

(2000) 08 KAR CK 0068
In the Karnataka High Court
Case No : Writ Petition No. 7987 of 2000

B.M. Nagaraj

APPELLANT

Vs

The Karnataka Public Service Commission and Another

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Citation : (2000) 3 KCCR 2327

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : M.R. Rajagopal, for the Appellant; T. Narayanaswamy, for Respondent 1 and M.H. Motigi, A.G.A. for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—This petition is an offshoot of an earlier Writ Petition in Writ Petition No. 37357 of 1998, dated 21.9.1999.

2. Facts in brief of the case are as under:

An unfortunate candidate who is deprived of selection for reasons beyond his control is before this Court seeking for the following prayers:

A) Issue writ in the nature of certiorari or any other writ to quash the endorsement of the Respondent in No. E(2) 2131 of 1999-2000, dated 18.1.2000 as per Annexure F and also the endorsement dated 16.2.2000 in No. E(2) 2135 of 1999-2000 as per Annexure H;

B) Direct the Respondent to include the name of the Petitioner in the final select list in proper ranking and assign the same to the Government, enable the government to issue order of appointment to the Petitioner with full salary from the date of order of this Hon'ble Court dated 21.9.1999 in Writ Petition No. 37357 of 1998 as per annexure B;

C) Issue any appropriate writ order or directions as this Hon'ble Court deems to be fit and proper in the circumstances of the case and allow this writ petition

with cost in the ends of justice and equity.

3. The Petitioner was a candidate for a competitive examination held by the Respondent-1, Karnataka Public Service Commission ("Commission" for short) for the post of Assistants and First Division Assistants to the civil Services of the State. He was successful in the examination and obtained the required marks for selection. During the relevant point of time there was no viva or interview in the process of selection. Petitioner belongs to category III-A and the Commission required the Petitioner to appear before it on 1.8.1998 at 10.30 A.M. for verification of the testimonials of the Petitioner with the original. The said letter was dated 30.7.1998 which was despatched on 31.7.1998. The said letter was served on the Petitioner after the due date i.e. 1.8.1998. He could not appear for the purpose of verification only. His case was not considered and hence he was obliged to move the Karnataka Administrative Tribunal (for short "Tribunal") in Application No. 4624 of 1998. The Tribunal rejected his case and hence he approached this Court in Writ Petition No. 37357 of 1998. This Court disposed of the writ petition with directions in particular a direction to the Commission to provide an opportunity for production of the original testimonials for verification and for subsequent inclusion and selection in the matter. Subsequent to the order of this Court after verification Respondent issued an endorsement on 18.1.2000 stating therein that the Petitioner is ineligible for selection for recruitment to the post of first division assistant. Thereafter a letter was addressed to the Commission as per Annexure G and a second endorsement dated 16.2.2000 was issued to the Petitioner in which it is stated that Rural Weightage cannot be granted in the light of the order of this Court in Writ Appeal No. 5807 of 1998. Petitioner is again before this Court seeking an order to quash these two endorsements.

4. The Notice was issued pursuant to which the Respondents filed a detailed statement of objections. The Respondents stick to the word "in order" and on the basis of the word "in order" they contend that in view of the striking of the Rural Weightage and in view of Retitioner's non-selection on the date of the judgment, their endorsement is proper and legal.

5. I have heard the learned Counsel Mr. M.R. Rajagopal, for the Petitioner and Sri T. Narayana Swamy, learned Counsel for the Respondent-1.

6. Both the counsels reiterate vehemently the facts and the grounds raised by them in their respective statements.

7. Admittedly in the case on hand the Petitioner had undertaken competitive examination in 1997 and in all respects he was selected by the Commission but for verification of the testimonials with the originals. As could be seen from the material fact narrated above the Petitioner was unable to produce the originals on the date due to reasons beyond his control resulting in deprivation of his selection alongwith others during 1997. Petitioner was unsuccessful before the tribunal and hence filed a writ petition.

8. A Division Bench of this Court in Writ Petition No. 37357 of 1998 filed by the Petitioner has noticed the facts as under:

The time provided to the Petitioner for appearing in the interview was too little and cannot be considered to be reasonable. Petitioner reached the office of the Commission on 3rd of August, 1998 and pleaded with the authorities to provide another opportunity to produce the original testimonials for verification. According to the Petitioner he has obtained 220 marks in the written test and in case his testimonials are found to be in order he is bound to be selected and appointed as persons with lesser number of marks have been appointed. We are constrained to hold that the Commission has acted in this case in an unjust and arbitrary manner. Tribunal has erred in dismissing the application filed by the Petitioner.

9. The Division Bench of this Court in para 8 has issued the following directions:

A mandamus is issued to the Commission to provide the Petitioner with another opportunity to produce the original testimonials for verification and if the testimonials are found to be in order then include the name of the Petitioner in the final select list. Commission is directed to assign ranking as per merit of the Petitioner with references to the marks obtained in the examination and the preference given by him. On receipt of the recommendation from the Commission the government is directed to take the Petitioner in service and assign him the seniority in the service as if the Petitioner had been initially selected alongwith other candidates. Appointment of the Petitioner in service shall date back to the date person lower in merit in the select list was given the appointment. He shall be entitled to the seniority and other benefits in the service for all intents and purposes but shall not be entitled to any arrears of pay etc., for the period he has not worked. Writ petition is allowed with costs which are assessed at Rs. 2,000/-.

10. A careful reading of the facts and directions indicate that this Court has virtually directed the selection and inclusion of the Petitioner as could be seen from the reading of the order as a whole. Since the originals were required to be verified with the testimonials filed by the Petitioner this Court thought fit to give a direction to the Commission to verify the testimonials and if found in order include his name in the final select list. The word "in order" is referable to the testimonials and not for any other purpose. It is rather unfortunate that the Commission has rejected the case of the Petitioner on a ground which was neither raised at the earliest point of time or raised before the tribunal or before this Court. When the writ petition was disposed of nothing prevented the Commission to say that in view of a direction Petitioner's case cannot be considered on the ground of "rural weightage". The same was not done. On the otherhand the only argument advanced before the Division Bench was that it had rejected the case of the Petitioner on account of his non-appearing on the due date which rightly was rejected by the Division Bench on the peculiar facts and circumstances of the case.

11. That being the position on facts I am unable to understand the reasoning in the present endorsement which has been issued as per annexures F and H. In my opinion the present endorsement runs counter to the judgment of this Court. This Court specifically directed the completion of the ministerial act of verification of the records with the originals. No opportunity as such was given for reopening the case on merits as I see from para 8 of the order. In fact this Court has said in unmistakable terms that if testimonials were found to be in order the Commission was directed to include name in the final select list with a ranking and recommendation. A further direction was issued to the government to provide an appointment which shall date back to the date when others were selected in the select list.

12. In my opinion the present rejection on the ground of rural weightage is not unsustainable in the light of a specific direction of the division bench. Nothing prevented the Commission either to seek clarification or review of the order of the Division Bench. Instead a new ground has been invented to reject the case of the Petitioner on the ground of rural weightage. Moreover but for the non-appearance on the said date his name also would have to be included alongwith other rural weightage candidates. Hence the rejection of the case of the Petitioner on the ground of rural weightage for no fault of his requires my interference.

13. Under these circumstances I have to accept the argument of the Petitioner that the rejection is unsustainable on the facts of this case. The vehement argument of Sri T. Narayanaswamy that the word "in order" has to include the consideration of the weightage does not appear to be correct. Looking from any angle the present order is unsustainable both on facts and in law particularly in the light of a clear direction of this Court.

14. At the time of argument to my repeated questions the Counsel for the Commission stated that after verification original testimonials were verified and found to be in order.

15. In the circumstances I deem it proper at the cost of repetition once again to direct the Commission to strictly comply with the directions of the division bench.

16. In the result this writ petition is allowed. Commission is directed as per the order of Division Bench which has become final to include the name of the Petitioner in the final list and to assign him the ranking as per merit of the Petitioner with reference to the marks obtained in the examination. On receipt of the recommendation from the Commission the State Government is directed to take the Petitioner in service as if the Petitioner has been initially selected with other candidates; appointment of the Petitioner in service shall date back to the date of a person lower in merit in the select list was given the appointment. Petitioner is entitled to seniority and all benefits for the purpose except for arrears of pay for the period he has not worked in terms of the directions already issued by the division bench in earlier order. Writ petition is allowed but without

costs. Time for compliance is one month from today.