

Basavaiah vs H.L. Ramesh & Ors on 29 July, 2010

Equivalent citations: 2010 AIR SCW 5907, 2010 (8) SCC 372, 2010 (4) AIR KANT HCR 812, (2010) 127 FACLR 888, (2011) 2 KANT LJ 579, (2010) 3 LAB LN 595, (2010) 5 MAD LW 501, (2010) 3 SCT 680, (2010) 5 SERVLR 105, (2011) 1 ANDHLD 42, (2010) 7 SCALE 529, (2011) 1 SERVLJ 170, 2010 (4) KCCR SN 165 (SC)

Author: Dalveer Bhandari

Bench: T.S. Thakur, Dalveer Bhandari

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6057 OF 2010
(Arising out of Special Leave Petition (C) No. 9473/2006)

DR. BASAVIAIAH ...Appellant

VERSUS

DR. H.L. RAMESH & ORS. ...Respondents

WITH

CIVIL APPEAL NO. 6058 OF 2010
(Arising out of Special Leave Petition (C) No. 9474/2006)

DR. MANJUNATH ...Appellant

VERSUS

DR. H.L. RAMESH & ORS. ...Respondents

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.

2. These appeals are directed against the judgment and order dated 2.8.2005 passed in Writ Appeal No. 5014 of 2004 and dated 22.3.2006 passed in Review Petition Nos. 593, 594 and 632 of 2005 in Writ Appeal No. 5014 of 2004 by the High Court of Karnataka at Bangalore

3. By this judgment, we propose to decide the cases of both the appellants Dr. Basavaiah and Dr. D. Manjunath, because exactly similar issues have been raised in both the appeals. But, for the sake of convenience, the facts of Civil Appeal No. 6057 of 2010 arising out of SLP (C) No. 9473 of 2006 are recapitulated.

4. The short controversy which needs to be adjudicated in these cases is whether the appellants Dr. Basavaiah and Dr. D. Manjunath were qualified to be appointed as Readers in Sericulture?

5. Brief facts which are necessary to dispose of the appeals are recapitulated as under:

6. The appellants in both the appeals were appointed as Readers in Sericulture in the year 1999 on the basis of the qualifications possessed by them in accordance with the vacancy Notification No. ET.8/335/98-99 dated 12.11.1998. As per the notification, the qualifications necessary for appointment as Readers as per the said notification are set out as under:

"READER: Prospective candidates shall have consistently good academic record with a Doctorate Degree or equivalent published work. Candidates from outside the university system, in addition, shall also possess at least 55% marks or an equivalent grade at Master's degree level.

Applicants shall possess eight years experience of teaching and/or research including 3 years for a Ph.D. Degree, and shall have made some mark in the areas of scholarship as evidenced by quality of publications, contribution to educational innovation, design of new courses, curricula, etc."

(emphasis supplied)

7. Dr. Basavaiah obtained M.Sc. and Ph.D. degrees in Botany. Thereafter, he served as Senior Research Assistant in the Central Sericultural Research and Training Institute (for short CSRTI), Mysore from the years 1986 to 1992. Dr. Basavaiah, the appellant herein while working as Senior Research Assistant, joined the Karnataka State Sericulture Research and Development Institute (for short, KSSRDI) at Bangalore as Scientific Officer-II and continued to work there till 31.1.1994. In addition to the research work he had taught many training courses and also worked as the examiner of M.Sc. Sericulture.

8. The appellant was selected to the higher post of Scientific Officer-I (Scientist-D). The appellant had also undergone Overseas Training in Sericulture for two months in the Department of Sericulture at Zhejiang Agricultural University, Hangzhou, China and had also passed certificate course in Genetic Engineering from the Indian Institute of Science, Bangalore.

9. The appellant had 18 years of research experience and out of that, 13 years was directly in the field of Sericulture. He also worked for six years at CSRTI, Mysore, which is an internationally renowned Sericulture Research and Training Institute and seven years at KSSRDI, Bangalore.

10. The appellant had more than five years of teaching experience. The appellant's twenty Research Papers were published on Sericulture in Journals of national and international repute. The appellant was the first author in twelve Research Papers and in other eight Research Papers he was the second author. The appellant possessed the equivalent qualification prescribed in the said vacancy notification dated 12.11.1998.

11. The appellant, Dr. Basavaiah was M.Sc. and Ph.D. in Botany. He had also got sixteen years of Research experience. He also possessed postgraduate diploma in Sericulture and worked as Sericulture inspector in the State Government and also worked as Senior Research Assistant at the CSRTI, Mysore. He worked as the Scientific Officer II with effect from 29.5.1992 to 31.1.1994 and he worked as the Scientific Officer-I with effect from 1.2.1994 till his appointment as the Reader in the University of Mysore. In addition to these, he had about twenty publications to his credit.

12. In the counter affidavit of the University it was asserted that the appellant in C.A. No.6058/2010 @ SLP (C) No.9474/2006 Dr. Manjunath was M.Sc. and Ph.D. in Zoology and also had teaching experience. He had got research experience of about twenty two years. He had joined the CSRTI as Senior Research Assistant on 28.3.1981. He was promoted to the post of Senior Research Officer on 15.10.1986 and he had worked in that Institute till his appointment in the University of Mysore. He had also published a number of Papers in Sericulture and number of connected subjects as per the certificate produced by him. He was also teaching M.Sc. Sericultural Technology course, in addition to other courses.

13. Dr. H. L. Ramesh, the respondent in both the appeals challenged the appointments of both the appellants in the High Court on the ground that the appellants were not qualified to be appointed as Readers in Sericulture. The learned single Judge on 11.10.2004 after examining the pleadings and scrutinizing the arguments of the parties dismissed the writ petition filed by the 1st respondent (Dr. H.L. Ramesh) in the Writ Petition No. 24300 of 1999.

14. Respondent Dr. H. L. Ramesh, aggrieved by the said judgment preferred a Writ Appeal before the Division Bench of the High Court. The writ appeal was allowed and the appointments of the appellants were set aside leaving it open to the University of Mysore to make fresh selection in accordance with the law.

15. The appellants aggrieved by the said judgment have filed these special leave petitions against the judgment of the Division Bench of the High Court.

16. In the Writ Petition No. 24300/99 before the learned Single Judge of the High Court of Karnataka, the University of Mysore filed a separate counter affidavit. It was contended in the said counter affidavit filed by the University that the qualifications prescribed for the post of Reader, according to the Advertisement issued on 12.1.1998, are as under:

".....According to notification prospective candidate shall have consistently good academic record with a doctorate degree or equivalent published work.

It further specified that applicant shall possess 8 years experience of teaching and/or Research including 3 years of a Ph.D. degree and shall have made some mark in the areas of scholarship as evidenced by quality of publication, contribution to educational innovation, design of new courses etc. Therefore, it is very clear that the advertisement does not specify that only those who possess M.Sc. in Sericulture are eligible for the post of Reader in Sericulture. It is submitted that the candidates with the Master Degree and Ph.D. are also qualified to apply for the post and for consideration for the post. Therefore, the contention of respondent, Dr. H.L. Ramesh that the qualification required for the post of Reader in Sericulture in Master Degree and Ph.D. Degree only in Sericulture is not correct. It is needless to mention that Botany, Zoology and Sericulture are all interrelated subjects."

17. The University of Mysore further submitted that there was no merit in the contention of Dr. H.L. Ramesh that the appellants Dr. Basavaiah and Dr. Manjunath were not qualified to be appointed as Readers in the Sericulture.

18. We deem it appropriate to mention that the University had constituted an Expert Committee consisting of the leading experts. The said Committee consisted of the following eminent experts:

(a) Prof. Y. Srinivasa Reddy Chairman, DOS in Sericulture Manasagangothri, Mysore
- 6.

(b) Prof. M. C. Devaiah,
Dept. of Sericulture.
University of Agri. Sciences
Bangalore.

(c) Prof. S. Govindappa,
Dept. of Sericulture
Sri Venkateswar University
Tirupati.

(d) Dr. S. B. Dandin,
Director

Karnataka State Sericulture Research and Development Institute, Bangalore

(e) Prof. V. Subramaniam Dept. of Textile Technology Anna University Chennai.

19. The Committee appointed by the University thoroughly scrutinized the qualification, experience and published works of both the candidates and made its unanimous recommendations in favour of their appointments. The University also clearly stated that the appointments of the appellants were made in consonance with the terms of the provisions of the Act. Admittedly, for the selections to the post of Readers, an Expert Committee was constituted and thereafter, its recommendations were accepted by the University and issued orders accordingly. No one had any grievance so far as the constitution of Experts Committee was concerned and no mala fides have been levelled against any member of the expert committee.

20. We have heard the learned counsel for the parties.

21. According to the advertisement, a relevant portion of which has been set out in the preceding paragraph it is clearly indicated that the qualification for appointment to the post of Reader was that candidates must possess consistently good academic record with a Doctorate Degree or equivalent published work.

22. According to respondent no.1, the appellants were not eligible to be appointed because they had degrees in Zoology and Botany respectively whereas only respondent no.1 was eligible because he was the only one who had the Doctorate degree in the subject of Sericulture.

23. In the impugned judgment dated 2.8.2005, the Division Bench did not properly comprehend the qualifications for the appointment of the Reader given in the advertisement. It is clearly indicated in the advertisement that the qualification for appointment as Reader was a Doctorate degree or equivalent published work. Admittedly, both these appellants had extensive published work in the national and international journals of repute to their credit. This is clearly indicated in extenso in the application forms which they had filled for the appointments for the posts of Readers.

24. The learned Single Judge dismissed the writ petition filed by respondent no.1 on the ground that selection had taken place in 1999 and the appellants were working in their respective teaching posts and the court did not deem it appropriate to disturb the existing arrangement and dismissed the petition.

25. The Division Bench in the impugned judgment allowed the appeal filed by Dr. H.L. Ramesh, respondent no. 1 herein, on the short ground that the appellants herein did not have Doctorate degree in Sericulture. Therefore, they were not qualified for appointment as Readers in Sericulture. In the impugned judgment, the court did not properly comprehend the advertisement in which it was clearly mentioned that the prescribed qualification was Doctorate degree or equivalent published work. According to the affidavit which has been filed by the University, the Expert Committee consisting of highly qualified five distinguished experts evaluated the qualification, experience and the published work of the appellants. They found them eligible and suitable. The relevant portion of the affidavit reads as under:-

"All the abovesaid members of the committee are experts in the field of Sericulture. The said selection committee thoroughly scrutinized the relative merits and demerits of each candidates and made its recommendations. It is needless to mention that the selection and appointment of teachers is to be made in terms of Section 49 of the Act. This respondent University has strictly followed the Government orders issued from time to time regarding reservations. After taking into consideration the orders issued by the Government and the guidelines issued by the University, the recommendation of the expert selection committee has been accepted by the University and accordingly impugned orders have been issued."

26. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinized the qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinized the merits and de-merits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.

27. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

28. A similar controversy arose about 45 years ago regarding appointment of Anniah Gowda to the post of Research Reader in English in the Central College, Bangalore, in the case of *The University of Mysore and Anr. v. C.D. Govinda Rao and Anr.* AIR 1965 SC 491, in which the Constitution Bench unanimously held that normally the Courts should be slow to interfere with the opinions expressed by the experts particularly in a case when there is no allegation of mala fides against the experts who had constituted the Selection Board. The court further observed that it would normally be wise and safe for the courts to leave the decisions of academic matters to the experts who are more familiar with the problems they face than the courts generally can be.

29. We have been called upon to adjudicate the similar matter of the same University almost after half a century. In a judicial system governed by precedents, the judgments delivered by the Constitution Bench and other Benches must be respected and relied on with meticulous care and sincerity. The ratio of the Constitution Bench has not been properly appreciated by the learned judges in the impugned judgment.

30. In *Dr. M.C. Gupta & Others v. Dr. Arun Kumar Gupta & Others* (1979) 2 SCC 339, somewhat similar controversy arose for adjudication, in which the State Public Service Commission invited applications for two posts of Professors of Medicine in the State Medical Colleges. The two appellants as well as respondent nos.1, 2 and 3 applied for the said post. Appellant no.1 had teaching experience of about 6 years and 6 months as a Lecturer in Cardiology in the department of medicine and about 3 years and 2 months as Reader in Medicine in S. N. Medical College, Agra. Since there was no separate Department of Cardiology in that College, Cardiology formed part of general medicine and as such he was required to teach general medicine to undergraduate students and to some post-graduate students in addition to Cardiology. Similarly, appellant no.2 had one year's experience as post- doctoral teaching fellow in the Department of Medicine, State University of New York, Buffalo, one year's teaching experience as Lecturer while posted as a Pool Officer and 15 months' teaching experience as post-doctoral research fellow in the Department of Medicine in G.S.V.M. Medical College, Kanpur and about 4 years' and 6 months' teaching experience as

Assistant Professor of Medicine, State University of New York, Buffalo. The cardiology is a part of medicine and the teaching experience acquired while holding the post of Lecturer in Cardiology, was teaching experience in a subject which substantially formed part of general medicine and over and above the same. The Commission was amply justified in reaching to the conclusion that he had the requisite teaching experience. The High Court was, therefore, in error in quashing his selection of the appellant in this case.

31. The teaching experience of foreign teaching institutions can be taken into consideration if it is from the recognized and institution of repute. It cannot be said that the State University of New York at Buffalo, where appellant no.2 served as an Assistant Professor would not be an institution of repute. The experts aiding and advising the Commission must be quite aware of institutions in which the teaching experience was acquired by him and this one is a reputed University.

32. According to the experts of the Selection Board, both the appellants had requisite qualification and were eligible for appointment. If they were selected by the Commission and appointed by the Government, no fault can be found in the same. The High Court interfered and set aside the selections made by the experts committee. This Court while setting aside the judgment of the High Court reminded the High Court that it would normally be prudent and safe for the courts to leave the decision of academic matters to experts. The Court observed as under:

"7.When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be..."

33. In *Dr. J. P. Kulshrestha & Others v. Chancellor, Allahabad University & Others* (1980) 3 SCC 418, the court observed that the court should not substitute its judgment for that of academicians:

"17. Rulings of this Court were cited before us to hammer home the point that the court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies."

34. In *Maharashtra State Board of Secondary and Higher Secondary Education & Another v. Paritosh Bhupeshkumar Sheth & Others* (1984) 4 SCC 27, the court observed thus:

"29. ... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

35. In *Neelima Misra v. Harinder Kaur Paintal & Others* (1990) 2 SCC 746, the court relied on the judgment in *University of Mysore* (supra) and observed that in the matter of appointments in the academic field, the court generally does not interfere. The court further observed that the High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor had acted.

36. In *Bhushan Uttam Khare v. Dean, B.J. Medical College & Others* (1992) 2 SCC 220, the court placed reliance on the Constitution Bench decision in *University of Mysore* (supra) and reiterated the same legal position and observed as under:

"8. ... the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice."

37. In *Dalpat Abasaheb Solunke & Others v. Dr. B.S. Mahajan & Others* (1990) 1 SCC 305, the court in some what similar matter observed thus:

"... ..It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

38. *The Chancellor & Another etc. v. Dr. Bijayananda Kar & Others* (1994) 1 SCC 169, the court observed thus:

"9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection...."

39. In *Chairman J&K State Board of Education v. Feyaz Ahmed Malik & Others* (2000) 3 SCC 59, the court while stressing on the importance of the functions of the expert body observed that the

expert body consisted of persons coming from different walks of life who were engaged in or interested in the field of education and had wide experience and were entrusted with the duty of maintaining higher standards of education. The decision of such an expert body should be given due weightage by courts.

40. In *Dental Council of India v. Subharti K.K.B. Charitable Trust & Another* (2001) 5 SCC 486, the court reminded the High Courts that the court's jurisdiction to interfere with the discretion exercised by the expert body is extremely limited.

41. In *Medical Council of India v. Sarang & Others* (2001) 8 SCC 427, the court again reiterated the legal principle that the court should not normally interfere or interpret the rules and should instead leave the matter to the experts in the field.

42. In *B.C. Mylarappa alias Dr. Chikkamylarappa v. Dr. R. Venkatasubbaiah & Others* (2008) 14 SCC 306, the court again reiterated legal principles and observed regarding importance of the recommendations made by the expert committees.

43. In *Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, Sirsa & Another* (2008) 9 SCC 284, the court reminded that it is not appropriate for the Supreme Court to sit in appeal over the opinion of the experts.

44. In *All India Council for Technical Education v. Surinder Kumar Dhawan & Others* (2009) 11 SCC 726, again the legal position has been reiterated that it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.

45. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fide has been alleged against the experts constituting the selection committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters.

46. In the impugned judgment, the High Court has ignored the consistent legal position. They were expected to abide by the discipline of the precedents of the courts. Consequently, we are constrained to set aside the impugned judgment of the Division Bench of the High Court and restore the judgment of the Single Judge of the High Court.

47. The University of Mysore, respondent herein, is directed to give regular pay-scale to the appellants from 1st August, 2010. To avoid any further litigation, we may make it clear that the appellants would not be entitled to claim any arrears or benefits for the past period.

48. The appeals are allowed, but, in the facts and circumstances of the case, we direct the parties to bear their own costs.

.....J. (DALVEER BHANDARI)J. (T.S. THAKUR) New Delhi;

July 29, 2010