

(2015) 09 KAR CK 0104

In the Karnataka High Court

Case No : Writ Petition Nos. 3203/2008 (S-PRO) and 83941/2013 (S-PRO)

Ganesh D. Kundaragi and Others

APPELLANT

Vs

The Karnataka University and Others

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2015) 09 KAR CK 0104

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Aravind D. Kulkarni, Advocate, for the Appellant; Mallikarjun S. Hiremath, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. These petitions are considered together and disposed of by this common order, having regard to the grievance of these petitioners being seemingly identical.

3. The petitioner in Writ Petition No. 3203/2008 is said to have joined the services of the first respondent as a Technician on 11.07.1994 and has been serving the respondents in that capacity. He belongs to Scheduled Caste and therefore claims to be entitled to reservation within the quota allotted for the Scheduled Caste, both in the matter of promotion and recruitment, in accordance with the statutes that have come into force and governing the respondents with effect from 16.01.1996 known as the Karnataka University Staff Recruitment Statute, 1998. The post of Junior Engineer in the said University Science Instrumentation Center (hereinafter referred to as "the USIC for brevity) was required to be filled either through promotion by selection of eligible employees on the basis of merit and suitability or direct recruitment. That, upon the

retirement of one S.R. Deshpande, as Junior Engineer on 28.02.2005, said post had fallen vacant and was to be filled up. It is the petitioner's grievance that the respondents took a decision to fill up the post by way of promotion from amongst the eligible employees by way of selection. The post of Junior Engineer had fallen vacant on 01.03.2005 and the petitioner's claim that he was eligible candidate and therefore, had submitted the application for consideration of his case on that very day. In response to which the respondents had communicated by reply dated 02.04.2005 intimating him that he would be considered for such promotion. He had thereafter made three more representations. Since there was no further response from the respondents, he made a fourth representation, to which again there was no response. He was therefore constrained to issue a legal notice through the counsel. There was a reply to state that the petitioner's claim was not legal and without affording any reasons thereof. It is his further grievance that in gross violation and in breach of the positive assurance, they had effected the promotion of the third respondent to the above said cadre without going through any process of selection and therefore, it was arbitrary. He was not a party to the said order and he was not in possession of the document and therefore has not been able to produce the same. It is this grievance, which is sought to be highlighted in the petition.

4. Insofar as the petitioner in W.P. No. 83941/2013 is concerned, the petitioner claims that he is a Diploma Holder in Civil Engineering and was appointed by the first respondent namely the Karnataka University on 30.07.1997 as Assistant Draftsmen. He was placed as Junior Engineer in various sections of the University independently on work charge arrangements and therefore, gained rich experience in various departments of the University. The petitioner is said to have made a representation to consider him for promotion to that of Junior Engineer or to any of the equivalent cadre as on 14.09.2007. The respondent-University is said to have called for direct recruitment of certain posts belonging to backlog posts reserved for Scheduled Caste and Scheduled Tribe on 11.02.2011. The petitioner belonged to Scheduled Caste and therefore, he was an aspirant to the post of Junior Engineer. The respondents had issued an endorsement to state that the petitioner's case could not be considered. The petitioner had challenged the said endorsement and notification in a Writ Petition before this Court in W.P. No. 62779/2011 which was disposed of at the threshold with an observation that reservation in favour of women being a later development in the area of reservations and if the original reservation as stipulated under the constitution is maintained and in addition, it is supplemented and worked upon to provide for horizontal reservation in favour of women also, no fault can be found with such a further/inner reservation. On the other hand, such a measure being in the interest of women to promote the interest and welfare of women candidates, also cannot be found fault at all by this court, for quashing the same as either illegal or constitutional. It is further stated that a report submitted by the Commissioner, Social Welfare Department to the Government of Karnataka has indicated that the first respondent has not

maintained the roster in the University in all its recruitment and it was the duty of the University to accomplish the spirit of Article 16 of the Constitution of India and the Rules formulated under the State in that the University had failed to do so. Therefore, the petitioner made a second representation to reconsider his case for promotion and it is further claimed that the petitioner is on par with the petitioner in the connected writ petition in WP 3203/2008 and that he along with other petitioners have been over looked in promoting another and therefore, seeks to question the action of the respondents.

5. The learned counsel for the petitioner would further contend that respondents 1 and 2 have rejected the case of the petitioner in Writ Petition No. 3203/2008 on two grounds namely as per Government Order dated 16.11.1995, reservation policy is not applicable when there is only one single post. The petitioner had not raised any objection regarding the seniority list prepared for the post of Technical Assistant/Senior Technical Assistant/Technician and hence, the same had attained finality. It is pointed out by the learned counsel that it was specifically contended in the earlier writ petition filed by him that the post of Junior Engineer is not a single post cadre existing in the University, inasmuch as, the cadre exists in the Building Department of the University also and hence, in the matter of recruitment/promotion, the rules of reservation in favour of Scheduled Caste/Scheduled Tribe applies squarely and in terms of the roster laid down by the Government for promotion/recruitment, the first post should be allotted to the Scheduled Caste candidate. The respondents 1 and 2 had not appreciated this and have proceeded overlooking the same and hence, on that ground alone, the petitioners should succeed. The petitioner's claim, however, is rejected on that ground that he had not raised any objection to which the learned counsel would point out that the post of Junior Engineer had fallen vacant on 01.03.2005 and he had made a representation on the very day and he was intimated that his case would be considered positively, but, had been clearly overlooked. This was wholly unfair and illegal and the third respondent having promoted post haste overlooking the claim of the petitioner is, therefore, unjust and in violation of the statutes framed for itself. It is further pointed out that the petitioner had joined the services on 11.07.1994 whereas the third respondent had joined the services on 28.07.1997 and that even on merit, the petitioner was more meritorious. On a plain perusal of the academic record and the years of experience that the petitioner has gained vis-?-vis the third respondent. It is further pointed out that only two persons have been considered for promotion and that the statutes itself requires that at least five persons should be considered to each vacancy.

6. The respondents 1 and 2 have filed their statement of objections to contend that there is only one post of Junior Engineer in USIC and that the post of Junior Engineer was a single cadre post and therefore, no reservation or promotion to the said post was applicable as per the Government Advocate and that the third respondent was promoted to the post of Junior Engineer in accordance with law and that the Promotion Committee constituted by the Syndicate to review the service records had recommended the list of employees for such promotion. The

Syndicate after considering the recommendation of the Committee had passed a resolution promoting the third respondent as Junior Engineer and therefore, has denied several claims set up by the petitioners.

7. In a further additional statement of objections to clarify as to how even though third respondent was sought to be junior to the petitioner in Writ Petition No. 3203/2008, the University was justified in promoting him as Junior Engineer and reiterated that there is only one post of Junior Engineer in the USIC Department and that it could be filled up by promotion in selection of Technical Assistant/Senior Technical Assistant/Technician or by direct recruitment. The University had taken a decision to fill up the said post through promotion. Accordingly, the third respondent was considered as being senior to the petitioner in seniority and was promoted as Junior Engineer and that it was on consideration of all criteria that he was so promoted. The seniority list of Lab Assistant including Technical Staff working in USIC department was published on 07.05.2003 as approved by the Syndicate. According to the seniority list, the name of the third respondent was found above the name of the petitioner and when such seniority list was prepared and published, objections were called for and though the petitioner had full knowledge of the same, he had not filed any objections. Hence, it had attained finality and therefore his claim in the petition made now is not relevant.

8. Insofar as the earlier direction issued by this Court in Writ Petition No. 5603/2007, that the representation of the petitioner be considered, it was indeed considered and an endorsement was issued explaining the reasons as to why the petitioner's claim for promotion could not be granted. The respondents were again called upon to file a better statement of objections as the above statement of objections was not clear. Therefore, by a further additional statement of objections dated 03.09.2015, it was amplified that the post of Junior Engineer sanctioned under the 5th Plan Period was unreserved as being only post in the cadre and it was filled up by S.R. Deshpande, who retired from service as a Junior Engineer. The three posts of Technicians under the Fifth Plan period was duly filled by one C.C. Pattanshetti who had since retired and R.V. Murgod both under general merit category and G.D. Kundargi under the scheduled caste category and was shown at serial numbers 6, 7 and 8 of the seniority list dated 01.04.2003. Out of two posts of Senior Technical Assistant sanctioned as an additional assistant, one post was filled up by S.V. Mygoti under general merit category and another post was filled by C.R. Bharathi, under the scheduled caste category and was shown at serial numbers 4 and 5 of the seniority list date 01.04.2003. The petitioner G.D. Kundargi had joined the services of the University as "Technician" on 11.07.1994 whereas the third respondent S.V. Mygoti had been appointed as "Senior Technical Assistant" on 28.07.1997. The post of Technician held by the petitioner carried a pay scale of Rs. 1520-2900 whereas the post of Senior Technical Assistant held by the third respondent carried a pay scale of Rs. 1720-3300 and that the consideration of giving promotion to the Laboratory Staff was placed before the Syndicate and the

Syndicate resolved to constitute a Promotion Committee consisting of three members to review the service records, confidential reports of Laboratory Staff and to recommend the list of candidates to the Syndicate for promotion. The Committee having submitted a report recommending promotions to various posts in the Laboratory and Technical Cadre apart from other non-Technical posts, the University resolved to accept the recommendations in accordance with the conditions laid down by the Government. Since there was only one post of Junior Engineer, the reservation policy was not applicable. Hence, M.V. Mygoti who was senior was promoted as Junior Engineer. It is asserted that C.C. Pattanshetti shown at serial number 6 in the seniority list had retired from service in October, 2004. Smt. R.V. Murgod shown at serial number 7 was appointed as Technician in USIC and joined duties on 07.01.1982 and continued in the service of the University and she was senior to the petitioner who had joined the services as on 11.01.1994 and even if it is assumed that the post was unreserved and the said post was to be filled up by promotion, Murgod having joined the services on 07.01.1982 and being senior was to be considered for promotion to the post rather than the petitioner. But, since the Promotion Committee had recommended to consider the Senior Technical Assistant for the promotion to the post of Junior Engineer from among the Technical Assistant/Senior Technical Assistant/Technician, Mygoti was found to be suitable for the post and senior in the cadre of Senior Technical Assistant was recommended and the University had accepted the same. The nature of duties of Junior Engineer in Building Section (Engineering) Department of the University and that of Technical Assistant were entirely different as is indicated in the RTI Act Manual 2008. The comparative study of the nature of work prescribed makes this clear. Therefore, these were the relevant considerations on the basis of which third respondent was chosen over the petitioner.

9. The petitioner had thereafter filed a counter or a rejoinder to the additional statement of objections to point out that as per the Schedule annexed to Karnataka University Staff Recruitment Statute for promotion, it is evident the method prescribed is promotion by selection and it shall be by selection of person on the basis of merit and suitability in all respect to discharge the duties of the post from among persons eligible for promotion. The number of eligible persons to be considered shall be limited to five times the number of vacancies to be filled in order of seniority and therefore, the University was required to consider the following aspects namely persons who are working as Technical Assistant/Senior Technical Assistant/Technician, whether they have completed five years of service in the respective cadre and that the number of eligible persons to be considered shall be limited to five times the number of vacancies to be filled in order of seniority. The University had not followed the same while passing the impugned order of promotion. The admitted circumstances that only two persons were considered for promotion to the post of Junior Engineer namely Mygoti and Bharathi would make it clear that, the University has committed a breach of its own statutes and has not been taken into consideration the

requirement of at least five times the number of vacancies to be filled in order of seniority being considered for promotion. The seniority list dated 31.01.2001 which the petitioner has obtained by recourse to the Right to Information Act indicates that the petitioner was shown at serial number 14 and the third respondent has been shown at serial number 16. That suddenly in the year 2003, the University has shown the name of the third respondent at serial number 4 and the petitioner at serial number 8. This was not forthcoming from any of the documents. When admittedly the petitioner had joined the services on 11.07.1994 and the third respondent had joined the services on 28.07.1997, the length of service put in by the petitioner was certainly more than that of the respondent.

10. Insofar as the contention that the pay-scale of the third respondent was higher than that of the petitioner is glossed placed of the requirement for the eligibility conditions in the University seeking to promote the third respondent when there is no rule prescribing that only persons who are working as Senior Technical Assistant had to be considered while granting promotion to the post of Junior Engineer. From these aspects, it is clear that the University has played favoritism in promoting third respondent and overlooking the claim of the petitioner, though he was earlier assured of consideration of his case for promotion.

11. The learned counsel for the third respondent would vehemently oppose the petition and would support the respondents 1 and 2 in their stand, while also pointing out that there was no post of Technician in the USIC and the petitioner claiming to be a Technician would not be eligible for seeking promotion in the department when there was no such post available.

12. By way of reply, the learned counsel for the petitioners would point out that the premise that it is a single cadre post and that reservation cannot be considered which has been raised by the University and the further contention that the petitioner was not from the same department and was not eligible for being considered for promotion as Junior Engineer, are both incorrect premises. It is pointed out that there are other departments where there are Junior Engineers of the University and therefore, could not be considered as a single cadre post. Secondly, it is pointed out that the eligibility condition prescribed by the University, itself indicates that a Technician was eligible for promotion provided he had put in five years of service and since the petitioner belongs to a scheduled caste, reservation would also have to be taken into account. Further even on merit, the petitioner is more merited and has long experience than the third respondent. It is in this face that the learned counsel would seek to contend that the promotion made by the respondents albeit on the recommendation of a Promotional Committee constituted by the Syndicate, would not render the same legal and that it is in gross violation of its own statutes.

13. Insofar as the criteria that the pay scale of the third respondent was higher than that of the petitioner and therefore, he has stolen a march over the

petitioner is not a consideration that can be accepted. On this ground, the promotion of the third respondent would have to be set at naught. It is certainly gloss placed on the eligibility criteria read into the statutes by the University when there is no such rule or provision which would be a consideration. The eligibility of the candidates was only that they should either be a Senior Technical Assistant or a Technician with five years service, apart from the consideration of merit and it is those eligibility criteria which would be relevant. The University having read into the eligibility criteria, the higher pay scale as being relevant, is therefore not supported by any rule or other provision. The petitioners have certainly been short changed in this regard and therefore, the University would have to reconsider the candidates and the appropriate number of candidates as it is also the candidates numbering five times the vacancy being considered to be filled up should be taken into account was also to be applied.

14. Insofar as, the petitioner in Writ Petition No. 83941/2013 is concerned, since the promotions now made are set aside by this order, it would be necessary for the University to also consider the case of the petitioner therein subject to his eligibility and other conditions which he would have to meet in order to be considered for promotion and therefore, the University would do well to redo the exercise of considering the case of promotion to the post of Junior Engineer in the USIC department taking into account all the eligible persons including the petitioners herein, if, they so qualify and pass orders in accordance with law.

The petitions are allowed. The annexures-G and K in Writ Petition No. 3203/2008 are quashed.

The University shall expedite the process of considering the case of promotion to the post of Junior Engineer in USIC with expedition, in any event, within a period of three months from the date of receipt of copy of this order.

The third respondent shall, however, continue in the post of Junior Engineer till such time, the University should redo the exercise as stated above.

The Government Pleader to file his memo of appearance in Writ Petition No. 83941/2013 within a period of four weeks.