

(2005) 02 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 43114 of 2002

B.K. Sunitha

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 15, 3

Citation : (2005) 3 KarLJ 99 : (2005) 2 KCCR 74 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Sri L. Narayan Swamy and Associates, for the Appellant; N. Basavarajaiah, High Court Government Pleader for Respondent - 1 to 4, for the Respondent

Judgement

N.K. Patil, J.—The petitioner in this petition, has sought for a direction, directing the respondents to release the salary grant/aid in respect of the appointment of the petitioner, without insisting the requirement of approval of the appointment of the petitioner as held by the Hon'ble Supreme Court in the decision in Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another, . and grant all consequential benefits flowing therefrom, including arrears of salary, increments, seniority and other benefits.

2. The petitioner claims to be a B.A. and B.Ed, graduate. The fifth respondent herein - management is running an Educational Institution. The third respondent has issued notification for appointment of "Assistant Master" in the Educational Institution run by the fifth respondent on 21st January, 1999. In pursuance of the said Notification, the fifth respondent has given paper publication in "Samyukta Karnataka" a Kannada Daily on 3rd February, 1999 after obtaining the necessary permission from the Competent Authority. In pursuance of the paper publication on 3rd February, 1999 inviting application for the post of "Assistant Master", the petitioner having requisite qualification for the post of

"Assistant Master", has submitted her application in the prescribed form by complying with all the requirements. Thereafter, she has been called for interview. There were totally five members who had filed their applications to the post of "Assistant teacher". Out of five candidates, four candidates have attended the interview. It is the case of the petitioner that, she has secured highest marks among four candidates who attended the interview vide Annexure-C. The certified copies issued by the Secretary of the fifth respondent-Management vide Annexure-D and E consisting of four members of the said Selection Committee, in which one member is represented on behalf of the Government as Educational Officer and three from the Management are produced. The Selection Committee has selected the petitioner for the post of "Assistant teacher" as per the proceedings of the Selection Committee vide Annexure-E, dated 4th March, 1999 and the said proceedings had been duly signed by all the four members of the Selection Committee including the Government representative. Thereafter, the matter has been placed before the Managing Committee of the fifth respondent and the Committee in turn in its meeting held on 7th March, 1999 has unanimously resolved to accept the proceedings of the Selection Committee. Thereafter, result has been announced in the notice Board, stating that, the petitioner has been selected as "Assistant Mistress" vide Annexure-G duly signed by all the Competent Authorities of the fifth respondent. Immediately thereafter, a communication has been sent on 10th March, 1999 bearing No. 182 of 1998-99 to the petitioner directing her to report for duty before 16th March, 1999 accompanied by all the credentials of the requisite educational qualification. After receipt of the communication vide Annexure-H, the petitioner has reported for duty on the forenoon of 11th March, 1999, in the presence of the Headmaster of the said School and the Secretary of the fifth respondent vide Annexure-J. When things stood thus, it emerges from the records available before the Court that, the Deputy Director has written to the Secretary of the School on 3rd February, 2000 vide Annexure-K, stating that, on the basis of the surprise visit made by the Educational Officer on 3rd August, 1999 to the School, it is reported by the said Officer that, the petitioner has not secured highest marks and there is some overwriting in the aggregate marks of the petitioner made only to benefit the petitioner. The Deputy Director of Public Instructions has further stated that, instead of appointing the candidate who has secured highest marks, a candidate who has secured lesser marks has been appointed much contrary to the Karnataka Education Act and Rules and also contrary to the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (10 of 1975) as it existed then. In pursuance of the said communication from the Deputy Director of Public Instructions, the Secretary of the fifth respondent-institution has sent a reply on 17th March, 2000 vide Annexure-L requesting to approve the selection made by the Selection Committee stating that, the appointment of the petitioner was made in strict compliance of the mandatory provisions of the Education Act and Rules and the Selection Committee has taken unanimous decision in selecting the petitioner. Thereafter, the Deputy Director of Public Instructions has sent a communication

dated 22nd June, 2000 vide Annexure-M stating that, the appointment of the petitioner cannot be approved since there are excess teachers in the school run by the fifth respondent and there are two excess Science teachers who may have to be transferred to other institutions. Therefore, the question of approving the appointment of the petitioner does not arise and returned the recommendation sent by the Secretary of the fifth respondent. Thereafter, the Director of Public Instructions, Bangalore has sent a communication to the Deputy Director of Public Instructions, Mysore District on 2nd July, 2001 vide Annexure-o, directing him to look into the matter with regard to the approval of appointment of the petitioner and to submit a report. In pursuance of the said communication, on behalf of the Deputy Director of Public Instructions, a reply has been sent on 14th August, 2001 vide Annexure-P to the Director (Higher Education), Commissioner's Office, Public Instructions Department, Bangalore, producing all necessary documents and requesting him to take suitable action at their level. Be that as it may

3. The Secretary of the fifth respondent-Institution has given a consolidated detailed representation dated 13th October, 2001 bearing No. 79 of 2000-01 vide Annexure-Q, narrating the facts and circumstances of the case as to how the selection process started and completed, declaration of results and the then Deputy Director of Public Instructions has referred and pointed out that there is some error in the procedure followed while selecting the petitioner, etc. At pages 2 and 3 of the said representation, the specific reason behind the disapproval of the appointment of the petitioner has been mentioned and at page 7, the Secretary of the fifth respondent has requested the Director to approve the appointment of the petitioner and to take appropriate action against the concerned Deputy Director, as envisaged under the Karnataka Education Act and Rules. Thereafter an endorsement has been issued by the Divisional Secretary-cum-Joint Director of Public Instructions, Mysore Division, Mysore on 16th January, 2002 vide Annexure-R to the petitioner and the Deputy Director of Public Instructions, Mysore, stating that, there is excess appointment of teachers by the fifth respondent-Management and there is no vacant post as per the report submitted by the then Deputy Director and the same is as per the Government Order dated 3rd February, 2000. Thereafter, the fifth respondent sent a reminder letter requesting the concerned Competent Authority to take a lenient view of the matter and consider the request of the petitioner sympathetically for her appointment as Assistant teacher in the school run by the fifth respondent-Institution having regard to the unblemished service rendered by her in the School and also taking into consideration the status of the petitioner and the fact that, her future career is certainly uncertain due to non-approval of her appointment. Thereafter, the petitioner has also given a representation dated 24th June, 2002 to the Secretary, Higher Education, stating that since three years, she is discharging her duties in the said School and that, for no fault of her, till date, her appointment has not been approved and therefore, the concerned authorities may take appropriate decision in accordance

with law. In spite of the fifth respondent Management giving detailed explanation, vide Annexure-B and a reminder on 1st February, 2002 vide Annexure-S and also the petitioner giving representation on 24th June, 2002 vide Annexure-T, to the Secretary, Higher Education, the request of approval of the appointment of the petitioner has not been considered nor the authorities, have taken any decision in accordance with the mandatory provisions of the Karnataka Education Act and Rules. Hence, in view of the inaction on the part of respondents in not considering the request of the petitioner, the petitioner was compelled to invoke the extraordinary jurisdiction of this Court as envisaged under Articles 226 and 227 of the Constitution of India.

4. Learned Counsel appearing for petitioner, vehemently submitted that, the Selection Committee has selected the petitioner in strict compliance of the procedure as envisaged under the Education Act and Rules and she has been declared as selected on the basis of merit. He pointed out that, the said Selection Committee consists of four members, out of which, one member is represented by the Government who is the Educational Officer and three members are from the management. As per the proceedings of the Selection Committee dated 4th March, 1999, all the members were present including the Government representative and they have taken a unanimous decision, selecting the petitioner and all the four members of the Selection Committee have duly signed the same. Thereafter, the matter has been placed before the Managing Committee of the fifth respondent and they have also unanimously resolved to accept the proceedings of the Selection Committee, appointing the petitioner to the post of Assistant Teacher. Thereafter, her name has been notified in the notice board as having been selected to the post of Assistant Teacher in Arts subject. Thereafter, she has been communicated to report to duty and subsequently she also reported to duty on 11th March, 1999 as per Annexure-J and has been discharging her duty. Due to some misunderstanding and communication gap, and also for non-consideration of the case of the candidate of the then Deputy Director, the petitioner has been made scapegoat and she has been penalised by not approving her appointment on the basis of the recommendation sent by the fifth respondent-Management. Further, he pointed out and submitted that, once the Selection Committee selects a candidate and declares the result, and thereafter, he or she reports to duty and takes charge, there is no requirement under the mandatory provisions of Sections 3 and 15 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (10 of 1975) to take the approval. He submitted that, when the Department has been represented and participated in the Selection proceedings of the Selection Committee, there is no mandatory requirement for approval from the Government again. To substantiate his submission, he placed heavy reliance on the judgment of the Apex Court in the case of Laxman Dundappa Dhamanekar, and drew my attention to paragraphs 7, 11 and 13. He submitted, in view of the well-settled law laid down by the Apex Court and having regard to the fact that, the selection of the petitioner made is in accordance with law, there is no

justification for the respondents for taking a different decision instead of approving her appointment in the school run by the fifth respondent-Management, which is an aided institution. Instead of approving the appointment of the petitioner, the respondents have dragged on the petitioner from pillar to post, that too, for no fault of her.

5. Further, he placed reliance on the detailed representation given by the fifth respondent-Management to the Director, Higher Education Department, Public Instructions Department and pointed out the reason behind the non-consideration of the approval of appointment of the petitioner on the basis of the alleged report submitted by the then Deputy Director of the Education Department who was in charge. He submitted that, instead of initiating appropriate action against the then Deputy Director who was in charge for take two different stands and pass orders approving the appointment of the petitioner and release the pay to enable the management to pay the salary to the petitioner, the authorities have made several communications from one Department to another Department. Finally, when the management has given one more representation, requesting the authorities to consider the request and to approve the appointment of the petitioner having regard to the status of the petitioner and the decision taken by the Management in the presence of the Government representative, no error or illegality as such has been committed in appointing the petitioner. In spite of it, the respondents have not taken any decision. Hence, the petitioner was constrained to approach this Court seeking the instant relief, as stated supra.

6. Per contra, the learned Government Pleader appearing for respondents, inter alia, contended and submitted that, the selection made by the Selection Committee was not in accordance with the relevant provisions of the Education Act and Rules and as per the consolidated/aggregate marks list furnished by the Educational Officer of the fourth respondent, it shows that, the petitioner has not secured highest marks and the candidate who has secured highest marks has not been selected. He submitted that, to that effect, the then Deputy Director has also sent a communication to the fifth respondent-Management stating that, the selection process was not in accordance with law and hence, the question of approving the appointment of the petitioner does not arise. Further, he has taken me through the statement of objections and pointed out that, the fourth respondent has denied the allegation of the petitioner that, approval of the appointment of the petitioner is denied on one or other reasons and submitted that, the action taken by the fourth respondent is in accordance with law and there is no mala fide, arbitrariness, illegality or unsustainable action on the part of the said respondent. He submitted that, it is not correct to say that for regular appointments no approval is necessary and that the appointment of the petitioner was for a regular post. Therefore, he submitted that, non-consideration of the case of the petitioner for approval was valid and the same was justifiable.

7. Having heard the learned Counsel appearing for petitioner and the learned

Government Pleader appearing for respondents for considerable length of time, after going through the stand taken by respondents in their statement of objections carefully, the entire material available on record as on the date of filing the writ petition, after considering the rival contentions urged by the learned Counsel appearing for the petitioner and the learned Government Pleader appearing for respondents, it reveals that, till the date of filing of this writ petition, the respondents have not taken any decision or passed any order, except making communications from one department to another and are still at the stage of calling for report from the Divisional Officer that too, when the fifth respondent-Management has given the entire history of the case. The report given by the Officer to the Deputy Director is contrary to the material on record and the said officer has pointed out some errors due to mala fide intention and he/she will be responsible for the same, when the Selection Committee has selected the petitioner in strict compliance of the mandatory provisions of the Education Act and Rules after following due procedure and in the presence of Government representative along with her signature for the same and participated in the proceedings of the Selection Committee. It is very unfortunate to note the manner in which the respondents have taken their stand in the objections filed them on instructions. The learned Government Pleader submitted that, there is some discrepancy in the aggregate marks mentioned and since the post is reserved for general merit, a candidate who has secured highest marks should be appointed as per the report submitted by the Educational Officer, who was one of the member of the Selection Committee. This statement is made by respondents in their statement of objections when they have filed the objections in the month of October 2003. But, after careful perusal of the alleged report, it is seen that, the then Deputy Director who was in charge then, has not mentioned that aspect, but has mentioned that after seeing the records it appears the marks has been manipulated, there is overwriting and the Selection Committee has selected the candidate who has not secured highest marks. It appears, the officer who has sworn to this affidavit while filing the statement of objections, has not evaluated the entire material available on record and has simply proceeded on the basis of the alleged error pointed out by the then Deputy Director who was in charge at that time. Further, it is pertinent to note that, since the endorsement has been sent, subsequently after pointing out the alleged error committed by the Selection Committee, wherein it has been pointed out that, already two science teachers are in excess in the institution and in view of that, approval of the petitioner in Arts subject cannot be made, is not justifiable. However, as per the communications, both sent by the then Deputy Director dated 3rd February, 2000 vide Annexure-K and dated 22nd June, 2000 vide Annexure-M, it is seen that, both are contradictory to each other. At one breadth it is stated by the authority that, there is some overwriting in the aggregate marks and the candidate who has secured highest marks has not been selected, and at another breadth, it is stated by the same authority that, since there are two science teachers in excess in the School run by the fifth respondent-Managemnet, the approval of appointment of the petitioner is

returned. This shows the manner in which the authorities have submitted their explanations, reasons and all these prove beyond all reasonable doubt that, the authorities have proceeded without proper application of mind. Further, the fifth respondent has specifically pointed out the background and reasons behind for not approving the appointment of the petitioner. It has been specifically highlighted and pointed out by the fifth respondent-Management in the consolidated detailed representation dated 13th October, 2001 given to the Director, Higher Education and has specifically requested to initiate appropriate proceedings against the said Deputy Director who has violated the principles, guidelines and the mandatory provisions of the Education Act and Rules. It is not the case of respondents in their objections that, they have already initiated proceedings against the said officer who has mis-utilized his status and gone to the extent of giving two different versions vide Annexure-K and M. Instead of taking appropriate action, when the fifth respondent has pointed out, and pass appropriate orders, the authorities are making correspondence from one Department to another.

8. Further, it is worthwhile to mention, as rightly pointed out by the learned Counsel appearing for petitioner that, the authorities are well-aware of the well-settled law laid down by the Apex Court in the case of Laxman Dundappa Dhamanekar, wherein it is declared as follows.--

"... The conditions embodied in Rule 16 of the Grant-in-Aid Code provide for the conditions under which the financial assistance would be made available to the Management of the Institution by the Government. If there is a breach of the conditions of the grants-in-aid, it is open to the Government either to suspend or cancel the financial grant to the institution. But such breach of conditions of the Grant-in-Aid Code would not make the appointment of a teacher in the institutions invalid when the method of appointment of teachers in the institution is fully covered by the Act and the statutory rules. It is, however, true that, for breach of administrative instructions which have no statutory force, a public servant or the person guilty of such a breach can be subjected to disciplinary action; but the same cannot be pressed into service for action which has the effect of modifying the statutory rules. We are, therefore, of the view, that breach of non-statutory Rule 16 would not render the appointments of appellant invalid".

As rightly pointed out by the learned Counsel appearing for petitioner, the Apex Court has observed at paragraph 7 of the aforesaid judgment, the relevant portion of which reads as follows.--

"7. Reason being that the Head of the Department himself or his nominee sits in the Selection Committee and it is because of that reason, the approval of the Head of the Department in case of a regular appointment has been dispensed with under the Rules. Whereas, if the appointment is made on an ad hoc basis by the Management for a period of 3 months or less, or for part-time, the same is required to have the approval of the Head of the Department apparently for the

reason that the Head of the Department or its nominee is not party to the decision to make ad hoc appointment in the institution. We are, therefore, of the view that the rules do not contemplate for obtaining approval of the Head of the Department i.e., the Director of Public Instructions where the appointment is to be made on the basis of the recommendation of Selection Committee constituted under Sub-rule (2) of Rule 6 of the Rules".

In spite of the well-settled principles of law laid down by the Apex Court and this Court in several cases, the manner in which the Department is functioning by dragging on the petitioner from pillar to post for consideration of the request of the petitioner for approval of her appointment to the post of "Assistant teacher" is not justifiable.

9. Having regard to the facts and circumstances of the case, as stated above, and having regard to the factual legal aspect of the matter, as enumerated above, the respondents herein are directed to consider the representations given by the fifth respondent vide Annexure-Q and S and also the representation given by the petitioner vide Annexure-T and to take appropriate decision after affording an opportunity to the petitioner and the fifth respondent-Management and decide the same in strict compliance of the mandatory provisions of the Education Act and Rules as existed then bearing in mind the well-settled principles of law laid down by the Apex Court in the case of Laxman Dundappa Dhamanekar and dispose of the same, as expeditiously as possible, within an outer limit of three months from the date of receipt of a copy of this order.

10. With these observations, the writ petition filed by the petitioner stands disposed of.