

**(2000) 07 KAR CK 0010**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 2653-2655 of 2000

D.C. Kurnal and Others

APPELLANT

Vs

Karnataka Public Service Commission and Others

RESPONDENT

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**Date of Decision :** 07-07-2000

**Acts Referred:**

Competitive Examination Rules — Rule 11

**Citation :** (2000) 3 KCCR 1994

**Hon'ble Judges :** R. Gururajan, J

**Bench :** Single Bench

**Advocate :** P.S. Rajagopal, for the Appellant; T. Narayanaswamy, for Respondent 1, Ramesh N.K. Additional Government Advocate for Respondent 2 and B.V. Nagarathna, for Respondents 3 and 4, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

R. Gururajan, J.—Petitioners in these petitions are seeking for the following reliefs-

(a) DECLARE that the selection of the Petitioners for Gazetted Probationers main examination 1998-99 as evidenced by Notification bearing No. E(1)22995-98-99-PSC dated 5.2.1999 (Under Annexure-F to the writ petitions) has become final and it shall not be disturbed by virtue of the order dated 16.12.1999 passed by the Division Bench of this Hon'ble Court in Writ Appeals Nos. 5807 of 1998 and connected cases and consequently QUASH Notification bearing No. E (1) 182/90-2000/PSC dated 12.1.2000 (under Annexure-L to the writ petition) by issue of an appropriate writ, order or direction and consequently direct the 1st Respondent to redo the select list for personality test pursuant to the Gazetted Probationers Group-A and Group-B posts (main) examination 1998-99.

### **2. Facts-**

The Karnataka Public Service Commission ("Commission" for short) issued a notification dated 9.3.1998 calling for applications from eligible candidates for

preliminary examination to recruit Group-A and B Officers (Gazetted Probationers) in the service of the State. Petitioners submitted applications in response to the notification. The said notification provided for rural weightage under the rules. Admission tickets were issued by the Commission for preliminary examination. Petitioners participated in the preliminary examination held by the Commission.

3. Petitions were filed before this Court challenging that part of the Rule providing for weightage of additional marks to the rural candidates. The said petition came to be allowed by this Court holding that the said rule as unenforceable in law. However, the Court ruled that notwithstanding the above declaration of law the appointment of persons already made on the basis of rural weightage and who are working on their posts will not be disturbed and their appointments will not be adversely affected because of the present judgment. After the judgment the Respondents published the list of those who were successful in the preliminary examination excluding the rural weightage. The State Government filed a writ appeal and the Division Bench granted an Interim Order to the effect that the order of the learned Single Judge is stayed "with the stipulation that Selection/Appointment shall be made subject to the decision of the Writ Appeal and the Appointing Authority before giving order of appointment to a candidate having rural weightage shall obtain an undertaking from the candidate that the appointment given shall be subject to the decision in the writ appeal and that the candidate shall have no right to the post in the event of the order of the learned Single Judge being upheld." After the interim order passed in writ appeal, the commission selected the candidates for main examination after providing the benefit of rural weightage for preliminary examination. Petitioners were declared to have come out successfully and to have been selected for the main examination. Petitioners thereafter, applied for main examination in terms of the endorsement.

4. The Division Bench in the meanwhile dismissed the Writ Appeals and in para 22 directed as under-

For the foregoing reasons, we do not see any merit in the appeal. The learned Single Judge was right in striking down the impugned Rules. We affirm the observations made by the learned Single Judge that the candidates who have already been appointed by giving "rural weightage" should not be disturbed and also the persons who have been appointed during the pendency of these appeals until now on the basis of rural weightage.

Thereafter, an application was filed seeking for modification and the following order was passed on 16.12.1999.

...We affirm the observations made by the learned Single Judge that the candidates who have already selected and appointed by giving "rural weightage" should not be disturbed, and also the persons appointed or selected during the pendency of these appeals until now on the basis of Rural Weightage.

The Commission by notification dated 12.1.2000 published the results of the final examination and the Petitioners name did not find a place in the said notification. It is in these circumstances, Petitioners are before this Court seeking for the prayers as mentioned earlier.

5. Respondents 3 and 4 got themselves impleaded as a party in terms of the order of this Court dated 14.3.2000. Respondents have filed a detailed counter. The Commission has also filed a detailed counter along with two orders of this Court dated 4.12.1998 and 2.2.1999. The Commission has stated that the list published on 4.12.1998 with rural weightage has lost its legal existence in view of the order made in WA No. 5807 of 1998. They have stated that two lists were prepared one with rural weightage and another without rural weightage in terms of an order dated 2.2.1999. Now that the appeals have been dismissed by this Court and the list with rural weightage lost its significance. The commission says that what is saved is only final selection and appointment of the persons during the pendency of the appeals. The impleading Respondents have also filed a detailed counter. They say that the Judgment of the Division Bench is confirmed by the Supreme Court by dismissing the SLP filed by the State. Their contention also is that any list prepared pursuant to an interim order has no legal basis/sanction and it cannot stand after the dismissal of the main writ appeal. They contend that there is no necessity to redo the selection list for personality test for interview or to restrain the first and second defendants from taking any further proceedings pursuant to the notification dated 12.1.2000.

6. I heard the Learned Counsel Sri P.S. Rajagopal, appearing for the Petitioners, Smt. B.V. Nagarathna, Learned Counsel appearing for the contesting Respondents and Sri T. Narayanaswamy, Learned Counsel appearing for the Commission.

7. The admitted facts reveal that a rule providing for rural weightage had been struck down by this Court which has been upheld by the Division Bench and also by the Supreme Court. During the pendency of the writ appeal, the Division Bench passed an order dated 4.12.1998 providing for an undertaking from the candidates and also providing for the selection/appointment to be made subject to the decision of the appeal. Thereafter, another interim order was passed on 2.2.1999 providing for a permission to take the final examination by those candidates towards successful in the preliminary examination held by the Corporation. The final result is subject to the decision of Writ Appeal No. 5807 of 1998. The Division Bench also directed the commission to prepare two lists one with rural weightage and another without rural weightage in terms of the interim order of the Division Bench. The Government circular dated 22.12.1999 also provides for certain guidelines.

8. Mr. P.S. Rajagopal, Learned Counsel contends that the Petitioners were successful in preliminary examination and they were also permitted to participate in the final examination with the rural weightage and that they are successful with rural weightage. Without rural weightage they have to lose the battle of

examination. According to the Counsel in view of selection/appointment with rural weightage and in terms of the judgment no disturbance can take place in respect of these Petitioners. He argues that the word "Select" would include the selection for main examination with rural weightage in view of saving by this Court. He wants a wide interpretation to be given to the word select on the facts of this case.

9. Per contra, both Mrs. Nagarathna and T. Narayanaswamy, appearing for the Respondents contend that the word "Select" has to be understood in the context of the rules and the materials on record. If the Petitioner is provided the benefit of saving of selection/appointment even to the main examination in terms of the list as per the interim order according to the Respondents Counsel a new lease of life is granted to a dead rule confirmed by this Court.

10. After giving my serious thought to the rival contentions I am of the view that the Respondents Counsel are right in their stand in the matter. Selection/appointment in service jurisprudence has its own connotations. The Karnataka Recruitment Gazetted Probationers by appointment by Competitive Examination Rules provide for an application holding of competitive examination, age limit, attempts, academic qualifications, reservation, competitive examination etc., Rule 11 of the rules provide for a list of candidates being prepared for suitability for appointment. Though the word select is not found in Rule 11, a reasonable interpretation would include selection under 11 of the Rules. In the case on hand, admittedly, the Petitioners were provided a concession of rural weightage in terms of the Interim Orders of this Court. Two sets of lists were prepared one with rural weightage and one without rural weightage were published in terms of an Interim Order dated 2.2.1999. The Interim order dated 2.2.1999 categorically states that both the lists prepared shall be subject to the result of the Writ Appeal 5807 of 1998. The preparation of two lists is only an interim measure to avoid any administrative difficulties during the pendency of the writ appeal and those lists were subject to the final result of Writ Appeal 5807 of 1998. Admittedly, Writ Appeal 5807 of 1998 is dismissed, which again is confirmed by the Supreme Court. Therefore, Petitioners in my opinion cannot take advantage of the list with rural weightage to contend that they are entitled for announcement of their result pursuant to their taking examination in the main examination on the basis of rural weightage list prepared in view of an interim order. The Petitioners were successful in the main examination only with rural weightage. When the very rural weightage rule is held to be unsustainable in law, Courts cannot pump blood or inject life into a dead rule, which rule is declared to be a dead rule by this Court. The submission of the Petitioners in these cases in my opinion is to give a further lease of life to a rule in an indirect manner even after its striking down by this Court. Courts cannot permit any lease of life in respect of a list with rural weightage prepared in terms of an Interim Order which rule has been held to be unsustainable in law by final order.

11. In these circumstances, I am clearly of the view that the commission is right

in saying that the list published with rural weightage has lost its legal existence in view of the dismissal of the writ appeal. It is well accepted principle of law that any interim order is always subject to the final result. When the very writ appeal has been dismissed, Petitioners cannot derive any benefit of a list prepared out of an interim order. It is well settled that interim order get itself merged with the final order and therefore no relief can be granted to the Petitioners on the facts of this case.

12. Petitioner's Counsel however, argued that the saving of selection/appointment protects them in the case on hand. The word "select" has to be understood in the context in which it is made. Selection/appointment involve the same/similar process in the matter of employment. There may be cases of selection for appointment and there may be appointment by way of selection. The term "select" cannot be split into for various/different purposes as contended by the Petitioners. The Petitioner's request for a "declaration at Annexure-F has become final and the same cannot be disturbed by the judgment of this Court" cannot be accepted in the light of the dismissal of writ appeals confirmed in SLP. Petitioner on the facts of this case cannot derive any assistance from the saving clause. Petitioner's Counsel argues that the saving of Selection/appointment protects them in this case. There cannot be any hair split selection as contended by the Petitioners in the matter of selection/appointment, etc. In the light of the dismissal of the writ appeal and SLP; the Petitioners cannot derive any benefit for a saving clause in the judgment of this Court.

13. In these circumstances, I am of the view that the Petitioners request for a declaration that Annexure "F" has become final and the same cannot be disturbed by the judgment of this Court cannot be granted on the facts of this case. The judgment of this Court is final and binding on parties and the Petitioners cannot seek for a direction to redo the select list towards personality test as sought for in this petition after dismissal of writ appeal.

14. The Respondents Learned Counsel also placed before me a judgment of this Court in WP 43449 of 1999. This Court in the said case ruled that no writ petition can be filed seeking a direction to the authority to repeat an illegality on the ground of discrimination. In another batch of petitions in WP Nos. 286-288 of 2000, this Court after noticing the judgment of the Division Bench in identical circumstances ruled that the benefit is applicable only in respect of a final list. Looking from any angle, no relief could be granted to the Petitioners in these cases and any relief if granted would be running counter to the judgment of this Court.

15. In the result, I reject all the contentions urged for the Petitioners. The writ petition is dismissed.

Parties are to bear their respective costs.