
(2007) 08 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 9121 of 2007

Chinnappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 2 KarLJ 588

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : N.S. Deshpande, for the Appellant; S.Z.A. Khureshi, A.G.A. for Respondents 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a person who had been initially appointed as an "Assistant Teacher" in English subject and who had later got the benefit of aided salary provided by the State.

2. It appears subsequently an endorsement was issued to the management and to the knowledge of the petitioner that the aid will be stopped as it was found that the petitioner did not have the commensurate qualification, namely, the person who is appointed as Assistant Teacher in English subject was required to have studied English as an optional subject in the Degree examination.

3. While admittedly the petitioner did not have this qualification, it appears to claim the benefit of another circular which indirectly relaxes the qualification in favour of persons who had Post-graduate qualification in English subject, the petitioner had made efforts to acquire the Post-graduate Degree in English and even while the process was on, the respondents having stopped the aided salary, the petitioner is aggrieved by such an order dated 21-4-2007 (copy at Annexure-J) and has approached this Court seeking for quashing of this order.

4. Submission of Sri Deshpande, learned Counsel for the petitioner is that while

it is true that the petitioner did not have the requisite qualification of holding a Degree in English as an optional subject, the petitioner had made an earnest attempt to acquire Post-graduate Degree in English even while continuing in his job; that he has undergone one year course of study and he is likely to qualify himself in about a year's time and even while the process is on, it was not necessary for the respondents to have become active to stop aided salary in favour of the petitioner.

5. In this regard, learned Counsel for the petitioner places reliance on the Government Circular No. ED 130 NEP 2005, Bangalore, dated 5-8-2005 which enables an erring management to rectify the defects, if any, within a period of three years and three years period not having expired from the date of pointing out the defect i.e., one of appointing a person without commensurate qualification to the post of Assistant Teacher, the action on the part of the respondents is premature; that such a drastic action could have been taken only after the expiry of three years period from the date on which the authorities pointed out the defect, namely, appointing a person without commensurate qualification as an Assistant Teacher in English subject.

6. While admittedly the petitioner did not possess the qualification whether at the time of his appointment or approval or even as of now, the reliance placed on the Government Circular No. ED 130 NEP 2005, Bangalore, dated 5-8-2005, in my understanding, is not one which can rescue a person like the petitioner from the present situation.

7. The circular can only be understood as one enabling the management to rectify any defects in any procedural aspects and not one which should be understood as one enabling the management to appoint the persons without commensurate qualification and thereafter allow period of three years to enable such unqualified person to acquire the qualification.

8. Such course of action can never be permitted nor the circular can be understood to mean like this as in such an event, the circular becomes clearly violative of Articles 14 and 16 of the Constitution of India as it is the duty of the State to accord equal opportunity to all citizens and as minimum qualification for appointment to a post is prescribed, there is no question of allowing an element of discretion in private management to appoint ineligible persons and thereafter permit them to acquire necessary qualification within a period of three years.

9. Any understanding or interpretation to be placed on the statutory provision or any circular like the one relied upon by the petitioner can only be if it conforms to the statutory requirements. Interpretation which can render the circular unconstitutional cannot be resorted to.

10. It is for this reason, I am unable to interfere with the order passed by the respondent 1-State in withholding the aided salary to the petitioner.

11. It is open to the respondent 5 to continue if it so chooses to have the

services of the petitioner, but the respondent-State cannot be compelled to extend aid in respect of salary to be paid to the petitioner who is not a qualified person as of now.

It is open to the petitioner to avail of any other remedies that are available in law.

12. Reserving such liberty, this writ petition is dismissed.