A DR. M.S. PATIL

v.

GULBARGA UNIVERSITY AND ORS.

(Civil Appeal No. 1483 of 2005)

AUGUST 27, 2010.

B **[AFTAB ALAM AND R.M. LODHA, JJ.]**

Service law – Appointment – Post of Reader – Appointment of appellant-general category candidate – Challenged to – Case of respondent-reserved category candidate that the post was reserved for 'Group B' candidate and appointment of appellant was the result of favouritism – Appointment set aside by High Court – However, appellant directed to continue on ad-hoc basis until appointment of new incumbent to the post – On appeal, held: Appellant was wrongly appointed to a post reserved for 'Group B' category – His selection to the post was tainted – In service law, concepts of adverse possession or holding over are not there – For 17 years, appellant occupied the post which lawfully belonged to someone else – Equitable considerations are against him – Appellant continued in that post on basis of the direction of Supreme Court to maintain status quo, thus no need to continue ad-hoc arrangement any further – University directed to issue fresh Notification to fill up the post.

The respondent-University advertised posts of Reader. In the remarks column of the Notification, the said post was reserved for 'Group B' category. The appellant-general category candidate, was selected. Respondent no.2, a 'Group B' candidate, challenged the appointment of the appellant on the ground that the post was reserved for 'Group B' candidate; and that the appointment of the appellant was the result of favouritism. The Single Judge of the High Court set aside the selection and appointment of the appellant as Reader. It directed

the University to fill up the post of reader calling for fresh applications and to complete the selection within the stipulated period. However, the appellant was allowed to continue on the post till the fresh selection process was completed. The Division Bench of the High Court upheld the order passed by the Single Judge of the High Court. Therefore, the appellant filed the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1 The facts of the case lead to only one conclusion that the appellant was wrongly appointed to a post that was reserved for 'Group B' category. The High Court also found that the appellant's selection for appointment to the post was tainted by the participation of the Head of the Department of Kannada, who was related to him, in the selection process. [Para 11] [239-C-D]

1.2 In service law, there is no place for the concepts of adverse possession or holding over. Helped by some University authorities and the gratuitous circumstances of the interim orders passed by the Court and the delay in final disposal of the matter, the appellant has been occupying the post, for all these years that lawfully belonged to someone else. Thus, the equitable considerations are actually against him rather than in his favour. It is noted as to how the appellant was able to secure the appointment and how he managed to continue on the post. By notification dated August 13, 2004, the appellant was discharged from the service of the University on the post of Reader in Kannada but was asked to continue on ad-hoc basis until the appointment of the new incumbent to the post, on the basis of the order of status quo passed by this Court. Thus, his position is only ad- hoc till the appointment of the new incumbent and in that position he is continuing on the basis of the direction of this Court to maintain status quo.

A **There is no reason to continue this ad-hoc arrangement any further and stand any longer in the way of the post being filled up on a regular basis. [Paras 13] [239-F-H; 240-A-C]**

B **1.3 Since the matter has become very old, it would not be reasonable for the University to fill up the post on the basis of the notification issued in the year 1993. Therefore, the University could issue a fresh notification to fill up the post. [Para 14] [240-C-D]**

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1483 of 2005.

From the Judgment & Order dated 02.06.2004 of the High Court of Karnataka at Bangalore in W.A. No. 1303 of 2000.

D Basava Prabhu S. Patil, Ajay Kumar M. (for A.S. Bhasme) for the Appellant.

S.N. Bhat, Lakshmi Raman Singh for the Respondents.

The Judgment of the Court was delivered by

E **AFTAB ALAM,J.** 1. This case sadly illustrates how interim orders passed by the court coupled with judicial delays enure to the great advantage of the wrong doer and in the end make him bold in the false belief that with the passage of time the equity was now firmly on his side. The appellant in this case F was wrongly appointed to the post of Reader in the Department of Kannada in Gulbarga University. On the basis of the interim orders passed by the Court and evidently helped by the concerned authorities in the University he has been able to hold on to the post now for over seventeen and a half years.

G 2. The manner in which the case has progressed to reach the present stage may be stated thus. On March 30, 1992 the Gulbarga University, Gulbarga invited applications for appointment to different posts. One of the advertised posts was H of Reader in Kannada. In the remarks column of the notification,

it was clearly shown as reserved for 'Group B' category. It needs to be stated here that a plain copy of the notification is enclosed with the paper book as part of Annexure PI. In the remarks column of the enclosed copy, the letters "GM" are shown against the post in question, indicating that it was open to the general merit category. In order to show that it was incorrect Mr. L. R. Singh, counsel for respondent No. 2 produced before us a Xerox copy of the notification from which it clearly appears that the post was reserved for a candidate of 'Group B' category. Thus, confronted the lame plea on behalf of the appellant was that the mistake in the copy (Annexure P1) was due to a typing error. We do not wish to proceed any further in the matter except to say that a typing error materially affecting the facts of the case to the benefit of the party committing the mistake has to be viewed with a good deal of suspicion.

3. In response to the notification, 11 applications were made for the post in question. Only 3 applicants were from 'Group B' category and the rest were from different other categories; the appellant is from the general merit category. According to the appellant, the Board of Appointment did not find any of the 'Group B' candidates eligible or suitable and on the basis of the interview held on June 5, 1992 he was selected for appointment. His selection was approved by the Syndicate on February 1, 1993 and a notification for his appointment was issued on February 4, 1993 in pursuance of which he joined the post.

4. On June 27, 1993 respondent No.2 filed a writ petition [W.P. No.22047/1993] in the Karnataka High Court challenging the appellant's appointment on the ground that the post was reserved for 'Group B' candidate. He also alleged that in a certain way the appellant (respondent No. 2 in the Writ Petition) was closely related to the Head of the Kannada Department of the University (respondent No.3 in the WP) and his appointment was the result of favouritism. Before the High Court, the writ petition was resisted both by the appellant and

A the University. On behalf of the University, it was stated that the Writ Petitioner (respondent No.2 in this appeal) did not satisfy the requirements as per the government order to consider him as coming under 'Group B' category and, therefore, the Board of Appointment interviewed all the candidates and selected B respondent No.2 (appellant herein, who belonged to the General category) on the basis of his qualification, experience and performance in the interview. The appellant and the Head of the Department (who was made a party to the writ petition and was served with notice) on their part denied any C relationship between them.

5. A learned single judge of the High Court upheld the contention of the Writ Petitioner (respondent no.2 herein) on both counts. He held that the selection and appointment of the appellant, belonging to the General Merit category, to the post D reserved for 'Group B' category was illegal. The learned judge further held that the appellant (respondent No.2) was closely related to the Head of the Department (respondent No.3 in the writ petition) and, therefore, he ought not to have participated in the selection to the post of Reader in Kannada. On behalf of E the present appellant, it was also pleaded before the learned single judge that since he had been working for several years after his appointment to the post he should not be disturbed. The learned judge did not accept the plea. He allowed the writ petition and by judgment and order dated December 6, 1999 F set aside the selection and appointment of the appellant as Reader in Kannada on the basis of the notification dated March 30, 1992. The single judge directed the University to fill up the post of Reader in Kannada calling for fresh applications and to complete the selection within 6 months from the date of the G judgment. He, however, allowed the appellant to continue on the post till the selection process was completed.

6. Against the judgment and order passed by the single Judge, the appellant preferred an intra court appeal (W.A. No.1303/2000). A division bench of the High Court, dismissed H

the appeal by judgment and order dated June 2, 2004. The division bench noted that the single judge had come to the conclusion that the appellant was related to the Head of the Department and, therefore, the Head of the Department ought not to have participated in the selection proceedings in which a person related to him was one of the candidates. As regards the appointment of the appellant who belonged to the general merit category to a post reserved for 'Group B' category the division bench made the following observations:

> "We may observe that there is not material to support this contention to come to the conclusion that the selection committee did not consider the claim of the persons belonging to Group B category on that ground. If any of the candidates belonging to Group B category did not satisfy the qualifications prescribed, it can be taken note of by the selection committee and reasons can be recorded for considering General Merit candidate for such post. But we do not find material on record to accept that plea and to interfere in the order of the learned Single Judge which has been passed after taking into consideration the reservation policy and the qualifications required and also the posts notified in the notification."

7. By the time the appeal was heard by the division bench, ten years had gone by and the appellant was continuing on the post. On that basis it was strongly urged that it would be very unfair to him if he is forced to go back to the college from where he had resigned to join the post of Reader in Gulbarga University. The division bench was, however, unmoved. It maintained the order passed by the learned single judge and directed the University to fill up the post of Reader in Kannada pursuant to the notification dated March 30, 1992 giving opportunity to all the eligible candidates who had submitted their applications in response to the notification and complete the selection process within three months from the date of receipt of a copy of the order.

A 8. Against the order of the division bench, the appellant came to this Court in appeal. In the SLP, notice was issued on September 13, 2004 and a direction was given to maintain a status quo as obtaining on that date. Finally, the leave to appeal was granted on February 28, 2005.

B 9. In the meanwhile, there were some intervening developments that have a bearing on the matter. In compliance with the order passed by the division bench of the High Court, the University issued an order on August 13, 2004 by which the appellant was discharged from the service of the University on C the post of Reader in Kannada but was asked, as directed by the High Court, to continue as Reader in Kannada on ad-hoc basis until the completion of the appointment of the new incumbent to the post. Later, on the basis of the interview, held on August 20, 2004 the Board of appointment selected and D recommended for appointment one Dr. (Smt.) Mallamma Ganti. The recommendation of the Board of Appointment was placed before the Syndicate. After much discussion, the Syndicate approved the recommendation of the Board of Appointment to appoint Smt. Mallamma Ganti as Reader in Kannada. But the E approval was not without qualification. It was stated that the syndicate "felt that since disciplinary proceedings are now pending against her [Dr. (Smt.) Mallamma Ganti], this fact may also be brought to the notice of the Honorable High Court before the orders are issued." There is nothing to show that F anything was brought to the notice of the High Court, but this much is evident that no order was ever issued for appointment of Dr. (Smt.) Mallamma Ganti to the post in question.

10. In the counter affidavit filed by respondent no.2, in this G appeal, it is stated as follows:

> "It is also relevant to state that from the information derived from the University under the Right to Information Act, no disciplinary proceedings against Dr. Mallamma Ganti was pending as on the date of her selection and yet she was H not allowed to join the said post merely to show undue favor

to the appellant herein as the University due to malafide reasons was determined to show undue favour to the appellant herein." A

The above statement is not controverted either by the appellant or on behalf of the University. Thus, the appellant was allowed to continue on the post with some little help from the University authorities and on the basis of the order of status quo passed by this Court. B

11. Once the facts of the case are narrated, there remains hardly anything to adjudicate upon. The facts of the case lead to only one conclusion that the appellant was wrongly appointed to a post that was reserved for 'Group B' category. The High Court has also found that the appellant's selection for appointment to the post was tainted by the participation of the Head of the Department of Kannada, who was related to him, in the selection process. In those facts and circumstances, all that is needed is to dismiss the appeal without further ado. C D

12. But at this stage once again a strong appeal is made to let the appellant continue on the post where he has already worked for over 17 years. Mr. Patil, learned senior counsel, appearing for the appellant, submitted that throwing him out after more than 17 years would be very hard and unfair to him since now he cannot even go back to the college where he worked as lecturer and from where he had resigned to join to this post. E F

13. We are unimpressed. In service law there is no place for the concepts of adverse possession or holding over. Helped by some University authorities and the gratuitous circumstances of the interim orders passed by the Court and the delay in final disposal of the mater, the appellant has been occupying the post, for all these years that lawfully belonged to someone else. The equitable considerations are, thus, actually against him rather than in his favour. The matter can also be looked at from a slightly different angle. It is noted above how the appellant was able to secure the appointment and how he managed to G H

A continue on the post. By notification dated August 13, 2004, the appellant was discharged from the service of the University on the post of Reader in Kannada but was asked to continue on ad-hoc basis until the appointment of the new incumbent to the post. His position is, thus, only ad- hoc till the appointment B of the new incumbent and in that position he is continuing on the basis of the direction of this court to maintain status quo. We see no reason to continue this ad-hoc arrangement any further and we do not wish to stand any longer in the way of the post being filled up on a regular basis.

C 14. Since the matter has become very old, it would not be reasonable for the University to fill up the post on the basis of the notification issued in the year 1993. The University may, therefore, issue a fresh notification to fill up the post. The process of selection and appointment on the basis of the fresh D notification should be completed within six months from today.

15. In the result, the appeal is dismissed with costs, quantified at Rs.50.000.00 (rupees fifty thousand only).

N.J. Appeal dismissed.