

A

G. MARULASIDDAIAH

v.

T. G. SIDDAPPARADHYA & ORS.

February 1, 1971

B

[G. K. MITTER AND A. N. RAY, JJ.]

Mysore University Act, 1956—Rule 5 of Supplementary Rules—Board Appointments—Reasons to be recorded by Board—Failure to record reasons for disregarding greater length of service of candidate does not vitiate appointment.

C

Rule 5 of the Supplementary Rules promulgated under the Mysore University Act, 1956, provides that "the Board of Appointments shall give in writing the reasons for the selection of any candidate and also the basis on which the selection has been made and always give in writing the reasons for overlooking the claims of those who are seniors (i.e., total service as a teacher) and/or have higher qualifications." The first respondent whose total service as teacher exceeded that of the appellant was considered along with the appellant and two others by the Board of Appointments for the post of a professor. The Board made its written recommendation that it took into consideration the academic qualification, research, teaching experience and the performance during the interview of the four candidates who appeared at the interview and resolved to appoint the appellant in the post. The appointment was later approved by the Chancellor of the University. The first respondent filed a writ petition in the High Court challenging the appointment of the appellant as being in violation of r. 5. The High Court quashed the appointment. It took the view that the rule was a mandatory provision and it was incumbent on the Board of Appointments to state in writing why the first respondent, although he had longer teaching experience, was passed over in favour of the appellant. Allowing the appeal,

D

E

F

HELD: The proper construction of r. 5 is to regard the length of teaching experience as one of the important factors to be taken into consideration by the Board of Appointments. However much may be the importance of the length of teaching experience the rule did not provide that as the determining factor. The rule did not lay down all the factors which are to be considered by the Board in making the selection. [625 H]

G

H

In the present case the academic qualifications of the appellant and the first respondent were of the same standard. In mere length of service the first respondent certainly was superior to the appellant. But that by itself would not tip the scale in his favour. The recommendation of the Board clearly showed that one of the factors which the Board had taken into consideration was teaching experience. It would be giving preference to the letter of the rule than to its spirit if it were to be held that the recommendation of the Board was to be treated as invalid merely because they had failed to state in clear words that the appellant was preferred to the first respondent although the latter had a longer period of service as a teacher. Rule 5 was substantially complied with by the Board and the failure to record expressly the reasons for disregarding the greater length of service of the first respondent did not vitiate the appointment *per se*. At best it was an irregularity which was cured by the approval of the Chancellor. [626 C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2241 of A
1970.

Appeal by special leave from the judgment and order dated
April 15, 1969 of the Mysore High Court in Writ Petition No.
2071 of 1967.

M. C. Setalvad and *R. V. Pillai*, for the appellant.

B

B. R. L. Iyengar and *A. G. Ratnaparkhi*, for respondent No.
1.

The Judgment of the Court was delivered by

Mitter, J. In this appeal by special leave the appellant C
challenges the decision of the Mysore High Court quashing his
appointment as a University Grants Professor in Sanskrit by the
Board of Appointments on the sole ground of non-compliance with
Rule 5 of the Supplementary Rules promulgated under the Mysore
University Act, 1956. That rule provides :

“The Board of Appointments shall give in writing D
the reasons for the selection of any candidate and also
the basis on which the selection has been made and al-
ways give in writing the reasons for overlooking the
claims of those who are seniors (*i.e.* total service as
teacher) and/or have higher qualifications.”

The facts are as follows. The appellant and the main con- E
testing respondent have the same academic qualifications. The
appellant joined the University as a lecturer in 1945 and he was
appointed a temporary Reader in Sanskrit under the University
Grants Commission Scheme which was distinct from other Uni-
versity appointments. He was appointed a permanent Reader in F
the University under the said Scheme in April 1960. The first
respondent had joined the University as a lecturer in 1938 *i.e.*
seven years before the appellant. He was appointed a Reader
under the University Grants Scheme in January 1961 *i.e.* several
months after the appellant. In December 1965 the appellant was
placed as the Head of the Department of Sanskrit. It appears G
that in 1967 an appointment had to be made as Professor in the
University Grants Scheme, the top position in the department. The
claims of the appellant, the first respondent and two other persons
were considered by the Board of Appointments. They were also
interviewed by the Board and on June 9, 1967 the appellant was
given the said appointment. This was later approved of by the
Chancellor of the University on June 29, 1967.

H

The first respondent filed a Writ Petition in the High Court
challenging the appointment of the appellant under Art. 226 of

A the Constitution on various grounds but the infraction of rule 5 set forth above was not one of them. The High Court, however, on an application made for the purpose allowed the ground to be raised but the learned single Judge dismissed the writ petition. The first respondent filed an appeal which was heard by a Division Bench of the High Court. The High Court turned down all but the contention based on rule 5 above and took the view that the said rule was a mandatory provision and it was incumbent on the Board of Appointments to state in writing why the first respondent although he had longer teaching experience was passed over in favour of the appellant before us. According to the Division Bench the appointment of the appellant became invalid for this non-compliance of rule 5 by the Board of Appointments. The order of appointment was quashed by the High Court with a direction that the University should make an appointment in accordance with law. This judgment was rendered on April 15, 1969.

D The appellant's application for a certificate being turned down by the High Court, he filed an application for special leave before this Court on 9th September 1969 along with a petition for stay of the order of the High Court. On the application being moved on September 22, 1969 the respondents were directed to show cause why special leave should not be granted but an interim stay was granted to the effect that the matter of a fresh appointment as a result of the quashing of the order of the appellant's appointment was not to be placed before the Chancellor for his approval under s. 26(4) of the Mysore University Act. This was occasioned by the fact that the University had taken steps to make another appointment necessitated by the order of the Division Bench of the High Court and had asked the appellant to appear at an interview for the purpose fixed on September 21, 1969. On affidavits being filed this Court after hearing the parties passed an order on November 14, 1969 modifying the earlier order of stay to the effect that the order of the High Court was to remain suspended till the disposal of the special leave petition and as soon as the Chancellor had decided the case, the parties were to be at liberty to mention the matter to this Court and in the meanwhile the appellant was to continue as Professor. On a clarification of the Court's order being sought for, an order was passed on August 26, 1970 to the effect that the Chancellor was free to deal with the matter notwithstanding that the application for special leave was pending in this Court. It appears that the Board of Appointments re-constituted after the decision of the High Court had advised the appointment of the first respondent as Professor and the Chancellor in the circumstances of the case felt that he should not come to any decision during the pendency of the matter before this Court. The Chancellor's order was made on November 11, 1970. On December 11, 1970 this Court granted special leave to the appel-

lant and directed the stay to continue till the disposal of the appeal.

Although we have set out what transpired after the presentation of the special leave petition to this Court in September 1969 to give a complete picture of the events concerning the appointment of a Professor under the University Grants Scheme, we do not propose to take any notice of what the Second Board of Appointments did. In our view, if the action of the Board of Appointments taken on June 9, 1967 and approved of by the Chancellor on June 26, 1967 was valid, the Board would have no jurisdiction to consider the matter for a second time.

The position in law appears to be as follows. The Mysore University Act, 1956 came into force on October 3, 1956. s. 13 of the Act sets out the authorities of the University which include *inter alia* the Senate, the Syndicate, the Academic Council and the Board of Appointments. Different sections following the above prescribe the powers and functions of the Senate, the Syndicate and their authorities. Section 26 concerns the Board of Appointments. Sub-s. (1) of this section provides :

“Appointments to the staff of the University shall be made in accordance with the rules made by the Chancellor in consultation with the Syndicate.”

Sub-s.(2) shows how the Board of Appointments is to be constituted for the purpose of making appointments of Professors, Readers and Lecturers. The Board is to consist of (1) the Vice-Chancellor who was to be the *ex-officio* Chairman, (2) the Head of the University Department in the subject concerned, except where the appointment to be made was the post of the Head of the concerned Department, (3) one member who was to be an expert in the subject concerned selected from outside the University by the Syndicate and (4) another person who was to be an expert in the subject concerned selected from outside the University by the Chancellor. Under sub-s. (4) :

“The decisions of the Board and in such cases as may be prescribed by the Chancellor, the decision of the Vice-Chancellor shall not have effect unless approved by the Chancellor; thereafter, every such decision shall be final and shall not be called in question in any manner.”

The Mysore University Staff (Appointment) Rules came into force on October 24, 1964. Some supplementary Rules of recruitment governing the appointment of University teachers were approved by the Governor under s. 26 of the Act on 8th April 1967 and these were published on May 25, 1967. Rule 5 men-

- A** tioned above is one of these rules. Rule 3 of the Supplementary Rules shows that the Board of Appointment was to be provided at the meeting with all relevant information about every candidate regarding his qualification, seniority, teaching experience and research work and under rule 4 the Dean and the Head of the Department who were to be associated with the Board were to prepare a note regarding qualification, work etc. of the candidate who had served in the department under them and give their opinion in writing to the Board of Appointment. This rule further prescribed that the claims of the "senior (most)" teachers with approved service who acted in that vacancy for a long time shall be given due consideration.

- C** After interviewing the candidates the Board of Appointments made its written recommendation as follows :—

- D** "The Board took into consideration the academic qualifications, research and teaching experience and the performance during the interview of the four candidates who appeared for the interview. The Board in consultation with the Dean of the Faculty of Arts, unanimously resolved that Dr. G. Narulasiddiah be appointed Professor of Sanskrit on a starting salary of Rs. 1,000/- p.m. in the scale of Rs. 1000-50-1500 subject to the usual period probation for two years."

- E** If rule 5 is to be observed in its latter and not according to its true intent it must be said that the Board of Appointments failed to give in writing expressing the reasons for overlooking the claims of the first respondent whose total service as a teacher undeniably exceeded that of the appellant. According to the High Court :

- F** "... the clear intendment of rule 5 is that a superior claim to an appointment flows out of the seniority to which it refers and that that claim should not be overlooked except for reasons to be stated in writing and since the resolution of the Board of Appointments with which we are concerned does not state any reason for the supersession of such claim with which the petitioner became clothes under the rule, we are inclined to the view that the appointment becomes invalid for that reason."
- G**

We find ourselves unable to accept the above dictum of the High Court. In our view the rule was not intended to load the dice in favour of someone merely because of longer experience as a teacher. The proper construction of that rule is to regard the length of teaching experience as one of the important factors to be taken into consideration by the Board of Appointments. However much may be the importance of the length of teaching experience the

H

rule did not provide that as the determining factor. The rule did not lay down all the factors which were to be considered by the Board in making their selection. Of necessity they had to consider: the academic qualifications of the respective candidates including that of the quality of their teaching and of the research work if any to their credit, their past experience and the impression which they created in the minds of the persons constituting the Board. Rule 5 laid particular stress to the total length of teaching experience of the candidates but it was not meant to outweigh other consideration.

In this case it appears that the academic qualifications of the appellant and the first respondent were of the same standard. In mere length of service the first respondent certainly was superior to the appellant. But that by itself would not tip the scale in his favour. The recommendation of the Board clearly shows that one of the factors which they had taken into consideration was "teaching experience" and in 1967 when the appointment was made the appellant had to his credit a period of 22 years of teaching experience while the first respondent had 29 years of service to his credit. It is not as if the appellant was a man very much junior in age to the first respondent with a career in teaching far shorter than or negligible compared to that of the first respondent. It must also be noted that when there was a question of appointing a temporary Reader under the University Grants Scheme in 1958 it was the appellant who was given preference to the first respondent and even as a permanent Reader he secured the appointment some months ahead of the first respondent. The preference given to him in the past was certainly one of the factors to be taken into consideration. In our view it would be giving preference to the letter of the rule than to its spirit if we were to hold that the recommendation of the Board of Appointments was to be treated as invalid merely because they had failed to state, in clear words, that the appellant was preferred to the first respondent although the latter had a longer period of service as a teacher.

Mr. Setalvad appearing for the appellant drew our attention to Seniority Rules which were framed with the approval of the Chancellor and came into force on 30th March 1969 during the pendency of the matter before the Division Bench of the Mysore High Court. Rule 7 of these rules provides that :

"Teachers appointed to a class of post in the University Grants Commission scale shall be deemed senior to teachers holding the same class of posts in the University scale."

Reference was made to this rule for the purpose of showing that the appellant who had been a Reader under the University Grants

- A Scheme nearly three years before the first respondent would be senior to him in terms of the rule if it had been in force and even otherwise counsel contended that the mere fact that the appellant had preceded the first respondent in appointment under the said scheme showed that his preference over the first respondent was not undeserved. We do not think that we can take into account
- B rule 7 for the purpose of our decision in this case.

- Mr. Setalvad's second contention was that it was apparent from the recommendation of the Board that rule 5 was substantially complied with and as such the High Court should not have set aside the appointment of the appellant. He also placed reliance on sub-s.
- C (4) of s. 26 as giving a finality to the approval of the Chancellor to the appointment made by the Board.

- Mr. Ayyangar appearing for the first respondent contended, first, that rule 5 was divided into two parts and that the provision for a statement in writing giving reasons for ignoring a person's total length of service as a teacher had to be complied with by the
- D Board and any disregard of this rule rendered the appointment invalid. Counsel argued that the rules had statutory force and the mere approval of the Chancellor under sub-s. (4) of s. 26 of the Act did not put a seal on the case so as to prevent from scrutiny the disregard of any mandatory provision of the rules framed under s. 26(1) and approval of the Chancellor would not
- E cure such illegality. In our view, rule 5 was substantially complied with by the Board and the failure to record expressly the reason for disregarding the greater length of service of the first respondent did not vitiate the appointment *per se*. At best it was an irregularity which was cured by the approval of the Chancellor.

- Mr. Setalvad's last contention was that the High Court had gone wrong in quashing the appointment but should have relegated the matter back to the Board of Appointments to comply with the requirements of r. 5 and for this he relied on two English decisions in *Iveagh (Earl) v. Minister of Housing etc.*⁽¹⁾ and *Brayhead Ltd. v. Berkshire County Council*⁽²⁾. In the view we have taken it is unnecessary to consider the last point raised by
- G counsel or the effect of these two decisions. The Board of Appointment was constituted of four persons who were eminently fitted to assess the relative merits of the candidates before them at the interview and their recommendation shows that although they had not expressly recorded any reason in terms of the rule, they had taken the teaching experience of the candidates into
- H consideration. Our conclusion might have been otherwise if it were shown that the Board had not considered the length of teach-

ing experience of the candidates as one of the factors for coming
to their decision. A

In the result we allow the appeal and set aside the order of the
High Court holding that the appellant was validly appointed as a
Professor under the University Grants Scheme. In the circum-
stances of the case, we leave the parties to bear their own costs. B

Before parting with this case we cannot but express our dis-
approval in noting that the canker of litigiousness has spread even
to a sphere of life where discipline should check ambition con-
cerning personal preferment. A teacher is justified in taking legal
action when he feels that a stigma or punishment is undeserved
but he is expected to bear with fortitude and reconcile himself to
his lot suppressing disappointment when he finds a co-worker raised
to a position which he himself aspired after. C

K.B.N.

Appeal allowed.