

PETITIONER:
STATE OF MYSORE

Vs.

RESPONDENT:
H. PAPANNA GOWDA & ANR. ETC.

DATE OF JUDGMENT:
24/11/1970

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
SHAH, J.C.
HEGDE, K.S.
GROVER, A.N.
RAY, A.N.

CITATION:
1971 AIR 191 1971 SCR (2) 831
1970 SCC (3) 545
CITATOR INFO :
RF 1981 SC 53 (23)
E&D 1982 SC1107 (28)

ACT:
Constitution of India, 1950, Art. 311-Compulsory transfer from Government Service to University-If operates as removal from service.

HEADNOTE:
The University of Agricultural Sciences Act, 1963, was passed by the Mysore State Legislature, to establish a University for the development of agricultural and allied sciences in the State. Under s. 7(4) of the Act, the control and management of such research institutions of the department of agriculture as the State Government might by order specify, were to be transferred to the University as and from the date specified; and, under sub-s. (5), every person employed in such an institution, were, as from the specified date, to become an employee of the University on such terms and conditions as might be determined by the State Government in consultation with the Board of Regents of the University.

The respondent was holding a civil post under the State Government, having been appointed as a chemical assistant in the Agricultural Research Institute, Mandya, in the department of agriculture of the State. In 1965, the control and management of the Institute was transferred to the University, by a notification under the Act.

On the question whether there was a removal-of the respondent from a civil post in contravention of Art. 311, HELD : Whether the prospects of the respondent were or were not prejudicially affected is irrelevant. For better or for worse, the notification resulted in the extinction of his status as a civil servant, and hence, his compulsory transfer to the University was void. [834 A, F]

Amulya Kumar Talukdar v. Union of India, I.L.R. 13 Punj. 781, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1868 to 1882 of 1969.

Appeals from the judgment and order dated July 9, 10, 1968 of the Mysore High Court in Writ Petitions Nos. 1776, 2108, 2109, 2111, 2112, 2272, 2273, 2275, 2385, 2386, 2390, 2395 and 2396 of 1966 and 728 and 990 of 1967.

Jagadish Swarup, Solicitor-General, S. S. Javali and S. P. Nayar, for the appellant (in all the appeals).

M.Mama Jois and R. B. Datar, for respondent No. 1 (in C.As. Nos. 1868 to 1871 and 1874 to 1881 of 1969).

832

The Judgment of the Court was delivered by-

Mitter, J. The State of Mysore has come up in appeal from a common judgment of the High Court at Bangalore disposing of a number of writ petitions and holding void the compulsory transfer of the respondents herein to the Agricultural University under the provisions of the University of Agricultural Sciences Act, 1963.

As the same question arise Civil all these appeals it will be sufficient to state the facts in Appeal No. 1868 of 1969 in which one H. Papanna Gowda is the respondent. The said respondent was appointed on January 7, 1959 as an agricultural demonstrator in the Mysore Civil Service. His appointment was as a local candidate' which under the Mysore Civil Service Rules means a person appointed not in accordance with the rules of recruitment. His services were however regularised when he was selected by the Public Service Commission for appointment to that post on August 27, 1959. By an order dated April 4, 1964 he was transferred and posted as a Chemical Assistant of the Sugarcane Research Station Mandya, in the department of agriculture. When he was thus employed, a law made by the State Legislature called the University of Agricultural Sciences Act., 1963 (hereinafter referred to as the Act') came into force on April 24, 1964. Before the High Court the respondents to these appeals challenged the vires of s. 7(5) of the Act and a notification issued thereunder.

The preamble to the Act shows that it was an Act to establish and incorporate a University for the development of agriculture, animal husbandry and allied sciences in the State of Mysore. Under S. 3(2) the University was to be a body corporate having perpetual succession and a common seal. The powers given under s. 6 of the Act enabled it inter alia to create administrative, ministerial and other posts and to appoint persons to such posts. Under s. 7(1) subject to the conditions therein mentioned several agricultural and veterinary colleges were disaffiliated from the Karnatak University or the University of Mysore and were to be maintained by the new University as constituent colleges. The control and management of these colleges were to stand transferred to the Agricultural University and all its properties and assets and liabilities and obligations of the State Government in relation thereto were to stand transferred to, vest in, or devolve upon the said University. Under sub-s. (4) of s. 7 the control and management of such research and educational institutions of the Department of Agriculture, the Department of Animal Husbandry and the Department of Fisheries of the State Government were, as and from such date as the State Government

833

might by order specify, to be transferred to the University

and thereupon all the properties and assets and liabilities and obligations of the State Government in relation to such institutions were to stand transferred to, vest in, or devolve upon the University. omitting the proviso which is not relevant for our purpose, sub-s. (5) provided

"Every person employed in any of the colleges specified in sub-section (1) or in any of the institutions referred to in sub-section (4) immediate before the appointed day or the date specified in the order under subsection (4), as the case may be, shall, as from the appointed day or the specified date, become an employee of the University on such terms and conditions as may be determined by the State Government in consultation with the Board :"

The Board has been defined in section 2 clause (3) as the Board of Regents of the University.

By notification dated September 29, 1965 the control and management of a large number of research and educational institutions were transferred to the University with effect from October 1, 1965. The Agricultural Research Institute Mandya where the respondent was working was one such institution. Not liking the change which his future prospects were likely to undergo as a result of the notification, the respondent presented a writ petition, seeking a declaration that sub-ss. (4) and (5) of s. 7 of the Act were invalid and for a further declaration that he continued to be a civil servant under the State Government. To put in brief the argument on this head was that he had been removed from a civil post under the State in contravention of the provisions of Art. 311.

A further argument was put up that the respondent had been subjected to hostile discrimination inasmuch as persons who had been appointed in the same manner as himself and later in point of time than himself had been retained in the service of the State thereby infringing articles 14 and 16 of the Constitution.

It is not necessary to deal with the second point as the appellant, in our opinion, must fail on the first. There can be no dispute-as indeed the learned Solicitor-General was constrained to admit-that the respondent and others who had filed writ petitions in the High Court challenging the notification ceased to hold the civil posts which they held under the State of Mysore at the time when the notification was issued if it was to have full force and effect. Whether the prospects of the respondent were

11-L694Sup.CI/71

834

or were not to be prejudicially affected if he was to become an employee of the University is not in point. However the learned Solicitor-General drew our attention to paragraph 17 of the counter affidavit to the writ petition filed in the High Court where it was stated that the terms and conditions of transfer as agreed to by the Government and the University provided inter alia for the following

- (1) Every employee of the Government on his transfer to the University shall enjoy the same pay scale.
- (2) He was to be eligible for pensionary benefits in the same manner as he had while he was serving the Government.
- (3) His claims for higher pay scales or higher positions under the University shall be deemed to be on a preferential basis in comparison with others, provided the qualifications and experience were equal; and
- (4) Every employees of the Government on his transfer to the University was to be protected to the extent that the

terms and conditions of his service under the University would not be altered to his detriment.

We are not here concerned with the question as to whether for all practical purposes the respondent was not to be a loser as a result of the transfer. Evidently the respondent held the view that as a civil servant of the State of Mysore the prospects of promotion to higher posts with better scales of pay were greater in the service of the State with its manifold activities in various departments. For better or for worse, the notification resulted in extinction of his status as a civil servant.

The learned Solicitor-General sought to rely on a judgment of the Punjab High Court in *Amulya Kumar Talukdar v. Union of India and others*(1) a case which was considered by the High Court of Mysore, in aid of his contention that the transfer of the kind effected in this case had been held to be valid by the Punjab High Court. The High Court at Bangalore went into the question rather elaborately and noted that there were many differences between the provisions of the Indian Institute of Technology (Kharagpur) Act 1956, the Act impugned in the Punjab High Court and the Agricultural University Act of 1963. In the Punjab case the petitioner had initially been appointed by the Director, Indian Institute of Technology Kharagpur as a peon. As a result of the Act of 1956 the Institution declared to be one of national importance, was constituted under the Act providing inter alia that the employees who were working in the Institute before were to hold office or service thereafter upon the

(1) I.L.R. 13 Punj. 781.

835

same terms and conditions and with the same rights and Privileges as to pension, leave, gratuity, provident fund and other matters as they would have held the same on the date of commencement of the Act as if the Act had not been passed. In the case before us the Act provides by sub-s. (5) of S. 7 that the terms and conditions of the Government employees immediately before the appointed day or the date specified in the notification were to be such as might be determined by the State Government in consultation with the Board. The learned Judge of the Punjab High Court on the facts of that case found it unnecessary to examine the argument whether, the assent given by the President to the Indian Institute of Technology Bill had the effect of terminating the status of the petitioners as Government servants by the President as also the argument raised on their behalf that their lien had been terminated under the Fundamental Rules without their consent. The Punjab decision can-not therefore apply to the case as presented before us.

In the result the appeals fail and are dismissed with costs.. There will be one set of hearing fee.

V.P.S. Appeals dismissed.

836