

(2015) 04 KAR CK 0085

In the Karnataka High Court

Case No : Writ Petition No. 10955 of 2012 (S-RES)

B.S. Shivananda Swamy

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0085

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : M.P. Srikanth, for the Appellant; Y.H. Vijayakumar, AGA, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.

1. The short question for consideration in this writ petition is as to whether the appointment as a teacher in an unaided institution, prior to the date when it was brought under grant-in-aid, which has been made without complying with the reservation policy, could be approved for being included in the list of employees at the time when the institution is brought under grant-in-aid ?"

2. The brief facts of this case are that:

"The Society managing the Institution (respondent No. 6) was granted permission on 18.07.1984 for starting a High School, which was Sree Shankareshwara High School (respondent No. 7). The respondent No. 7-Institution was duly recognized, but unaided. Against a clear vacancy, on 05.11.1993 the petitioner was appointed as a Teacher by the respondent No. 6-Society in the respondent No. 7-Institution. Since his appointment, the petitioner has been continuing to work as Teacher in the said institution. The Management had applied for bringing the respondent No. 7-Institution under the grant-in-aid list of the State Government. In response thereto, on 01.01.1996, the respondent No. 7-institution was brought under the grant-in-aid with certain

conditions."

3. It is not disputed that the name of the petitioner found place in the list of employees which was sent by the institution to the Government at the time of filing the application for being included under the grant-in-aid list. By the order dated 01.01.1996 passed by the State Government, the institution was brought under the grant-in-aid list, but appointment of only six teachers was included for the grant and the name of the petitioner was excluded for the reason that his appointment was made without following the reservation policy. The petitioner kept contesting the matter, and the management also supported his case. Representations were made to the State Government for including the name of the petitioner for the purposes of payment of salary under the grant of the State Government. In pursuance thereof, on 08.07.2008, the State required the institution to furnish an undertaking that future appointments will be filled up by candidates belonging to the Scheduled Caste. Such undertaking was given by the institution, yet the case of the petitioner was not included in the list for being given the benefit under the grant-in-aid policy. Then by order dated 12.01.2009 passed by the Deputy Director, the approval of the appointment of the petitioner was not granted, on the ground that after the Government Order dated 01.06.1992, there was no power for relaxation of appointments made outside the reservation policy. Challenging the said order, the petitioner filed an appeal before the Director of Public Instruction (Secondary Education) and the Appellate Authority Bangalore, and by order dated 27.01.2012, the Appellate Authority dismissed the appeal. Aggrieved by the said order, this writ petition has been filed. A further prayer has been made for a direction in the nature of mandamus for granting the approval of the appointment of the petitioner with grant-in-aid along with other employees of the institution, who were brought under the purview of grant-in-aid, in pursuance of the order dated 01.01.1996 passed by the State.

4. I have heard Sri M.P. Srikanth, learned Counsel for the petitioner as well as Sri Y.H. Vijayakumar, learned AGA for the State-respondents No. 1 to 5 and Sri Rajashekar K., learned Counsel for respondents No. 6 and 7-Society and the institution in question.

5. The submission of the learned Counsel for the petitioner is that the appointment of the petitioner having been made prior to the institution having been brought under the grant-in-aid list, the non-inclusion of the petitioner cannot be justified, especially, in view of clause-9 of the order dated 01.01.1996, by which the institution was brought under the grant-in-aid. It is submitted that under clause-9 of the said order, it was clearly provided that if the reservation Rules had not been complied with by the institution, then until the ratio of Scheduled Caste and Scheduled Tribe candidates (as per the reservation policy) was fulfilled, the vacancies arising in future would be treated as backlog vacancies and should be filled up by candidates belonging to the said categories.

6. Learned Counsel for the petitioner thus contends that disapproval of the name

of the petitioner for being brought under the grant-in-aid list was, thus, wholly unjustified, because if there was any imbalance created in the reservation policy, the same could be made good in future, as provided in clause-9 of the order dated 01.01.1996.

7. On the other hand, Sri Y.H. Vijayakumar, learned AGA for the State has submitted that by Government Order dated 01.06.1992, for unaided institutions, the irregularities in the reservation policy were condoned and since there was no power for such condonation after 01.06.1992, the approval to the appointment of the petitioner, which was made against the reservation policy, could not be granted.

8. Sri K. Rajashekar, learned Counsel appearing for respondents No. 6 and 7 has supported the case of the petitioner.

9. Having heard the learned Counsel for the parties and considering the facts and circumstances of this case, I am of the opinion that the order refusing to include the name of the petitioner in the list for grant-in-aid of the State Government, cannot be justified in law. The appointment of the petitioner was made much prior to the institution having been brought under the grant-in-aid list, as admittedly, the petitioner was appointed in 1993 and the institution was brought under the grant-in-aid on 01.01.1996. It is not disputed by the parties that the reservation policy of the State Government is not required to be followed in unaided institutions. Clause-9 of order dated 01.01.1996 clearly provided that if there was any imbalance in following the reservation policy of the State Government, the same could be corrected by filling up the future vacancies from amongst the Scheduled Caste and Scheduled Tribe candidates. The English translation of clause-9 of the order dated 01.01.1996 is as follows:

"9. The Rules of appointments and reservation Rules have to be compulsorily followed. Until the ratio of Schedule Caste, Schedule Tribe candidates is adjusted future vacancies are to be treated as backlog vacancies and should be filled up by the candidates belonging to the Schedule Caste, Schedule Tribes. If the roster policy is violated, the grant-in-aid of such Institution will be cancelled."

10. Sri Y.H. Vijayakumar, learned AGA appearing for the State-respondents submitted that on a complete reading of the Government Order dated 01.01.1996, it could be concluded that all vacancies which arose in the institution after 01.01.1996 would have to be mandatorily treated as backlog vacancies pertaining to Scheduled Caste and Scheduled Tribe and shall be filled up by the candidates belonging to such categories, till such time that the total number of appointees belonging to Scheduled Castes and Scheduled Tribes in relation to the total number of appointees comes at par with the percentage of reservation statutorily earmarked for the said categories.

11. Such being the position, it is clear that while granting approval to the institution for being brought under grant-in-aid, it was nowhere provided that the approval would be granted to only such teachers and other employees who were

appointed as per the reservation policy. On the other hand, a complete reading of the Government Order dated 01.01.1996, along with clause-9 of the said order, would clearly indicate that if there was any imbalance in following the reservation policy, then the future vacancies would be treated as backlog vacancies and were to be filled up only from amongst the candidates belonging to Scheduled Castes and Scheduled Tribes. It was also provided that if the same was not done, the grant-in-aid of the institution would be cancelled.

12. As regards the submission of learned Counsel for the State-respondents that after 01.06.1992 there was no power with the State Government to condone the follies regarding the compliance of the reservation policy is concerned, it may only be said that by the Government Order dated 01.06.1992, the appointments made against the reservation policy prior to the said date were automatically condoned. The same would not mean that future appointments made in unaided institutions which were against the reservation policy but prior to being brought under grant-in-aid, could not be condoned. By the inclusion of the clause-9 (while granting the approval to the institution by order dated 01.01.1996) it would be clear that appointments already made without following the reservation policy would stand condoned, provided the future vacancies were treated as backlog vacancies and filled up from amongst the candidates belonging to the Scheduled Castes and Scheduled Tribes.

13. It is not disputed that the petitioner was appointed much prior to the institution having been brought under the grant-in-aid scheme of the Government and when by clause-9 of the said order dated 01.01.1996 itself it was provided that in case of non-compliance of the reservation policy, future vacancies of the institution would be treated as backlog vacancies meant to be filled up from amongst the Scheduled Castes and Scheduled Tribes, I am of the opinion that the orders dated 12.01.2009 and 27.01.2012 passed by the respondents No. 4 and 3 respectively deserve to be quashed and the petitioner would be entitled to be included amongst the teachers brought under the grant-in-aid list by order dated 01.01.1996.

14. Learned Counsel for the petitioner has relied on the decision of this Court dated 30.10.2001 passed in W.P. Nos. 20635-636/1999, wherein also similar question was involved, and this Court, after considering the condition imposed with regard to the reservation policy for future vacancies (as is laid down in the present case by clause-9 of the order dated 01.01.1996), allowed the writ petitions and directed the name of the petitioners therein to be included under the grant-in-aid list. On a perusal of the said judgment, I am of the opinion that though the facts of the aforesaid case may be slightly different but the ratio of the said judgment would apply to the facts of this case.

15. For the foregoing reasons, this writ petition stands allowed. The order dated 27.01.2012 passed by the respondent No. 3 is quashed. The State-respondents No. 1 to 5 are directed to include the name of the petitioner as one which was approved, along with other employees of the institution who were brought under

the purview of grant-in-aid, in pursuance of the order dated 01.01.1996 passed by the respondent No. 1.

16. It is however, provided that insofar as future vacancies are concerned, the respondent No. 7-institution shall follow the reservation policy and if there is any violation of the same, the State authorities shall be at liberty to take suitable action in accordance with law.