
(1991) 03 KAR CK 0068
In the Karnataka High Court
Case No : W.A. No"s. 893 and 894 of 1991

G.M. Kumar

APPELLANT

Vs

Karnataka Public Service Commission

RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 28
Constitution of India, 1950 — Article 136, 226

Citation : (1991) ILR (Kar) 1289 : (1991) 1 KarLJ 340

Hon'ble Judges : Mohan, C.J.;Hakeem, J

Bench : Division Bench

Advocate : L.Govindaraj, for M.M. Jagirdar, for the Appellant;

Final Decision : Dismissed

Judgement

Mohan, C.J.—It is trite saying that hard cases make bad law. This is illustrated by these Appeals. The short facts are as follows:

The appellants in response to a Notification issued by the Karnataka Public Service Commission staked their claims for the post of Assistant Surgeon cum Medical Officer in Group A, Class-I. That the applications were made within the prescribed time. It was also accompanied by fee as well as the documents in support of the candidature. Unfortunately, for them, in one case though the requisite fee of Rs. 22/- has been paid, it came to be rejected on the wrong premises that there was a deficit while in the case of other appellant only Rs. 18/- had been paid as against prescribed fee of Rs. 22/- and that deposit came to be made good, later. Nevertheless, these applications came to be rejected on account of deficit. The rejection of these applications were sought to be questioned in W.P.No. 33/1991 and W.P.No.26269/1990. The learned Judge (G.P. Shivaprakash, J) was of the view that the Writ Petitions could not be entertained in view of Sections 15 and 28 of the Administrative Tribunals Act, 1985 (for short the Act), since they provide for exclusive jurisdiction in the matter of recruitment. Accordingly, he dismissed the Writ Petitions. Hence, these Appeals.

2. The learned Counsel for the appellants urges that as on today the position has become difficult for the appellants. The Writ Petitions were entertained in the first instance. Interim directions were issued in both the cases, calling upon the Karnataka Public Service Commission to interview the appellants. In fact, they have been interviewed. However, their results are yet to be announced. Presently, the appellants cannot move the Tribunal because there is no Karnataka Administrative Tribunal since there is only one Member, who cannot dispose of the matters. It has also been held by the Supreme Court that one Member cannot function as Tribunal and it must sit always as a Bench. Therefore, there is no other go than to request this Court under Article 226 of the Constitution of India, to issue necessary direction since the principle of *ubi jus, ibi remedium* must apply. This is the only contention urged before us.

3. We fully appreciate the piquant situation under which the appellants are placed. But, we are afraid the appellants are knocking at the wrong door. We have not the slightest hesitation in holding that having regard to the comprehensive language employed in Section 15 of the Act, we will have no jurisdiction to entertain the Writ Petition itself muchless the Writ Appeal. We may at once look at Section 15 of the Act. That states in Clause (a) of Sub-section (1) of Section 15 as follows:

"Recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State."

Section 28 of the Act reads as under:

"Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution - On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters, concerning recruitment to any Service or post or service matters concerning members, of any Service or persons appointed to any Service or post, no Court (Except the Supreme Court under Article 136 of the Constitution), shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

As a matter of fact, the constitution of the Tribunal is traceable to Article 323A of the Constitution. Article 323A(2)(d) states as follows:

"Excluded the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the dispute or complaint referred to in Clause (1)."

Therefore, there is a constitutional bar. We cannot exercise our power under Article 226 of the Constitution in the teeth of the bar. However, what has happened in this case as we have stated above is that both appellants have been interviewed by the Service Commission by a direction of this Court. Strictly speaking that direction is without jurisdiction, since as we stated above, the

entertaining of Writ Petitions itself was not warranted. On that score the appellants should not suffer. It is one of the axiomatic principle of law that no man could be prejudiced by the Act of the Court. Accordingly, we could only expect the Service Commission to come to the rescue of the appellants. More than this, it is neither desirable nor permissible for us to say. Dismissed.