

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 13TH DAY OF SEPTEMBER, 2011

PRESENT

THE HON'BLE MRS.JUSTICE MANJULA CHELLUR

AND

THE HON'BLE MR.JUSTICE V.SURI APPA RAO

WA.No.5189/2011 (S.Pro)

BETWEEN:

DR UDAY MULGUND S/O NARAYAN MULGUND,
AGE: 47 YEARS, WORKING AS
ASSOCIATE PROFESSOR DEPARTMENT,
OF OPHTHALMOLOGY, KIMS.
HUBLI, DHARWAD,

... APPELLANT

(By Sri. : V P KULKARNI, ADV.)

AND

1. STATE OF KARNATAKA
REP: BY ITS PRINCIPAL SECRETARY
TO DEPARTMENT OF MEDICAL EDUCATION,
M.S. BUILDING,
BANGALORE-1
2. THE DIRECTOR, KARNATAKA INSTITUTE OF
MEDICAL SCIENCES (KIMS) HUBLI

DHARWAD,

3. THE GOVERNING COUNSEL REP: BY ITS
CHAIRMAN, KIMS, HUBLI,
DHARWAD,
4. SATISH SHET S/O DATTATRAYA SHET
AGED ABOUT 41 YEARS, OCC: WORKING
AS ASSISTANT PROFESSOR, DEPARTMENT
OF OPHTHALMOLOGY, KIMS, HUBLI
DHARWAD,
5. DAMAYANTI SURANAGI
AGED ABOUT 49 YEARS, OCC: WORKING
AS ASSISTANT PROFESSOR, DEPARTMENT
OF OPHTHALMOLOGY, KIMS, HUBLI
DHARWAD.

... RESPONDENTS

(By Sri. : MAHESH WODEYAR AGA FOR R1,
D.L.LADKHAN FOR R2, R3 SD,
SHASTRY & HEGDE ASSOCIATES FOR C/R4
V.M.SHEELVANT FOR R5
V.R.RDATAR FOR R4)

THIS WRIT APPEAL IS FILED U/S.4 OF THE
KARNATAKA HIGH COURT ACT, PRAYING TO, SET ASIDE
THE IMPUGNED ORDER PASSED BY THE LEARNED
SINGLE JUDGE IN W.P. NO.61890/2011
DATED:21/04/2011, SO FAR AS IT RELATES TO
ANNEXURE-O VIDE NO.KIMS/EST(1)/118/2010-11
DATED:23/07/2010 AND ANNEXURE-L VIDE
NO.KIMS/CV(1)/350/2005-06 DATED:28/02/2006 AND
ALLOW THE WRIT APPEAL.

THIS APPEAL COMING ON FOR FINAL HEARING, THIS DAY, MANJULA CHELLUR,J., DELIVERED THE FOLLOWING:

JUDGMENT

The present appeal is filed by the appellant with regard to the quashing of the promotional order issued in favour of appellant as Assistant Professor as per Annexure-L and Associate Professor in the Department of Ophthalmology as per Annexure-O.

2. According to the learned counsel for the appellant, the observation at paras 31 and 32 of the learned Single Judge though says promotions ought not to have been quashed because of the delay in questioning the promotions at the relevant point of time made in favour of the appellant as per Annexures-L and O, proceeds to quash Annexures L and O. Appellant's counsel makes it clear that he has no grievance so far as reconsideration of the matter by the authorities concerned as directed by the learned Single Judge, but, his grievance is after making

observation at paras 31 and 32 as stated above, Court ought not to have quashed his promotions as per above Annexures.

3. As against this learned counsel for the private respondent No.4 submits that in pursuance of the direction of the learned Single Judge on 23/7/2011 provisional seniority list is already prepared in the KIMS, Hubli. Therefore, the appeal itself is infructuous.

4. The learned counsel for the appellant and as a mater of fact the appellant admits before the Court that the said provisional list is already in the notice board of the institution and they are aware of it. He also submits that objection statement to this provisional list is also made. After considering the objection statement, the authorities concerned have to finalise the seniority list.

5. According to Mr. V.R.Datar, learned counsel arguing for R4, the appellant was not eligible to be promoted as Assistant Professor, therefore, question of further promotion as Associate Professor in the

Department of Ophthalmology would not arise. The very direction of the learned Single Judge is to verify from all angles, what entitlement the appellant and other private parties are entitled to in the matter of seniority. The only grievance seems to be his promotion as Associate Professor and earlier to that, the Assistant Professor, ought not to have been quashed till further consideration. Therefore, the appeal has to be disposed of with a modification to the above extent.

Appeal is disposed of and the order of learned Single Judge is modified only in respect of quashing of Annexures- L and O.

Sd/-
JUDGE

Sd/-
JUDGE

Vmb