

**IN THE HIGH COURT OF KARNATAKA AT
DHARWAD**

DATED THIS THE 26TH DAY OF MAY 2023

PRESENT

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

AND

THE HON'BLE MR. JUSTICE UMESH M. ADIGA

WRIT APPEAL No.100234 OF 2021 (S-RES)

BETWEEN:

DR. M. DAVID
S/O MUNISWAMY MASILAMANI
AGED ABOUT 57 YEARS
OCCUPATION: PROFESSOR
DEPT. OF P.G. STUDIES IN ZOOLOGY
KARNATAKA UNIVERSITY,
DHARWAD
R/O NOW AT CTS # 144/3A
SUR COMPOUND,
NEAR RAILWAY SAMUDAYA BHAVAN
GOPALPUR, MALAMADDI
DHARWAD - 580 003.

... APPELLANT

(BY SRI SHRIDHAR PRABHU, SENIOR ADVOCATE FOR
SRI LINGESH V. KATTEMANE, ADVOCATE)

AND:

1. DEPARTMENT OF HIGH EDUCATION
GOVERNMENT OF KARNATAKA
6TH FLOOR, M.S. BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU - 560 001
REPRESENTED BY ITS PRINCIPAL SECRETARY

2. THE REGISTRAR
KARNATAKA UNIVERSITY DHARWAD
PAVATE NAGAR
DHARWAD - 580 003.
3. THE COMMISSIONER
SOCIAL WELFARE DEPARTMENT
5TH FLOOR, M.S. BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU - 560 001.
4. DR. H. KRISHNA RAM
SON OF HANUMAPPA
AGED ABOUT 47 YEARS
RESIDING AT & POST KAMBODI VILLAGE
KOLAR TALUK & DISTRICT - 563 101.

... RESPONDENTS

(BY SRI C. JAGADISH, SPECIAL COUNSEL FOR R1 & R3;
SRI VEERESH R. BUDIHAL, ADVOCATE FOR R2;
SRI VIJAYKUMAR, ADVOCATE,
SRI J.A. PATTAR, ADVOCATE AND
SRI P. BANAKAR, ADVOCATE FOR C/R4)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO CALL FOR ENTIRE RECORDS OF WRIT PETITION NO.36345/2017 AND SET ASIDE THE ORDER DATED 16.09.2021 PASSED IN WRIT PETITION NO.36345/2017 BY LEARNED SINGLE JUDGE BY ALLOWING THIS WRIT APPEAL AND ETC.

THIS WRIT APPEAL PERTAINING TO DHARWAD BENCH AND RESERVED ON 17.02.2023 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT AT PRINCIPAL BENCH, BENGALURU THROUGH VIDEO CONFERENCING THIS DAY, **S. SUNIL DUTT YADAV J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The appellant has called in question the validity of the order dated 16.09.2021 passed in W.P.No.36345/2017, whereby the Writ Petition came to be allowed setting aside the appointment of the appellant (respondent No.4 in Writ proceedings) to the post of Associate Professor, Zoology Department with consequential direction to the respondent University to fill up the post of Associate Professor pursuant to the advertisement dated 25.07.2011.

2. The parties are referred to by their rank in the Writ proceedings.

3. The petitioner was one of the aspirants who had applied for the post of Associate Professor, Zoology, (backlog vacancy) pursuant to the advertisement dated 25.07.2011 issued by the second respondent University.

4. The second respondent University selected respondent No.4 who was issued with the letter of appointment on 29.02.2012.

5. It is stated that the petitioner coming to know of the disentitlement of respondent No.4 to claim the Scheduled Caste status is stated to have made a representation to the first respondent Government on 26.04.2016.

6. It is further submitted that respondent No.1 issued a direction to the University to cancel the appointment of respondent No.4. It is stated that the University by its communication dated 06.04.2017 justified the appointment and accordingly, closed the grievance of the petitioner.

7. It is further submitted that the respondent No.3 Commissioner, Social Welfare Department, acting upon the representations of the petitioner, by communication to the first respondent on 04.05.2017 is stated to have directed the first respondent State to

take action. As no action was taken, the petition came to be filed seeking for the following reliefs:-

(a) sought for setting aside of the order of appointment of the respondent No.4 dated 29.02.2012 vide Annexure-C and the impugned communication dated 06.04.2017 at Annexure-J;

(b) sought for issuance of writ of mandamus directing the respondent to include the name of applicant in the final main list for the post of Associate Professor in backlog category and to appoint and grant him all consequential benefits.

8. The grounds raised in the petition were as follows:-

(a) application not filed in requisite format as required in terms of advertisement;

(b) respondent No.4 did not furnish Academic Performance Indicator (A.P.I.) and Performance Based Appraisal System (P.B.A.S.) as per UGC Regulations 2010;

(c) Respondent No.4 does not belong to Scheduled Caste category of Karnataka, as

having migrated from Andhra Pradesh and as per the Government of India notification dated 06.01.1984 he is ineligible to claim the status of Scheduled Caste candidate;

(d) direction of first respondent State to the respondent No.2 to cancel the appointment made in favour of the respondent No.4 has not been complied with;

(e) that the petitioner has indeed made a representation to the Hon'ble Minister for Social Welfare on 26.04.2016.

9. It is submitted that the respondent No.4 having resided for more than 21 years in the State of Karnataka has become a regular resident and lost his identity in the State of origin, i.e. Andhra Pradesh.

10. It is submitted that the University in response to directions by respondent No.1 - Government constituted a Sub-Committee to enquire into the appointment of the respondent No.4 and as to whether it was in terms of the advertisement and the

UGC Regulations, and came out with a report that the appointment was in accordance with applicable Rules which was accepted by the University and forwarded to the Government.

11. It is further submitted that respondent No.4 was originally from Andhra Pradesh and belonged to Aadi Dravida Caste which was classified as Scheduled Caste both in State of Andhra Pradesh and Karnataka. As per the Notification of 03.09.1977, the Aadi Dravida Caste has been declared as Scheduled Caste in State of Karnataka also.

12. The learned Single Judge has allowed the Writ Petition by setting aside the order dated 29.02.2012 issued by the University appointing respondent No.4 to the post of Associate Professor, Zoology Department and consequently set aside the communication dated 06.04.2017 at Annexure-'J'.

13. The Court had framed the following points for consideration :-

(i) Whether the person belonging to Scheduled Caste/Scheduled Tribe in one State can be considered as Scheduled Caste/Scheduled Tribe person in the State of his migration for the purpose of employment or education?

(ii) Whether the appointment of the 4th respondent to the post of Associate Professor in Zoology Department in the 2nd respondent University, which was reserved for candidates from the Scheduled Caste category, is proper and sustainable?"

14. The Court has held that a person who belongs to the Scheduled Caste/Scheduled Tribe category is entitled to the benefits admissible to such category only in the State of origin and not in the State to which he has migrated and accordingly has found that the respondent No.4 admittedly having his origin in the State of Andhra Pradesh and having migrated to the State of Karnataka would not be entitled to seek benefits on the basis of his caste in the State of Karnataka. The Court has relied on the judgment in the case of **Bir Singh v. Delhi Jal Board**

and Others reported in **(2018) 10 SCC 312** in arriving at the above conclusion and accordingly has answered point No.1 in negative.

15. As regards Point No.2, the Court has rejected the contention of the University that applications were invited from Indian Nationals and accordingly a person belonging to Scheduled Caste category from anywhere could apply and while holding so, has set aside the communication at Annexure-J, whereby the University had affirmed the selection of respondent No.4 and accordingly has allowed the petition.

16. Heard learned counsel Sri.Vijaykumar for the petitioner (respondent No.4 in Writ Appeal) and Sri.Shridhar Prabhu for respondent No.4 (appellant in Writ Appeal) Sri.C.Jagadish, learned Standing Counsel representing respondent Nos.1 and 3 and Sri. Veeresh R. Budihal, representing respondent No.2.

17. It must be noted that the learned Single Judge has not addressed the question of *locus standi* of the petitioner who has assailed the selection of the respondent No.4. The prayer in the Writ Petition was for setting aside the selection of the respondent No.4 and directing the respondent University to include the name of the applicant in the main selection list and consequently issue appointment letter.

18. The relief granted by the learned Single Judge is by setting aside the appointment of the respondent No.4 and a further direction is made out to the second respondent University to fill up the post of Associate Professor, Zoology Department pursuant to the advertisement at Annexure-'A' dated 25.07.2011.

19. As strenuously contended by learned counsel for the respondent No.4 that the petitioner could have the *locus standi* only if he is an aggrieved party, which aspect has not been addressed to by the learned Single Judge. Such aspect is a jurisdictional

issue that can and is required to be addressed in the appeal proceedings as well.

20. The respondent No.4 in the statement of objections filed before the learned Single Judge has specifically asserted at para-20 that the petitioner was not eligible for appointment to the post of Associate Professor, as he did not possess the required teaching experience and has relied on the merit list at Annexure-'R3'.

21. It is to be noted at the outset that despite the petitioner in the present proceedings assailing the said document at Annexure-'R3', the document having the seal and signature of the Registrar of the University, Dean faculty of Science and Chairman, Department of Zoology and not disputed by the University requires to be accepted. This Court is neither a fact finding Authority nor is it permissible to evaluate the eligibility as regards required teaching experience.

22. It is also relevant to note that in terms of Annexure-'R3', there were others in the list who were stated to be eligible, including Dr.Aladakatti R.H. (Sl.No.2), Dr.C.B.Ganesh (Sl.No.4) apart from the respondent No.4 and none of whom have been made as parties in the present proceedings. Upon such proceedings, it appears that Syndicate has taken a decision on 05.03.2012 as per Annexure-'R4', in which the selection of respondent No.4 has been approved.

23. For the purpose of being aggrieved, the petitioner is required to demonstrate that in the event he had succeeded, he would be entitled to be appointed.

24. Where there are other eligible persons, attack to the selection of the respondent No.4 at the instance of the petitioner is impermissible, in the absence of arraying the others as parties.

25. Firstly, this would be on the ground that Public Interest Litigation is impermissible in 'Service'

matters and secondly, on the ground that the petitioner being ineligible cannot be stated to be legally aggrieved so as to possess *locus standi* to challenge the selection of respondent No.4.

26. It is also necessary to note that unless finding is recorded as regards such aspect, learned Single Judge ought not to have proceeded to decide the merits of the matter.

27. It is to be noticed that the petitioner has not called in question his non-selection nor has he challenged the selection process. The grievance primarily is not against the selection process nor against his non-selection but as regards the ineligibility of the respondent on the basis of his caste certificate. If that were to be so, the proper course of action was to challenge the validity of the caste certificate and the consequences would follow.

28. It is also necessary to note that the respondent No.4 possessed the Caste Certificate dated

18.08.2011 at Annexure-'R2' issued by the competent authority, which shows that the respondent No.4 belongs to Scheduled Caste (Adi Dravida). The said Caste Certificate has not been cancelled.

29. Insofar as the contention of the Special Counsel appearing for the respondent State that Validity Certificate ought to have been obtained in terms of Rules 6 and 9 of the Karnataka Scheduled Castes and Scheduled Tribes and Other Backward Classes (Reservation of Appointment, etc.) Rules, 1992. However, there was no such pleading on record before the learned Single Judge and fresh contention regarding the same at this stage ought not to be entertained.

30. Even otherwise, the proceedings of the University dated 27.02.2012 relating to selection by filling up of backlog vacancies between 15th and 25th of February 2012 specifies "validation (Sindhutva) of castes in respect of the candidates, who are already working in the University/constituent Colleges

amongst the selected once (sic) against the reserved for backlog vacancies are not necessary." Though there is a note by the Vice Chancellor that condition may be imposed regarding verification of Caste Certificate as regards those already working in the University, in effect, no such condition has been imposed in the appointment order at Annexure-'C' dated 29.02.2012.

31. The Caste Certificate is issued by the Tahsildar under Section 4A of the Karnataka Scheduled Castes and Scheduled Tribes and Other Backward Classes (Reservation of Appointment, etc.) Act, 1990. The same is preceded by an enquiry satisfying himself regarding the genuineness of the claim made. Any person aggrieved by an order issuing Caste Certificate under Section 4A of the Act, may appeal to the Assistant Commissioner under Section 4B of the Act. If such is the procedure provided under the Act with a procedure for verification under Section 4C and appeal under

Section 4D and revision under Section 4F of the Act, the petitioner ought to have sought for cancellation of the Caste Certificate in terms of the procedure prescribed. Rule 3-C of the Karnataka Scheduled Castes and Scheduled Tribes and Other Backward Classes (Reservation of Appointment, etc.) Rules, 1992, further provides that the Caste Certificate issued under Section 4A of the Act shall be valid until it is cancelled. The consequences would then follow once the Caste Certificate is cancelled in terms of the procedure prescribed.

32. Though the respondent No.4 has contended that the selection is on an All India basis and open to Indian Nationals and the UGC Regulations governing such selection would enable the Scheduled Caste from any part of the country to apply, which would have the effect of rendering nugatory contention of the petitioner regarding the respondent No.4 being a migrant and being eligible to claim benefit in Karnataka, such contention is not addressed in light of

dismissal of the petition by keeping open rights of the petitioner to initiate appropriate proceedings as per law.

33. Though detailed arguments have been advanced by the learned counsel for respondent No.4 on the aspect of delay contending that the order of appointment is of the year 2012 and representation has been made by the petitioner for the first time on 14.12.2015, while the petitioner would contend that the caste certificate being a void order, question of delay would not be relevant, such contention is not adjudicated and kept open in light of the manner of disposal of the appeal.

34. Accordingly, it would not be open for the petitioner to have sought for relief in the present Writ Petition which in effect could have been granted only after cancellation of the Caste Certificate.

35. In light of the above position, we set aside the order of the Single Judge keeping open

contentions on merits and it is open for the petitioner to take appropriate action, if so advised and circumstances are so made out, as per law.

36. Accordingly, the order of learned Single Judge dated 16.09.2021 passed in W.P. No.36345/2017 is set aside and the Writ Appeal is ***disposed off*** in terms of the above discussion.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

VGR/NP