

(2000) 07 KAR CK 0104

In the Karnataka High Court

Case No : Writ Petition No's. 6816 and 6817 of 2000

Dr. Mahesh B.P. and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-07-2000

Acts Referred:

Karnataka Civil Services (Direct Recruitment by Selection) Rules, 1973 — Rule 7
Karnataka Public Service Commission (Functions) Rules, 1973 — Rule 5

Citation : (2000) ILR (Kar) 3055 : (2000) 6 KarLJ 116 : (2000) 4 KCCR 119 SN

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Sri B.B. Bajenshari, for the Appellant; Sri M.B. Prabhakar, High Court Govt. Pleader and Sri T. Narayanaswamy, for the Respondent

Judgement

Chandrashekaraiah, J.—The Karnataka Public Service Commission (hereinafter referred to as "KPSC" for short) published a notification dated 30-4-1999 calling for applications for the purpose of selection to the post of Insurance Medical Officers in the Department of Employees State Insurance. Pursuant to the said notification the petitioners and others made applications for selection. The KPSC after scrutinising all the applications with reference to the rules relating to reservation of certain number of posts, issued notice to the eligible candidates to appear before it for selection. Accordingly, the petitioner and others appeared before the KPSC. The KPSC taking into consideration the marks secured in the interview and in the degree examination with rural weightage if any, selected and published the list of candidates on 1-10-1999 as required under the rules. Thereafter, KPSC issued a press note which reads as follows:

"The interviews for the following posts will be held from 21-2-2000 to 28-2-2000 in the office of the Karnataka Public Service Commission, "Park House", Bangalore-560 001.

Lecturers in Telecommunication Engineering in the Department of Technical Education, Medical Officers in the Directorate of Employees State Insurance

(Medical Service), Assistant Engineers in the Department of Karnataka Housing Board, Junior Engineers in the Department of Drugs Control and Librarians in the Department of Public Library. The interview notices have already been sent to eligible candidates.

Sd/- Secretary, KPSC, Bangalore".

This note has made the petitioners to come before this Court seeking for quashing of the press note issued by the KPSC and also for a direction to implement to select list which was published on 1-10-1999.

2. The learned Counsel for the petitioners submits that the petitioners were selected to the post of Insurance Medical Officers in the Directorate of Employees State Insurance (Medical Service) as per the list published on 1-10-1999 and therefore, there is no need for the KPSC to again call for interview for selection to the posts in respect of which the petitioners and others have already been selected and further submits that since the select list has already been published on 1-10-1999, the KPSC, is bound to forward the said list to the State Government to issue orders of appointment to the selected candidates.

3. Sri Narayanaswamy, learned Counsel for respondent 4-KPSC submits that the petitioners were selected on the basis of the Rural Weightage added to their marks obtained in the qualifying examination as per the list dated 1-10-1999 and the said list is only provisional and therefore in view of the decision of the Division Bench of this Court in *State of Karnataka and Others v Basavaraj Nagoor and Others*, direction to the KPSC to forward the list to the State Government for the purpose of taking further steps on the select list published by the KPSC. It is nextly contended by Sri Narayanaswamy, learned Counsel for the KPSC that the direction issued in the circulars dated 22-12-1999 and 10-2-2000 (Annexure-F and G) is only to the Appointing Authority and therefore the said direction is not applicable to the KPSC since the KPSC is not the Appointing Authority.

4. In reply to this submission, the learned Government Pleader submits that though the clarification issued is to all the Appointing Authorities, the same should be followed even by the Selection Authorities, and therefore the KPSC cannot say that the said circulars are not binding on the KPSC.

5. In view of the rival contentions referred to above, the question that arises for consideration in these writ petitions is:-

"Whether the list published on 1-10-1999 selecting certain candidates to the post of Insurance Medical Officers is provisional or final?"

6. The learned Counsel for respondent 4 submits that as per the Government Order dated 4-11-1993, the KPSC is required to publish a provisional select list and accordingly the provisional list has been published on 1-10-1999 and this list cannot be treated as a final list. It is further submitted that any list published by KPSC is to be treated as provisional list till the list is forwarded to the State Government as required under the rules.

7. In order to consider the rival contentions, it is useful to refer to certain provisions providing for selection of candidates to civil posts.

8. Rule 5 of the Karnataka Public Service Commission (Functions) Rules, 1973 reads as follows.-

"5. Direct recruitment by selection,--(1) On receipt of requisition from an Appointing Authority for direct recruitment to any service by selection the Commission shall.-

(a) openly advertise by notification in the Karnataka Gazette and in such other manner, as it deems fit specifying the condition of eligibility, the nature of competition, the provisional number of vacancies to be filled, reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes and all other relevant particulars and invite applications, in such form and before such date and on payment of such fees, if any as may be specified by the Commission in the advertisement, from intending candidates who possess the required qualifications.

(b) Scrutinise the applications received and make selections in accordance with the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973".

9. Rule 7 of the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973 reads as follows.-

"7. List of selected candidates.--(1) The selecting authority shall on the basis of the aggregate of the percentage of the total marks secured in the qualifying examination as determined under Rule 5 and of the marks secured at the interview under Rule 6 and taking into consideration the orders in force relating to reservation of posts for Scheduled Castes, Scheduled Tribes, Backward Tribes and Other Backward Classes prepare in the order of merit a list of candidates eligible for appointment to the cadre or post and if the aggregate of the percentage of total marks secured in the qualifying examinations as determined under Rule 5 and of the marks secured at the interview under Rule 6 of two or more candidates in equal, the order of merit in respect of such candidates shall be fixed in accordance with Rule 5. The number of names of candidates to be included in such list shall be equal to the number of vacancies notified.

(2) The selecting authority shall in accordance with the provisions of sub-rule (1) also prepare an additional list of names of candidates not included in the list prepared under sub-rule (1) in which the number of candidates to be included shall, as far as possible, be ten per cent of the number of vacancies notified:

Provided that if the Appointing Authority so requires the number of candidates to be included in the list shall be such as may be specified by the Appointing Authority but not exceeding fifty per cent for the number of vacancies notified.

(3) The lists so prepared under sub-rules (1) and (2) shall be published in such manner as the State Government may direct and a copy thereof shall be sent to

the appropriate Appointing Authority".

Under sub-rule (2) of Rule 5 of the Karnataka Public Service Commission (Functions) Rules, 1973, the KPSC is required to publish a list of candidates selected under clause (b) of sub-rule (1) in the Karnataka Gazette and also on the notice board of the office of the KPSC and communicate the result to the candidates concerned. In the instant case, it is not disputed that the impugned list selecting the candidates has been published on the notice board of the office of the KPSC.

10. Rule 7 of the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973 provides for publication of list of candidates selected. Neither the Karnataka State Civil Services (Direct Recruitment) Rules, 1973 nor the Karnataka Public Service Commission (Functions) Rules, 1973 provide for publication of provisional list. The list dated 1-10-1999 though is called provisional select list, is a list published under Rule 7 of the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973 and Karnataka Public Service Commission (Functions) Rules, 1973. Therefore, it is a final list.

11. The notification dated 1-10-1999 has been issued with a following note.-

"The selection of all the candidates under the rural weightage benefit is subject to the final order of Writ Appeal No. 5807 of 1998 before the Hon'ble High Court".

The above note incorporated in the list published clearly shows that the list published is final for all purposes subject to the final order that may be passed in the writ appeal insofar as it relates to rural weightage referred to above.

12. Sri T. Narayanaswamy, learned Counsel for respondent 4 submits that the provisional list was published pursuant to the Government Order dated 4-11-1993 and therefore, according to him, the impugned list cannot be treated as a final list till the list is forwarded to the State Government as per the rules referred to above. In order to appreciate this contention it is just and necessary to see the object behind issuing the Government Order dated 4-11-1993. From the preamble of the Government Order, it is seen that the said Government order has been issued in order to verify whether the persons claiming to be appointed under the reserved category really belong to Scheduled Caste or Scheduled Tribe or Other Backward Classes. But for this verification, in my opinion, the list dated 1-10-1999 is a final list. There is no rule which provides that the persons claiming marks under rural weightage are required to be considered by any of the authorities constituted by any rules or by a Government Order. Therefore, in the absence of verification of candidates who are required to be selected with marks under rural weightage, the said Government Order has no application and therefore, even on this ground also the list notified on 1-10-1999 is to be treated as a final select list for all purposes.

13. This Court while considering similar case, in Writ Petitions 286 to 288 of

2000, dated 7-1-2000 has held as follows.-

"6. From the observations made by this Court, it is clear that the Division Bench has made no distinction between the provisions list or final select list. In the instant case, though the nomenclatures is provisional list, for all practical purposes, it is a final select list. The authorities cannot delete any name which is included in the provisional list, Only the circumstances under which the name of the candidate in the provisional list can be omitted is, if any person has got into the select list by giving false caste certificate, his name can be deleted; and such candidates will not be entitled to be appointed. All others in the list are entitled for appointment. Therefore, I am, unable to accept the submission made by the learned Counsel for the petitioners that the observation made by this Court in the writ appeal referred to above must be treated as applicable to final list and in this background, the impugned circular is liable to be quashed".

14. From the observation made above, it is clear that this Court has made no distinction between the provisional list or final select list. In the instant case, though the nomenclature of the list is "provisional list", for all practical purposes it is a final list. So the view taken by this Court in the writ petitions referred to above supports the view what I have taken above. Therefore, for all purposes, the list notified on 1-10-1999 is final select list of candidates except the candidates who are selected and included in the list in respect of the reserved posts.

15. In view of the finding recorded on the issue referred to above, the next point that arises for consideration is.-

"Whether the selection of the petitioners in the list dated 1-10-1999 is saved by the decision of this Court in Writ Appeal No. 5807 of 1998 and other connected matters?"

16. The Division Bench of this Court in its order dated 26-11-1999, has held as follows.-

"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 in Basavaraj Nagoor v State of Karnataka and Others, 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".

This order has been clarified by a subsequent order dated 16-12-1999 which reads as follows.-

"At para (22) of the judgment delivered by this Court on 26-11-1999, at line 5, in the place of "already been appointed" it has to be substituted as "already selected and appointed" and also at lines 6 and 7, in place of "who have been appointed," it has to be substituted as "appointed or selected" during the

pendency of these appeals".

17. Admittedly, the select list was published on 1-10-1999, that is, prior to the disposal of the writ appeal by the Division Bench. If that is so, in view of the order dated 16-12-1999 passed by the Division Bench, the selection of the petitioners by the KPSC is saved and the persons who have been appointed or selected during the pendency of the writ appeal shall not be disturbed.

18. Sri Narayanaswamy, learned Counsel submitted that the direction issued in the Circulars dated 22-12-1999 and 10-2-2000 issued by the State Government cannot be treated as a direction to the KPSC because the KPSC is not the Appointing Authority. It is true that the KPSC is not the Appointing Authority but it is an Authority constituted for the purpose of selection. Whether there is any such direction or not in the above said circulars it is the duty of the KPSC to forward the list to the State Government for the purpose of appointment. In the instant case, as held above, the list published by the KPSC on 1-10-1999 is a final list. If that is so, the only course open for the KPSC is to forward the same to the Government as required under the rules. Therefore, irrespective of the fact whether there is any such direction issued in the circular to the KPSC or not, it is just and necessary to direct the KPSC to forward the select list dated 1-10-1999 to the State Government to take further steps as required under the rules.

19. Accordingly, writ petitions are disposed of in the following terms.-

The 4th respondent-KPSC after verifying the caste certificates if any insofar as the reserved posts are concerned, is directed to forward the list dated 1-10-1999 (Annexure-C) to the State Government under Rule 7(3) of the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973, within 15 days after the completion of the process of verifying regarding candidates selected for the reserved posts.

The State Government after receiving the select list dated 1-10-1999 may take further steps to implement the said list.

Rule issued is made absolute.

No costs.