

(2014) 03 KAR CK 0189

In the Karnataka High Court

Case No : Writ Petition No. 7981/2014 (S-RES)

Dr. H. Hanumanthappa, M.B.B.S., D.V.D., M.D., (Dermatology) APPELLANT

Vs

The State of Karnataka, The Selection Committee, Mysore
Medical College and Research Institute and Dr. B.
Krishnamurthy, Professor and Head of the Department of
Pediatrics, Mysore Medical College and Research Institute RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Citation : (2014) 03 KAR CK 0189

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : H. Subramanya Jois, Senior Advocate for Sri K.C. Shantakumar, Advocate for the Appellant; M.S. Prathima, H.C.G.P. for R.1, Sri T. Seshagiri Rao, Advocate for R.2 and Sri Naveen Chandrashekhar, Advocate for R.3, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

A.N. Venugopala Gowda, J.—Challenge in this writ petition is to the legality and correctness of a Notification dated 10.02.2011, as at Annexure-C issued by the 1st respondent and to the statement showing the marks obtained in the interview for the selection of the post of "Director and Dean" of Mysore Medical College and Research Institute, Mysore-570001 (for short, "M.M.C. & R.I."), dated 23.01.2014, vide Annexure-E and for a mandamus as against respondent Nos. 1 and 2 to fill the post of "Director and Dean" of MMC&RI, by promotion of the petitioner on the basis of the seniority-cum-merit and for grant of consequential relief"s.

2. To fill the post of "Director and Dean" of "MMC&RI" a notification was issued on 31.07.2013 calling for application from the eligible candidates. In response thereto, the petitioner, respondent No. 3 and two others applied to the said post, which is required to be filled up as per the provisions of the Cadre and

Recruitment Rules and Byelaws of the Institute. The selection committee having conducted the interview and completed the process of selection on 23.01.2014, the petitioner was awarded 7.62 marks and respondent No. 3 was awarded 8.62 marks. Other two candidates were awarded lesser marks than the petitioner and the respondent No. 3. Selection committee having recommended the name of the respondent No. 3 to the post of "Director and Dean" of the Institute, respondent No. 3 was appointed as the "Director and Dean" of the Institute as per the notification dated 10.02.2014 vide Annexure-C issued by the 1st respondent.

3. Sri. H. Subramanya Jois, learned senior advocate by taking me through the averments made in the writ petition reiterated the grounds raised in the writ petition. Per contra, Smt. Prathima, learned H.C.G.P., Sriyuths T. Seshagiri Rao and Naveen Chandrashekar, learned advocates appearing for the respondents took me through the counters filed to the writ petition and contended that the selection and appointment of respondent No. 3 having been made in accordance with law, interference with Annexures-C and E to the writ petition is not called for in exercise of the power of judicial review by this Court.

4. Even though, learned advocates appearing for the parties adverted to the respective stands taken by them in the pleadings, I deem it proper to decide this writ petition on a short legal ground, that the respondent No. 1 having not been vested with the power of appointment, is unjustified in issuing the Notification dated 10.02.2014 as at Annexure-C.

5. Mysore Medical College and Research Institute, Mysore, Rules and Regulations, 2013, makes it clear that the appointing authority in respect of the first Dean/Director of the Institute is Government of Karnataka and in respect of subsequent Dean/Director, Governing Council of the Institute. Regulation 18(3) makes it clear that the Governing Council shall appoint Dean/Director through a selection process and such appointment shall be on the basis of the recommendation of the selection committee in accordance with the provisions of Bye-laws. Even the Bye-laws-2013 of the Institute, provides procedure for the constitution of selection committee for the recruitment; method of recruitment; procedure for recruitment; method of selection etc. In view of the provisions contained in the Rules and Regulations-2013 of the Institute particularly Rule 2(c) (2) and Rule 18(3), the respondent No. 1 is not the competent authority to issue the order of appointment pursuant to the selection made by the selection committee. Respondent No. 3, thus, having been appointed by respondent No. 1, which has no authority, the impugned notification vide Annexure-C being illegal, is liable to be quashed.

6. In the circumstances, it is unnecessary to record findings on the other contentions raised by the learned advocates appearing for the respective parties. It is for the Governing Council of the Institute to take into consideration the selection process and then act in the matter in accordance with law.

In the result, the writ petition is allowed in part. Impugned notification - Annexure-C is quashed. The Governing Council of Mysore Medical College and Research Institute, Mysore, is directed to consider the proceedings/ recommendation of the selection committee in the matter of selection conducted to the post of Dean/Director of the Institute and pass orders.

Till the Governing Council of the Institute takes the decision, the respondent No. 3 is entitled to function as Dean-cum-Director of the Institution. The Governing Council shall take decision in the matter expeditiously and before 30.04.2014.

If the petitioner or the respondent No. 3 are aggrieved by the decision of the Governing Council, it is open to them to question the same in accordance with law.

All other contentions raised by the petitioner and respondent No. 3 are left open.

No costs.