

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS 23RD DAY OF MARCH 2016

BEFORE

THE HON'BLE MR.JUSTICE RAGHVENDRA S. CHAUHAN

WRIT PETITION Nos.43762-43766/2015 (S-RES) &
WRIT PETITION Nos.44642-44653/2015

BETWEEN :

1. SMT MEERA D'SOUZA
D/O FRANCIS D'SOUZA,
AGED ABOUT 40 YEARS,
WORKING AS TYPIST CUM CLERK,
ENGINEERING DIVISION,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI,
D. K. DISTRICT AND R/AT
HOIGE COMPOUND, KODICAL ASHOK NAGAR,
PO, MANGALORE D.K.
2. SRI CHANDRA
S/O RAMA MOOLYA,
AGED ABOUT 36 YEARS,
WORKING AS PEON,
O/O THE REGISTRAR,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI,
D.K. DISTRICT AND R/AT E-5 QUARTERS,
MANGALAGANGOTHRI, D.K.
3. SMT. K. B. BALINI
D/O SRI K. BABUKOTIAN,
AGED ABOUT 47 YEARS,
WORKING AS STENOGRAPHER,
O/O THE REGISTRAR,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI,
D.K. DISTRICT AND R/AT
PUCHARABETTU PADIL,

MANGALORE.

4. SMT. SUMANGALI A.
D/O SRI ANANTHAIAH NAVADA,
AGED ABOUT 43 YEARS,
WORKING AS STENOGRAPHER,
VICE CHANCELLOR'S SECRETARIAT,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI,
D.K. DISTRICT AND R/AT
KUDRU HOUSE, URVA, MANGALORE,
DAKSHINA KANNADA.
5. SRI M. NAGESH
S/O VEEROJI RAO,
AGED ABOUT 48 YEARS,
WORKING AS PEON,
DEPARTMENT OF APPLIED BOTANY,
MANGALORE UNIVERSITY AND
R/AT M. M. GARDEN PANDESHWAR,
MANGALORE.
6. SRI M. SUBRAMANYA
S/O K. RAMACHANDRA,
AGED ABOUT 47 YEARS,
WORKING AS PEON,
ENGINEERING DIVISION,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI,
D.K. DISTRICT AND R/AT POLICE LINE,
NEW BLOCK, NO.3, ROOM NO.14,
MANGALORE, D.K.
7. SRI MANJUNATHA BANGERA
S/O POOVAPPA SALIAN,
AGED ABOUT 40 YEARS,
WORKING AS PEON,
ENGINEERING DIVISION,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI,
D.K. DISTRICT AND R/AT
PULINCHADI MANE,
MANGALORE TALUK.

8. SRI CHITHARANJAN
S/O LATE NARAYANA BANGERE,
AGED ABOUT 48 YEARS,
WORKING AS PEON,
DEPARTMENT OF BIO SCIENCES,
MANGALORE UNIVERSITY,
R/AT NEAR STATE BANK KANDAK,
MANGALORE, D.K.
9. SRI T. MOHAN (MANKU)
S/O T. GURUVA,
AGED ABOUT 51 YEARS,
WORKING AS PEON,
DEPARTMENT OF BUSINESS ADMINISTRATION,
MANGALORE UNIVERSITY,
D.K. DISTRICT R/AT THENKIKI HOUSE,
KASABA VILLAGE,
PUTTUR POST, D.K.
10. SRI K.N. ASHOK KUMAR
S/O P.K. NAMADEVA RAO,
AGED ABOUT 46 YEARS,
WORKING AS PEON,
DEPARTMENT OF PHYSICAL EDUCATION,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI,
D.K. DISTRICT AND R/AT
VAIDYANATHA NAGAR, N.G. ROAD,
ATTAVAR, MANGALORE.
11. SRI. RAMAPPA
S/O NARAYANA POOJARY,
AGED ABOUT 45 YEARS,
DEPARTMENT OF LIBRARY AND
INFORMATION SCIENCE,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI.
12. SRI P. MOHANA
S/O RAMA POOJARY,
AGED ABOUT 46 YEARS,
WORKING AS PEON,
DEPARTMENT OF MARINE GEOLOGY,
MANGALORE UNIVERSITY,

MANGALAGANGOTHRI,
D. K. DISTRICT AND R/AT
BRAMARI GURU NAGARA,
THARDHOLLYA, JAPPINA MOGARU,
MANGALORE, D.K.

13. SRI K. GANEASH SHETTY
S/O K. MAHABALASHETTY,
AGED ABOUT 43 YEARS,
WORKING AS PEON,
OFFICE OF THE REGISTRAR,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI, D.K. DISTRICT AND
R/AT THALIPADI COMPOUND,
CENTRAL WAREHOUSE, MANNAGUDDA,
MANGALORE, D.K.
14. SRI JAYANTHA
S/O SRI NARAYANA POOJARY,
AGED ABOUT 43 YEARS,
OFFICE OF THE REGISTRAR,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI.
15. SRI EGILIUS RENY D'SOUZA
S/O LATE VELERINE MARK D'SOUZA,
AGED ABOUT 51 YEARS,
WORKING AS FIRST DIVISION ASSISTANT,
O/O THE REGISTRAR (E),
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI,
D.K.DISTRICT AND R/AT
MALICOPPALU HOUSE, PADUCODY VILLAGE,
KULUR POST: 575 013 MANGALORE,
DAKSHINA KANNADA.
16. SMT. B. SAROJINI
D/O B. KALYANI,
AGED ABOUT 50 YEARS,
WORKING AS FIRST DIVISION ASSISTANT,
OFFICE OF THE FINANCE OFFICER,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI D.K.DISTRICT AND
R/AT SARASWATHINAGAR,

SARIPALLA ALOPA GRAMA, PADIL,
MANGALORE.

17. SRI U. THARANATH
S/O LATE SRI NARAYANA,
AGED ABOUT 48 YEARS,
WORKING AS PEON,
DEPARTMENT OF BIO-SCIENCE,
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI D.K.DISTRICT AND
R/AT C/O KAMALA N. RAO,
POOVAPUTHRAN MANE,
MOGAVEERA PATNA, ULLAL,
DAKSHINA KANNADA ... PETITIONERS

(BY SRI L. M. CHIDANANDAYYA, ADV.)

AND:

1. MANGALORE UNIVERSITY
REPRESENTED BY ITS REGISTRAR,
MANGALAGANGOTHRI,
DAKSHINA KANNADA.
2. FINANCE OFFICER
MANGALORE UNIVERSITY,
MANGALAGANGOTHRI,
DAKSHINA KANNADA. ... RESPONDENTS

(BY SRI T. P. RAJENDRA KUMAR SUNGAY, ADV. FOR R1)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER VIDE ANNEXURE-A DATED 28.9.2015 ISSUED BY THE R-1 WITHHOLDING THE EXTENDED PAY SCALE TO THE PETITIONERS AND CONSEQUENTLY PASS AN ORDER RESTRAIN THE RESPONDENTS FROM REDUCING PAY SCALE OF THE PETITIONERS AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING :

O R D E R

With the consent of the learned counsel for parties, these petitions are being decided at this stage itself.

2. The petitioners have challenged the legality of the order dated 28.09.2015 passed by the Registrar of the Mangalore University, whereby the Registrar claims that he has been informed to take necessary steps to pay the salary at pre-revised rates from the month of September, 2015 onwards until further orders.

3. Briefly the facts of the case are that, the petitioners were initially appointed between the period 1988 to 1995 on temporary basis to different posts, such as Peons, Typist-cum-Clerks, First Division Assistants and Stenographers under Section 51-B of the Karnataka State Universities Act ('the Act' for short). In 1997, since the petitioners had completed three years of service, some of the petitioners approached this court by filing a writ petition, namely W.P.Nos.37787-37805/1997, wherein they had sought a writ of mandamus for regularisation of their services. However,

this court directed that the petitioners shall be continued in service and their case for regularisation shall be considered after they complete ten years of service. Upon receiving the said direction passed by this court, on 03.02.2004, the State Government directed the Finance Officer, Mangalore University to consider the petitioners case for regularisation under the Act. By a resolution dated 25.03.2004, the Syndicate decided to regularise the petitioners' service, as they had completed ten years of service by then. A similar resolution was also passed by the Syndicate on 29.04.2004. Both these decisions were intimated to the Government, and the approval of the Government was sought. On 20.09.2005, the respondent issued an Official Memorandum, regularizing the services of the petitioners with immediate effect subject to the petitioners completing a provisional period of two years. By 30.07.2007, the petitioners had successfully completed the probationary period, and they were declared to have successfully completed the said period.

4. However, on 11.11.2009, the State Government wrote to the Mangalore University and sought the reasons as to why the Syndicate resolution dated 29.02.2005 should not be declared as illegal. Although the University replied to the said notice on 25.11.2009, on 30.11.2010 the State Government passed the order canceling the resolution dated 20.09.2005. It also directed the University to terminate the services of the petitioners. Since the petitioners were aggrieved by the order dated 30.11.2010, they filed writ petitions before this court, namely W.P.Nos.40264-79/2010 challenging the order dated 30.11.2010. By order dated 07.12.2011, this court not only allowed the writ petitions, but also directed the State to extend all consequential benefits to the petitioners. Since the order dated 07.12.2011 was not implemented, the petitioners filed a civil contempt petition, namely CCC No.1292-1303/2013 before this court. Immediately, the State Government issued a direction to the Mangalore University to implement the order dated 07.12.2011. During the course of the contempt proceedings, the Government also gave an undertaking before this Court

to comply with the directions issued by this court in its order dated 07.12.2011.

5. Therefore, the issue whether the petitioners were entitled to consequential benefits or not was placed before the Syndicate of the University on 30.09.2014. The Syndicate decided to grant consequential benefits including the re-fixation of pay, with seniority and promotion, from the date of initial joining on the temporary post. Consequent to the said resolution, on 16.12.2015, the University issued a notification re-fixing the pay-scales of the petitioners. On 05.06.2015, on the basis of the decision of the Syndicate, the petitioners were given revised salary.

6. However, some unknown persons had sent an anonymous letter to the Chancellor of the University, namely His Excellency, the Governor Karnataka, wherein it was alleged that undue financial benefits were given to the petitioners which would impose expenditure of Rs.64 Lakhs on the University. On 24.07.2015, the Chancellor had sent the said complaint to the Vice-Chancellor asking for an

explanation and to comment on the said complaint. On 28.09.2015, without giving an opportunity of hearing to the petitioners, without the revocation of the Syndicate resolution dated 30.09.2014, the impugned order dated 28.09.2015 has been passed, whereby it has been directed that the revised payment of pay-scale to the petitioners from September, 2015 shall be kept in abeyance till further orders. Hence, this petition before this court.

7. The learned counsel for petitioners has pleaded that an adverse order has been passed against the petitioners only on the basis of some anonymous complaint to the Chancellor. The said adverse order has been passed without giving an opportunity of hearing to the petitioners. Therefore, their rights under the principles of natural justice have been violated. Secondly, the impugned order has been passed without considering the explanation/comment offered by the Vice-Chancellor with regard to the anonymous complaint. Thirdly, even the said complaint has never been brought to the notice of the petitioners. Thus, they have

been made to suffer without any rhyme or reason. Hence, the impugned order deserves to be set aside by this court.

8. On the other hand, the learned counsel for respondents submits that according to the order, regularizing the services of the petitioners, it was clearly held that they will not be entitled to include the period which they have spent on temporary basis. Therefore, the resolution dated 30.09.2014 passed by the Syndicate was contrary to what was already informed by the University to the petitioners. Therefore, the Registrar was justified in being directed by the Vice-Chancellor to keep the pre-revised rates of salary in abeyance from September, 2015 onwards. Therefore, the learned counsel for respondents has supported the impugned order dated 28.09.2015.

9. Heard the learned counsel for the parties and perused the impugned order, as well as other documents submitted along with the writ petition.

10. The entire exercise in passing the order dated 28.09.2015 seems to be an exercise in '*putting the cart before the horse*'. Even if the plea raised by the learned counsel for

respondents were accepted, for the sake of argument, the resolution dated 30.09.2014 is contrary to the regularisation order passed in favour of the petitioners. The issue, whether the said regularization is, indeed, contrary to the regularization order, has to be examined by the University. Merely because an anonymous complaint has been received by the Chancellor, and thereafter, even comments called from the Vice-Chancellor, would not justify the passing of the impugned order dated 20.09.2015.

11. It is, indeed trite to state that any order which adversely affects the rights of a person should be passed only after giving the affected person an opportunity of hearing. However, in the present case, the salary to which the petitioners were being paid from June, 2015 is suddenly denied without giving an opportunity of hearing to them. Obviously, the impugned order, therefore, violates the rights of the petitioners under the principles of natural justice.

12. A bare perusal of the note sheet submitted by the respondents clearly reveals that a proposal was made to keep the salary at the pre-revised rates in abeyance from

September, 2015 onwards. The said proposal was placed before the Vice-Chancellor. Although the Vice-Chancellor has approved the said proposal, but he has appended a note that *“better to await for the clear orders from the Chancellor”*. The note further reveals the fact that despite the comment/explanation sent by the Vice-Chancellor with regard to an anonymous complaint, the said explanation/comment had not even been considered by the Chancellor. Moreover, the Chancellor is yet to take a financial decision with regard to the complaint. But without waiting for the final decision of the Chancellor, the Vice-Chancellor has decided to keep the pre-revised salary in abeyance. Therefore, the note of Vice-Chancellor has adversely affected the rights and interest of the petitioners without even waiting for the final decision of the Chancellor. To say the least, the decision taken by the Vice-Chancellor seems to be in hot-haste. Since the complaint was still under consideration of the Chancellor, it would have been, indeed a better course for the Vice Chancellor to wait for the

final order from the Chancellor without having rushed in an area where even the angels would have feared to tread.

13. For the reasons stated above, this petition is allowed; the order dated 20.09.2015 is set aside.

14. However, once the final decision is taken by the Chancellor upon the complaint filed before him, the respondent shall be free to take a decision with regard to the issue, whether petitioners are entitled to their salary by including the period for which they had temporarily worked for the University or not? Or whether they are entitled to the salary and other benefits from the date of their regularisation from 20.09.2005 or not ?

Sd/-
JUDGE

Np/-