

N. Chandrappa Vs. Registrar

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Court : Karnataka

Decided On : Nov-02-1989

Reported in : ILR1990KAR1667; 1990(1)KarLJ107

Judge : K.A. Swami, J.

Acts : Karnataka State Universities Act, 1976 - Sections 33A and 33A(2);
Karnataka State Universities (Amendment) Act, 1986

Appeal No. : W.P. No. 19168 of 1989

Appellant : N. Chandrappa

Respondent : Registrar

Advocate for Pet/Ap. : Ko. Channabasappa, Adv.

Disposition : Petition rejected

Judgement :
ORDER

K.A. Swami, J.

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has sought for a declaration that the provisions of Sub-section (2) of Section 33A of the Karnataka State Universities Act, 1976 (hereinafter referred to

as the 'Act') are only prospective and not retrospective and that the terms of office held by the members of the authorities mentioned in Section 20 of the Act prior to the coming into force of Karnataka Act No .23/1986 shall not be taken into account for the purpose of Section 33-A of the Act.

2. The petitioner is a Lecturer in J.S.S. College, Mysore. He was elected to the Academic Council of the Mysore University for the period 1983-86. Thereafter, he came to be elected for the second term for the period 1986-89. His term of office as a Member of the Academic Council of the Mysore University comes to an end by the 31st of December 1989. Therefore, the said office has to be filled up for the period commencing on the end of December 1989. From the facts stated above, it is clear that the petitioner has held the office as a Member of the Academic Council on two consecutive terms. His apprehension is that he is likely to be held ineligible to contest the election, for the third time, having regard to the provisions of Sub-section (2) of Section 33A of the Act. Therefore, he has sought for a declaration to the effect that the operation of Sub-section (2) of Section 33A of the Act is not retrospective.

3. Section 33A of the Act reads thus:

'33A - Certain restriction on the holding of office by nominated and elected members of the authorities:

1) Any member nominated to any of the authorities specified in Section 20 shall hold office during the pleasure of the person or authority nominating him;

2) No person nominated or elected to any of the authorities specified in Section 20 shall hold office for more than two consecutive terms in such authority.'

4. The contention of the petitioner is that the period of office held by him or by any other person of any one of the offices mentioned in Section 20 of the Act consecutively for a period of two terms prior to the coming into force of Karnataka Act No. 23/1986 shall not be and cannot be taken into account for the purpose of applying Sub-section (2) of Section 33-A of the Act and if it is done so, it would amount to giving effect to the provision of Section 33A(2) of the Act retrospectively

because, according to the learned Counsel for the petitioner, the term or terms of office held after the coming into force of Sub-section (2) of Section 33A of the Act alone will have to be taken into account and not the term or terms of office held prior to the coming into force of Karnataka Act No. 23/1986.

5. It is not possible to accept the contention of the learned Counsel for the petitioner. There is no retrospectivity involved in the application of Sub-section (2) of Section 33-A of the Act. Sub-section (2) of Section 33-A of the Act, on the date it becomes relevant for applying it, if it is found that as on that day if a person has held the offices mentioned in Section 20 of the Act consecutively for two terms, even though it had taken place prior to the coming into force of Karnataka Act No. 23/1986, he will not be eligible either to be nominated or elected for another term in continuation of the terms of office held by him. If the contention of the petitioner is accepted, Section 33-A of the Act which has come into force on 14-5-1986 will be Inoperative for a period of 6 years. No such interpretation should be placed on a statute which makes a provision of the Act inoperative or redundant. As long as the facts required for applying Sub-section (2) of Section 33A of the Act are existing, whether those facts had taken place prior to the coming into force of Karnataka Act No. 23/1986 or subsequent thereto, it makes no difference and they are to be taken into account. There is no application of the Section with retrospective effect. It is not a penal provision. The Section is applied as on and from the date it has come into force. If the facts which are necessary for applying it are existing as on today or on the date the Act came into force, the provision is attracted.

6. It is also relevant to notice the statement of law as to interpretation of statutes on the point in issue made in 'Carrier on Statute Law', Seventh Edition. While dealing with the subject 'Retrospective Enactments' at page 387, it is stated thus:

'A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. But a statute 'is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing.'

The Act as such does not state that the provisions of Sub-section (2) of Section 33A are retrospective. Again at page 390, the learned Author has stated thus:

'In WEST v. GWYNNE, (1911) 2 Ch.I, 11) Cozens Hardy M. R. Said: 'Retrospective operation' is an inaccurate term. Almost every statute affects rights which would have been in existence but for the statute...I doubt whether the power to refuse consent to an assignment except upon the terms of paying a fine can fairly be called a vested right or interest. Upon the whole, I think Section 3 of the Settled Estates Act, 1877 is a general enactment based on grounds of public policy and I decline to construe it in such a way as to render it inoperative for many years whether leases for 99 years, or it may be for 999 years, are in existence.'

7. Having regard to the aforesaid statement of law and in view of the fact that Sub-section (2) of Section 33A of the Act does not take away or impair any vested right acquired under the existing laws, but only part of the requisites are drawn for its action from a time antecedent to its passing, it cannot properly be called 'Retrospective Statute'. Hence the contention that the application of the provisions of Section 33-A(2) of the Act to the facts as revealed by the petitioner in this petition would amount to giving effect to the provision retrospectively is not based on proper reading of the provision.

8. Hence I do not see any ground to issue Rule. The petition is accordingly rejected.