

REGISTRAR KARNATAKA UNIVERSITY & ANR. A

v.

DR. PRABHUGOUDA & ANR.

(Civil Appeal No. 4079 of 2020)

DECEMBER 17, 2020 B

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M. R. SHAH, JJ.]**

Service Law:

Promotion under Career Advancement Scheme (CAS Promotion) – Under statute framed under Karnataka State University Act – To the post of Professor – Eligibility date – Incumbent teacher joined the constituent college of the University on 28.10.2013 as Associate Professor – Prior to that, he was working as Associate Professor from 01.01.2006 to 01.01.2009 in the affiliated college of the University – CAS promotion granted to the post of Professor from 28.10.2013 – Writ Petition claiming his promotion from 01.01.2009 on the ground that on 01.01.2009 he had completed eligibility criteria – Single Judge as well as Division Bench of High Court allowed his case and directed to grant him promotion from 01.01.2009 – Appeal to Supreme Court – Held: For the purpose of grant of CAS promotions, the word “College” is to be interpreted, keeping in mind the preamble of the relevant statute, governing promotions and not the definition of “College” u/s. 2(2) of the Act – A harmonious reading of Clauses 12.6 and 12.7 of the Statute r/w Preamble thereof makes it clear that the term “College” is referable to only “Constituent College” and not “Affiliated College” – Therefore, the incumbent teacher is entitled to promotion only from the date of entry of service into the University and not covering the period anterior thereto – Statute Governing the Direct Recruitment, Promotion under Career Advancement Scheme (CAS) and Conduct of Interview to the Posts of Professors, Associate Professors, Assistant Professors, Principals of Constituent Colleges, Directors of Physical Education and Librarians under Section 40(1)(k) of KSU Act, 2000 – Preamble; Clauses 12.6 and 12.7 – Karnataka State University Act, 2000 – s. 2(2).

A **Allowing the appeal, the Court**

- HELD:** 1. Karnataka State Universities Act, 2000, applies to all the colleges, including private college. Even private colleges have to seek affiliation from the jurisdictional University, as such the College is widely defined in the Act. Definition u/s. 2(2) of B the Act cannot be readily imported, as defined, for the purpose of grant of promotions under CAS. For the purpose of grant of promotions under CAS, the word ‘College’ is to be interpreted, keeping in mind, the preamble of the Statute, governing promotions. [Para 17][868-A-B]
- C 2. A comprehensive reading of the statute makes it very clear that for the purpose of granting CAS promotion, the incumbent teacher must have been holding a substantive sanctioned post. It is also clear that the incumbent teacher must be on the “roll and active services of the University or the College”, on the date of consideration by the Selection Committee D for selection under CAS Promotion. A harmonious reading of Clauses 12.6 and 12.7 of the Statute read with the Preamble thereof, makes it clear that the term “College” used in the said statute is referable to only Constituent College but not affiliated College. [Para 15][866-F-H]
- E 3. The High Court, by losing sight of a vital aspect namely, that the first respondent was not in actual service of the University or of the constituent College, has ordered to extend the benefit from 01.01.2009. There cannot be any promotion in the University for the period, when the writ petitioner was not in effective service F of the University. The University is not expected to order promotion for the period when he was working in affiliated college. [Para 16][867-A-B]
- G 4. The High Court, by misconstruing the statute contrary to its objectives, as mentioned in the preamble liberally construed, going beyond the scope of the statute and granted all consequential benefits, by declaring that the effective date for promotion was to be 01.01.2009 instead of 28.10.2013. The High Court has fallen in error in interpreting clause/paragraph 12.7 of the Statute, by giving liberal meaning to the word “colleges”, by extending the meaning to “affiliated college”. Even the Division H

Bench has committed the same error by recording a finding that a magnanimous interpretation is to be given for the wordings University/Colleges, as used in the paragraph/clause 12.7 of the Statute. The University has correctly interpreted the various clauses of the Statute and by giving the benefit of past service, has given effect to his promotion from the date of entry into the service of the University. [Para 16][867-D-F]

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5. Therefore, the incumbent teacher, who is entitled for promotion under the scheme, is to be given benefit only from the entry of service of such incumbent into the University. Though the earlier service is to be counted for the purpose of giving benefit of promotion, but effective date for all purposes is only from the date of entry of first respondent into the University service, i.e, 28.10.2013. The University is not expected to grant promotion, covering the period, anterior to the entry of service of the first respondent into University. [Para 18][868-C-D]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4079 D
of 2020.

From the Judgment and Order dated 02.01.2020 of the High Court of Karnataka, Dharwad Bench in Writ Appeal No. 100436 of 2019.

Siddarath Bhatnagar, Sr. Adv., Kirit Javali, Ninad Dogra, E
Sharanagouda Patil, Ms. Supreeta Sharanagouda, V. N. Raghupathy,
Advs. for the appearing parties.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. Leave granted. F

2. This civil appeal is filed by the Karnataka University, at Dharwad, through its Registrar and another, aggrieved by the judgment and order dated 02.01.2020, passed in writ appeal No.100436 of 2019, G
by the High Court of Karnataka, Dharwad Bench.

3. By the aforesaid Order, Division Bench of High Court has dismissed the writ appeal preferred by the appellants herein, calling in question the order passed by the learned Single Judge in writ petition No. 100353 of 2018 (S-PRO) dated 13.03.2019 allowing the writ petition

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- A and declaring that the effective date of “Career Advancement Scheme” (for short ‘CAS’) promotion of the first respondent-writ petitioner was 01.01.2009 and also directed to grant all consequential benefits to him, as flow from such fixation. In fact, the CAS promotion was already given to the first respondent- writ petitioner and pay fixation has already been made, but it was from the date of 28.10.2013.
- B 4. The brief factual matrix of the case is that, the first respondent-writ petitioner had claimed his promotion under CAS, promulgated by the UGC, to be given effect from 01.01.2009 instead of 28.10.2013, from which date, promotion is given to the writ petitioner. The writ petitioner was earlier working as an Associate Professor, in J.S.S College, which is affiliated to Karnataka University. In pursuance of syndicate Resolution No.24 dated 26.10.2013, the writ petitioner was appointed as an Associate Professor in the P.G. Department of Studies in Mathematics in the University. Pursuant to his appointment, he joined in the service of the University on 28.10.2013 and vide order dated 31.12.2015, his service
- C D was confirmed with effect from 28.10.2013.
- E 5. By issuing Circular dated 04.07.2013, the University invited applications for promotion, from eligible Assistant Professors, Associate professor and Professor (stage 5) under CAS. The first respondent-writ petitioner made an application in response to the said Circular, for promotion to the post of Professor under UGC, CAS. He appeared for interview on 12.08.2014 before the Board of Appointment (BOA), which has recommended his case for promotion and accordingly promotion order was issued on 16.02.2016, promoting the writ petitioner as a Professor, with effect from 28.10.2013, that is, from the date of his eligibility, to the said post. He has been promoted to the post of Professor
- F with effect from 28.10.2013, taking into consideration his past three years of service in previous college, where he worked as Associate Professor. The claim of the first respondent- writ petitioner in the High Court was that as he has completed three years of service in the cadre of Associate Professor from 01.01.2006 to 01.01.2009, as such, he ought to have
- G been considered for promotion under CAS from 01.01.2009 instead of 28.10.2013. During the relevant time, neither he was in the service of the University nor working in any of the constituent Colleges of the University, but he was in service of J.S.S College, Dharwad, which is an affiliated College to the Dharwad University. The first respondent- writ petitioner made representations dated 18.03.2016 and 25.07.2016, in this
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regard, for which, he was replied by the University on 04.08.2017. The claim of the writ petitioner, for grant of CAS promotion from 01.01.2009, was placed before the Syndicate of the University, and the Syndicate in its meeting held on 19.07.2017, vide Resolution No.36, has rejected the claim, stating that there is no provision to grant the said benefit from 01.01.2009, as claimed. In accordance with the Resolution of the Syndicate, an endorsement came to be issued by the University on 04.08.2017, a copy which was served on the writ petitioner.

6. Challenging the Resolution of the Syndicate of the University, bearing Resolution No. 36, dated 19.07.2017 and the endorsement dated 04.08.2017, the first respondent has filed writ petition No. 100353 of 2018 before the High Court of Karnataka, Dharwad Bench, questioning the aforesaid resolution, endorsement and by seeking further consequential directions to fix the eligibility date from 01.01.2009 for promotion to the post of Professor under CAS, in mathematics, instead of 28.10.2013 and to reconsider his representation dated 10.08.2017. The claim of the first respondent-writ petitioner was opposed, by filing the written note of objections in the High Court but the learned Single Judge of the High Court, by Order dated 13.03.2019, allowed the writ petition, by recording a finding that the writ petitioner completed three years of teaching by 01.01.2009, as such effective date should have been 01.01.2009. Learned Single Judge of the High Court was of the view that his service in affiliated College is also to be considered for the purpose of promotion under CAS and consequently writ petitioner is entitled for promotion from 01.01.2009 instead of 28.10.2013.

7. Aggrieved by the Order of the learned Single Judge, the appellants herein preferred the writ appeal in writ appeal No. 100436 of 2019 and by Order dated 02.01.2020, the said writ appeal is dismissed, confirming the Order of the learned Single Judge, by recording a finding that the magnanimous interpretation is to be given for the wordings “University/Colleges”, as found in Clause 12.7 of the Statute. The Division Bench has held that the word ‘colleges’ used in the Statute, not only includes constituent colleges, but also includes other colleges, which are affiliated to Karnataka University.

8. We have heard Sri Kirit Javali, learned counsel appearing for the appellant-University and Sri Siddarath Bhatnagar, learned senior counsel appearing for the first respondent- writ petitioner.

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- A 9. Having heard the learned counsels on both sides, we have perused the impugned order and other material placed on record.
10. It is contended by learned counsel for the appellants that, it is an admitted position that, prior to joining the appellant- University, respondent No.1- writ petitioner was working as Associate Professor
- B from 01.01.2006 till 23.10.2013 (with an affiliated College) and thereafter, he joined the University as Assistant Professor. It is submitted that at the time of recruitment, respondent No.1 did not apply for the post of Professor, as he was well aware that he was not eligible for the same. The writ petitioner was promoted as Professor vide Order dated
- C 26.10.2013, he joined the University service with effect from 28.10.2013.
- D It is submitted that the effective date of promotion of respondent No.1, for the post of Professor, cannot be from any date prior to 28.10.2013, as at that point of time, he was admittedly not in the employment of University. Further it is brought to the notice by the learned counsel that very preamble of the statute makes it clear that the candidate must have been on the rolls of the University or a Constituent College. It is further submitted that the benefit of Clause 17 of the Statute was duly given to respondent No.1, and his previous service was considered for promotion, but as he was not in the effective service of the University, the University has rightly given the effective date from 28.10.2013. It is submitted that
- E as per the statute framed by the University, the incumbent teacher was required to be on the rolls of the ‘constituent College’ only and not ‘affiliated College’. It is submitted that interpretation accorded to the statute by the High Court, is improper, as is evident from the meaningful reading of complete statute, as well as the preamble thereof.
11. On the other hand, learned senior counsel Sri Siddarath
- F Bhatnagar, appearing for the first respondent has submitted that the Statute framed by the University for effecting promotions in CAS, applies to Professors, Associate Professors, Assistant Professors, Principals of Constituent Colleges, Directors of Physical education and Librarians and allied posts. It is submitted that the term “principals of Constituent
- G Colleges”, ought to be read disjunctively, as against the other posts, mentioned in the provision, since it appears only *qua* a category of principals and not other posts. By referring to the definition under Section 2(2) of Karnataka State Universities Act, 2000, it is submitted that term “College” includes ‘Constituent College’ as well as ‘affiliated College’. It is further submitted that as the High Court has correctly interpreted
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the relevant statute and has recorded a finding that the effective date of promotion should have been 01.01.2009 instead of 28.10.2013, there are no grounds to interfere with the impugned judgment of the High Court. A

12. Before we consider the rival submissions made by the learned counsels on both sides, we deem it appropriate to refer to certain relevant provisions of the statute, governing the direct recruitment, promotion under CAS, framed by the University. The preamble and the title of the statute, read as under: B

“PREAMBLE: Consequent upon the extension of UGC pay scales as revised from 01.01.2006 in respect of Teachers, Librarians and Physical education Personnel of Universities and Constituent Colleges and issuance of letter No. 1-32/2006-U II/ UI-I (i) dated 31.12.2008 of the Government of the India, Ministry of Human Resource Development, Department of Higher Education, New Delhi and Notification No.F-3-1/2009 (PS) dated 23.09.2009 of the University Grants Commission New Delhi and Government of Karnataka Order No. ED 37 UNE 2009, Bangalore dated 24.12.2009 prescribing the revised norms of recruitment and qualification for appointment and promotion of Professors, Associate Professors, Assistant Professors, Physical Education Directors and Librarians, it has become imperative to frame the statutes for recruitment and promotion of the above mentioned personnel in the Karnatak University, Dharwad. C D E

TITLE: Statute governing the direct recruitment, promotion under Career Advancement Scheme (CAS) and conduct of interview to the posts of Professors, Associate Professors, Assistant Professors, Principals of Constituent Colleges, Directors of Physical Education and Librarians under Section 40(1)(k) of KSU Act, 2000.” F

13. Clause 12 of the Statute deals with the Screening-cum-Evaluation Committee for CAS Promotion. Clauses 12.6 and 12.7 of the statute read as under: G

“12.6 CAS promotions being a personal promotion to the incumbent teacher holding a substantive sanctioned post, on superannuation of the individual incumbent, the said post shall revert back to its original cadre. H

- A **12.7** The incumbent teacher must be on the role and active service of the University/Colleges on the date of consideration by the Selection Committee for Selection/CAS Promotion.”
- B 14. Clause 13 of the statute deals with the Stages of Promotion under CAS of Incumbent and Newly Appointed Assistant Professors, Associate Professors, Professors. Clauses 13.7 and 13.8 of the statute, read as under:
- C “**13.7** Assistant Professors completing three years of teaching in third grade (stage 3) shall be eligible, subject to the qualifying conditions and the API based PBAS requirements prescribed by this Statute, to move to the next higher grade (stage 4) and to be designated as Associate Professor.
- D **13.8** Associate Professor completing three years of service in stage 4 and possessing a Ph.D. Degree in the relevant discipline shall be eligible to be appointed and designated as Professor and be placed in the next higher grade (stage 5), subject to
- E (a) satisfying the required credit points as per API based PBAS methodology provided in Table I-III of Annexure-I stipulated in this Statute, and
- F (b) an assessment by a duly constituted selection committee as suggested for the direct recruitment of Professor. Provided that, no teacher, other than those with a Ph.D., shall be promoted or appointed as Professor.”
- G 15. Clause 17 of the statute provides for Counting of Past Service for Direct Recruitment and Promotion Under CAS. A comprehensive reading of the statute makes it very clear that for the purpose of granting CAS promotion, the incumbent teacher must have holding a substantive sanctioned post, as much as CAS promotion being a personal promotion to the incumbent teacher and on superannuation of the individual incumbent, the said post shall revert back to its original cadre. It is also clear that the incumbent teacher must be on the “roll and active services of the University or the College”, on the date of consideration by the Selection Committee for selection under CAS Promotion. A harmonious reading of Clauses 12.6 and 12.7 of the Statute read with the Preamble thereof, makes it clear that the term “College” used in the said statute is referable to only Constituent College but not affiliated College.
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16. The High Court, by losing sight of a vital aspect namely, that the first respondent was not in actual service of the University or of the constituent College, has ordered to extend the benefit from 01.01.2009, on the ground that he has completed three years of service, by working as Assistant Professor in Mathematics in UGC pay scale with effect from 01.01.2006 to 01.01.2009. There cannot be any promotion in the University for the period where the writ petitioner was not in effective service of the University. The University is not expected to order promotion for the period when he was working in affiliated college. The High Court, by mere mathematical calculation, by basing on the service certificate which is “Annexure D” before the High Court, has held that as he has completed three years of service as Assistant Professor in UGC scale and therefore the effective date of promotion should be 01.01.2009 and not 28.10.2013, as granted by the University. Further, the High Court has fell in error in interpreting clause/paragraph 12.7 of the Statute, by giving liberal meaning to the word “colleges”, by extending to “affiliated college”. Even the Division Bench has also committed the same error by recording a finding that a magnanimous interpretation is to be given for the wordings University/Colleges, as used in the paragraph/ clause 12.7 of the Statute. The University has correctly interpreted the various clauses of the Statute and by giving the benefit of past service, has given effect to his promotion from the date of entry into the service of the University. It is also to be noticed that at the time of appointment itself, though the writ petitioner has completed three years of service, fully knowing that he was not eligible for appointment as a Professor, he has not claimed the post of Professor. Even the representations filed by the writ petitioner indicate that he claimed notional service, in spite of the same, the High Court, by misconstruing the statute contrary to its objectives, as mentioned in the preamble liberally construed, going beyond the scope of the statute and granted all consequential benefits, by declaring that the effective date for promotion was to be 01.01.2009 instead of 28.10.2013.

17. We do not find any substance in the argument made by the learned senior counsel appearing for the respondents, that the term “principals of Constituent Colleges” ought to be read disjunctively as against the other posts mentioned in the provision. If it is to be read in the manner as sought to be argued by learned counsel, same will run contrary to the objectives and preamble of the statute itself. Even the submission of the learned counsel relying on the definition under Section

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- A 2(2) of Karnataka State Universities Act, 2000, also does not render any assistance to support his case. Karnataka State Universities Act, 2000, applies to all the colleges, which includes private college. Even private colleges have to seek affiliation from the jurisdictional University, as such the College is widely defined in the Act. Said definition cannot be readily imported, as defined, for the purpose of grant of promotions under CAS. For the purpose of grant of promotions under CAS, the word 'College' is to be interpreted, keeping in mind, the preamble of the statute, governing promotions.

18. In that view of the matter, we are of the clear view that, the incumbent teacher, who is entitled for promotion under the scheme, is to be given benefit only from the entry of service of such incumbent into the University. Though the earlier service is to be counted for the purpose of giving benefit of promotion, but effective date for all purposes is only from the date of entry of first respondent into the University service, i.e, 28.10.2013. The University is not expected to grant promotion, covering the period, anterior to the entry of service of the first respondent into University. As such, we are of the view that the University has rightly given the benefit of promotion from 28.10.2013.

19. For the aforesaid reasons, this civil appeal is allowed, and judgment and Order dated 02.01.2020, passed by the High Court in writ appeal No. 100436 of 2019 (S-PRO), is hereby quashed and set aside and consequently the writ petition filed by the first respondent in writ petition No. 100353 of 2018 (C-PRO) stands dismissed. No order as to costs.

Kalpana K. Tripathy

Appeal allowed.