

(2015) 10 KAR CK 0129
In the Karnataka High Court
Case No : Writ Petition No. 7416 of 2015 (S-RES)

Arun Kumar K.S.

APPELLANT

Vs

Principal Secretary, Rural Development and Panchayath Rajya
Department and Others

RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0129

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : R. Rama Chandran, Advocate, for the Appellant; Rafeeunissa, GP, for the Respondent

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri, J.—The petitioner, who has been working as a bill collector in fourth respondent Seegekuppe Grama Panchayath from 2007, is seeking a writ of mandamus to the respondent No. 2 to extend the benefit of Annexure-E. Annexure-E is the official memorandum, dated 12.12.2014 issued by second respondent, the Chief Executive Officer, Ramanagara Zilla Panchayatha approving the appointments of 32 persons in different grama panchayaths.

2. Dr. R. Ramachandran, learned counsel for the petitioner submits that the appointment of the similarly placed bill collector, namely, Dayananda is approved by respondent No. 2, as is evident from the official memorandum, dated 12.12.2014 (Annexure-E). He complains of hostile discrimination.

3. Sri. B.J. Somayaji, learned counsel for respondent Nos. 2 to 4 submits that the petitioner's appointment is not in response to any regular recruitment process. He submits that the petitioner's appointment is without the approval of competent authority. He submits that the post of bill collector is to be filled up by the promotees. There is no provision for directly recruiting anybody as the bill collector, so submits Sri. B.J. Somayaji. In support of his submissions, he relies

on the decision of this Court in the case of D. Narayannappa v. State of Karnataka reported in 2006 (3) KLJ 494. Para. 15 of the said decision read out by him is extracted hereinbelow:

"15. A perusal of the relevant Government Orders/Circulars does indicate that the post of "bill collector" is not one that can be filled up by direct recruitment, but it is only by way of promoting the existing employees who have suitable qualification such as having passed SSLC. If the petitioner is a person who is an aspirant and who could have filled the post, there was no occasion for the respondent 4 - Panchayat to have invited applications. There was never any possibility of appointing a person like respondent 5 for the post of "bill collector" in terms of the Government Order/circular and therefore an approval of the resolution passed by the Grama Panchayat may be even for the third time, is definitely not proper in law when the resolution is not one appointing a person in terms of the relevant Government Order/Circular issued for the purpose of making such appointment."

4. The submissions of the learned counsel have received my thoughtful consideration. It is trite that the equals cannot be treated unequally and the similarly placed persons cannot be treated dissimilarly. If the case of the petitioner is akin to the case of Dayanand, then it is not fathomable as to how the appointment of Dayanand as the bill collector is approved whereas the appointment of the petitioner as the bill collector is not approved. It is not the case of the respondents that the petitioner does not possess the requisite qualification and that Dayanand possesses the same. For both of them, the source of appointment and the procedure adopted therefore, appear to be the same. On the ground that the petitioner has not taken part in the regular recruitment process or on the ground that the bill collector's post is a promotional post or on the ground that the petitioner is appointed without the prior approval, the respondent No. 2 cannot refuse to accord approval to his appointment, if those circumstances/grounds were existing in the case of Dayanand.

5. It is also not known as to why the appointment of the petitioner as bill collector, which is now being said to be illegal, is not withdrawn or cancelled by the competent authority.

6. It may not be out of context to refer to the doctrine of desuetude, which essentially means the abrogation of law by long nonuser. If the requirements of law now being insisted for by the respondents were consistently overlooked while according the approval to the appointment of 16 bill collectors, there is no reason as to why they should be applied to the petitioner and the petitioner alone.

7. For all the aforesaid reasons, I allow this petition by directing the respondent No. 2 to examine as to whether the cases of the petitioner and of 16 persons, whose appointments came to be approved vide official memorandum, dated 12.12.2014 (Annexure-E), are similar. If their cases are similar, then the

respondent No. 2 shall accord approval to the appointment of the petitioner as the bill collector. This exercise shall be completed as expeditiously as possible and in any case within an outer limit of two months from the date of the production of the certified copy of today's order. No order as to costs.