially reproduces the language of the Ordinance which it replaced. The Empowered Committee set up under the Ordinance completed its task of phased specification of colleges during the academic year 1997-98. On 3rd July, 1997, the Empowered Committee issued an order which inter alia provided for relaxation on the ban of appointments of non-teaching staff to a limited extent, by allowing only provisional appointment through the Employment Exchange in the Universities "in already sanctioned vacancies". In our opinion, this blanket ban on regular appointments statutorily imposed for three years was by itself sufficient ground for the University to cancel the rank list.

In addition to this circumstance was the creation of Kannur University by which several colleges which earlier fell within the jurisdiction of Calicut University came under the aegis of Kannur University. This took place after the publication of the 1995 Rank List, and cannot be said to be an irrelevant reason for cancelling the 1995 Rank List. According to the respondents, the formation of Kannur University had rendered about 130 Assistants as excess staff in Calicut University. It is true that the Calicut University made internal adjustments pursuant to the creation of Kannur University by which certain Assistants were required to discharge the function of Section Officers but this would not take the case of the appellants much further. Matters were clearly in a state of flux. What the position would be once the transfer of the Colleges and personnel took place could not be determined.

The third reason given by the respondents for cancelling the 1995 rank list were allegations of corruption in the preparation of this list. It appears that there were Press reports which questioned the fairness with which the 1995 rank list had been prepared. Although this figured in the decision of the Syndicate to cancel the rank list, it does not appear to have been the prime motive to do so. There was a statutory ban, with a limited relaxation allowing provisional appointment on the one hand and the administrative and financial consequences of the creation of Kannur University on the other. The appellants have not also been able to establish that there were any permanent vacancies which existed during that period which could have been filled by the University in accordance with law. In the light of all these circumstances, the reason for cancellation of the Rank List given by the respondents cannot be termed to be arbitrary or unjust. The ban on regular appointments under the Act came to an end in 2000. The respondents have also stated that the de-linking of the pre-degree courses was completed by the academic year 2000-2001 with the publication of the pre-degree results in June 2001. The period of validity of the 1995 Rank List, even according to the

appellants, had long since expired. The University issued a fresh notification on 25th March, 2000 to prepare a panel of qualified assistants in anticipation of the lifting of the ban for vacancies that existed and those that would arise on retirement of existing employees. Some candidates in the 1995 Rank List sought to thwart this and approached the High Court. On 9th March, 2001 the High Court said:

"Since the test is scheduled on 10.3.2001 I do not find any ground to stay the test. But I make it clear that the declaration of the result and further proceedings will be only subject to the result of the Original Petition".

The test was duly held. The results have been published in April 2001. The appellants seek to hold up the appointment of the successful candidates by claiming regularisation on the ground that they had been serving the University albeit on a daily wage basis pursuant to orders of Court. In support of this prayer the appellants have relied on the decision of this Court in *State of Haryana v. Piara Singh* (1992) 4 SCC 118. The reliance is misplaced. In that case the Government itself had appointed ad hoc/temporary employees who had continued for years together under orders passed by the Government from time to time. The situation was brought about because there was no Subordinate Service Selection Board (SSB) in existence in the State during this period. After the SSB was set up the Government was faced with a large number of ad hoc employees already appointed by it and serving continuously for a period of ten years or more. To meet the situation, the Government formulated a scheme for regularisation of such employees subject to certain conditions. The High Court set aside the conditions and directed unconditional whole scale regularisation of ad hoc employees who had put in at least one year service. This Court set aside the direction of the High Court and said:

"Such directions have also the effect of disregarding and violating the rule relating to reservation in favour of backward class of citizens made under Article 16(4). What cannot be done directly cannot be allowed to be done in such indirect manner".

This Court upheld the scheme for regularisation formulated by the Government itself.

The facts of this case are totally at variance with those in *Piara Singh*. In this case there was a complete statutory ban on appointments by the University from 1997 till 2000. The appellants were appointed provisionally only pursuant to orders of Court purely by way of interim relief because of the then existing need of the University. There is no scheme for regularisation formulated by the University. Besides regularisation in the appointment of the appellants would mean appointment contrary to the order of merit in the Rank List. There is also nothing to show that such regularisation would be in keeping with the reservation rules. The appellants cannot stand in the way of the candidates who successfully competed in the 2001 selections for the post of Assistants. The alternative prayer of the appellants is, therefore, unsustainable.

For all these reasons the appeals are dismissed and the interim order vacated without any order as to costs.

(S. Rajendra Babu)

..J
(Ruma Pal)

Dated : April 26, 2002

JUDIS