
(2012) 04 KAR CK 0214
In the Karnataka High Court
Case No : Writ Petition No. 62635 of 2012

Abdul Azeem

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Citation : (2013) 1 AKR 474 : (2012) ILR (Kar) 5671 : (2013) LabIC 743

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : Sunil S. Desai for Goulay Associates, for the Appellant; Vinayaka S. Kulkarni, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—Petitioner herein is impugning the endorsement dated 17.11.2011 issued by second respondent vide Annexure - "J". Brief facts leading to this writ petition are as under:

Petitioner herein is son of late Mohammad Ismail Yaligar, who was working as Chief Officer of Kamalapur, Taluk: Hospet, Bellary District. It is stated that the petitioner's father, Mohammad Ismail Yaligar, died in harness on 10.02.1994. Immediately thereafter the petitioner as legal representative of deceased Mohammad Ismail Yaligar, filed an application seeking appointment on compassionate ground. Subsequently his representation was considered and he was appointed as S.D.A. by appointment order dated 09.05.2001.

2. Petitioner accepted the offer of appointment and thereafter made a representation that as on the date of his appointment, he had completed graduation in B.A., and as he was eligible for the post of F.D.A., considering his appointment as S.D.A., is opposed to the decision rendered by the Division Bench of this Court in The Director of Municipal Administration Directorate of Municipal Administration Government of Karnataka, The Deputy Commissioner and The State of Karnataka Vs. H.N. Guruprasad and The Municipal

Commissioner City Municipal Council, wherein the Division Bench of this Court held as under:

If the authorities had overlooked the qualification the applicant already possessed at the time of his appointment and also ignored the representation of the applicant mainly because the authorities have passed an appointment order to a lower post, will not take away the right of the petitioner to claim the higher post.

Relying upon aforesaid judgment this Court disposed off W.P. No. 62605/2009 on 11.03.2010 following the aforesaid decision of the Division Bench of this Court, a representation was made. On considering the said representation, respondents herein have issued Annexure - "J", which is challenged in this writ petition.

3. Heard the counsel for petitioner and also learned Government Pleader appearing for respondent Nos. 1 to 4. On going through the grounds of writ petition and also the endorsement impugned, it is seen that the judgment passed by this Court and relied upon by petitioner herein is in contravention of the decision rendered by the Apex Court in the matter of Umesh Kumar Nagpal Vs. State of Haryana and Others, wherein under similar circumstances, the Apex Court has held as under:

2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and

hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory.

4. On going through the aforesaid judgment, it is clearly seen that the Apex Court while considering the said matter under similar circumstances has held that providing of appointment on compassionate ground is the only exception which is otherwise provided for appointment to be made in public service. This exception is provided to see that the status of the family which has lost a breadwinner should not be put to penurious situation, where the survival of family itself should not be put to jeopardy. While observing that the Apex Court has clearly held that in considering the application for providing employment under the compassionate ground, the lowest possible post will have to be provided to them, which portion is highlighted in the portion culled out as above. On going through the same, it is clearly seen that in the instant case also to tide over the penury situation of the family of petitioner, an appointment was provided to him appointing him in the cadre of S.D. A.

5. Further, the said appointment is not provided to him considering the qualification that he is holding at the relevant time and based on that the post for which the said qualification would fetch him. In that view of the matter, the ruling of the Division Bench relied upon by the petitioner being is total contrary to the ratio laid down by the Apex Court in the matter of Umesh Kumar Nagpal Vs. State of Haryana and Others, This Court has no discretion to follow the judgment rendered by the Division Bench of this Court, which is contrary to the ruling of Apex Court.

6. In that view of the matter, relying upon the decision of the Apex Court in Umesh Kumar Nagpal's case, this Court find that the petitioner herein does not have any legal right to insist that he should be appointed for the post of F.D.A., based on the qualification that he had acquired at the time of his appointment on compassionate ground. Accordingly the writ petition filed by the petitioner is dismissed, without any order as to costs.