

(1982) 09 KAR CK 0025
In the Karnataka High Court
Case No : W.P. 14516/82

Dr. (Mrs.) Kamala B.S.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-09-1982

Acts Referred:

Karnataka Civil Services Rules, 1958 — Rule 62(1)

Citation : (1983) 1 KarLJ 109

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

This writ petition is disposed of at the stage of preliminary hearing after notice to respondents and after hearing counsel for the parties.

Petitioner Dr. B.S. Kamala is a holder of a degree in Medicine and Surgery and has been in the service of the State of Karnataka (1st respondent) in the Directorate of Health and Family Welfare services as a Medical Officer since 12.9.74 As on 1.1.76 in the cadre to which she belongs she was shown at SI. No. 1902. In response to the circular issued by the Director of Health and Family welfare services dated 25/8/81 she applied for a seat for post graduate degree course in Obstetrics and Gynaecology in the academic year 1981-82. She submitted her application through proper channel as directed. She was called for interview. She was not selected and deputed by the Government for higher studies while the 3rd respondent K.S. Radha who is junior to her found at SI No. 1944 in the gradation list of the department was selected and deputed for post graduate course to one of the seats available to the Government in its own colleges or in the private colleges offering post graduate degree course in Medicine and surgery.

It is relevant to notice that selection to post graduate diploma and degree courses is regulated by rules framed by the 1st respondent State Government in exercise of its power under Article 162 of the Constitution. For the academic year 1981-82 rules are framed by order No. HFW 68 MSF 81 dt 14.8.81 known as the Karnataka Medical Colleges (Selection for post Graduate courses) rules, 1981.

The said rules provide for eligibility both academic and domicile, it provides for distribution of seats, reserving seats, the constitution of a selection committee, the mode in which application may be made, the procedure for selection, publication of the list of selected candidates, admission of the candidates and how the vacancies among the selected candidates are to be filled up, verification of information furnished in the applications of certain categories of applicants and penalty for incorrect statements made in the applications or documents accompanying the applications.

Much of the controversy arising in this writ petition can be kept apart by referring to rule 4 of the selection rules. Under rule 4(1) of the selection rules 50 per cent of the total number of seats in the diploma courses are reserved to in-service personnel borne on the cadres of Health and Medical Education Department to be selected and deputed by the Government of Karnataka. By sub-rule (2) of rule 4 of the selection rules, 25 per cent of the total number of seats in the degree courses are similarly reserved for inservice personnel borne on the cadre of Health and Medical education Department to be selected and deputed to the Medical colleges by the Government of Karnataka. We are not concerned with the other sub-rules of rule 4 of the Selection rules.

By the aforementioned sub-rules (1), and (2) what is really brought about is the Selection Committee constituted under rule 6 of the selection rules has no authority to make any selection in so far as inservice candidates of the State Government are concerned as that process of selection has to be made by the State Government itself and the selected candidates assigned to the Medical Colleges by the State Government. Therefore the only question with which the court now concerned with the writ petition is whether the selection of respondent against the claims of the petitioner is violative of Arts. 14 & 16 of the Constitution and no more

The respondents, in this writ petition are besides the State Government the Selection committee constituted under rule 6 of the selection rules and Dr. K.S. Radha one of the candidates selected by the State Government and deputed who admittedly is junior to the petitioner in service. Though all the respondents are served, the State Government and the Selection Committee alone are represented and a common statement of objection is filed on behalf of the respondents. That statement of objection was actually filed in W.P. 6066 to 6069/82 though it was mentioned in the cause title that it was being filed in W.P. 14516/82 as a common statement of objection in all the writ petitions. In that circumstances, W.P. 6066 to 6069/82 having been disposed by an order made by Puttaswamy, J, I had to call for the records of that case to peruse the statement of objection filed by the respondents.

I am compelled to observe that respondents-1 and 2 have misdirected themselves in appreciating the case put forward by the petitioner. The statement of objection sets out the scheme and selection and the policy of the state government as obtaining on the date of filing of the objection in regard to the

new trend and need for encouraging Doctors serving under the State Government in rural areas and depute them for higher education on account of the special need established in rural areas. Unfortunately there is no proper meeting of the case put forward by the petitioner except in para-3 thereof to deny that the petitioner's right under Arts. 14 and 16 of the Constitution are not violated. However an assertion is made at the end of para-4 of the statement of objection to the effect that the selection and deputation has been made on the basis of their suitability, service record, seniority and aptitude with reference to the existing vacancies in posts in particular specialities in Taluk towns. What respondents 1 and 2 have lost sight of is that the Selection rules are not applicable to the selection and deputation of candidates who are in-service candidates in terms of sub-rule (1) and (2) of rule 4 of the selection rules. Deputation for higher studies of such in-service candidates is strictly governed by the provisions contained in the Karnataka Civil Services Rules of 1958. Rule 62 of the latter rules, which will be hereinafter referred to as "the rules", clearly provides for deputation of government servants for higher studies. Rule 62(1) of the rules and Appendix II-A provide at rules 3 and 4 as follows:

"3. The number of Government servants to be deputed at any point of time for study training should be restricted to the minimum not exceeding in any case 5 per cent of the sanctioned permanent strength of the concerned cadre.

4. Only those Government servants who have put in a regular service of at least five years and who are within the age of 45 years should be selected. Such selection should be made strictly on the basis of seniority except for reasons to be recorded in writing in any particular case.

Whatever may be the compulsion under which the Government made the selection and deputation of its in-service personnel in the two departments for post graduate diploma and degree courses for the academic year 1981-82 compliance with the requirements of the rules in regard to deputation to higher studies is mandatory. The rules framed under the proviso to Art 309 of the Constitution have statutory force and should be considered as law within the meaning of, that term occurring in Art. 13 of the Constitution. In other words, the petitioner had a legal right, to be considered on account of her seniority in service, for deputation and, should have been deputed automatically unless reasons were recorded by the concerned authority for not deputing her in spite of her seniority. When this was pointed out to the learned Government Pleader and he was directed to produce the records in the case to evidence the procedure of selection and deputation followed by the 1st respondent. State, he was unable to produce any records in that behalf This leads the court to inevitably conclude, that the petitioner's application made in response to the circular issued by the Head of the department was a mere futile, exercise and selections, were made arbitrarily without following the procedure prescribed by the rules. I must also infer that had the records been produced it would have gone against the case of the respondents. Once the fact the petitioner is senior to the 3rd respondent is

admitted, then the selection of the 3rd respondent becomes bad in law and violative of both Arts. 14 and 16 of the Constitution.

Numerous adjournments were taken by the State Government and by the time this order is passed, one academic year is over. The 3rd respondent has completed one of the two years course and therefore to strike down her selection would be unjust and will deprive both the state and the 3rd respondent of the benefit of her one year's completion. But that does not mean that this court exercising jurisdiction under art. 226 of the Constitution is helpless to give relief to the petitioner whose legal and constitutional rights have been lightly treated by the respondent state without any justification whatsoever.

Learned Government Pleader relied upon the decision of Puttaswamy, J. in W.Ps. 6066 to 606982 dt. 25.8. 82. In the said decision, the learned Judge has declined to interfere with the selection and deputation solely on the ground that the academic year had come to an end and that the petitioners therein had made applications for being considered for the academic year 1982-83. I do not think that the said decision in any way restrains me from directing the 1st respondent herein who has without sufficient cause overlooked the claims of the petitioner for the academic year 1981-82 to select and depute the petitioner without any further application from her for post Graduate studies in, the degree course in Obstetrics and Gynaecology to which the 3rd respondent herein was selected and deputed for the previous academic year. The state must not only adhere to the rules framed by it, but also respect the fundamental rights guaranteed in the Constitution.

In the circumstances of the case, the petitioner, is entitled to her costs. Advocate's fee Rs. 250.

A copy of this order shall be forthwith furnished to the Government Advocate free of cost and on a proper application being made, to the petitioner as well. Rule will accordingly issue in terms above and be made absolute.

Sri Motigi, learned Government Advocate is permitted to file his memo of appearance within two weeks from to-day.