

(2006) 02 KAR CK 0064

In the Karnataka High Court

Case No : Writ Petition No's. 21169 to 21171, 21173, 21174, 21175, 24153, 24802, 32607 and 37697 of 2003

D. Shivaramu

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 22-02-2006

Acts Referred:

Karnataka State Civil Services (Unfilled vacancies reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes) (Special Recruitment) Rules, 2001 — Rule 2 (1) (d)

Citation : (2006) 2 KarLJ 370

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

Bench : Single Bench

Advocate : J.M. Anil Kumar, for the Appellant; L.K. Srinivasamurthy, A.G.A. for Respondent-1, B.J. Somayaji, for Respondent-2 in W.P. No. 37697 of 2003, K.H. Jagdish, for Respondent-2 in W.P. No. 32607 of 2003 and H. Malatesh, for Respondent-2 in W.P. 21169 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioners are aggrieved by the action of the respondents, particularly, the Chief Executive Officers of the respective Zilla Panchayats, in inviting applications from eligible persons for filling up posts of Secretary, Grade II of respective Gram Panchayats, as the posts available against the backlog vacancies.

2. Petitioners are working as bill collectors and clerks and their promotional avenue takes them to this post, if they are selected. However, in terms of the Government notification/guideline issued in the year 1998, filling up of such posts was sought to be regulated by 70% by way of direct recruitment and 30% of post are earmarked for in service candidates by way of promotion.

3. It appears that in the meanwhile, the Karnataka State Civil Services (Unfilled vacancies reserved for the persons belonging to the Scheduled Castes and the

Scheduled Tribes) (Special Recruitment) Rules, 2001 (for short, "the Rules"), a copy of which is produced at Annexure-D to W.P. No. 37697 of 2003, have also been brought into force, which provides for carry forward and filling up of unfilled reserved vacancies,

4. It is pursuant to the rules and for giving effect to these rules, it appears the respondents and the Chief Executive Officers of the Zilla Panchayats have notified the posts to be filled up and one such notification being available at Annexure-C to W.P. No. 37697 of 2003,

5. The grievance of the petitioners, as submitted by Sri J.M. Anil Kumar, is that no recruitment had taken place at all to the posts hitherto; that no person by way of direct recruitment had been appointed to the post either after 1998 or after 2001 and if no posts had been filled up by direct recruitment at all, the question of any posts remaining vacant by not filling up from amongst such direct recruits does not arise and there will be no backlog vacancy at all and if there is no backlog vacancy, the present notification earmarking good number of posts to be exclusively filled up by candidates belonging to Scheduled Caste/ Scheduled Tribe as backlog vacancies is clearly not tenable; that it can affect the promotional opportunities of persons like the petitioners; that it can block their opportunities and as the notification is not supported by law, it should be quashed.

6. It is also the submission of learned Counsel for the petitioners that the present exercise is not in consonance with the definition of unfilled vacancies as defined in Rule 2(l)(d) of the Rules, particularly Clause (ii) of this Rule, as no recruitment had taken place to fill up the post by direct recruitment and therefore the present exercise is contrary to the very Rules, It is also the submission of learned Counsel for the petitioners that the apportionment between direct recruitment and promotion was put in place in the year 1998; that even amongst persons like the petitioners who could have been promoted, no promotions have taken place and the posts of Secretary had not been filled up either by promotions or by direct recruitment and in this situation, the question of earmarking some posts for the reserved category and by mere passage of time treating them as backlog vacancies is not proper.

7. Heard Sri Srinivasamurthy, learned Additional Government Advocate appearing for the respondent.

8. Non-filling up of the posts if is also a fact does not affect the reservation provided for. The manner in which filling of the posts having been indicated even in the 1998 Government notification/guidelines it is inevitable is that as and when the posts are sought to be filled up, reservation has to be worked out and that reservation has to be given effect to.

9. Assuming for arguments sake, the posts are being filled up only now to the extent of reservation, it necessarily has to be operated upon and it does not make much difference whether it is backlog or current vacancy, as only the

reserved number of posts are being filled up against the posts earmarked for the reserved categories. The petitioners are not persons who fit into these posts. The number of posts earmarked for persons like the petitioners-promoters is 30% and so long as that 30% of posts are available to be filled up by way of promotion, the petitioners cannot have any grievance.

10. No cause of action for the petitioner which requires to be examined in this writ petition at their instance. The action being not detriment to the petitioners, I do not find any merits in these writ petitions for quashing the publication inviting applications from eligible persons for filling up the reserved posts. However, it is observed that it is the bounden duty of the respondents to accord promotion to the in service candidates against the 30% quota earmarked for them from amongst the available/existing vacancies in the cadre of Secretary, Grade II if not earlier at least not later than the date on which the posts notified and sought to be filled up in terms of the publication inviting applications are sought to be filled up and the filling up of posts by way of promotion within the promotees quota cannot be delayed to a date later than the day when the backlog vacancies are sought to be filled up.

11. Except for this observation, these writ petitions are dismissed. Sri Srinivasamurthy, learned Additional Government Advocate is permitted to file his memo of appearance in eight weeks.