

CASE NO.:

Appeal (civil) 27 of 2001.

Appeal (civil) 15991 of 1999 Special Leave Petition (crl.) 44412-4431
of 2000

PETITIONER:

STATE OF KARNATAKA & ANR.

Vs.

RESPONDENT:

B. SUVARNA MALINI AND ANR.

DATE OF JUDGMENT: 04/01/2001

BENCH:

G.B.Pattanaik, B.N.Agarwal

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T.....T..J

JUDGMENT

PATTANAIAK, J.

Delay condoned. Leave granted in Special Leave Petitions. These appeals by State of Karnataka as well as Karnataka Rajya Sarkari Prathama Darje Collejugala Arekalika Upanyasakara Sangha, are directed against the judgment of the Karnataka High Court, dismissing the writ petitions, filed against the order of the Karnataka Administrative Tribunal. The tribunal entertained the public interest litigation petition and struck down Rule 2(b)(iii) of the Karnataka State Civil Services (Absorption of Persons working as Part Time Lecturers in the Karnataka Education Department of College Education) Special Rules, 1996 as well as the order dated 15.12.1997, essentially on the ground that the stop-gap lecturers are back door entrants and their regularisation by Rules is contrary to the law laid down by Supreme Court in several cases and it affects the rights of regular entrants. Against the order of the tribunal, the High Court being moved under Articles 226 and 227 of the Constitution and the writ petitions having been dismissed, the present appeals have been preferred.

These cases involve not only a question of law but also a human problem inasmuch as these part time lecturers have served in different colleges for varying period for ten to twenty years and, if they are not regularised and treated as regular servants, then they will not be able to get themselves engaged anywhere else and at the same time, their experience in teaching will be a great loss to the student community. The part time lecturers had approached this court against the dismissal of their applications by the Karnataka Administrative Tribunal by way of filing special leave petitions, which were registered as SLP No. 4440-4454/1992 and 4321/1992. Those special leave petitions

were disposed of by order dated 3.9.1992 and the Court came to the conclusion that on that date their exist 626 vacancies and the part time lecturers should be continued till regular recruitment to fill up the posts is made and such part time lecturers would be eligible to apply to the State Public Service Commission, whenever, the vacancies are notified and applications are called for. The Court also took note of the fact that the tribunal itself has given weight-age at 1% per year of service as part time lecturers, depending upon the number of years of service or 5%, whichever is less and also to enhance the maximum age limit upto 10 years in case of part time lecturers, possessing teaching experience and the weightage is also to be taken into consideration at the time of recruitment. Notwithstanding the aforesaid observations of this Court, the State of Karnataka did not take any further steps for filling up 626 vacancies, as a result of which, these part time lecturers could not make applications for regular recruitment. They again filed a writ petition under Article 32 in January, 1994, which was registered as Writ Petition No.21/1994. In the said writ petition, they sought for regularisation of their services. While, the matter was pending in this Court, the State Government appointed a High Power Committee on 28th of February, 1995 to examine the problem and the impasse and submit a report. Taking into account the fact that the Sub-committee has been constituted to consider the grievances of the part time lecturers, the writ petition was disposed of by order dated 11.9.1995. The said order reads as follows:

It is stated in the rejoinder affidavit that a sub-committee has been constituted by the State Government to consider the grievances of the part time lecturers and the cases of all such persons would be considered by the Sub-committee. The Minister In-charge also seems to have made a statement to that effect on the floor of the House. If that is so, it would be open to the petitioners to make a representation before the sub-committee along with all other persons similarly situated. The writ petition is accordingly dismissed.

On consideration of the grievances made by the part time lecturers, the High Power Committee submitted its report with the recommendation that the part time lecturers could be regularised as one time measure, and the aforesaid recommendation was more or less for solving the impasse on account of inaction on the part of the State government in taking regular steps for filling up the vacancies and the continuance of these part time lecturers, who have served for fairly long period ranging from ten to twenty years. The State of Karnataka, approved the recommendation of the High Power Committee and decided to frame Rules under the provisions of Karnataka State Civil Services Act, 1978 for regularisation of these part time lecturers.

It may be noticed that the High Power Committee considered the problems of the part time lecturers in great detail and bearing in mind the relevant decisions on the question, made the recommendation for absorption of such part time lecturers and while making such recommendations, the reserved quota in favour of Scheduled Castes/Scheduled Tribes/other back-ward classes under Article 16(4) of the Constitution remained intact. The said Committee also recommended that special recruitment rules will have to be framed by the State Government in exercise of powers

conferred on it by the Karnataka State Civil Services Act, 1978 for the purpose of absorption. On the basis of the aforesaid recommendations of the High Power Committee, the State Government framed draft rules called the Karnataka Civil Services (Absorption of Persons working as Part Time Lecturers with Karnataka Education Department Services)(Department of Collegiate Education) (Special) Rules, 1996 [hereinafter referred to as the Absorption Rules) in exercise of powers conferred under Section 3 read with Section 8 of the Karnataka State Civil Services Act, 1978 [hereinafter referred to as 'the Act']. Section 3(2)(b) of the Act mandates that the draft rules should be forwarded to the Karnataka Public Service Commission for necessary consultation, as provided under Article 320(3) of the Constitution. The draft rules were notified in Gazette, inviting objections and then the same were sent to the Public Service Commission for necessary consultation. On consideration of all objections received and in consultation with the Public Service Commission, the final absorption rules were published on 22nd of January, 1997. The Karnataka State Civil Services Act is an Act to regulate the Recruitment and the conditions of Service of persons appointed to Civil Services of the State of Karnataka and posts in connection with the affairs of the State of Karnataka. Section 3 authorises the State government to make rules, regulating recruitment and the conditions of service. Section 8 is the rule making power of the State government to make rules to carry out the purposes of the Act. Under Sub-section (3) of Section 8, every rule made under the Act is required to be laid as soon as may be, after it is made before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and any modification in the rule, as desired by the House, could be carried out or if both Houses agree that the rule should not be made, in which case the rule will not be effective and it is only when the House agrees with or without any modification, then the rules shall have the effect in such modified form. The absorption rules being the rules made in exercise of powers under Section 8 and the aforesaid requirement under sub-section(3) of Section 8, having been duly complied with, the rule is legislative in character and would have the force, as if the State Legislature have framed the rules.

On the public interest litigation filed by some intending candidates for the post of lecturer, the tribunal struck down the absorption rules on the ground that it violates Article 14 and seeks to legalise back-door entrants, even at the cost of relaxation of the relevant qualification and must be held to be contrary to several decisions of this Court. Reliance has been placed on the three Judge Bench Judgment of this Court in Ashwani Kumars case, AIR 1997 SUPREME COURT 1628, where-under this Court had indicated that an employee whose entry in service is illegal being in total disregard of recruitment rules or being not on existing vacancy, has no case for regularisation and in any event, back-door entries for filling up the vacancies have to be strictly avoided.

Mr. Kapil Sibal, the learned senior counsel, appearing for the part time lecturers, submitted with vehemence that the question of absorption through a legislative measure was necessary because of inaction on the

part of the State machinery in complying with the directions of this Court dated 3.9.92 in special leave petition Nos. 4440-4454/1992 and even before initiating framing of absorption rules, the State Government have constituted a special Committee to examine the problems of these part time lecturers and suggest measures to be taken for ventilating their grievances and said Committee had recommended for absorption as a one time measure. According to Mr. Sibal, therefore, this is not a clandestine regularisation of the so-called back-door entrants, but solving a problem and an impasse which was the creation of the inaction on the part of the State machinery and, therefore, there could not be any objection to such regularisation, so long as the essential qualifications are not sacrificed. According to Mr. Sibal, these part time lecturers have in fact discharged the maximum work load in taking the courses of study meant for the students and would otherwise lose their livelihood, if their services are not regularised and the legislative measures by way of enactment of absorption rules, subserves the purpose and the tribunal as well as the High Court committed error in striking down the said rules. By referring to the requirement of the absorption rules, Mr. Sibal also submitted that due care and caution has been taken, so that unworthy and unqualified hands do not get themselves absorbed and he further urged that if this Court feels any further stipulation in that regard, the Court may observe to that effect. The learned counsel also contended that he is not advocating for absorption, generally of untrained and unqualified persons but in the case in hand, the absorption rules have been framed to meet a special and peculiar situation and that too, after thoroughly examining the pros and con by an expert Committee and consequently, it stands on a different footing than an ordinary process of absorption of back-door entrants and this perspective has not been borne in mind by the tribunal or the High Court, while striking down the provisions of the absorption rules. We find considerable force in the aforesaid submission of Mr. Sibal, appearing for these part time lecturers. Though some of the intending applicants for the post of lecturer had moved the tribunal by way of a public interest litigation and had been arrayed as party respondents in these appeals, but there had been no appearance on their behalf and, therefore, the Court had not the advantage of having the opposite view point and for this reason, we have to scrutinize the so-called absorption rules in a great detail. It may be stated that the State of Karnataka has also preferred a special leave petition, which has been tagged on to the present case, being SLP(civil) No. 15991/99 and the contentions raised in the said special leave petition are similar to those raised by Mr. Sibal in the special leave petitions filed on behalf of the part time lecturers. It may also be noticed that the order of the State Government dated 10.6.1998 as well as the assertion of the State Government in the special leave petition filed in this Court unequivocally indicates that there would be no compromise with the prescribed qualification and, necessarily, therefore, the part time lecturers, who would get themselves absorbed under the Absorption Rules by following the prescribed procedure, will have to pass the N.E.T. test, fixed by the University Grants Commission, within the period of three years, as provided in the Government letter dated 10.6.98 and would not be entitled to the scale of pay available for the regular qualified teachers but would only get the State scale of pay provided they possess the requisite qualification for the state

scale. It is in these perspectives, we are examining the validity of the Absorption Rules.

It is no doubt true that this Court in the case of K.S.P. College Stop-Gap Lecturers Association vs. State of Karnataka, AIR 1992 SC 677, had indicated as to how appointments made in disregard of rules and regulations and then regularising the same by process of regularisation rules or order has been unjust and unfair to those who are lesser fortunate in society, even though they may be better qualified, more meritorious and well deserving. The Court also indicated its anxiety to find that the infection has been widespread in Government or semi-government departments and even used a word of caution that even if it is found to have been resorted to as a genuine emergency measure, the Courts should be reluctant to grant indulgence. It is specifically indicated in the aforesaid case that in the State of Karnataka, it is basically State created problem due to defective rules and absence of any provision to effectively deal with such a situation. It is this judgment of the Court, which has weighed with the High Court in upholding the orders of tribunal by striking down the provisions of the Absorption Rules. As has been indicated in the impugned judgment of the High Court that the appointment of the part time lecturers in the State of Karnataka is in vogue since 1979 and the object of appointment on part time basis is the utilisation of services of unemployed qualified persons and such part time lecturers are appointed only when the full time teaching staff is not adequate to cope up with the existing teaching work load or when there is no full time teaching staff in any subject.

From time to time, the Government have also been issuing instructions for canalizing the method of appointment and directing that even part time lecturers could be appointed through the Directorate of Collegiate Education and not otherwise. The Directorate of Collegiate Education also has been issuing circulars indicating the guidelines. The reasons which weighed with the High Court to sustain striking down of the Absorption Rules are that the so-called part time lecturers had not been appointed after a process of selection in accordance with the prescribed rules but on the other hand, their appointment is de hors the rules. Further such candidates are not scrutinized by the Public Service Commission and they do not possess the N.E.T. test, as provided by the University Grants Commission, which is one of the essential requisites for recruitment under the statutory Recruitment Rules of 1993.

From the materials on record, it appears that the State government has been regulating the mode of appointment of part time lecturers and it is not correct that there has been no process of selection before such appointment of part time lecturers. Even though the selection had not been made by the Public Service Commission, but yet there was a process of selection and it further appears that unqualified people were not been appointed as part time lecturers. Part

time lecturers having been formed a class by themselves and for some reason or the other, they having been deprived of the benefits of the earlier directions of this Court on account of inaction on the part of the State Government, the matter was reexamined by a Committee of experts as to how best, the services of these part time lecturers can be utilised and at the same time, there will be no dilution in the quality of teaching nor there can be any infraction in the minimum qualification, necessary for appointment as a lecturer. The concept of equality before the law does not involve the idea of absolute equality among human beings which is a physical impossibility. All that Article 14 guarantees is a similarity of treatment contra-distinguished from identical treatment. Equality before law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though, they are the same. It of-course means denial of any special privilege by reason of birth, creed or the like. The legislature as well as the executive government, while dealing with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws, to attain any particular object and to achieve that object, it must have the power of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per se amount to discrimination. When the Absorption Rules are examined from the aforesaid stand point and when we consider the circumstances under which the said rules were made to solve a human problem and that the rules made were put to objection to the general public and even the Public Service Commission was consulted and finally was before the State Legislature to have their concurrence, we are of the considered opinion that the High Court committed error in striking down the rules on the ground that it is discriminatory. When this Court deprecates the regularisation and absorption, when it comes to the conclusion that such regularisation and absorption has become a common method of allowing back door entries and then regularising such entry, it is not that in every case, the Court would be justified in striking down the process of absorption or regularisation, more so when such absorption has been made as a legislative measure and that also as a one time measure, and at the same time insisting upon the essential qualifications to be duly complied with, by the persons intended to be absorbed on regular basis. In the aforesaid premises, we have no hesitation to come to the conclusion that the tribunal as well as the High Court committed serious error in striking down the impugned absorption rules. We, therefore, set aside the judgment of the tribunal and the High Court and allow these appeals. While we hold the absorption rules to be valid, we would further direct that the State Government must insist upon the candidates to pass the N.E.T. test, as required by the University Grants Commission within the period of three years and it is only on passing of such test, the absorbed employees will be entitled to the scale of pay, available for the regular qualified lecturers. Failure on their part to pass the N.E.T. test would debar them from being absorbed and regularised.

These appeals are allowed with the aforesaid observations and directions.

JUDIS