

(2019) 07 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No. 18656, 17359 Of 2011 (S-RES)

Dr. Phaniraja K L

APPELLANT

Vs

Karnataka Veterinary Animal

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Karnataka State Civil Services Act, 1978 — Section 3(1), 4(1A), 8, 14

Citation : (2019) 07 KAR CK 0036

Hon'ble Judges : G.Narendar, J

Bench : Single Bench

Advocate : M S Bhagwat, H N Shashidhara, S.T. Naik, J.Prashanth, C.Jagadish

Final Decision : Partly Allowed

Judgement

1. Heard the learned Counsel for the petitioners Sri M.S.Bhagwat, learned Counsel for respondents 1 & 2 Sri H.N.Shashidhara, learned Counsel for respondent No.4 Sri J.Prashanth and the learned Counsel for respondent No.5 Sri C.Jagadish.

2. Brief facts leading to the filing of these writ petitions are, that a notification was issued on 09.07.2010 inviting applications for the backlog posts of Professor and Associate Professor from amongst the reserved Scheduled Caste category and the modified notification issued on 7. 12.2010.

3. Petitioner and respondent No.4 were the applicants for the post of Professor under the said notification. Petitioner had applied for the post of Associate Professor, to which respondent No.5 is also an applicant. The respondent-University after appraising the applications and after completing the procedure, have drawn up the merit list, wherein respondent No.4 - D.Rathnamma has been declared as eligible to be appointed as Professor and respondent No.5 has been declared as eligible to be appointed as Associate Professor.

4. As common facts and common issues of law are involved, both the writ petitions are taken up together for disposal.

5. Having heard the learned Counsels and having adverted to the material on record, the point that arises for consideration is,

"whether the appointments are required to be made in compliance with the UGC Regulations?"

6. Learned Counsel for the petitioner Sri M.S.Bhagwat would vehemently contend that respondent No.4 is ineligible in view of the Special Rules formulated, whereby the upper age limit of the applicant/appointee cannot be more than 40 years. He would invite the attention of the Court to the notification dated 21.11.2001, whereby under the said notification, as a one time measure, the State Government intended to fill the vacancies which had arisen on account of lack of eligible candidates to occupy the posts reserved in favour of Scheduled Caste/Scheduled

Tribe and the Rules were framed as Karnataka Civil Services (Unfilled Vacancies Reserved for the persons belonging to SC & ST) (Special Recruitment) Rules, 2001.

Learned Counsel would invite the attention of the Court to Rule 3 of the said Rules, which reads as under:

"3. Age:- Notwithstanding anything to the contrary contained in the Karnataka Civil Services (General Recruitment) Rules, 1977, or the rules of recruitment specially made for recruitment to any service or post, the candidates for recruitment to any service or post under these rules must have attained the age of eighteen years but not attained the age of forty years."

7. He would further invite the attention of the Court to Rule 6 of the said Rules, to buttress the contention that the upper age limit cannot be beyond 40 years and that respondent No.4 as on the date of application was aged 41 years and six months and hence, was ineligible to be appointed.

8. The Rules have been framed pursuant to Karnataka Act 14 of 1990 and is made under the Karnataka State Civil Services Act, 1978, in exercise of the powers conferred under sub-section (1) of Section 3 and Section 8 of the Act. Admittedly, the said Rules were inapplicable to the independent institutions like the respondent-University. Thereafter, the State realizing that the said Act does not encompass the institutions like respondent No.1-University, by way of an Amendment to Act of 1990, provisions of Section 4(1-A) came to be inserted by Act No.8 of 2004 which reads as under, issued the above notification.

"4. Reservation of appointment or posts etc.- (1) After the appointed day, while making appointments to any office in a civil service of the State of Karnataka or to a civil post under the State of Karnataka appointments or posts shall be reserved for the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes to such extent and in such manner as may be specified from time to time in the order made by the Government under clause (4) of Article 16 of the Constitution of India.

[(1-A) Notwithstanding anything contained in any law for the time being in force, the Appointment Authority shall identify unfilled vacancies reserved for the persons belonging to Scheduled Castes and Scheduled Tribes in any service or post in an establishment in public sector as existing on the date of commencement of the Second Amendment Act, 2004 and take action to fill them as a one time measure within a specified time. The manner in which the number of vacancies is to be computed, the procedure for filling such vacancies and the time within which action is to be taken shall be as specified by notification by the State Government:

Provided that, the provisions of this sub-section shall not apply to any unfilled vacancy in Karnataka State Civil Services or post in respect of which provisions have been already made:

Provided further that, where the Appointing Authorities covered under this sub-section have already filled all or part of the unfilled vacancies before the date of coming into force of the Second Amendment Act, 2004 by making appointment of persons belonging to the Scheduled Castes and the Scheduled Tribes, then such appointments shall not be affected.]

9. The first proviso to Section 4(1)(A) specifically excludes the applicability of the said Section to the posts under the Karnataka Civil Service and in respect of which provisions have already been made in the year 2001. The second proviso protected or validated the appointments which are already made.

10. From the statement of objects and reasons for the amendment, it is apparent that the amendment was brought about after the State realizing the error that the provisions as existing do not provide for a similar measure for the other authorities including the University. The appointment is pursuant to the said amendment. In this regard, there is no dispute. The only point that is canvassed by the petitioner is, that respondent No.4 being aged 41 years is disentitled to be considered by the respondent for appointment to the post of Professor. In this regard, reliance is placed on Rules 3 & 6 to buttress his argument.

11. Learned Counsel for respondents 1 & 2 would invite the attention of the Court to the UGC Regulations produced at Annexure-R4B. The UGC Regulations of minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of standards in higher education, 2010, is relied upon by the learned Counsel for respondents 1 & 2 and he would invite the attention of the Court to Regulation 4.1.0.A.(ii) which reads as under:

"(ii) A minimum of ten years of teaching experience in university/college, and/or experience in research at the University/National level institutions/ industries, including experience of guiding candidates for research at doctoral level."

12. Learned Counsel for respondents 1 & 2 would submit that the UGC Regulations was promulgated for the purpose of maintaining minimum standards

and qualifications, in that, it specifies a minimum of ten years of teaching experience in university/college, and/or experience in research at the University/ National level institutions/ industries, including experience of guiding candidates for research at doctoral level, for the post of Professor. He would further invite the attention of the Court with regard to Karnataka Veterinary, Animal and Fisheries Sciences University Act, 2004, and would further invite to Statute

29 in Chapter-V pertaining to method of recruitment of teachers and other employees in the University and he would invite the attention of the Court to Statute 29(2)(c) & (g) which pertains to appointments through direct recruitment for the backlog posts, and that Clause (c) relates to the qualification of Teachers, Scientist and Extension Specialists shall be as stipulated by UGC/ICAR from time to time with the approval of the University. He would contend that the University has been following UGC norms for appointment of teachers and that as per the said norms, minimum 10 years experience as a teacher in university/college, and/or experience in research at the University/National level institutions/ industries, including experience of guiding candidates for research at doctoral level, is a pre-requisite as on the date of application.

13. That as regards the post of Professor, petitioner does not possess the minimum qualification prescribed. Admittedly, petitioner has been appointed as Veterinary Officer and the experience certificate would not demonstrate that the petitioner possesses 10 years experience as a teacher in any university or college. That the petitioner joined the services of the university only in the year 2008 and the notification inviting applications being issued in the year 2010, it is apparent that the petitioner did not possess the minimum qualification of 10 years teaching experience.

14. Further, learned Counsel for the respondents 1 & 2 would contend that the stipulation of upper age limit of 40 years is inapplicable to the university as the university is governed by its own statute as mentioned supra. That the statute also provides for filling the backlog posts through direct recruitment and hence, reliance on the Rules to assail the appointment of respondent No.4 is unfounded. The contention merits consideration. There is denying the fact that the Regulations of the University provides for and governs even backlog appointments as noted supra. Hence, the contention otherwise by the petitioner requires to be rejected and is rejected. Further, learned Counsel for respondents 1 & 2 would invite the attention of the Court to Annexure-J being the notification dated 23.04.2010 under which the applications have been received and he would invite the attention of the Court to the experience mentioned in Sl. No.4 of the qualifications, wherein it is stipulated that the candidate shall possess a minimum of 18 years of experience in teaching / research / extension / administration in Universities / Colleges and other institutions of higher education. He would contend that if the submission of the learned Counsel for the petitioner is taken as correct, then, there would be no candidates who would qualify with 18 years of experience and be less than 40 years old. The contention

bears substance.

15. A normal student is expected to complete his graduation at the age of 21 years. Thereafter, he is required to complete his post-graduation to even enable him to attempt for obtaining a doctoral degree. Post-graduation would necessarily be two years and assuming that the candidate has completed his post-graduation without any break or failures, he would have crossed two years to merely complete his post-graduation and assuming that the candidate is extremely brilliant and successfully completes his doctoral course, he would be atleast aged 25 years. If that be so, then the question of 40 year old candidate possessing 18 years experience is wholly unimaginable and well highly impossible. Hence, the contention that Rules 3 & 6 ought to be applied to the post of Professor or Associate Professor cannot be appreciated. Hence, the contention must fail and is accordingly rejected.

16. That apart, it is seen that the petitioner does not possess the qualification specified in UGC Regulations which stipulates 10 years teaching experience in university/college, and/or experience in research at the University/National level institutions/ industries, including experience of guiding candidates for research at doctoral level. In that view of the matter, petition calling in question the appointment of respondent No.4 requires to be rejected and accordingly W.P.No.17359/2011 stands rejected.

17. With regard to the post of Associate Professor, the UGC Regulations at 4.3.0 (ii) & (iii) stipulates that the candidate shall possess a Master's Degree with atleast 55% marks (or an equivalent grade in a point scale wherever grading system is followed) and a minimum of 8 years of experience of teaching and/or research in an academic/research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution/Industry. Neither the petitioner nor respondent No.5 are able to demonstrate that they meet the requirement as stipulated in Regulation 4.3.0 (ii) & (iii). In that view of the matter, W.P.No.18656/2011 in so far as it calls in question the appointment of respondent No.5 is partially allowed. Respondents 1 & 2 shall re-examine the case of the petitioner and respondent No.5 on merits and shall thereafter publish the selection list provided the candidates meet the qualifications stipulated by the UGC Regulations. The writ petition is ordered accordingly.

The interim orders stand discharged.

Costs made easy.