

(2011) 09 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 20868 of 2010 (S-KAT)

Dr. B.L. Sujatha

APPELLANT

Vs

The State of Karnataka and Dr M Dakshayani

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Citation : (2012) 5 KarLJ 599 : (2012) 3 KarLJ 334

Hon'ble Judges : K.L. Manjunath, J;H.S. Kempanna, J

Bench : Division Bench

**Advocate : S.V. Narasimhah for Jayanth Pattanshetti Assts, for the Appellant;
Revathi Adinath Narde, HCGP for R1 and Sri Ravivarma Kumar, for B.B. Bajentri
for R2, for the Respondent**

Final Decision : Allowed

Judgement

Manjunath J.

1. The legality and correctness of the order passed by the Karnataka Administrative Tribunal, Bangalore in Application No. 8926/02 passed on 10th June 2010 is called in question by the petitioner.

2. The aforesaid application was filed by the 2nd Respondent herein challenging the promotion given to the petitioner as Assistant Professor in the Department of Ophthalmology attached to Bangalore Medical College as per Annexure-A4 dt.6. (sic).2001 on the ground that 2nd Respondent is senior to the petitioner in the cadre of Lecturer and she was absorbed as a Lecturer w.e.f, 10.11.1999 and that the petitioner herein on acquiring the post graduation degree in 2001 was absorbed as a lecturer w.e.f. 26.5.2001 and within one month thereafter she has been promoted to the post of Assistant Professor without considering the case of her for promotion. The Tribunal has quashed the order of promotion given to the petitioner on the ground that she had not fulfilled the eligibility criteria to get promotion to the post of Assistant Professor and further directed the Government to consider the case of the 2nd Respondent for promotion to the post of Assistant

Professor in accordance with law from the date she completed a minimum period of 3 years as a lecturer and also to consider further consequential promotion. This order is called in question in this petition.

3. Before advertng to the arguments advanced by the learned counsel for the parties, it would be appropriate for us to refer to the facts of this case.

4. The 2nd Respondent was appointed as an Assistant Surgeon on 11.12.1967 and she completed her M.S. Degree in Ophthalmology and thereafter she was deputed to work as a lecturer in the Govt. Medical College, Bangalore and she was absorbed as a lecturer in Ophthalmology w.e.f. 10.11.1999 as per Annexure-A2. In other words she has been working as a lecturer w.e.f. 10.11.1999.

5. The petitioner herein was appointed as an Asst Surgeon in the month of September 1991 by the Health and Family Welfare Department. She was immediately posted to work on deputation to work as a lecturer in place of one Dr. Shivakumarswamy vide notification dt. 10.9.1991 at Minto Hospital attached to Bangalore Medical College. When she was posted to work as a lecturer in place of Dr. Shiv kumarswamy she had acquired graduation in MBBS, but had not possessed any Post graduation qualification- Again by notification dt-29.5.1992 she was promoted to work as a lecturer in Bangalore Medical College, Bangalore without seeking any right for absorption or to consider her seniority for the purpose of promotion. Subsequently she was permitted to pursue her Post-Graduation in M.S. Ophthalmology on 21.3.2001. In the meanwhile as per the Govt. order dt.30th October 1999 and 10.11.1999 she was permitted to work as lecturer and that she would be appointed as a lecturer in Ophthalmology on acquiring Post-graduation degree. Accordingly the petitioner as well as the 2nd Respondent were working as lecturers in Ophthalmology in Bangalore Medical College. Subsequently Government Medical College has been converted into an autonomous body w.e.f. 14.1.2007 when the matter was pending before the Karnataka Administrative Tribunal. With effect from 26.8.2008 the persons who were working in Bangalore Medical College as Government servants were absorbed as the employees of the autonomous body. Accordingly, the petitioner as well as the 2nd Respondent are now ceased to be Government servants and are absorbed by the autonomous body.

6. Within a month from the date of appointment of the petitioner as a regular lecturer on acquiring Boat Graduation she was promoted to the post of Assistant Professor in Ophthalmology. The 2nd Respondent contending that the promotion given to the petitioner is illegal and that such promotion should have been given to her because she has been working as a lecturer in the Department of Ophthalmology w.e.f. 4.7.1999 having acquired M.S. degree and that the petitioner who has acquired M.S. degree in the month of 2001 could not have been given promotion to the post of Assistant Professor. Challenging the legality and correctness of the promotion given to the petitioner, the 2nd Respondent filed an Application before the Karnataka Administrative Tribunal, Bangalore in Application No. 8926/ 02.

7. The petitioner contended that even though she had not acquired M.S. degree earlier to the 2nd Respondent since she has been working as a lecturer (sic) the Department of Ophthalmology w.e.f. 10.9.1991 she had the experience of a lecturer of more than 9 years and that the 2nd Respondent who was appointed as a lecture on 10.11.1999 could not have been considered for the post of promotion as the petitioner had more experience than the 2nd Respondent. Accordingly, the post of Assistant Professor has been given to the petitioner.

8. The Government also filed a statement of objection supporting the case of the petitioner. According to the Government even the petitioner had not acquired the Post-Graduation degree as she was working as an Assistant Surgeon in the Health Department of State of Karnataka she was posted on deputation to work as a lecturer in place of Dr. Shivakumarswamy from 10.9.1991 and since then she has been discharging her duties as a lecturer in Bangalore Medical College. Later she has also got a seat for Post-Graduation as an in-service candidate and subsequently an order was passed by the Government to make her as a permanent lecturer on obtaining a Post-Graduation degree. In the circumstances, it was contended by the Government that the promotion given to the petitioner considering her experience is justified. Therefore, the Government requested the Tribunal to reject the application.

9. During the pendency of the application, the petitioner who was Respondent-3 before the Tribunal raised a question of maintainability of the application before the Tribunal. According to the petitioner as the petitioner as well as the 2nd Respondent ceased to be the employees of the Karnataka State on account of their absorption by the autonomous body w.e.f. 36.8.2008, the Tribunal cannot consider the grievance of the 2nd Respondent and the application filed by her was not maintainable. Therefore, an application was filed to consider the jurisdiction of the KAT to go into the merits of the case. The Tribunal allowed the application by holding that in view of the absorption of the petitioner and the 2nd Respondent, the application filed by the 2nd Respondent was not maintainable. Aggrieved by the said order, the 2nd Respondent filed a Writ Petition before this court in W.P NO. 18195/ 09. A Co-ordinate Bench of this court on 21.10.2009 allowed the Writ Petition and set aside the order passed by the Tribunal holding that the Tribunal had jurisdiction to consider the grievance of the parties in spite of their absorption by the autonomous body subsequent to the filing of the application. Aggrieved by the order passed by the Co-ordinate Bench of this court, the petitioner took up the matter to the Hon. Supreme Court in SLP NO.36744/09 wherein their Lordships at the first instance directed the Tribunal to consider the case of the parties on merits and subsequently an order has been passed by the Hon. Supreme Court to agitate the said issue before that court since the Tribunal by that time had already allowed the application filed by the 2nd Respondent on merits.

10. Relying upon the Judgment of the Hon. Supreme Court the learned counsel Mr. S.V. Narasimhan appearing for the petitioner, at the first instance contends

that the Tribunal has committed an error in allowing the application as the petitioner as well as the Respondent-2 were ceased to be the Government servants w.e.f. 26.8.2008 and therefore the Tribunal should have rejected the application as not maintainable. According to him, if the 2nd Respondent has got any grievance in regard to the promotion given to the petitioner she has to file a Writ Petition and not an application. Therefore he requests the court to consider the maintainability of the application by that court in view of the specific direction issued by the Hon. Supreme Court while disposing of the Special Leave Petition. He further contends that the Tribunal has committed an error in holding that the petitioner did not possess requisite experience as a lecturer and further committed an error in allowing the application by setting aside the order of promotion given to the petitioner and in further directing the Government to consider the case of the 2nd Respondent. According to him even though the petitioner was not eligible to be appointed as a lecturer in Ophthalmology in view of the non acquisition of a Post Graduation degree since she has acquired the same at a later date and as she has discharged her duties as a lecturer on transfer from 10.9.1991 in place of Dr. Shivakumarswamy. The experience of the petitioner from 10.9.1991 as a lecturer was a relevant consideration for the Government to consider her case for promotion as against the case of the Respondent. According to him even though the 2nd Respondent was senior to the petitioner as the experience of the petitioner was more than the experience of the 2nd Respondent, the Tribunal without considering the Judgment of the Hon. Supreme Court reported in AIR 3000 SC 1580 in the case of A.K. Raghumani Singh and Others Vs. Gopal Chandra Nath and others has wrongly allowed the application of the 2nd Respondent on the ground facts involved in RAGHUMANI SINGH'S case and the facts involved in the present case are different. According to him, the Tribunal without considering the Recruitment Rules to the post of Assistant Professor or Lecturer and the Recruitment Rules to the post of Superintendent Engineer of the State of Manipur in one sentence the Tribunal has not followed the Judgment of the Supreme Court. According to him, the running following of the Judgment of the Supreme Court itself would be sufficient to set aside the order passed by the Tribunal. He further contends that the Government had power to post an Asst. Surgeon to work as a Lecturer in any Medical College. Accordingly she has worked as a lecturer and therefore he requests the court to set aside the order passed by the Tribunal.

11. The learned Government Advocate submits that the petitioner has worked as a lecturer in place of Dr. Shivakumarswamy from 10.9.1991 even though she had not possessed a Post Graduation degree. It is also the case of the Government that till she acquires a Post Graduation degree in Ophthalmology, the petitioner has worked as a lecturer in Bangalore Medical College. The Government considering her teaching experience as she has fulfilled the stability criteria for promotion, her case has been considered as against Respondent -2. In the circumstances, she requests the court to set aside the order passed by the Tribunal and to allow the Writ Petition filed by the petitioner.

12. Per contra, Mr. Raviverma Kumar, learned senior counsel appearing for the 2nd Respondent contends when the petitioner could not have been posted as a lecturer. With effect from 10.9.1991, any service rendered by her as a lecturer till she acquires Post Graduation degree in May 2001 could not be considered as an experience and as the 2nd Respondent is senior to the petitioner, the case of the 2nd Respondent was required to be considered and therefore he requests the court to dismiss the petition. According to him, the facts involved in the present case and the facts involved in RAGHUMANI SINGH's case are entirely different and therefore the Tribunal has not considered the Judgment relied upon by the petitioner. He further contends that the application filed by the 2nd Respondent before the Tribunal was maintainable and Tribunal had jurisdiction to try the case as the 2nd Respondent has questioned the legality and correctness of the promotion given to the petitioner by the Government when both of them were Government servants. According to him, merely because they were absorbed by an autonomous body later, cannot be a ground to hold Tribunal loses its jurisdiction. In the circumstances, he requests the court to dismiss the petition,

13. Having heard the counsel for the parties, we have to consider the following two points in this petition:

- 1) Whether the Tribunal had jurisdiction to try the case even though the parties were absorbed by an order of absorption during the pendency of the application?
- 2) Whether the experience of the petitioner worked as a lecturer without acquiring a Post Graduation degree could be considered for the promotion as Assistant Professor?

14. So far as the first point is concerned, admittedly when the Application was filed in the year 2002, the petitioner and respondent-2 were civil servants of the State of Karnataka. When the promotion was given to the petitioner as an Assistant Professor by the State of Karnataka, Bangalore Medical College was a Government Medical College. Therefore what was challenged by the petitioner is the promotion given by the State of Karnataka and 7 years later the Bangalore Medical has been given a status of an autonomous body and all the teaching and non-teaching staff of the Bangalore Medical College were given option for absorption. Accordingly, the petitioner and 2nd Respondent were absorbed w.e.f. 36.8.2008. We could have appreciated the arguments of Mr. Narasimhan, provided the Respondent-2 had challenged any action or an order passed by autonomous body. But what is challenged in this case is an order of promotion given to the petitioner in the year 2001 by the State of Karnataka and when the petition was filed, Tribunal alone had jurisdiction and that jurisdiction would continue till the disposal of the application. In the circumstances, point No. 1 is held against the petitioner. Accordingly, we hold the Tribunal had jurisdiction to entertain the application.

15. The next point is whether the promotion given to the petitioner by the State considering her experience as a lecturer worked on GOD in place of Dr.

Shivakumarswamy w.e.f 10.9.1991. To appreciate this contention, the Government has categorically stated that even though the petitioner had not possessed a Post Graduation degree, she was posted to work as a lecturer in place of Dr. Shivakumarswamy. If a lecturer has to be recruited directly, the eligibility criteria prescribed under the C & R Rules is only a degree in Medicine of any University and a preference would be given to a person who possess the qualification of a Post Graduation. Therefore, the Government Advocate contends that if a person had to be recruited directly as a lecturer, an ordinary MBBS degree would be sufficient But in a case of transfer from the cadre of Assistant Surgeon or Health Officers of Senior Grade-I or II one should possess a Post Graduation qualification in addition to a degree in Medicine in any University established. As the petitioner was working as an Assistant Surgeon, she was transferred to work as a lecturer in the Department of Ophthalmology in Bangalore Medical College. She has actually worked as a lecturer even though she had not possessed post-graduation qualification. From this it is clear that the petitioner as a Graduate in Medicine who was worked as an Assistant Surgeon in the State of Karnataka was transferred to Bangalore Medical Collage to work in the Department of Ophthalmology as a lecturer in place of Dr. Shivakumarswamy from 10.9.1991. She is continued to work as a lecturer till she was regularly appointed on acquiring a Post Graduation in the month of May 2001. In other words for more than 10 1/2 years she has worked as a lecturer. To get a promotion from the post of lecturer to the post of Assistant Professor the eligibility criteria is 50% by promotion by selection from the cadre of lecturer and 50% by direct recruitment

16. In the present case it is not a direct recruitment It is the case of a promotion from the post of lecturer to the post of Assistant Professor. The qualification prescribed for promotion is one shall be a holder of a degree in Medicine and shall also have Post Graduation qualification and should have teaching experience in Ophthalmology of not less than 3 year in a post of lecturer or Lecturer-cum-Registrar of higher post (emphasis is supplied by us).

17. Now the question would be whether the service rendered by the petitioner on account of transfer to work as a lecturer from 10.9.1991 can be taken into account to consider her case for promotion to the post of Assistant Professor.

18. As rightly pointed out by Mr. Ravivarma Kumar, the petitioner was not recruited as a lecturer directly. But she was working on transfer. But what be contends is that if she had been recruited directly MBBS degree which she had acquired could have been sufficient to work as a lecturer. But if one has to work as a lecturer on transfer from the post of Assistant Surgeon, a Post Graduation degree is a must Therefore any service rendered by the petitioner as a lecturer and transferred holding an ordinary graduation of Medicine is of no consequence and such teaching experience could not have been counted for the purpose of promotion.

19. Bar contra, Mr. Narasimhan relying on the Judgment of the Supreme Court in

the case of RAGHUMANI SINGH & OTHERS contends an experience acquired before acquiring a degree has to be considered for the purpose of promotion. Therefore, he requests the court to negative the contentions urged by Mr. Ravivarma Kumar.

20. We have perused the Judgment relied upon by Mr., Narasimhan. In para-15 of the Judgment it reads as hereunder-

15... the essential qualification for appointments were (a) Degree in Civil Engineering, and (b) two years" professional experience. The Court interpreted the language to mean that the two years professional experience need not entirely be experience gained after obtaining the Degree.

21. In the case of RAGHUMANI SINGH & OTHERS, Gopal Chandra had joined the service as a diploma holder without acquiring a graduation in Engineering. He had worked as an Engineer. Later he acquired the B.E. degree. It was a case for promotion to the post of Superintendent Engineer. In order to consider the eligibility criteria, a candidate shall have an experience of 6 years regular service in the grade. Gopal Chandra had worked as a Diploma Engineer without having any Graduation. Their Lordships considering his experience in the Department as a Diploma Holder held that the past service rendered by him has a eligibility criteria to consider him for the post of promotion.

22. Now in the instant case also the petitioner who was an ordinary MBBS degree holder on transfer has worked as a lecturer for more than 9 1/2 years. The experience required for promotion is only 3 years and admittedly she has not worked as a lecturer after acquiring the Post Graduation. But she has worked as a Lecturer as ordinary Graduate of Medicine. But the facts involved in the present case and facts involved in RAGHUMANI SINGH's case are similar and identical. The Tribunal without considering the background of the present case and the background of RAGHUMANI SINGH's case has brushed aside the Judgment cited by the petitioner on the ground that the Recruitment Rules in the present case and the Recruitment Rules in the aforesaid decisions are entirely different. But as a matter of fact, the Tribunal has not looked into the Recruitment Rules in RAGHUMANI SINGH's case. Therefore, we are of the view, the Tribunal has committed a serious error in not following the decision of the Hon. Supreme Court.

23. In view of the Judgment of the Hon. Supreme Court in RAGHUMANI SINGH's case, we have to set aside the order passed by the Tribunal.

24. In the result, the Writ Petition is allowed. Rule made absolute. The order passed by the Karnataka Administrative Tribunal in Application No. 8926/02 passed on 10th June 2010 is hereby quashed.