

(2004) 04 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No's. 11578 of 2000 and 15196 to 15201 of 2004

B. Srinivas and Others

APPELLANT

Vs

Director, Research and Development Organisation,
Aeronautical Development Establishment

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16 F, 16 F (4)

Citation : (2004) 7 KarLJ 232 : (2004) 3 KCCR 243 SN

Hon'ble Judges : Ajit J. Gunjal, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : S.V. Narasimhan, for the Appellant; T. Rajaram, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Srinivasa Reddy, J.—The question, whether the respondent could have made appointments only in terms of the rules that prevailed at the time of calling applications for the post or whether it could shelve the whole process of selection under the old rules and opt for the new rules prescribing different qualification for the post is the only question that arises for our consideration in this batch of writ petitions.

2. The respondent had instructed the Employment Exchange to sponsor names for appointment as storekeepers. The Employment Exchange had sponsored several names. A common test was conducted for all the eligible candidates and the successful candidates were also called for personal interview. When matters were pending at that stage, new rules of recruitment came into vogue prescribing qualification different from the one prescribed by the earlier rules. The respondent invited applications from eligible candidates possessing qualification prescribed under the new Rules. It is at this stage the petitioners moved the Tribunal for a direction to the respondent to make appointment to the post of storekeeper, designated as "Stores Asst-A" in the new Rules, only with

reference to the old recruitment rules under which substantial progress had been done by the respondent in the matter of selection of the suitable candidates. The Tribunal turned down the request by the impugned order. Aggrieved the petitioners have come up before us questioning the legality and correctness of the impugned order.

3. We have heard the learned Counsel for the petitioner Mr. S.V. Narasimhan and Mr. T. Rajaram, Additional Central Government Standing Counsel for the Department.

4. The grievance of the petitioner is that the department could not after sending out feelers for personal interview shelve the whole process of selection under the old rules and start the process of selection afresh under the new Rules which prescribe different qualifications. Mr. Narasimhan cited for our consideration several decisions on the point. In A.A. Calton Vs. Director of Education and Another, , the selection made to the post of Principal of a college was challenged before the High Court by one of the contestants. The High Court by its judgment allowed the writ petition and quashed the selection directing the selection committee to make an appointment in accordance with Section 16-F(4) of U.P. Intermediate Education Act, 1921. Pursuant to the said direction the Director appointed the second respondent which appointment was challenged by the petitioner before the High Court. The High Court dismissed the writ petition. In the SLP filed against the order of dismissal, the Apex Court, held:

"It is no doubt true that the Act was amended by U.P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of Director to make an appointment u/s 16-F(4) of the Act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings u/s 16-F of the Act. Nor do we find any words in it which by necessary intendment would affect such proceedings. The process of selection u/s 16-F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection u/s 16-F(4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates.

...

Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amendment had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned Counsel for the appellant that the law as amended by the U.P. Act 26 of 1975 should have been followed in the present case".

In Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , also in a similar situation the Apex Court held:

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules.

...

We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules".

To similar effect is also the decision in N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, : wherein the Apex Court held:

"A candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquired a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature".

These decisions were also cited before the Tribunal. The Tribunal has referred to these decisions and brought out the distancing feature in those decisions that disentitle the petitioner to any relief in line with the relief provided by the Apex Court in those cases. The distinctive feature pointed out by the Tribunal is at para 12 and it reads:

"the principle which would apply to the case of promotion is, that vacancies which have arisen prior to the amendment of rules which are not retrospective in nature will have to be filled up in accordance with the Rules in force on the date the vacancies arose. In respect of direct recruitment to posts, the decisions would indicate that if during the recruitment process the recruitment rules are amended and such amendment is not retrospective then the recruitment could be finalised and if appointment is made in accordance with the old rules then such appointment cannot be challenged on the ground that by the date the appointment was made new rules had come into force. In Bevin Katti's case what had been done was to apply a Government order which was issued after the initiation of recruitment process though that Government order itself indicated that for reservations which had already been made the new order would not apply. By applying the new Government Order persons who had been included in the notified select list were excluded. It is in those circumstances, the Supreme Court gave relief to the appellants. But in none of these cases it has been held that where a recruitment process had not been finalised and the recruitment rules are amended prescribing different qualifications for the post, the Government has no power to take a decision not to proceed with the recruitment and to initiate recruitment afresh in accordance with the new Rules".

5. We are quite in agreement with the distinction made out by the Tribunal to

take the case out of the purview of the principle laid down in the decisions cited by learned Counsel for the petitioner both before the Tribunal and before us.

6. The Defence Research and Development Organisation, Ministry of Defence Group "C" (Stores) Posts Recruitment Rules, 1998 were brought into force with effect from 29th May, 1998 in supersession of the Defence Research and Development Organisation, Ministry of Defence Group "C" Non-gazette (Ministerial) Posts Recruitment Rules, 1980 and the Defence Research and Development Organisation, Ministry of Defence Clerks, Storekeepers, Cashier, Stenographer, Grade II and Stenographer, Grade III Posts Recruitment Rules, 1986. Under the new Rules at the time of initial constitution of the redesignated posts not only the posts were given a new designation but the qualifications prescribed for appointment to the post of "Storekeeper" redesignated as "Store Assistant A" was different as in addition to the qualifications prescribed in the earlier rules, the qualification of Accurate speed of not less than 8000 key depressions per hour for Data Entry in the computer" was prescribed. The knowledge of computer operation or pass in computer course at "O" level was also desired under the new Rules. The additional qualifications required for being appointed as "Store Assistant A" virtually render the post a new post and in effect abolishes the post of "Storekeeper" which was the lowest rank in the cadre of "Storekeepers" to which appointment could be made directly, all other higher ranked posts in that cadre being selection posts. There is good reason why we are convinced of the view point taken by the Tribunal. The reason is that the technological advancements taking place day in and day out and the computerisation of the various governmental organisations, out of necessity require that the appointees to the various posts in these organisations are armed with knowledge of computer. The changes brought in by the amended rule seem to have taken stock of this changed requirements. In this situation, thrusting on the department a person not armed with this essential qualification who if appointed would not be in a position to discharge the functions required of a person occupying the said post cannot be justified under any circumstance particularly, if the claim for appointment is by a person who has not been appointed as yet and the process of appointment under the old Rules had not been completed. It would be useful in this regard to quote the observations made by the Apex Court in *State of M.P. and Others Vs. Raghuvver Singh Yadav and Others*, , in a similar situation:

"It is settled law that the State has got power to prescribe qualifications for recruitment. Here is a case that pursuant to amended rules, the Government has withdrawn the earlier notification and wants to proceed with the recruitment afresh. It is not a case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended Rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State.

Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules".

The case of the petitioners herein is also one of "legitimate expectation" and not of "a vested right" which alone would entitle them to the relief sought by them. The case would have been on a different keel altogether if the process of selection was over and the appointments made pursuant to such selection were sought to be not given effect to.

7. Therefore, we find no merit in these writ petitions and they are, accordingly, dismissed.