REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6045 OF 2008
(Arising out of SLP(C) No.14863 of 2007)

B.C. Mylarappa @Dr. Chikkamylarappa ..Appellant

VERSUS

Dr. R. Venkatasubbaiah and Ors. ...Respondents

J U D G M E N T

TARUN CHATTERJEE, J.

1. Leave granted.

2. The appellant herein along with two other persons was appointed to the post of 'Research Assistant' in Sociology Department, Bangalore University (In short, "the University") on or about 18th of October, 1988. The initial appointment was for a period of three years provided however that the continuance of the appointment will be on an year to year basis

subject to the report of the Head of the Department concerned testifying to the satisfactory work and conduct of the research during the year of review.

3. In the appointment letter, it was also made clear that the appointment may be extended by one year at a time for a further period of two years, depending upon the progress of the research work. The Clause 4 of the appointment letter states as under :-

> *"They will be required to do tutorial work for 3 to 4 hours a week in addition to the research work approved by the University."*

4. Clause 9 of the appointment letter states as under :-

> *"They should produce all the original certificates pertaining to their qualifications, date of birth, experience etc. at the time of reporting for duty to the Heads of the Department concerned, for verification.*
> *They should apply for registration for the Ph.d. Degree to the Registrar, Bangalore*

University, Bangalore within two months after reporting for duty to do research work on a selected subject and also abide by the regulations for the Ph.d Degree."

5. On or about 12th of February, 1987, some persons, whose tenure appointment as Research Assistants was coming to an end in 1986-87, made a representation on 12th of February, 1987 to the Chancellor, Bangalore University to regularize them by promoting/upgrading the post of Research Assistants. In their representation, the said persons submitted that during the tenure appointments (three years extended to five years) have acquired sufficient experience in the field of research and also teaching and they would be rendered jobless and put to hardships if their appointments were terminated at the end of their tenures.

6. On 31st of October, 1988, the University framed a draft statute thereby providing for absorption of Research Assistants as Lecturers as a one-time measure and submitted it to the State Government for approval. By an order dated 19th of October, 1991, the University directed that in regard to Research Assistants who were appointed for three years and continued beyond that period, status quo would be maintained by continuing their services until further orders or until the Government takes a decision in regard to proposals of their absorption as lecturers in the University. By a communication/order dated 3rd of November, 1992, the State of Karnataka returned the draft statute to the University suggesting some changes. Again on 17th of February, 1993, the University resubmitted the draft Statute after making necessary changes as instructed by the State Government. On 4th of October, 1993, the Chancellor of the University

gave his assent to the said Statute and the Statute was called as the "Conversion of certain posts of Research Assistants to that of Lecturers and abolition of vacant posts of Research Assistants in various Departments of Bangalore University (for short "Statute")".

7. The aforesaid Statute was notified by the Registrar of the University on 8th of November, 1993. The clauses which are relevant for the purpose of proper decision of this appeal are as follows :-

> *"3.1. As from the date on which these Statutes shall come into force the posts of Research Assistants as mentioned in Annexure 'A' to these Statute shall stand converted to the posts of Lecturer.*
>
> *3.2. As from the date on which these Statutes shall come into force all posts of Research Assistants, which are vacant as on 13.11.1992, shall stand abolished and there shall be no further appointment of Research Assistants in any of the Departments of the University."*
>
> *3.4. The Research Assistants holding the post as such and as mentioned in Annexure 'A' to these Statutes as on the*

date on which these Statutes shall come into force shall be eligible to be absorbed and appointed as Lecturers.

3.6. The Research Assistants absorbed and appointed under the Statutes as Lecturers for the purpose of seniority as Lecturers will rank below the Lecturer already working in the University as on the date on which these Statutes shall come into force."

8. In pursuance of the Statute, the Syndicate of the University passed a Resolution on 18th of March, 1994 thereby absorbing 22 Research Assistants.

9. In pursuance thereof, a common appointment order was issued on 21st of March, 1994 from which the relevant conditions are as follows :-

"1. For the purpose of seniority as Lecturers, they will rank below the lecturers already working in the University and temporary lecturers now regularized.

2. *Such of the Research Assistants, who are absorbed as lecturers not possessing Ph.D./Net/M.Phill qualification shall acquire Ph.D. /Net within a period of 3 years, failing which*

they shall not earn their future increments, till they acquire above qualifications.

6. *The services as Research Assistants will not be counted for the purpose of granting senior scale and selection scale of pay."*

10. By an order dated 4th of August, 1994, the University ordered that the date of appointment of the present appellant as Lecturer in Sociology be read as 'effective from 21.3.1994'. In the year 1995, the present appellant and some other Research Assistants filed writ petitions before the High Court of Karnataka, which were registered as Writ Petition Nos. 41710-41786 of 1995, in which the writ petitioners made the following prayer :-

"The petitioners therein interalia sought for a declaration that Clause 3.6 and 3.8 of the Statute are illegal and ultra-vires Article 14 of the Constitution; and also for a declaration that Condition Nos. 1 & 6 of the appointment order dated 21.3.1994 are illegal and void.

The Petitioners therein also sought for a direction to the University to give the benefits if their past services as Research

Assistants for the purpose of seniority in their past services as Research Assistants for the purpose of seniority in the cadre of lecturer and accord them consequential benefits.…"

11. The aforesaid writ petitions were taken up for final disposal by a learned Single Judge of the High Court of Karnataka, who by his Judgment and order dated 12th of April, 2000 allowed the writ petitions in part *inter alia* upholding the validity of Clauses 3.6 and 3.8 of the Statute as well as Condition No. 1 of the appointment order dated 21st of March, 1994. Further, it would be evident from the Judgment of the learned Single Judge of the High Court that the Condition No. 1, as noted hereinearlier, of the appointment order dated 21st of March, 1994 was cancelled.

12. Being aggrieved by the aforesaid Judgment and Order passed by the learned Single Judge, the writ petitioners as well as the University and the

State had preferred appeals before the Division Bench of the High Court. By a Judgment and order dated 7th of March, 2002, the Division Bench of the High Court dismissed the appeal and allowed the appeals preferred by the State as well as by the University. While passing such Judgment, the Division Bench made the following conclusions :-

> *"(i) It has been amply demonstrated that the posts of Research Assistants are lower to the post of lecturers; and*
> *ii) A Research Assistant's post cannot be equated with that of lecturers."*

13. The University thereafter issued a notification on 30th of September, 2002, inviting various persons to apply for the post of Professor, Reader and Lecturer in the University. In the said notification, the University invited candidates for the post of Professors in which the following qualifications were required :-

"An eminent scholar with published work of high quality, actively engaged in Research with :
10 years of experience of Post-Graduate teaching, and/or experience in research at the University/National Level Institutions (including experience of guiding research at Doctoral Level).

Or

An outstanding scholar with established reputation who has made significant contribution to knowledge."

14. In response to the said notification, various candidates including the appellant and the Respondent Nos. 1 and 2 applied for the said post. The last date of submission of application was 23rd of October, 2002 on which date, the appellant had completed 8 years, 7 months and 2 days i.e. from 21st of March, 1994 to 23rd of October, 2002. The Chairman, Department of Sociology, submitted a "Scrutiny and Verification Report". In the said report, it was stated as under :-

"….on my scrutiny, I am satisfied that the candidate under reference fulfills all the requirements, as laid down in the University Notification under reference and the candidate may be invited for the interview.
If the candidate is not eligible, please furnish the details."

15. From this Scrutiny and Verification Report, it appears that the Chairman found only four persons eligible for the post and invited the appellant, respondent Nos. 1 and 2 and one other person for interview. A Board of Appointment in Sociology Department of University was constituted by a notification dated 30th of September, 2002 and the Board assembled for selection of candidates for the post of Professor in Sociology. The Board of Appointment selected the following persons in the order of merit :-

1. Dr. Chikkamylarappa (appellant herein)
2. Dr.R.Venkatasubbaiah (respondent No.1 herein)
3. Dr. C. Somashekar (respondent No.2 herein)
4. Dr. I. Maruthi

16. Challenging this selection, the respondent Nos. 1 and 2 filed a writ petition before the High Court seeking for a writ declaring the selection and appointment of appellant to the post of Professor in the Department of Sociology. In the said writ petition, the appellant filed its written objection and University also had filed its objection. On or about 18th of June, 2003, the appellant was appointed by an appointment order as a Professor in the Department of Sociology. It would be pertinent to mention that although during the pendency of the writ petition, the appointment order of the appellant was issued by the University, but such appointment order was, however, never challenged in the writ application even by way of an amendment to the writ petition in which the only challenge was against the selection of the appellant. By a Judgment and order dated 31st of July, 2007,

the learned Single Judge of the High Court had allowed the writ petition filed by the respondent Nos. 1 and 2 herein and thereby directed the University to readvertise the post and fill the vacancy in accordance with law within a period of three months from the date of reply of the order. While setting aside the selection of the appellant, the learned Single Judge, inter alia, concluded as follow:-

(1) The writ petitioners/respondent Nos. 1 and 2 confined their challenge only to one aspect i.e. whether the appellant possessed the minimum qualification as required.

(2) The appellant could claim to be a Lecturer only with effect from 21st of March, 1994 and not prior to it.

(3) In view of the Judgment and order dated 7th of March, 2002, it would not be permissible to

reckon the services/experience rendered by the appellant as Research Assistant in the University as a Lecturer in the same.

(4) Taking the said dates into account, the appellant did not possess the stipulated qualification set out in the notification i.e. 10 years of experience in post-graduate teaching or the alternative. The appellant was selected with reference to the number of years of teaching and not with reference to the qualification that he was an eminent scholar with research experience and publications etc.

(5) The appellant was ineligible for appointment to the post of Professor in the Sociology Department of the University and hence could not have been appointed. His selection and appointment, therefore, was arbitrary and illegal.

(6) The writ petition survived for consideration despite the superannuation of the respondent

No. 1 herein and non-short listing of respondent No. 2.

17. It is in this view, the learned Single Judge came to the conclusion that the selection was improper, arbitrary and illegal and, therefore, his appointment ought to be cancelled. Being aggrieved by the Judgment and order dated 31st of July, 2007, the appellant preferred a writ appeal before the Division Bench of the High Court. The Division Bench of the High Court, by its Judgment and final order dated 6th of August, 2007 dismissed the appeal preferred by the appellant *inter alia* on the following findings:-

> *"(i) The question whether the appellant's experience can be treated as research experience was not considered by the Board of Appointment. It was not clear how the Board of Appointment found the appellant eligible.*
> *(ii) The question was whether the experience of the appellant as Research Assistant can be treated as equivalent to post-graduate teaching experience.*

(iii) The High Court in its Judgment and order dated 7.3.2002 had taken the view that the post of Research Assistants was not equal to the post of Lecturer. Therefore, the experience as Research Assistants could not be treated as equivalent to post-graduate teaching experience."

18. Accordingly, on the aforesaid grounds, the Division Bench, by the aforesaid order, dismissed the appeal of the appellant against which, the appellant filed this Special Leave Petition in respect of which leave has already been granted and the appeal was heard in presence of the learned counsel for the parties.

19. We have heard Mr.Rama Jois, learned senior counsel appearing for the appellant and Mr.Hrishikesh Baruah, learned counsel appearing for the respondents and also examined the impugned judgment of the Division Bench as well as of the learned Single Judge passed in the writ

application in depth and in detail. Before us, Mr. Rama Jois, learned senior counsel at the first instance submitted that the High Court ought not to have interfered with the decision of the Board of Appointment which comprised of experts for selection to the post of Professor in the University as it was not for the court to go into the question whether such selection was proper or not in the absence of any pleading that either the Expert Body of the University or the University Authorities had acted mala fide in the matter of selection of the appellant. Secondly it was argued by Mr.Rama Jois, learned senior counsel for the appellant that the High Court also erred in allowing the writ petition of the respondents by holding that having regard to the wording of the prescription both the periods of experience in teaching as Lecturer for a period of 8 years 7 months and 2 days and experience as Research Assistant for a period of 5 years 5 months and 10 days ought to have been taken into account

and after taking into account the aforesaid period, the High Court ought to have held that the appellant was eligible for being selected as a Professor in the Sociology Department of the University and by not doing so, the High Court erred in setting aside the appointment of the appellant. In support of this contention, learned senior counsel for the appellant had drawn our attention to a decision of this Court in the case of ***Dr.Kumar Bar Das vs. Utkal University & Ors.*** [1999 (1) SCC 453] and argued that this case squarely covered the case of the appellant which was also relied on by the appellant before the High Court, but the High Court had failed to take notice of that decision. Reliance was also placed by the learned senior counsel for the appellant in the case of ***The University of Mysore vs. C.D.Govinda Rao & Anr***. [AIR 1965 SC 491] and ***National Institute of Mental Health & Neuro Sciences vs. Dr.K.Kalyana Raman & Ors.*** [1992 Supp (2) SCC

481]. Accordingly, learned senior counsel for the appellant concluded that in view of the settled law and the law laid down by this Court particularly in **Dr.Kumar Bar Das (supra**), the judgments of the Division Bench as well as of the learned Single Judge are liable to be set aside. The learned counsel appearing for the respondents, however, refuted the submissions so made on behalf of the appellant. According to the learned counsel for the respondent, the Division Bench as well as the learned Single Judge of the High Court were perfectly justified in holding that the experience of the appellant as Research Assistant could not be treated as equivalent to Post Graduate teaching experience and the question whether the experience of the appellant could be treated as Research experience was not considered by the Board of Appointment of the University. Let us now deal with the question raised by the learned counsel for the parties. As quoted herein earlier that requirement

for selection in the post of Professor in the Sociology Department of the University, 10 years experience in Post Graduate teaching and/or experience in Research in the University was necessary. It is not in dispute that the appellant had 9 years of service as Lecturer and had done Research work for 5 years. Therefore, there cannot be any dispute that he had satisfied that he had got the experience of 10 years in Post Graduate teaching experience in Research in the University. It is also not in dispute that the Board of Appointment of the University consisted of the persons, who were experts academician as Head, found the appellant eligible for such appointment, after scrutinizing the experience required for appointment to the post of Professor in the said Department. He was interviewed along with others by the Board of appointment of the Expert Body and found to be eligible for appointment. The Syndicate of the University, which also consisted of Academic

experts had passed a resolution approving the appointment of the appellant as Professor. This appointment of the appellant was challenged on two grounds. Before we go into the two grounds, we may keep it on record that it was the stand of the University before the High Court as well that the appellant was duly qualified for appointment to the post of Professor. The learned Single Judge while allowing the writ petition of the respondents, however, reckoned the service of the appellant as Lecturer, but ignore to consider the experience of the appellant as Research Assistant. It cannot be disputed that these two experiences, namely, experience as Lecturer and experience as Research Assistant, if counted, the eligibility of the appellant for appointment to the post of Professor could not be questioned. In Dr. Kumar Bar Das (supra), this court in detail had considered this aspect of the matter and in the said decision, this Court observed that the opinion of experts in the Selection

Committee must be taken to be that the appellant's teaching and Research experience satisfied the above conditions of 10 years as mentioned for appointment to the post of Professor. In that case, this Court at para 27 at page 462 observed as follows :

> *" In our view, having regard to the high qualifications of the experts and the reasons furnished by the Syndicate as being the obvious basis of the experts' opinion, the Chancellor ought not to have interfered with the view of the experts. The expert's views are entitled to great weight as stated in University of Mysore's case."*

20. In Para 28 of the said decision, this Court also observed :

> "In our opinion, the Chancellor cannot normally interfere with the subjective assessment of merit of candidates made by an expert body unless mala fides or other collateral reasons are shown. In Neelima Misra case above-referred to, this Court observed, referring to the powers of the Chancellors in matters of appointment of Professors/Readers as

being purely administrative and not quasi-judicial."

21. Following the principles laid down in **Kumar Bar Das vs. Utkal University (supra),** this Court also in the case of **G.N.Nayak vs. Goa University & Ors.** [2002 (2) SCC 712] considered this aspect of the matter and held at para 27 which are as follows:

> *"A candidate can club together his qualification of teaching and research to cover the 10 years' period as has been held in Kumar Bar Das (Dr.) vs. Utkal University."*

22. In view of the aforesaid two decisions of this Court, as noted herein earlier, which extensively dealt with the requirement to the post of Professor in the University, we need not dwell in depth and in detail any further and therefore, we must hold that the appellant had satisfied the qualifications required for appointment to the post of Professor in

the University. There is another aspect of this matter which is also relevant for proper decision of this appeal. We have already indicated earlier that the Board of Appointment was constituted with experts in this line by the University Authorities. They have considered not only the candidature of the appellant and his experience as a Lecturer and Research Assistant along with others came to hold that it was the appellant who was the candidate who could satisfy the conditions for appointment to the post of Professor. Such being the selection made by the expert body, it is difficult for us to accept the judgments of the High Court when we have failed to notice any mala fides attributed to the members of the expert body in selecting the appellant to the said post. In ***University of Mysore vs. C.D.Govinda Rao & Anr.*** [AIR 1965 SC 491], this Court while dealing with the selection of candidates for academic matters by a Board of Experts appointed by the University for the post of Reader

and the recommendation of the Board, this Court at Para 13 of the aforesaid decision observed:-

> "*Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the court should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the court to leave the decisions of academic matter to experts who are more familiar with the problems they face that the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writ of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration*

which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board & its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified."

23. Admittedly, there is nothing on record to show any mala fides attributed against the members of the Expert Body of the University. The University Authorities had also before the High Court in their objections to the writ petition taken a stand that the

appellant had fully satisfied the requirement for appointment. In this view of the matter and in the absence of any mala fides either of the expert body of the University or of the University Authorities and in view of the discussions made herein above, it would be difficult to sustain the orders of the High Court as the opinion expressed by the Board and its recommendations cannot be said to be illegal, invalid and without jurisdiction.

24. Again in ***M.V.Thimmaiah & Ors. vs. Union Public Service Commission & Ors.*** [2008 (2) SCC 119], this Court clearly held that in the absence of any mala fides attributed to the expert body, such plea is usually raised by an interested party (in this case the unsuccessful candidate) and, therefore, court should not draw any conclusion on the recommendation of the expert body unless allegations are substantiated beyond doubt. That

apart, the challenge to the selection made by the expert body and approved by he University Authorities was made by the respondent Nos. 1 and 2 who were unsuccessful candidates and were not selected for appointment to the post of Professor in the Department of Sociology.

25. In ***National Institute of Mental Health & Neuro Sciences vs. Dr.K.Kalyana Raman & Ors.*** [1992 Supp (2) SCC 481], this Court considered in detail the role of an expert body in deciding the candidature for selection to a particular post. While doing so, this Court at Para 7 at P. 484 of the said decision observed as follows:

> *"In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival*

candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with. The High Court in support of its reasoning has, however, referred to the decision of this Court in Union of India v. Mohan Lai Capoor. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil service. The decision in Capoor case was rendered on 26 September, 1973. In June, 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil services. The Capoor case cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R. S. Dass v. Union of India in which Capoor case was also distinguished."

26. Keeping this observation in our mind and considering the facts and circumstances of the present case, we find that there was no dispute in this case that the selection was made by the assessment of relative merit of rival candidates determined in the course of the interview of the candidates and after thoroughly verifying the experience and service of the respective candidates selected the appellant to the post of the Professor in the said Department. It is not in dispute that there is no rule or regulation requiring the Board to record reasons. Therefore, in our view, the High Court was not justified in making the observation that from the resolution of the Board selecting the appellant for appointment, no reason was recorded by the Board. In our view, in the absence of any rule or regulation requiring the Board to record reasons and in the absence of mala fides attributed against the members of the Board, the selection

made by the Board without recording reasons cannot be faulted with.

27. Before we conclude, at the risk of repetition, we may reiterate that the Chairman, Department of Sociology, University of Bangalore submitted his scrutiny and verification report in which it was stated as under:

> *"On my scrutiny, I am satisfied that the candidate under reference fulfils all the requirements as laid down in the University Notification under reference and the candidate may be invited for the interview. If the candidate is not eligible, please furnish the details."*

28. A reading of the scrutiny report which was extracted by the learned Single Judge in his order would clearly show that the Chairman found only four persons eligible for the post and invited the appellant and the respondent Nos. 1 and 2 and one more candidate for interview. After being satisfied and after verifying the report of the eligibility and

the requirements for appointment to the post of Professor in the Sociology Department of the University, the scrutiny and verification report was filed by the Chairman and on the basis of which the appellant was selected and appointed in the post of Professor in the University. That being the position and in view of our discussions made herein above, we are of the view that the Division Bench as well as the learned single judge ought not to have exercised the writ jurisdiction and interfered with the selection of the expert committee of the University for the reasons made in the order and particularly when the selection of the appellant was not challenged on the ground of mala fides.

29. For the reasons aforesaid, we are inclined to set aside the orders of the High Court. Accordingly the impugned orders of the High Court are set aside and the writ petition filed by the respondents is hereby rejected. In view of the fact that we have

already found that the appointment of the appellant is legal, the University is directed to re-instate the appellant within two months from the date of supply of a copy of this order. The appeal is allowed. There will be no order as to costs.

.....J.
[Tarun Chatterjee]

New Delhi;
October 03, 2008.

.....J.
[Harjit Singh Bedi]